

## Terms and Condition of Purchase United States and Canada

### 1. DEFINITIONS

**Affiliate:** an entity that is owned and/or controlled directly or indirectly by Buyer.

**Agreement:** these Terms and Conditions of Purchase together with the Order pursuant to which Goods or Services are being provided and all documents specifically referenced herein or in such Order.

**Buyer:** the Marathon entity identified in the applicable Order, and any successor or assignee of Buyer.

**Buyer's Customer:** a purchaser or lessee of the Goods, including the ultimate owner, lessee, or operator of the Goods, and including the purchaser or lessee of a product incorporating the Goods and/or Services provided by Seller under the Order.

**Buyer Indemnitees:** Buyer and its Affiliates and its and their respective past, present and future members, shareholders, owners, directors, officers, agents and employees; and Buyer's Customers; and all of their respective successors and assigns.

**Deliverables:** Goods and/or Services depending on the context.

**Goods:** materials or products described in Orders, the purchase of which is governed by the terms of the Agreement. Goods may include Intellectual Property.

**Order:** a document, electronic or hard copy, issued by Buyer to Seller, in the form of a purchase order or release or similar document, referring to these Terms and Conditions of Purchase and ordering Deliverables.

**Intellectual Property:** inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature, including, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

**Party:** Seller or Buyer.

**Parties:** Seller and Buyer.

**Seller:** the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order, to whom the Order is issued by Buyer.

**Seller Person:** a Seller employee, agent, representative, subcontractor, subcontractor employee, consultant, or advisor.

**Services:** services (whether or not ancillary to a sale of Goods) described in Orders, the purchase of which is governed by the terms of this Agreement.

**Specifications:** Buyer's requirements for the Goods or Services set forth in any applicable specifications, drawings, designs, samples or other documents, including but not limited to Buyer's Supplier Requirements and Expectations Manual, Supplier Quality Manual or other applicable Buyer quality standards document.

**Terms and Conditions:** these Terms and Conditions of Purchase.

### 2. SCOPE OF THIS AGREEMENT

(a) This Agreement must be accepted as indicated in Orders or, if Orders do not so indicate, in writing by Seller within the time specified on the face of the Order or, if not so specified, within a reasonable time of Seller's receipt hereof.

(b) If for any reason Seller fails to accept this Agreement in writing or as specified in the Order, the furnishing or commencement of any Services called for hereunder, (including preparation for manufacture), the shipment by Seller of any Goods (or lots thereof) ordered hereby, the transfer by Seller of rights in Intellectual Property, the acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's election, be treated as an unqualified acceptance by Seller of this Agreement and all the terms and conditions hereof.

(c) Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Agreement shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and shall apply to each Deliverable received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of Seller.

(d) If the Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to all such additional and different terms herein and acknowledge that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of the relevant Order.

### 3. PRICE AND PAYMENT

(a) **Price.** The price for the Goods and/or Services shall be the price as shown on the Order. Such price, in any event, shall include all taxes and shall not exceed the price last granted or quoted by Seller, whichever is less. The price shall be subject to adjustment according to any agreed upon Seller price reduction.

(b) **Most Favored Customer Pricing.** Seller warrants that the agreed price for the Deliverables is not less favorable than that currently extended to any other buyer for the same or like Deliverables in similar quantities.

(c) **Payment Terms.** Payment terms will be net ninety (90) days following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in this Agreement.

(d) **Cash Discount.** The cash discount period, if any, shall be computed as commencing with receipt by Buyer of invoice or of Deliverables, whichever is later.

(e) **Invoices.** All invoices must contain the following information: Order number (including purchase order number, purchase order release number, and number of any similar document as applicable), item number, description of items, quantities, unit prices, taxes (whether such taxes are components of prices or not) and other details as Buyer may request. Payments of invoices shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of this Agreement. Buyer or any of its Affiliates may set off any amount owed by Seller or any of its affiliated companies to Buyer or any Affiliates against any amount owed by Buyer hereunder. In accordance with U.S. Bureau of Customs and Border Protection ("CBP") Regulations – 19 CFR 141.81, a commercial invoice will be presented with each merchandise shipment entering the U.S. Such invoice shall be prepared in the English language (or an English translation attached thereto), in accordance with 19 CFR 141.86-141.89. Buyer shall not be obligated to pay for any Deliverable if the invoice for such Deliverable is received more than six (6) months after the receipt of the Deliverable.

#### 4. TAXES

(a) Unless otherwise stated in this Agreement and except to the extent prohibited by applicable law, (a) the price for the Goods and/or Services shall include all applicable taxes, including but not limited to sales taxes, use taxes, value added taxes ("VAT"), transaction privilege taxes, gross receipts taxes, and other charges such as duties, customs, tariffs, imposts, any payroll taxes for Services performed in country by Seller's personnel, and any other government imposed taxes (each and all hereafter referred to as "Taxes"), each of which shall be stated separately on Seller's invoice and (b) Seller shall not bill Buyer for any Taxes as separate items.

(b) Unless otherwise stated in this Agreement and except to the extent prohibited by applicable law, Seller shall have sole responsibility for the payment of all Taxes without reimbursement by Buyer other than by Buyer's payment to Seller of the price for the Goods and/or Services. Seller shall remit all such charges to the appropriate tax authority unless Buyer provides sufficient proof of tax exemption. Seller is solely responsible for the fulfillment of Seller's obligations under law or statute in respect to collecting and remitting Taxes collected from Buyer under this Agreement to the proper tax authority. Any penalties, fees or interest charges imposed by a tax authority or other authority as the result of non-payment of Taxes collected by Seller from Buyer will be borne by Seller. Seller also shall pay any Taxes, penalties, fines or fees arising out of its willful misconduct or negligence for which Buyer becomes liable.

(c) Notwithstanding the foregoing, if and to the extent required by the applicable taxing jurisdiction's law, Seller shall bill Taxes as separate line items on its invoice, except that the sum of the amount billed for the Goods and/or Services and for the Taxes shall not exceed the price.

(d) In the event that Buyer is prohibited by law from making payments to Seller unless Buyer deducts or withholds Taxes therefrom and remits such Taxes to the local taxing jurisdiction, then Buyer shall duly withhold such Taxes and shall pay to Seller the remaining net amount of the price after the Taxes have been withheld. Buyer shall not reimburse Seller for the amount of such Taxes withheld.

(e) Seller shall not collect Taxes on the supply of Goods and/or Services under this Agreement in case and under circumstances where (i) the transaction is not subject to Taxes, (ii) the liability for payment of Taxes is shifted or reversed by law or statute or otherwise is Buyer's legal responsibility or (iii) Buyer has been authorized to pay Taxes directly to the appropriate Tax authority. In such instances, the price of the Goods and/or Services shall be discounted to exclude the Tax as a component of the price.

(f) In the event that Seller does not collect Taxes from Buyer (whether as a component of the price or as a separately billed item) where such collection is required, and the failure is subsequently audited by any tax authority, liability of Buyer will be limited to the tax assessment, with no reimbursement for penalty or interest charges.

(g) Each party is responsible for its own respective income taxes or taxes based upon gross revenues, including but not limited to business and occupation taxes.

(h) Where VAT is applicable, Seller shall ensure that its invoices to Buyer are issued in such a way that they meet the requirements for deduction of input VAT by Buyer.

#### 5. DELIVERY

(a) **Delivery Date.** Seller shall furnish the Deliverables in accordance with the delivery terms stated on the Order and if delivery dates are not stated, Seller shall offer Buyer its best delivery dates, subject to written acceptance by Buyer ("Delivery Dates"). Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. If Seller fails to deliver the Deliverables in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Deliverables on the Delivery Date. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Buyer may defer payment with respect to, or return, at Seller's expense, any

Deliverables delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such Deliverables.

**(b) Terms.** Unless otherwise expressly set forth in the Order, the delivery terms for Goods shall be: DDP Buyer's facility Incoterms® 2020 rules provided that Seller shall be responsible for unloading of the Goods in accordance with Buyer's instructions and the risk of unloading will be that of Seller. As consistent with this delivery term, standard delivery instructions of the relevant Buyer procurement facility or department apply and may be obtained through the relevant Buyer procurement representative. Title and risks of damage and loss shall pass to Buyer on delivery of Goods as provided in this section. If delivery is required to be made to a third party (drop shipment), title and risks of damage and loss shall pass to Buyer when delivered at the third party's facility.

**(c) Notice Of Delay.** Whenever an actual or potential reason for delay (including but not limited to labor disputes) delays or threatens to delay the timely performance of the Order, Seller shall immediately notify Buyer in writing of all relevant information and, subject to the force majeure provision set forth herein, shall make and pay for all necessary changes to fulfill its obligations under the Order and shall mitigate the potential impact of any such delay. Buyer has the right, without incurring any liability, to cancel any Deliverables affected by the delay in performance.

**(d) Cessation of Production.** Seller shall give Buyer at least one hundred eighty (180) days prior written notice of the permanent discontinuance of production of items covered by Orders, provided however that compliance with this provision shall in no way relieve the Seller from its obligations under the Order.

**(e) Packing.** All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller shall not charge separately for packaging, packing or boxing, unless Buyer has agreed to such charges in writing. Seller shall not combine in the same container, material that is to be delivered to different receiving locations. Seller shall not combine, in the same package or box, Goods that are not the same (i.e. same part number). All wood products used in packaging shall be ISPM 15 compliant.

**(f) Marking.** Unless otherwise agreed in writing, exterior containers shall be marked with the following: (i) address of Buyer site and Seller; (ii) Order number; (iii) part number of the Goods; (iv) special markings called for on the Order; (v) quantity; and (vi) where applicable, vendor code or other vendor identification number. In accordance with Section 304, Tariff Act of 1930, as amended (19 USC 1304) and CBP Regulations 19 CFR 134, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the Goods or their container will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the Goods.

**(g) Bills of Lading.** Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.

**(h) Packing Slip.** Seller shall include an itemized packing slip with all shipments that will adequately identify the Goods shipped, including Buyer part number.

**(i) Shipping and Approved Carriers.** Seller shall use only Buyer-approved carriers and forwarders for transportation of the Goods and shall reduce prices by an amount equal to the shipping costs if Buyer pays the freight carrier directly. In the event Seller makes any shipment by a carrier or method other than that approved by Buyer, Seller shall be responsible to reimburse Buyer for all losses or additional expenses incurred by Buyer by reason of the unapproved shipment. No shipment shall be made by air freight unless specifically authorized by Buyer. On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, Goods shall be shipped in accordance with routing instructions furnished by Buyer. If such instructions are not received, Goods shall be shipped via least expensive method sufficient to meet delivery requirements, but always through Buyer-approved carriers.

(i) **Partial Shipments.** Seller shall obtain the prior written permission of an authorized representative of Buyer, such as a Buyer factory materials manager, prior to making a partial shipment to Buyer and otherwise may not make a partial shipment to Buyer.

6. **LIENS.** Seller shall pay for labor, services, materials, equipment and parts thereof, and other expenses incurred by it or its suppliers in connection with the Order and indemnify and defend Buyer Indemnitees against all claims and liens arising out of unpaid accounts.

## 7. INSPECTION, ACCEPTANCE AND REJECTION

(a) All Deliverables may be inspected and tested by Buyer or its designee, Buyer's Customers and/or any competent regulatory authority, at all reasonable times and places, including during manufacture. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests. Such inspection may, at Buyer's option, include confirmation of Seller's compliance with any or all requirements of the Order. Seller shall permit access to Seller's facilities, for such inspection or testing, at all reasonable times and provide all tools, facilities and assistance reasonably necessary for such inspection and/or confirmation. All Goods are subject to final inspection and acceptance at any time after delivery to Buyer. Inspection or test of any item by Buyer shall not constitute acceptance.

(b) All inspection records relating to Deliverables covered by the Order shall be available to Buyer until the later of five (5) years after final payment, final resolution of any dispute involving the Goods, the latest time specified in the Order, or the latest time required by applicable law.

(c) Payment or transfer of title shall not constitute acceptance.

(d) Deliverables furnished hereunder shall have zero defects, and Seller has the obligation to properly inspect such items prior to delivery to Buyer. If any Deliverables covered by the Order are defective or otherwise not in conformity with the requirements of the Order, Buyer may, (i) rescind the Order as to such Deliverables, and rescind the entire Agreement if such defect or non-conformity materially affects Buyer; (ii) accept such Deliverables at an equitable reduction in price; or (iii) reject such Deliverables and require the delivery of replacements. Deliveries of replacements shall be accompanied by a written notice specifying that such Deliverables are replacements. If Seller fails to deliver required replacements promptly, Buyer may (i) replace, obtain or correct such Deliverables and charge Seller the cost occasioned Buyer thereby, and/or (ii) terminate the Order for cause.

(e) Rejected Deliverables may be returned to Seller at Seller's cost.

8. **CHANGES.** Buyer shall have the right at any time prior to the Delivery Date of Deliverables to make changes in the Specifications, packaging, place of delivery, nature and duration of Services, and method of transportation, or require additional or diminished work (a "Change Order"). If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, Seller shall notify Buyer of its proposed modifications of the Change Order, including pricing for the change, including a cost breakdown and substantiation for the change, whether by way of increase or decrease, and the parties shall negotiate an equitable adjustment in the corresponding provisions of the Change Order in writing accordingly. Seller's claims for adjustment under this section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within ten (10) days from the date Seller receives the Change Order.

## 9. WARRANTY

(a) **Goods Warranty.** Seller warrants to Buyer and Buyer's successors, assigns, Buyer's Customers, and users of goods sold by Buyer that all Goods provided under the Order shall be and continue to be: (i) merchantable; (ii) fit for the purpose intended; (iii) new; (iv) free from defects in material and workmanship; (v) free from defects in design if the design is not provided by Buyer; (vi) manufactured in strict accordance with the Specifications; (vii) free from liens or encumbrances on title; and (viii) to the extent the Goods are, or contain, hardware, software, and/or firmware products, be able to accurately process date/time data (including, but not

limited to, calculating, comparing, and sequencing all times and dates) and are free of viruses and other sources of network corruption (collectively, for this section, the "Warranty"). If the Order requires specific Goods to perform as a system, the foregoing Warranty also shall apply to those Goods as a system.

**(b) Goods Warranty Remedy – Repair or Replace.** Buyer may require Seller to promptly repair or replace, at Buyer's option, any Goods that breach the Warranty. Buyer may return ship the Goods on the fastest available commercial carrier at Seller's expense and risk of loss. Goods returned to Buyer hereunder shall be shipped at Seller's expense and risk of loss and shall be accompanied by notice stating whether they are new replacements or repaired originals and shall continue to be covered under this Warranty. Seller shall conduct intake, review, analysis and any other activity required to evaluate whether the returned Goods are covered by the Warranty at no expense to Buyer.

**(c) Goods Warranty Remedy – Other Costs, Expenses and Damages.** Notwithstanding any other provision, in addition to the foregoing, Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from Goods not conforming to the Warranty, including but not limited to labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

**(d) Services Warranty.** Seller warrants to Buyer that all Services provided under or in connection with an Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound and generally accepted industry standards and practices by appropriately licensed, trained, supervised and personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with the Specifications, performance requirements and other requirements contained in the Order (the "Service Warranty"). Seller agrees that should any of the Services be defectively performed by Seller, Seller will re-perform or correct such defective Services at no additional charge. Notwithstanding any other provision, in addition to the foregoing, Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Services not conforming to the Services Warranty.

**(e) Permits and Licenses.** Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller shall obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing national, state, provincial or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to review and verify all applications, permits, and licenses prior to the commencement of any work hereunder.

**(f) Support Obligation:** Seller shall maintain, at its expense, the ability to, and shall, provide product support for the Deliverables for ten (10) years after the last Order is placed by Buyer under this Agreement.

## 10. MANUFACTURING, SAFETY AND QUALITY

(a) Seller shall be responsible for manufacture of the Goods and for the adequacy of all warnings and instructions accompanying the Goods. Seller also shall be responsible for and shall take all necessary steps to ensure that the Goods comply with all applicable codes, laws, rules and regulations (both in the country of manufacture and in the country(ies) where Buyer has notified Seller that Buyer or Buyer's Customers will distribute the Goods). The Goods shall conform in quality and safety to all Buyer, Seller and governmental requirements, will be fit for sale in the United States and for exportation to the countr(ies) designated by Buyer without modification, will be subject to acceptance by Buyer and shall be inspected at Seller's factory in accordance with its standard factory test procedures, which shall be subject to review and acceptance by Buyer. Where any governmental agency requires, as a condition of selling the Goods within its jurisdiction, that part or all of used Goods or packaging of new Goods be accepted back from consumers, Seller shall assist Buyer in satisfying those agency take-back requirements.

(b) Seller shall meet all Buyer specifications applicable to the Goods and the Goods shall pass all Buyer-required testing.

**11. BUYER'S PROPERTY.** All tools, equipment dies, gauges, models, drawings or other materials furnished by Buyer to Seller or made by Seller for the purpose of the Order or paid for by Buyer, and all replacements

thereof and materials fixed or attached thereto, shall be and remain the property of Buyer. All Buyer's property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Seller as being Buyer's property, will at Seller's expense be safely stored (separate and apart from Seller's property whenever practicable), and will be kept free of all liens, claims, encumbrances and interests of third parties. Seller shall be responsible for loss of and damage to Buyer's property. Seller will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in filling the Orders of Buyer. Upon completion by Seller of the Order, or upon the written request of Buyer at any time, Seller will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer shall have the right, at all reasonable times, upon prior notice, to enter Seller's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any Buyer's property. Seller shall have such responsibility for Buyer's property as is chargeable to Seller by law by reason of its position as a bailee. Should Seller be unable to deliver Goods pursuant to this Agreement, Buyer, by written notice, may vest in itself title to finished parts, raw materials or work in process associated with this Agreement, and Seller shall deliver all such material and other Buyer property to such location or locations outside its facility as may be designated by Buyer.

## **12. INTELLECTUAL PROPERTY**

- (a)** Background Intellectual Property shall mean all Intellectual Property other than Foreground Intellectual Property.
- (b)** Foreground Intellectual Property shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- (c)** Each Party retains its existing rights in Background Intellectual Property.
- (d)** Buyer shall own all Foreground Intellectual Property. Seller shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Seller hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Seller agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Seller to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Proprietary Information (defined hereinafter). Seller agrees that, for any works of authorship created by Seller or any employees or any others used by Seller in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Seller, warranting that it has the right to do so, hereby assigns all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- (e)** Seller represents and warrants that Seller has sufficient rights in all Goods, Services, and Intellectual Property and other items that Seller uses or transfers to Buyer in connection with the Order to allow Seller to lawfully comply with the Order.
- (f)** Seller hereby grants to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- (g)** Seller hereby irrevocably waives all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.

**(h)** Seller represents and warrants that Seller shall not provide, in the performance of the Order, any software, (including free software, open-source software, freeware, General Public License-governed software, or the like), in any form that is subject to any obligations or conditions that reasonably or arguably could provide a legal right to any third party to access such software and/or source code, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software.

**(i)** Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Seller a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

### **13. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION**

**(a)** "Proprietary Information" shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer or (ii) conceived, created, acquired, or first reduced to practice in connection with the Order. If Buyer furnishes sample products, equipment, or other objects or material to Seller, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with the Order.

**(b)** Unless Seller has received the Buyer's express written consent to the contrary, Seller shall (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.

**(c)** Seller may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of the Seller who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Seller obligating such entity or person to treat such information in a manner consistent with the terms of this section.

**(d)** The Order shall not restrict Seller from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of the Seller or a third party; (ii) is received by Seller without restriction as to disclosure by Seller from a third party having a right to disclose it; (iii) was known to Seller on a non-confidential basis prior to the disclosure by the Buyer, as evidenced by Seller's written records prepared prior to disclosure; or (iv) was independently developed by employees of the Seller who did not have access to any of Buyer's Proprietary Information.

**(e)** If Proprietary Information is required to be disclosed pursuant to judicial process, Seller shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this section are fulfilled by Seller.

**(f)** Buyer shall have the right to audit all pertinent documentation of Seller, and to make reasonable inspection of Seller's premises, in order to verify compliance with this section.

**(g)** Obligations in this section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of the Seller or any third party.

**(h)** Unless required otherwise by law or the Order, Seller shall promptly return, or otherwise dispose of Proprietary Information as the Buyer may direct. Absent contrary instructions, Seller shall destroy all Proprietary Information one (1) year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.



(i) Seller agrees to cause all information regardless of form (including, for example, electronic, magnetic and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

**This document contains the property of Buyer and/or an affiliate. Seller may not possess, use, copy or disclose this document or any information in it for any purpose, including without limitation to design, manufacture, or repair parts, or obtain government approval to do so, without express written permission. Neither receipt, from any source, nor possession of this document, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of Buyer and/or the Buyer's affiliates issuing the Order is not authorized and may result in criminal and/or civil liability.**

(j) Notwithstanding any proprietary or confidential labels or markings, all information of Seller disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any of Buyer's Affiliates. Moreover, Buyer may disclose all Seller information, in accordance with applicable governmental regulations, to any department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals.

(k) Seller agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Seller may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly references a Buyer Purchase Order and contains obligations no less stringent than this section. Seller shall promptly notify Buyer if Proprietary Information is offered to Seller by a third party or of the suspected possession of Proprietary Information by a third party.

(l) Seller agrees to notify Buyer in writing and to obtain Buyer's written consent, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function as any parts Seller manufactures for Buyer using Proprietary Information. Seller's notification shall describe the parts to be manufactured for the other entity, identify the corresponding parts Seller manufactures for Buyer and provide Buyer with sufficient information to demonstrate that Seller will manufacture such parts without reference to or use of Proprietary Information. If Seller manufactures or sells any such parts without obtaining Buyer's written consent (or applies for or assists another entity in obtaining government approval for such parts), then it shall be considered a breach of the Order and Buyer shall be entitled to injunctive relief and such other remedies as a court may order.

(m) Seller shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information to any unauthorized third parties. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Proprietary Information (including by reverse engineering).

**14. TERMINATION FOR CONVENIENCE.** Buyer may terminate, for its convenience, all or any part of this Agreement at any time by written notice to Seller. In such case, Buyer's sole obligation will be to pay for completed Deliverables that are delivered to Buyer. Notwithstanding anything to the contrary in the previous sentence, Buyer will not be obliged to pay for any Deliverables in excess of that which would be delivered to Buyer in the "Lead Time Period" for the terminated Deliverables. The "Lead Time Period" for each terminated Deliverable will commence on receipt of Buyer's notice of termination and end upon the expiration of the lead-time specified for a Deliverable. If no lead-time is specified for a Deliverable, the lead-time will be a reasonable average actual lead-time under normal delivery circumstances for that Deliverable. In no event shall costs associated with, or anticipated profit or overhead, on unperformed work be payable to Seller.

**15. TERMINATION FOR DEFAULT.** If (i) Seller fails to make any delivery or perform Services in accordance with Delivery Dates or otherwise fails to comply with the Order and does not remedy such failure within a reasonable time after receipt of written notice thereof, (ii) Seller fails to make progress to such an extent that performance of the Order is endangered, (iii) any proceeding is filed by or against Seller in bankruptcy or insolvency, or for appointment for the benefit of creditors, or (iv) Seller commits any other breach of this Agreement, Buyer may (in addition to any other right or remedy provided by this Agreement or by law) terminate

all or any part of this Agreement by written notice to Seller without any liability and may purchase substitute goods and services elsewhere. Seller shall be liable to Buyer for any cost occasioned Buyer thereby. Buyer also may require Seller to transfer title and deliver to Buyer any completed supplies, and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has specifically produced or specifically acquired for the performance of such part of this Agreement and any technology or information necessary for production of Deliverables. If a court of competent jurisdiction finds that any termination for cause was wrongful, then such termination shall be automatically converted to a termination for convenience and the rights and obligations of the parties will be as set forth in the section hereof titled "Termination for Convenience." The parties agree that the provisions of this Termination for Default section shall not apply to failures or delays in making deliveries of Deliverables when such failure or delay is due to any cause beyond the control and without the fault or negligence of Seller as provided in the force majeure provision set forth herein; provided, however, that Buyer may cancel without liability to Seller its purchase of any such items.

**16. INDEMNIFICATION AND LIMITATION OF LIABILITY**

**(a)** Seller covenants and agrees at all times to defend, protect, hold harmless and indemnify Buyer, its parent and Affiliates, and its and their respective directors, officers, employees, successors and assigns from and against any and all losses, costs and expenses arising (a) from any and all claims for loss, damage (including but not limited to property damage) or injury made against Buyer ("Claims") and from and against any suits, actions, or legal proceedings of any kind brought against Buyer ("Actions"), so long as such Claims and/or Actions are made and/or brought on account of any damages incurred and/or injuries received or sustained by any person or persons or entity or entities in any manner (howsoever arising, including without limitation, by reason of negligence, violation of law, violation of these Terms and Conditions, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture, or materials used in the goods supplied, negligence in the manufacture, or provision of the goods supplied, or performance of any services hereunder. If directed by Buyer, Seller shall take upon itself the defense and/or settlement of all such Claims and the defense of any Actions, and to pay all judgments entered in such suit, suits or legal proceedings, and all attorneys' fees and other expenses. Seller, at its discretion, may elect to defend or settle a Claim and/or Action. However, Seller agrees that in any instance where such Claim and/or Action in any way affects Buyer's interest under this Agreement or otherwise, Seller shall not consummate any settlement without Buyer's prior written consent. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination or expiration of this Agreement or PO under the Agreement. Seller's obligations under this section are contingent upon Buyer providing Seller prompt notice of any Claim and/or Action and all necessary information and assistance so that Seller may defend or settle such Claim and/or Action. In the event that the damages and/or injuries that is/are the subject of a Claim or Action against Buyer is/are caused jointly or concurrently by Seller and Buyer, the Claim(s) and/or Action, including but not limited to the defense, resolution, settlement, or verdict of said Claim(s) and/or Action(s), shall be borne by Seller and Buyer in proportion to their negligence or fault.

**(b) NOTWITHSTANDING ANY PROVISION OF THIS ORDER OR THE LAW, IT IS EXPRESSLY AGREED THAT BUYER'S LIABILITY SHALL NOT EXCEED THE PURCHASE PRICE AND THAT IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND.**

**17. INSURANCE**

**(a)** Without limiting Seller's duty to hold harmless and indemnify hereunder, Seller shall maintain, at a minimum, the types and amounts of insurance coverage set forth in the table below with respect to its performance, including but not limited to its delivery or Goods or Services, under this Agreement. All such insurance shall be written on an "occurrence" basis. "Claims made" basis is acceptable for professional liability policies. Seller shall furnish a certificate of insurance reflecting Seller's insurance coverage in excess of its self-insured retention to Buyer upon request.

<u>Type of Insurance</u>	<u>Description and Coverage Amount; (see second table below for definitions)</u>
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<b>Workers' Compensation and Employers Liability</b>	Covers the following as a minimum, which shall be set forth in Certificate of Insurance issued to Buyer by a Rated Insurer: a. Workers compensation meets statutory minimums under the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed; b. Employers liability of \$500,000 each accident, \$500,000 policy limit by disease, and \$500,000 each employee disease; and, c. a waiver of subrogation applies for Workers compensation in favor of Buyer and its Affiliates. Buyer may require higher insurance limits based on nature of the Goods and Services provided under this Agreement.
<b>General Liability Excess Liability</b>	Covers the following as a minimum, which shall be set forth in Certificate of Insurance issued to Buyer by a Rated Insurer: a. \$1,000,000 Per Occurrence; b. \$1,000,000 personal and advertising injury Per Occurrence; c. \$2,000,000 Aggregate; d. Buyer is listed as an additional insured; e. Excess limits of \$5,000,000 (\$10,000,000 for construction and equipment suppliers) over GL and Auto policies.
<b>Automobile Liability</b>	Covers the following as a minimum, which shall be set forth in Certificate of Insurance issued to Buyer by a Rated Insurer: a. \$1,000,000 each accident; b. Liability coverage for "Any Auto."
<b>Professional Liability Insurance</b>	Covers the following as a minimum, which shall be set forth in Certificate of Insurance issued to Buyer by a Rated Insurer: a. Applies where Contractor is a consultant, performs professional Services for and/or on behalf of Buyer and/or any of its Affiliates, and/or provides other offsite Services. b. Professional liability and/or errors and omissions insurance with a minimum limit of \$2,000,000.

Insurance-related definitions:

<u>Term</u>	<u>Definition</u>
<b>Aggregate</b>	Total limit to be paid per year
<b>Certificate of Insurance</b>	ACORD or equivalent Form, properly produced and executed by a duly authorized representative of Seller's insurer or broker and sent directly to Seller by fax, email, postal service or other reputable courier service. Certificates produced by other than the insurer or broker are not acceptable.
<b>Per Occurrence</b>	Total limit to be paid for one claim.
<b>Rated Insurer</b>	A.M Best Rated VII A- or better.
<b>Trade Contractor</b>	Includes, but is not limited to, electricians, plumbers, HVAC contractors, food preparers or catering services and others who do general work.

<p><b>Trade Contractor High Exposure</b></p>	<p>Any Trade Contractor that in Buyer’s opinion is performing high-risk work. This shall include, but not be limited to: elevator repairs; roof repairs; rigging; crane work; fire suppression/sprinklers; hazardous waste transportation, disposal, treatment or recycling; fuel tanker deliveries; electric or utility main distribution work; excavation; and, any structural construction, grinding, torching, welding or other hot work.</p>
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- (b)** If, in Buyer’s opinion, Seller is performing high-risk work or delivering Goods intended for use in high-risk applications, Buyer may review and revise applicable coverage limits.
- (c)** Seller or Seller’s agent shall give Buyer thirty (30) days written notice of any material changes and/or cancellation.
- (d)** Seller shall require its suppliers and subcontractors to maintain insurance in the amounts and types required by this section entitled “INSURANCE.”

**18. INTELLECTUAL PROPERTY WARRANTY AND INDEMNIFICATION**

- (a)** Seller warrants that the Goods and Services shall be delivered free of the rightful claim of any third person of infringement. Seller shall indemnify and hold harmless Buyer, Buyer’s Customers, Affiliates, and subsidiaries, their agents, directors, officers, and employees, and each subsequent purchaser or user of Goods or Services, from any losses, costs, damages, and liabilities, including, without limitation, any attorney’s fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use, sale, offer for sale, import or other exploitation of any Goods or Services delivered or performed in connection with the Order (“Claim”).
- (b)** Seller shall not be liable for any Claim based on Seller’s compliance with any specification created by the Buyer, unless: (i) Seller could have complied with Buyer’s specification using a solution that was non-infringing; (ii) the relevant portion of the specification was derived from, recommended by, or provided by, Seller; or (iii) Seller knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.
- (c)** Seller shall, upon written notice from Buyer of a Claim, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as the Buyer’s interests are affected, the Buyer shall have the right, at its own expense and without releasing any obligation of the Seller, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Seller. Seller shall not enter into any settlement without Buyer’s prior written consent, which shall not be unreasonably withheld.
- (d)** Buyer may supersede Seller in the defense of any Claim and assume and conduct the defense at Buyer’s sole discretion. In such an event, Seller shall be released from any obligation to pay for attorneys’ fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Seller’s complete cooperation with Buyer in Buyer’s defense of such Claim at Buyer’s expense. Buyer shall not enter into any settlement without Seller’s prior written consent, which shall not be unreasonably withheld.
- (e)** If the manufacture, use, sale, offer for sale, import, export or other exploitation of any of the Goods or Services is enjoined by a court, if delivery is precluded by a government entity, or should Seller refuse to provide or supply any Goods or Services to avoid a potential third party claim, Seller shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; or (iii) provide such other solution acceptable to Buyer. Seller shall reimburse Buyer for Buyer’s costs incurred in obtaining all internal, external and Buyer’s Customer approvals, qualifications, certifications, and the like, necessary for making, using and selling alternate non-infringing Goods or Services. Seller shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using, selling offering for sale, importing, exporting, or otherwise exploiting.

**19. BUSINESS CONDUCT AND COMPLIANCE WITH LAWS.** Seller represents and warrants that, in connection with this Agreement:

**(a) Seller Code of Ethics.** Seller has and shall comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the WEG Code of Ethics for Suppliers available at Buyer's Supplier Site ([https://static.weg.net/medias/downloadcenter/he6/ha5/WEG-Code\\_of\\_Ethics\\_for\\_Suppliers.pdf](https://static.weg.net/medias/downloadcenter/he6/ha5/WEG-Code_of_Ethics_for_Suppliers.pdf)) ("Code of Ethics for Suppliers"). Seller shall have management systems, tools and processes in place that (i) ensure compliance with applicable laws and regulations and the requirements set forth in the Code of Ethics for Suppliers; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Code of Ethics for Suppliers; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Seller), disclosure (to Buyer and others as appropriate) and implementation of corrective actions for violations of law, regulations, this Agreement, an Order, or the expectations set forth in the Code of Ethics for Suppliers; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Code of Ethics for Suppliers.

**(b) Anti-Corruption and Anti-Bribery.** Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention") or other applicable anti-corruption/anti-bribery convention; Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a public official or any person in violation of any applicable laws, of any country, relating to anti-corruption or anti-bribery.

**(c) Anti-Kickback Act.** When applicable, Seller shall comply with the Anti-Kickback Act of 1986.

**(d) Gratuities.** Seller has not and shall not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer by influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

**(e) Environment, Health and Safety ("EHS").**

**(1) Compliance with EHS Laws.** Seller, all Deliverables provided by Seller, and any other actions or items provided to Buyer pursuant to this Agreement or an Order shall comply with all applicable national, state, provincial, foreign and local laws, ordinances, rules, and regulations, relating to:

**a.** pollution control, including, without limitation, the Clean Air Act, 42 U.S.C. 7401, et seq. and the Clean Water Act 44 U.S.C. 1251 et seq.;

**b.** waste management and disposal, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.;

**c.** hazardous substances, including, without limitation, the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., the European Directive 2011/65/EU of the European Parliament and of the European Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS"), and the European Regulation (EC) no. 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH");

**d.** occupational health and safety, including, without limitation, the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.;

**e.** consumer product safety, including, without limitation, the Consumer Product Safety Act (15 U.S.C. 2051 et seq.); and,

f. any other national, state, provincial, foreign and local laws, ordinances, rules, regulations and principles of common law dealing with protection of the environment, health and safety (such laws as overviewed in this subsection (e)(1), as now or hereafter amended, the "EHS Laws").

**(2) Test Reports.** Any Seller test reports or other test results, pertaining to tests performed pursuant to EHS Laws and related to the Deliverables or to Seller's compliance with EHS Laws, have been and/or shall be provided to Buyer as set forth in the terms of the Order, or if not specified in the Order terms, upon Buyer's request.

**(3) Buyer's EHS Standards.** Seller shall comply with Buyer's EHS standards during Seller's performance hereunder and when at Buyer's jobsites, including without limitation, Buyer's jobsite safety rules; and if Seller is unable or unwilling to comply with such requirements, the Order can be withdrawn without further recourse by Seller. Specifically, and without limitation, Seller shall: (i) comply with the applicable national, state, provincial or local environmental, occupational health and/or safety legislation or regulations including the EHS Laws; (ii) supply to Seller employees and representatives and require that all Seller employees and representatives wear specified safety equipment, including but not limited to eye protection, protective headgear and foot protection; (iii) adhere to all Buyer's safety requirements and instructions as indicated by Buyer or Buyer's representatives including without limitation, if Seller will be performing Services within Buyer's facilities, the compliance requirements and restrictions applicable to Services performed within Buyer's facilities; (iv) immediately prior to commencement of any work or service, contact a responsible Buyer representative; (v) submit Seller's Workers' Compensation Board registration number or other identifying number to Buyer's safety office; and, (vi) require its suppliers to agree to the requirements of the section of this Agreement entitled "Business Conduct and Compliance with Laws."

**(4) Use of Hazardous Substances.** Seller represents and warrants that none of the Goods contain any, and Seller or its representatives shall not, in the production or delivery of any Deliverables or any actions taken related to an Order, use: (i) substances contrary to the section entitled "RoHS Compliance" below; (ii) substances contrary to the section entitled "REACH Compliance" below; (iii) arsenic, asbestos, benzene, polychlorinated biphenyls (PCBs), carbon tetrachloride, beryllium, or radioactive materials; (iv) chemical restricted under the Montreal Protocol on ozone-depleting substances; or (v) other chemicals, the use of which is restricted in any other jurisdictions to which the Goods are shipped to or through, including the nations now or hereafter in the European Union ("EU") and the United States; unless Buyer expressly agrees otherwise in writing and Seller identifies an applicable exemption from any relevant legal restriction on the inclusion of such chemicals or hazardous materials in the Goods. Seller shall provide, upon and as requested by Buyer to satisfy any applicable regulatory or Buyer's Customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify the material composition, on a substance-by-substance basis including quantity used of each substance, of any Goods ordered by Buyer and/or of any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer. Separately and/or alternatively, Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or Buyer's Customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify that any Goods ordered by Buyer and/or any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer, do not contain particular hazardous substances specified by Buyer. Seller shall comply with the requirements of 40 CFR 82.104 et al. pertaining to requirements for warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances.

**(5) RoHS Compliance.** Seller represents and warrants that, if applicable, all the Goods comply with the Restriction of Hazardous Substances Directive and subsequent or related directives (the "RoHS") and specifically that the components of any Deliverables do not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE), or any other substance to the extent that its use is restricted by amendments to RoHS, except as permitted by the Annex to RoHS. Seller shall comply with any amendments to RoHS that the European Parliament or other regulatory body may impose, and any further instructions given by Buyer.

**(6) REACH Compliance**

a. Seller represents and warrants that, if applicable, all the Goods, parts of Goods and/or materials supplied under this Agreement (the "Products in the European Economic Area (EEA)" (the EEA includes all countries in

the European Union or "EU" as well as Norway, Iceland and Liechtenstein) will be supplied in full compliance with the provisions of the European Regulation (EC) n° 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (the "REACH Regulation").

**b.** Seller represents and warrants that, if applicable, all the substances in the Products supplied in the EEA, as well as substances manufactured in the EU that are present in the Products supplied anywhere, that require registration by Seller or by Seller's suppliers will be registered within the applicable REACH statutory deadlines and that such registration will cover all the uses identified in due time by Buyer to Seller. Seller expressly undertakes that, upon request, it shall appoint (or obtain that the non-EU manufacturers/formulators appoint) an Only Representative to pre-register and register any substance present in the Products imported by Buyer or one of its affiliates or Buyer's Customers in the EEA.

**c.** Seller shall investigate and communicate to Buyer if there are any substances in concentrations above 0.1 % weight by weight (w/w) present in the Products as shipped, or in any of the processes used to manufacture or assemble Products in the EEA, that are listed: (i) in Annex XIV of REACH for authorization, (ii) on the "Candidate List" (as published in accordance with Article 59.1 of the REACH Regulation), (iii) for which a REACH Annex XVII restriction exists or is proposed, or (iv) in the "CoRAP" list for Substance Evaluation under REACH. Seller shall provide Buyer for each such substance identified and communicated in (i) through (iv) with (a) its chemical identity, (b) its weight/weight percent on a substance-by-substance basis in each Product type and in each component/part (hereinafter "part") thereof to the extent such parts are "articles" under REACH, to the extent that Seller reasonably has available the technical capability to determine such weight/weight percent, and (c) safe use information. This ongoing obligation also applies to Products already supplied under this Agreement at the time the substances are identified as per (i) through (iv) above.

**d.** In order to meet its obligation under this section, Seller shall provide the required information to Buyer by the reporting procedure directed by Buyer for all Products supplied under this Agreement. Seller shall provide Buyer with the information within the timeframe specified by Buyer. Seller shall use best efforts to promptly supplement or update the provided information as appropriate (for example, as manufacturing processes change and different chemical substances are used in the Products) so that the information is accurate and complete. Seller shall also update the information as soon as, but no later than thirty (30) days from when, a new substance is identified and added to one of the lists set forth above.

**e.** Seller undertakes to timely provide Buyer with a safety data sheet ("SDS") that is compliant with REACH and the European Regulation (EC) n° 1272/2008 of 16 December 2008 on the classification, labeling and packaging of substances and mixtures (the "CLP Regulation"), including providing the SDS in the language of the country or area where the Products will be delivered, for any Product supplied under this Agreement that meets the criteria of Article 31 of REACH on SDS, and where an SDS is not required, provide Buyer with such other information as set forth in Article 32 of REACH.

**f.** Where the Products or parts thereof meet the definition of "articles" under REACH and contain chemical substances listed on the Candidate List, Seller undertakes to timely provide Buyer with all relevant information on such Products and parts that Seller and/or its suppliers are required to communicate down the supply chain under the REACH Regulation, including safe use information compliant with REACH.

**g.** To the extent that the Seller is a chemical manufacturer, formulator or distributor, this paragraph applies. Seller agrees to assist Buyer in (i) determining which chemicals/products supplied by Seller to Buyer contain SVHC's that will require authorization for the Products supplied within Buyer's supply chain and (ii) determining which upstream supplier(s) can ensure authorization for such substances to cover Buyer's or Buyer's Customers' uses, including but not limited to identifying and providing Buyer with the name of the chemical formulator or other supplier supplying the SVHC that either require authorization or are likely to require authorization in the future. Seller will assist Buyer in obtaining full product chemical content from upstream suppliers for all Products supplied by Seller to Buyer no later than five (5) years from the effective date of the Agreement.

**h.** To the extent that the Seller is a chemical manufacturer, formulator or distributor, this paragraph applies. Seller agrees to assist Buyer in ensuring that all chemicals/products containing SVHC's that require authorization are appropriately authorized for Buyer's uses, or at Buyer's request apply for such authorization where appropriate. Should Seller apply for such authorization at Buyer's request, Seller and Buyer shall negotiate an

equitable fee for such service based on both the additional cost to Seller as well as the benefit to Seller in holding such an authorization.

**(7) California Proposition 65 Compliance.** Seller represents and warrants that, if applicable, the Goods supplied under the Order comply with California Health and Safety Code Section 25249.5 et seq., commonly referred to as Proposition 65 ("Prop 65"). Buyer sells its Goods nationally across the United States, including California, either directly or indirectly through distributors or original equipment manufacturers that incorporate Buyer's Goods into their products. Seller shall (1) notify Buyer of any and all Goods manufactured by Seller for Buyer, or supplied by Seller to Buyer, that contain substances listed in Prop 65 that require a Prop 65 warning; or (2) certify that Goods manufactured by Seller for Buyer, or supplied by Buyer to Seller, do not contain substances listed in Prop 65 and thus do not require a Prop 65 warning.

## **(f) Employment Practices**

**(1)** Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to employment practices, including those pertaining to:

- a. Child Labor. Seller will comply with all applicable local and national child labor laws.
- b. Forced Labor. Seller will not use forced, bonded, prison, military or compulsory labor.
- c. Abuse of Labor. Seller will comply with all applicable local and national laws on abuse of employees and will not physically abuse employees.
- d. Freedom of Association and Collective Bargaining. Seller will comply with all applicable local and national laws on freedom of association and collective bargaining.
- e. Wages and Benefits. Seller will comply with all applicable local and national wages and benefits laws.
- f. Work Hours and Overtime. Seller will comply with all applicable local and national work hours and overtime laws.

**(2)** If Seller has operations physically located in the territorial United States that are involved in Seller's performance under this Agreement, Seller shall comply with all laws described in subsection (f)(1), above, including without limitation:

- a. Sections 6 ("Minimum Wages"), 7 ("Maximum Hours") and 12 ("Child Labor Provisions") and 15 ("Prohibited Acts") of the Fair Labor Standards Act of 1938 ("FLSA"), as amended (29 U.S.C. §§ 201-219) and regulations and orders of the United States Department of Labor issued under Section 14 ("Learners, Apprentices, Students, and Handicapped Workers") thereof; and
- b. the Equal Pay Act of 1963 (29 U.S.C. Chapter 8 §206(d)).

**(3)** Buyer is a contractor of the federal government of the United States of America. The Order may be in fulfillment of a prime contract with the U.S. Government or subcontracts at any tier. Seller shall comply with:

- a. the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), and any amendments thereto; and
- b. 29 CFR part 470 – Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees. This includes Executive Order 13496 "Notification of Employee Rights Under Federal Labor Laws" for which 29 CFR Part 470 et al. are the implementing regulations.
- c. Executive Order 11625 "Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise" and its implementing regulations with respect to the utilization of minority business enterprises.



**(g) Equal Employment Opportunity.**

**(1)** Seller shall comply with all laws described in subsection (f)(1), above, including, without limitation, all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to equal employment opportunity.

**(2)** If Seller has operations physically located in the territorial United States that are involved in Seller's performance under this Agreement:

**a.** Seller shall comply all laws described in subsection (g)(1), above, including, without limitation, with Title VII of the Civil Rights Act of 1964, including but not limited to its prohibitions against discrimination in employment practices on the basis of race, color, religion, sex or national origin, and the Americans with Disabilities Act.

**b.** Buyer is a contractor of the federal government of the United States of America. The Order may be in fulfillment of a prime contract with the U.S. Government or subcontracts at any tier. **Seller shall abide by the requirements of 41 CFR 60-1.4, 60-300.5 and 60-741.5. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.** This includes Executive Order 11246 "Equal Employment Opportunity," as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Rehabilitation Act of 1973.

**(h) Data Privacy.** Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to data privacy, meaning laws relating to data privacy, trans-border data flow or data protection, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the implementing legislation and regulations of the European Union member states under the European Union Directive 95/46/EC. Seller further acknowledges that Seller has read and understood Buyer's Privacy Notice at: <https://www.weg.net/institutional/BR/en/privacy-policy>. Where required under law, and to the extent required, Seller provides consent to the processing and transfer according to Buyer's Privacy Notice, and further confirms that it has obtained consent from relevant data subjects, including Seller employees, where required.

**(i) Conflict Minerals.** Seller recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). Accordingly, Seller commits to comply with Section 1502 of the Act and its implementing regulations; to the extent Seller is not a "Registrant" as defined in the Act, Seller shall comply with Section 1502 of the Act and its implementing regulations except for the filing requirements. In particular, Seller commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into products it provides Buyer; (ii) due diligence of its supply chain, following a nationally or internationally recognized due diligence framework, as necessary, to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there, and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Seller shall take all other measures as are necessary to comply with the Section 1502 of the Act and its implementing regulations, including any amendments thereto.

**(j) Product Chemical and Mineral Content Reporting.** Seller shall provide information regarding chemical and mineral contents of its Products as may be requested by Buyer in connection with any laws with which Buyer, Buyer's Customers, and their products must comply.

**20. TRADE COMPLIANCE.** Seller represents and warrants that, in connection with this Agreement:

**(a) Export**

- (1) Export Laws.** Seller shall comply with any applicable laws and regulations governing exports from country, region, locale or territory where exports are conducted through or in under this Agreement, or relating to economic sanctions, embargoes, or compliance with unsanctioned foreign boycotts (“Export Laws”). Such Export Laws may include without limitation (as may be amended from time to time): the Arms Export Control Act (22 U.S.C.A. § 2278), the Export Administration Act (50 U.S.C. App. §§ 2401-2420), the International Traffic in Arms Regulations (22 CFR 120-130) (“ITAR”), the Export Administration Regulations (15 CFR 730 et seq.) (“EAR”), the Office of Foreign Assets Control Regulations (31 CFR Chapter V), the Customs Laws of the United States (19 U.S.C. § 1 et seq.), the International Emergency economic Powers Act (50 U.S.C. § 1701-1706), the Foreign Trade Regulations (15 CFR 30), and any similar laws and regulations of other countries related to the export. Nothing in this Agreement shall be construed as requiring a party to perform an obligation that is noncompliant with Export Laws.
- (2) Export Compliance Program.** Seller shall maintain an export compliance program sufficient to ensure compliance by all of its respective operating units with all applicable laws and regulations pertaining to the export of Goods. Seller shall provide Buyer with the export control classification number of the Goods, shall maintain export records as required under applicable law, and notify Buyer if any Goods are restricted or controlled products.
- (3) Export Licensing Responsibility.** To the extent that this Agreement requires Seller to export, re-export, transfer or re-transfer technical data controlled by either the ITAR or the EAR that requires an export license, Seller will be responsible for obtaining and managing any authorizations necessary to perform the activities and obligations set forth in this Agreement. Buyer will exercise reasonable efforts to support Seller in obtaining necessary authorizations, including the provision of any and all necessary documentation.
- (4) Disclosures of Technical Data:** Seller will limit disclosure of any technical data contained in, made available, or generated in the performance under this Agreement in accordance with export restrictions imposed by the U.S. EAR and the ITAR, when applicable. Compliance with export laws and regulations does not relieve Seller of its obligations under any other provision of this Agreement related to protection of information. When the terms of this Agreement require interaction with or transfer of ITAR or EAR controlled technical data, and to ensure compliance with export regulations and laws, Seller shall not, without prior written approval from Buyer have any non-U.S. person employee or agent provide Services under this Agreement.
- (5) Technology Control Plan.** When the terms of this Agreement require interaction with or transfer of ITAR or EAR controlled technical data, Seller shall adopt and follow a Technology Control Plan (“TCP”) that, at a minimum, incorporates the following elements: (i) facility security; (ii) international trade compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) screening for restricted parties; and (vi) personnel oversight (including without limitation oversight of non-U.S. persons, dual third country nationals, employees, visitor management). Seller shall make a signed copy of the TCP available to Buyer within thirty (30) days of Buyer’s request. Seller will not be permitted to supply Deliverables that are controlled by ITAR or EAR until a TCP has been created and provided to Buyer.
- (6) Export License Failures Not An Event of Default.** It is not an event of default and neither party shall be liable for: (i) the inability to obtain or renew an export license; (ii) the cancellation of an export license by a governmental entity; or (iii) either party’s inability to perform any of its obligations under this Agreement due to the occurrence of item (i) or (ii) of this section. Upon the occurrence of either (i) or (ii) of this section, Seller shall immediately notify Buyer and the parties shall use all reasonable efforts to remedy or abate the impact of such occurrence and to agree to terms pursuant to which the obligations under this Agreement shall be performed in the future.
- (7) ITAR Registration, Brokering and Political Contributions, Fees and Commissions Registration.** If Seller engages in the United States in the business of either manufacturing or exporting defense articles or furnishing of defense services, Seller shall register with the U.S. Directorate of Defense Trade Controls in accordance with 22 C.F.R. Part 122.1. In addition, Seller agrees that it shall ensure said registration is current, accurate and complete. Any material changes shall promptly be submitted to the U.S. Directorate of Defense Trade Controls in compliance with applicable regulatory requirements.

**(8) Brokering.** Seller shall not engage in brokering activity as that term is defined in 22 C.F.R. Part 129.1 in conjunction with activity authorized pursuant to this Agreement.

**(9) Political Contributions, Fees and Commissions.** In carrying out the obligations of this Agreement, Seller shall not make any payment relating to sales of defense articles and defense services subject to the reporting requirements in 22 C.F.R. Part 130.

**(10) Marking.** Prior to the transfer of any technical data, item or document controlled by the EAR, ITAR or any other applicable local, foreign, territorial or controlling export related laws, regulations or orders, the transferring party shall provide to the receiving party the Export Control Classification Number (ECCN), the ITAR category or other appropriate classification (pursuant to the applicable local, foreign, territorial or controlling export related law, regulation or order) of such technical data.

**(b) Imports, Customs and Duty Drawback.**

**(1)** Seller shall comply with all applicable laws, ordinances, rules, and regulations, relating to: customs and import, including country of origin marking requirements, including, without limitation, U.S. Customs importing laws.

**(2)** In addition to any marking requirements set forth in the Specifications, Seller shall determine, and mark all Goods with, the English name of the "country of origin" in accordance with the laws of the destination country. For Goods which will enter the U.S., the "country of origin" is the country where the last substantial transformation occurred to the Goods and where the work performed created the form of the Goods that is most representative of the drawing.

**(3) Duty Drawback.** Upon Buyer's request, Seller shall assist Buyer in making claims for drawback pursuant to 19 U.S.C. Section 1313 in connection with the exportation by Buyer of articles manufactured by Buyer and/or a Buyer's Customer in the United States using Goods. Seller agrees to assign to Buyer any and all of Seller's U.S. Customs duty drawback rights related to the Goods furnished hereunder in order for Buyer to seek duty drawback. Such duty drawback rights shall include rights developed by substitution and duty drawback rights obtained from sub-tier suppliers related to the Goods. Seller agrees to inform Buyer of the existence of such duty drawback rights of which Seller becomes aware. Seller agrees to furnish upon request documents that Buyer reasonably requires, including, but not limited to, proof of importation and signed U.S. Customs & Border Protection Form 7552 (Certificates of Manufacture & Delivery or Certificates of Delivery), for Buyer to recover import duties related to the Goods. Seller further agrees to provide such assistance to Buyer as requested in connection with the recovery of said import duties.

**(4) Anti-Dumping/Countervailing Duties.** Seller shall inform Buyer of any applicable antidumping or countervailing duty, investigation and/or orders that are applicable directly to the Goods supplied by Seller to Buyer pursuant to this Agreement. To the extent that documentation is obtained or generated by Seller to exclude raw materials, components or Goods imported by Seller from the scope, investigation and/or orders, such documentation shall be provided to Buyer upon Buyer's request.

**(5) Instructions for International Shipments to the U.S.**

**a. Importer Security Filing ("ISF").** This provision is applicable if Goods will be shipped to the United States via ocean in connection with the Order. If Seller is Importer of Record ("IOR"), Seller shall be responsible for all applicable ISF filings required by U.S. Customs and Border Protection. If Seller is not the IOR, Seller shall cooperate with Buyer as necessary to facilitate required ISF filings. The detailed ISF filing requirements are set forth at: <https://www.cbp.gov/border-security/ports-entry/cargo-security/importer-securityfiling-102>. Seller shall indemnify Buyer Indemnitees for any penalties or other costs assessed against or otherwise incurred by Buyer resulting from Seller's failure to meet the obligations of this section.

**b. International Shipments to the U.S. – General.** Any order for Goods involving international shipment of the Goods from outside of the U.S. to the U.S. is subject to the requirements contained in Buyer's "Instructions to Suppliers for International Shipments to Buyer in the U.S." (the "Instructions"), which are incorporated herein by reference. Buyer reserves the right at its discretion to revise or amend the Instructions at any time, and Seller

agrees that any such revised or amended Instructions, as posted on Buyer's website or otherwise made available to Seller, shall be binding on the Order and Seller.

**(c) Customs – Trade Partnership Against Terrorism (“CTPAT”).** (Applicable to Orders in which Goods will be shipped into the United States).

**(1)** The U.S. Bureau of Customs and Border Protection has created the Customs Trade Partnership Against Terrorism (“CTPAT”) program in which the Government and business work to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore for delivery into the United States. Buyer is committed to be in full compliance with the CTPAT program and requires its suppliers to comply.

**(2)** During the period in which Seller ships Goods to Buyer, it and its subcontractors who either ship directly or package Goods for shipment shall either (i) be certified under the CTPAT program by the U.S. Bureau of Customs and Border Protection or (ii) demonstrate to Buyer's satisfaction that it meets the security requirements of CTPAT. Accordingly, Seller must either provide Buyer with documentation that it and its subcontractors are certified (e.g. – CTPAT certification or Status Verification Interface (SVI) number) or provide documentation and evidence satisfactory to Buyer to demonstrate compliance with CTPAT security requirements. CTPAT requirements can be found at [www.cbp.gov](http://www.cbp.gov).

**(3)** Seller shall comply with the security criteria described in the following U.S. Customs & Border Protection website: <https://www.cbp.gov/border-security/portsentry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/securitycriteria>.

**(4)** Upon five days prior written notice, Buyer, or its designee, may audit all pertinent books and records of Seller and its subcontractors, and make reasonable inspection of Seller's and its subcontractor's premises, in order to verify compliance with the requirements of this provision.

**(5)** Any delay in delivery due to Seller's failure to comply with this provision shall not relieve Seller of its obligations and shall not constitute a force majeure or give rise to an excusable delay.

**(d) Nuevo Esquema de Empresas Certificadas (“NEEC”).** This section is applicable to Orders with respect to which Goods will be shipped into Mexico.

**(1)** The Mexico Servicio de Administración Tributario or Tax Administration Service has created the Nuevo Esquema de Empresas Certificadas (“NEEC”) program in which the Government and business work to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore for delivery into Mexico. Buyer is committed to be in full compliance with the NEEC program and requires its suppliers to comply.

**(2)** Seller agrees that during the period in which it ships Goods to Buyer, it and its subcontractors who either ship directly or package Goods for shipment will either (i) be certified under the NEEC program by the Mexico Servicio de Administración Tributario or (ii) demonstrate to Buyer's satisfaction that it meets the security requirements of NEEC. Accordingly, Seller must either provide Buyer with documentation that it and its subcontractors are certified (e.g. – NEEC certification) or provide documentation and evidence satisfactory to Buyer to demonstrate compliance with NEEC security requirements. NEEC requirements can be found at [www.cbp.gov](http://www.cbp.gov).

**(3)** Upon five days prior written notice, Buyer, or its designee, may audit all pertinent books and records of Seller and its subcontractors, and make reasonable inspection of Seller's and its subcontractor's premises, in order to verify compliance with the requirements of this provision.

**(4)** Any delay in delivery due to Seller's failure to comply with this provision shall not relieve Seller of its obligations and shall not constitute a force majeure or give rise to an excusable delay.

**(e) United States – Mexico – Canada Agreement (“USMCA”).** In accordance with 19 CFR Part 181, Seller shall furnish annual certificates to Buyer for Deliverables that meet USMCA rules of eligibility and no other

Deliverables, maintain adequate records to support such qualification, and follow all applicable regulations under USMCA when issuing certificates of origin and/or other documents that allow Buyer to take advantage of duty free status.

**(f) Free Trade Agreements.** When requested by Buyer, Seller shall furnish annual certificates to Buyer for Deliverables that meet applicable Free Trade Agreement rules of eligibility and no other Deliverables, maintain adequate records to support such qualification, and follow all applicable regulations under the applicable Free Trade Agreements when issuing certificates of origin and/or other documents that allow Buyer to take advantage of duty free status.

**(g) Denied Party Screening**

(1) Seller shall perform denied party screening on parties with whom Seller engages directly for the placement of purchase orders for the procurement of products and/or services. It shall make commercially reasonable efforts to require such screening by its suppliers and services providers with respect to sub-tier suppliers and services providers. This requirement is intended to ensure that Seller identifies persons or entities, whom Seller engages or solicits under this Agreement, that are ineligible to perform such activities or services because of any embargo, sanction, debarment or denied party designation. In furtherance of this obligation, Seller shall: (i) not engage any party that Seller identifies as a Specially Designated National ("SDN"), as determined by the U.S. Office of Foreign Assets Control ("OFAC"), to source product, perform production activities, or Services under this Agreement; and (ii) not engage any person or entity to source product, perform production activities, or Services under this Agreement when Seller identifies such person or entity as a denied party pursuant to any embargo, sanction, debarment or denied party designation maintained by the U.S. government or any non-U.S. government or union of states (e.g., European Union); and the reason(s) for such embargo, sanction, debarment or denied party designation apply to product sourcing, performing production activities, or Services under this Agreement; except where such embargo, sanction, debarment or denied party designation conflicts with the anti-boycott laws of the United States.

(2) Seller shall notify Buyer immediately, in writing, if Seller determines that any parties engaged by Seller or sub-tier suppliers who have been designated as an SDN, debarred, sanctioned or designated as a denied party have provided products, performed production activities or performed services under or in support of this Agreement. Seller shall conduct periodic re-screening on all entities described above. Seller shall maintain records of its performance of denied party screening for a period of five-years following completion of screening and make such records available to Buyer upon reasonable request.

(3) Seller shall incorporate a provision substantially similar to this provision in all subcontracts with its suppliers or independent contractors with whom Seller engages or employs, or intends to engage or employ, to perform production activities or services under or in support of this Agreement. Seller shall make commercially reasonable efforts to provide to Buyer, upon Buyer's reasonable request, the identity of its suppliers and/or the location of manufacture of the Goods or any subcomponents of the Goods, as applicable, to conform compliance with legal and regulatory requirements, the Agreement, the Order and/or these Terms and Conditions.

**(h) Debarment.** Seller shall notify Buyer promptly if Seller is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the any government worldwide, or (ii) listed or is proposed to be listed by the U.S. Government, the United Nations, the European Union, and/or any other jurisdiction applicable, in any "denial orders," as a "blocked person," as a "specially designated national," or as a "specially designated terrorist".

**21. U.S. GOVERNMENT CLAUSES FOR ORDERS UNDER U.S. GOVERNMENT CONTRACTS.**

**(a) U.S. Government Clauses for Orders Under U.S. Government Contracts.** For Orders issued under prime contracts with the U.S. Government or subcontracts at any tier under U.S. Government contracts, the version of the clause listed in Supplement 1 to these Terms and Conditions of Purchase, entitled "U.S. Government Clauses for Orders Under U.S. Government Contracts," in effect on the date of the particular Order shall apply.

**(b) Seller Registration in System for Award Management (SAM).** In accordance with FAR clause 52.204-7 “System for Award Management,” Seller must be registered in SAM to quote or accept an Order issued under Buyer prime contracts with the U.S. Government or Buyer subcontracts at any tier under US Government contracts. In registering, Seller shall (1) enter all mandatory information, including its Unique Entity Identifier (as such term defined in FAR clause 52.204-7), its electronic funds transfer (EFT) indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 into the SAM, (2) complete the core, assertions, representations and certifications, and points of contact sections of the registration in SAM, (3) provide consent for the Taxpayer Identification Number (TIN) validation to the Government as a part of the SAM registration process, and (4) confirm that the Government has marked the record as “Active.” In addition to being registered in SAM when submitting an offer or quotation and at time of Order issue, Seller shall maintain its SAM registration during Order performance, and through final payment under such Order.

**22. SECURITY.** This provision applies whenever a Seller Person will be granted access to (i) Buyer’s facilities or, the facilities of a Buyer’s Customer (“Facilities”) or (ii) Buyer’s or a Buyer’s Customer’s computer-based information systems, computer systems, databases and/or files (“Systems”). Seller is responsible for ensuring that any Seller Person requiring access to Facilities or Systems meets the following minimum requirements designed to assess honesty and trustworthiness:

**(a) Access to Facilities and/or Systems in the United States.** In advance of Buyer granting a Seller Person access to Facilities and/or Systems:

**(1)** Seller must verify the identity and authorization to work status of the Seller Person through the form I-9 and E-Verify processes and provide written certification in the form provided by Buyer that the requirements of this provision have been satisfied;

**(2)** Seller shall perform a background screen on the Seller Person, using a service provider satisfactory to Buyer, and provide written certification in a form satisfactory to Buyer that (i) the Seller Person does not have any criminal convictions, as reported in the result of a background screen, or (ii) if the Seller Person does have one or more criminal convictions, Seller Person was hired only after an individualized assessment was conducted in accordance with all applicable laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the access to be granted, the specific jobs at issue, and the length of time since the convictions; and

**(3)** Seller shall perform a global sanctions search (i.e., a multi-source search including U.S. and non-U.S. databases generally known as “denied party screening lists”) on the Seller Person and provide written certification in a form satisfactory to Buyer that the Seller Person has not been identified in any such screenings.

**(b) Access to Facilities and/or Systems outside the United States.** In advance of Buyer granting a Seller Person access to Facilities and/or Systems:

**(1)** Seller must verify the identity of the Seller Person. Additionally, Seller must verify that the Seller Person has requisite work authorization to perform services requiring access to specific foreign Facilities and/or Systems contemplated by this Agreement and provide written certification in the form satisfactory to Buyer that the requirements of this provision have been satisfied; and

**(2)** Seller shall perform a background screen on the Seller Person using a service provider satisfactory to Buyer. As allowable by local/applicable laws, Seller shall provide written certification in the form satisfactory to Buyer that (i) the Seller Person does not have any criminal convictions, as reported in the result of a background screen, or (ii) if the Seller Person does have one or more convictions, the Seller Person was hired only after an individualized assessment was conducted and taking into consideration the nature and severity of the underlying offenses, the specific jobs at issue, and the length of time since the convictions; and

**(3)** Seller shall perform a global sanctions search (i.e., a multi-source search including U.S. and non-U.S. databases generally known as “denied party screening lists”) on the Seller Person and provide written certification in the form provided by Buyer that the Seller Person has not been identified in any such screenings.

(c) As a condition of a Seller Person performing work under, or being given access to (i) information or data controlled for export purposes under U.S. law or (ii) information or data related to Buyer's contracts with the U.S. government or subcontracts thereunder (as may be indicated by the appearance of a government contract number elsewhere in the Order or if Buyer otherwise specifically requires, as allowable by local/applicable laws), the Seller Person also shall be a "U.S. person" as defined by 22 CFR § 120.15. Buyer may further direct Seller to use a qualified service provider to verify "U.S. person" status, at Seller's sole cost and expense; and Seller shall retain documents verifying that the requirements of this section have been satisfied.

(d) Buyer reserves the right to impose additional requirements before granting a Seller Person access to Facilities and/or Systems (e.g., drug screening, credit check, security clearance, signing an intellectual property agreement). If additional requirements are imposed, Seller shall provide Buyer with written certification in the form provided by Buyer that the requirements have been met. Seller shall retain documents verifying that the additional requirements have been satisfied. Buyer may further direct Seller to use a designated service provider to verify authorization to work, U.S. person and/or citizenship status, along with additional attributes regarding citizenship and the Seller, at Seller's sole cost and expense.

(e) Should Seller desire to assign a Seller Person that does not fully meet the requirements herein, Seller may make a request for an exception in writing to Buyer, detailing the specific circumstances. Buyer may, on a case-by-case basis and in its sole discretion, either grant or deny any such requests.

(f) Failure to provide the certifications required herein may result in a refusal to grant Seller Persons access to Facilities and/or Systems, and Seller shall be responsible for promptly providing a replacement.

(g) Seller shall immediately update Buyer if, at any time during performance of this Agreement, any information related to a Seller Person is altered or rendered inaccurate for any reason. Inability of Seller to comply with the requirements of this provision shall not excuse Seller from performing this Agreement and shall not constitute an excusable delay.

(h) Buyer may (i) audit the methodology, process, and results relied upon by Seller to confirm that a Seller Person meets the requirements herein, and (ii) deny access to Facilities and/or Systems where Buyer reasonably believes that a Seller Person does not meet the requirements of this section.

(i) Seller represents and warrants that if individuals and/or entities other than Seller Persons are engaged by it in the performance of this Agreement, Seller shall require these individuals and/or entities to satisfy requirements no less than those stipulated herein.

(j) Seller acknowledges and agrees that any breach of this section may result in a violation of U.S. or other applicable law for which Buyer, Seller, and/or a Seller Person may be liable.

**23. AUDIT RIGHTS.** Upon reasonable notice, Buyer or its duly authorized representative shall have the right to audit at Seller's facility, or any of Seller's suppliers' or subcontractors' Seller's facilities, compliance with any of the provisions of this Agreement.

## **24. FORCE MAJEURE AND DISASTER RECOVERY**

(a) Neither Seller nor any Buyer shall be liable for damages for any failure or delay in the performance of this Agreement or any Order resulting from causes beyond its reasonable control that may include, but not be limited to, unforeseeable events such as acts of God, acts of Government, war, court order, riots, natural disasters, and labor strikes (a "Force Majeure Event"). Buyer may cancel without liability to Seller its purchase of any Deliverables affected by Seller's failure or delay in performance in the case of a Force Majeure Event. The party incurring the delay shall give timely notice to the other of any such event and shall use all reasonable efforts to avoid or remove the cause and resume performance with minimum delay. If requested by Buyer, the parties shall jointly prepare a contingency plan to address the potential impact of any such event. If a failure or delay in performance is caused by an event affecting any of Seller's suppliers, such failure or delay shall not be excusable unless such event is a "Force Majeure Event" as defined above and the Good or Service to be provided by such Seller is not obtainable by Seller from other sources in time for timely delivery to Buyer.

(b) Seller that is: (i) a sole source of supply; or (ii) providing Deliverables of which lead-time exceeds one hundred twenty (120) days, shall develop and maintain a disaster recovery plan. The disaster recovery plan must include strategy and actions for recovery and continuation of business, related to production of Seller's Deliverables furnished under this Agreement, in the event of a disaster or emergency in order to prevent or limit interruption of supply of Deliverables. Seller shall furnish a copy of its disaster recovery plan to Buyer upon Buyer's request.

## 25. GOVERNING LAW

(a) This Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the State of Wisconsin, USA without regard to conflicts of law principles.

(b) The parties specifically disclaim application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

## 26. DISPUTE RESOLUTION

(a) Both Parties shall endeavor to resolve any disputes arising from or related to this Agreement amicably through discussions with each other; and that prior to either Party filing legal action against the other (except for equitable actions that may be necessary to protect a Party's rights), they will enter into informal settlement discussions between management personnel of each Party. The settlement discussions will commence following receipt of written notice by one Party to the other and will conclude within a sixty-day period, unless the Parties agree to a different time period. Such settlement discussions will include attempts that are at least two tiered; meaning that if one level of management from each side cannot resolve the dispute, then each party will appoint a higher level of management to review the dispute and endeavor to reach resolution. The purpose of this section is to prevent costly litigation where early frank and pragmatic discussions between the Parties could avert such litigation.

(b) Buyer may, but is **not** obligated to, bring any action or claim relating to or arising out of this Agreement in the appropriate court in the State of Wisconsin, and Seller hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the Secretary of State or other applicable government authority of the State of Wisconsin as agent for receiving service of process. Notwithstanding the foregoing, if Buyer in good faith determines that enforcement of a judgment granted by a Wisconsin court would not be given full faith and credit by a court in a jurisdiction where enforcement may be sought, Buyer may bring the action in that jurisdiction.

(c) Any action or claim by Seller with respect hereto shall also be brought in the appropriate court in the State of Wisconsin. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction without Buyer's prior written consent.

**27. CHANGE OF CONTROL.** Prior to a potential change of control of Seller and at least ninety (90) days prior to the proposed effectiveness of such change of control, Seller will promptly notify Buyer in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as Buyer may request, consistent with applicable law and confidentiality restrictions. In the event there is a change in control with respect to Seller or in the event that a competitor of Buyer acquires an interest in Seller, Buyer shall have the right to terminate the Order in whole or in part upon thirty (30) days written notice with Buyer's only obligation to pay for those conforming Goods and Services actually received prior to the expiry of such thirty (30) day period. A change in control of Seller is deemed to have occurred if there is a change in the beneficial ownership, directly or indirectly, of twenty-five percent (25%) or more of the ownership interests in Seller.

**28. ASSIGNMENT.** Any assignment, whether by operation of law or otherwise, by Seller of this Order, in whole or in part, without Buyer's prior written consent shall be null and void and shall constitute a material breach of the Order. Buyer may assign or transfer this Order.



**29. SET-OFF.** Buyer and its Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under the Order or any other transaction with Buyer or its Affiliates.

**30. PUBLICITY.** Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Agreement or which shall make use of Buyer's name or logo without the prior written consent of Buyer, except as may be reasonably required to perform this Agreement.

**31. MISCELLANEOUS.**

**(a) Duty to Proceed.** Seller shall proceed diligently with the performance of this Agreement. Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to this Agreement shall excuse Seller from proceeding. During the pendency of any dispute, Buyer shall continue to pay in accordance with this Agreement for Seller's performance related to matters not in dispute. Notwithstanding the generality of the foregoing, Buyer shall retain its rights with respect to set-off and withholding.

**(b) Independent Contractor.** Seller shall perform the services required under this Agreement as an independent contractor and shall have exclusive control and direction of the persons engaged by Seller to perform such services, including, but not limited to, employees of Seller working at Buyer facilities. Seller assumes full responsibility for the acts and omissions of such persons. Seller shall have exclusive liability for the payment of and compliance with regulations pertaining to local, state, and federal or other governmental entity payroll taxes or contributions, and taxes for unemployment insurance, workers' compensation, social security and/or similar or related protection for such persons, as required by applicable law. Seller shall have no power to legally bind, or act on behalf of, Buyer and shall not hold itself out as an agent of Buyer.

**(c) Survival.** All obligations and duties under any provisions, which by their nature extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including protection of proprietary information) shall survive the expiration or other termination of this Agreement of which these provisions are made a part.

**(d) Waiver.** Buyer's failure to seek a remedy for any breach by Seller or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, rights or privileges or any other terms, conditions, or privileges whether of the same or similar type. Acceptance of any Deliverables or payment therefore shall not waive any breach.

**(e) Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

**(f) Remedies.** Seller shall be liable for any damages incurred by Buyer as a result of Seller's acts or omissions under this Agreement. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

**(g) Partial Invalidity.** If in any instance any provision of this Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms unless the purposes of this Agreement can no longer be preserved by doing so.

**(h) Interpretation.** This Agreement shall be construed as if drafted jointly by the parties and no provision in this Agreement shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

**(i) Captions.** The captions, headings, section numbers, and table of contents appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.