

MIDWEST COOLING TOWERS, INC.- BUYER

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS OR SERVICES BY MIDWEST COOLING TOWERS, INC.

The purchase of any goods ("Goods") or services ("Services") by Midwest Cooling Towers, Inc. ("Buyer") from any seller/supplier ("Seller") is expressly governed by these terms and conditions ("Terms and Conditions") which are incorporated into and made a part of any purchase order ("Purchase Order") issued by Buyer.

1. **ENTIRE AGREEMENT; ACCEPTANCE.** Buyer's Purchase Order, together with these Terms and Conditions and any documents attached thereto or incorporated therein by reference, including but not limited to, a Master Services or Goods Agreement that has been approved in writing by Buyer, constitutes Buyer's and Seller's entire understanding regarding the Goods and/or Services being purchased and collectively comprise the parties' contract (the "Contract"). Buyer expressly rejects any additional or different terms and conditions proposed by Seller. No Seller terms and conditions shall become part of the parties' Contract, nor shall they modify the Contract unless Buyer expressly agrees to such modification in a written instrument signed by Buyer. By accepting any Purchase Order from Buyer, Seller accepts these Terms and Conditions. No confirming orders, or other documentation, written or oral, by Seller modifies, alters, or changes the express written terms of this Contract and Buyer hereby expressly rejects any terms and conditions contained in any order acknowledgment or proposal provided by Seller. None of Seller's inconsistent and/or additional terms and conditions referenced or submitted in acknowledging this Contract or in releases, invoices or other documents shall apply to this Contract unless expressly assented to in a written instrument signed by Buyer. In the event of any conflict or discrepancies of terms within the Contract documents, the order of precedence in resolving such conflict or discrepancies shall be (a) Buyer's Purchase Order, (b) Buyer's Terms and Conditions, and (c) Master Services or Goods Agreement.

2. **ORDER CONFIRMATION.** Within one (1) business day from receipt of Buyer's Purchase Order, Seller shall confirm pricing and delivery dates to Buyer.

3. **PRICES.** The prices for the Goods and/or Services are set forth on the face of the Purchase Order and shall not be increased without Buyer's prior written and signed consent, which may be provided or withheld at Buyer's sole option. Buyer shall receive the full benefit of any general reductions in Seller's prices made prior to delivery of Goods or commencement of Services. Seller warrants that the prices for Goods and Services are not less favorable than those currently extended to Seller's other customers for goods and/or services.

4. **INVOICES; PAYMENT.** Seller's invoices shall: (a) specify Buyer's Purchase Order number; (b) separately itemize taxes; (c) be rendered separately for each delivery or job and indicate whether it is a "Partial Billing" or "Final Billing"; (d) clearly identify the Goods or Services provided; and (e) include proper supporting documents. Buyer shall pay all undisputed invoice amounts within the time frame and pursuant to the payment terms set forth on the face of the Purchase Order, calculated from Buyer's receipt of an acceptable invoice. Any payment or cash discount period will begin on Buyer's invoice receipt date and will be extended by the number of days of delay caused by errors or omissions in any invoice. Seller hereby authorizes Buyer to deduct from any amount payable to Seller any payment or part thereof to the extent and for so long as Buyer reasonably deems necessary to indemnify it from actual or potential losses arising from Seller's acts or omissions in performing, or failing to perform, Seller's obligations under the Purchase Order, including, without limitation, losses due to defective Goods or Services, third party claims, failure to make payments reasonably due third parties,

damage to Buyer or another contractor, or failure to deliver the Goods and/or Services in accordance with the Purchase Order. Seller's acceptance of the final payment shall constitute Seller's waiver and release of all of Seller's claims against Buyer.

5. **TAXES.** Unless otherwise agreed in writing signed by Buyer and Seller, such as if Buyer shows proof of an exemption, Seller's prices for Goods and Services include all applicable taxes and Seller shall remit all applicable taxes to the taxing authorities and provide proof of the same on request of Buyer. Seller acknowledges that it has taken into account the taxes to be imposed, levied, or assessed on Buyer and Seller as a result of the Contract in establishing Seller's prices. Any taxes applicable to the Goods or Services shall be shown separately on Seller's invoices if required by Buyer. Seller shall fully release, defend, and indemnify Buyer from and against, and hold Buyer harmless from, any and all taxes that are imposed, levied, or assessed against Buyer or Seller for which Seller bears liability therefore under the Contract or applicable laws, rules, regulations, statutes, order, requirements, or ordinances promulgated, issued, or enacted by any governmental authority, whether federal, state or local or foreign or other (collectively, "Applicable Law"). Seller will file, and cause its subcontractors to file, such returns, reports, or forms necessary for the payment of all applicable taxes.

6. **WARRANTIES AND COVENANTS.** Seller expressly warrants that all of the Goods and/or Services furnished under the Purchase Order: (a) are merchantable; (b) are not defective with respect to design, workmanship, and materials; (c) shall conform to Buyer's specifications (the "Specifications"); (d) are comprised of components that are new and of good quality; (e) are fit for the purposes specified within the Purchase Order and as advertised by Seller; (f) include the benefit of all manufacturer's warranties if such warranties are transferable; (g) are free of any charge, encumbrance, lien, or other security interest; (h) do not and will not constitute an infringement of any third party intellectual property rights; (i) comply with applicable laws; and (j) are in conformity with all requirements of the Purchase Order.

Seller further expressly warrants that it owns or possesses the right to transfer to Buyer all ownership of all Goods listed in the Purchase Order. Buyer will be entitled to inspect and/or test all Goods before, upon, or within a reasonable time after delivery. No substitution of any Goods will be made without Buyer's written approval and consent. Buyer reserves the right to reject Goods which have been reworked. If Buyer discovers that any Goods provided hereunder do not comply with these warranties, then at Buyer's option, Seller shall, at Seller's sole expense and liability, promptly correct, repair, or replace such defects or refund Buyer that portion of its payment to Seller attributable to the defective Goods. If Buyer elects to have Seller replace or repair the defective Goods, Seller shall immediately, after receiving notice from Buyer of such defective Goods, proceed, at Seller's sole cost and expense, to replace the defective Goods, including providing parts, freight, and labor for removal and reinstallation, to the satisfaction of Buyer. If Seller fails, after a reasonable period of time not to exceed seven (7) days, to perform the remedial action, or to commence to replace any defective Goods and thereafter continue to proceed diligently to complete the same, or if Buyer determines it cannot wait for Seller to perform the remedial action, Buyer may, in addition to any other remedies that Buyer has under these Terms and Conditions, at law, or in equity, perform or have others perform corrective work, and Seller shall be responsible for all reasonable costs incurred by Buyer. Seller shall pay all reasonable costs incurred in retrieving and removing any defective Goods and reinstalling conforming ones, including, without limitation, all costs of disassembling, removal, inspection, reinstallation, retesting and transportation. The warranties in this Section shall extend: (i) to twelve (12) months from date

of installation and acceptance by Buyer, or eighteen (18) months from date of delivery and acceptance by Buyer, whichever occurs first, and (ii) with respect to any item or part that has been corrected, repaired, or replaced, to the longer of the original unexpired warranty or twelve (12) months from the date of acceptance of such correction, repair, or replacement.

Seller shall perform all services: (a) diligently and in a thorough, good, and workmanlike manner; (b) in a manner that meets or exceeds the specifications or requirements provided by Buyer or, if none are given, the highest recognized standards of good practice in the industry utilized by reputable persons that specialize in providing similar services; (c) free from defects in workmanship; and (d) in a manner suited for Buyer's purposes, either specified by Buyer and/or advertised by Seller.

Seller shall obtain and maintain at Seller's sole cost and expense all permits and licenses required in connection with performance of the Services and, if permitted by Buyer to subcontract, Seller shall be fully responsible for the errors, acts, and omissions of Seller's employees and subcontractors (and of persons directly or indirectly employed by any of them) assisting Seller in performing the Services, as if such errors, acts, and omissions were committed by Seller. The Services performed under the Contract by any subcontractor shall be subject to inspection by Buyer to the same extent as the work or services of Seller. Seller shall not subcontract all or any portion of the Services without Buyer's prior written approval and consent. In every case, all requirements and obligations set forth in the Contract shall be extended to permitted subcontractors.

Seller shall and shall cause its permitted subcontractors to: (a) be fully qualified and, to the extent required, licensed to perform the services pursuant to applicable law, and (b) exercise for Buyer's benefit its best knowledge and skill in planning and performing all services in the most efficient, timely, and economical manner. Seller shall only permit individuals with the proper skill, knowledge, and experience to perform the services.

If Buyer discovers any defective Services, then at Buyer's option, Seller shall, at Seller's sole expense and liability, promptly correct, repair, or replace such defects or refund Buyer for that portion of its payment to Seller attributable to the defective Services. If Seller fails, after a reasonable period of time not to exceed seven (7) days, to perform the remedial action, or to commence to repair or replace any defective services and thereafter continue to proceed diligently to complete the same, or if Buyer determines it cannot wait for Seller to perform the remedial action, Buyer may, in addition to any other remedies that Buyer has under the Contract, at law, or in equity, perform or have others perform corrective work, and Seller shall be responsible for all reasonable costs incurred by Buyer to correct the defects. The warranties in this Section shall extend: (a) to twelve (12) months from date of completion and acceptance of the Services, and (b) with respect to any portion of the Services that has been corrected, repaired, or replaced, to twelve (12) months from the date of acceptance of such correction, repair, or replacement.

Seller is an independent contractor in all respects with regard to the performance of the Services. Seller, Seller's employees, or subcontractors performing the Services will not be considered for any purpose to be Buyer's employees, agents, or representatives. Buyer is interested in the results of the Services and will not direct or control the manner or method in which Seller performs the Services.

All Seller warranties are in addition to any other rights and remedies of Buyer at law, in equity or under the Contract and shall survive inspection, delivery, acceptance, and payment. Without relieving Seller of any of its obligations under the Purchase Order, Seller shall assign in full, and without cost to Buyer, all warranties from subcontractors that are applicable to the Goods and Services and deliver such assigned warranties to Buyer. The warranties shall

be for the benefit of Buyer and its successors and assigns and the respective successors and assigns of any of them and are fully transferable and assignable.

7. **QUANTITY.** Buyer is only obligated to purchase the quantity of goods stated in Buyer's Purchase Order. Buyer reserves the right to accept or reject, in whole or in part, partial or excess deliveries of Goods and such Goods may be returned to Seller at Seller's sole risk and expense, including any costs incurred by Buyer related to storage and handling of such Goods. If Seller's costs are reduced because of changes, Seller shall reduce the Purchase Order price to reflect all such quantifiable cost savings, whether direct or indirect. If Seller's costs are increased because of changes, Buyer will consider Seller's request for a reasonable adjustment to the Purchase Order price; provided, however, that if Seller does not notify Buyer of a cost impact within ten (10) days of the issuance of the revision/release, then Seller shall be deemed to waive any claim for a price increase due to the revision/release; and provided further, that if Seller does provide notice of a cost impact and the parties cannot agree upon a reasonable price adjustment within ten (10) days of such notice, the revision/release will not become effective, Seller shall not be entitled to any additional compensation or price changes, and the Buyer may terminate the Purchase Order without liability to Seller. Written or verbal acceptance of a revision or release and/or the provision of Goods or Services to Buyer after receipt of a revision to the Purchase Order constitutes Seller's assent to such revision.

8. **PACKING, SHIPPING & DELIVERY; TITLE AND RISK OF LOSS.** All packaging for the goods shall be numbered and labeled with Buyer's Purchase Order number, contents, and weight, and shall contain an itemized packing slip and a safety data sheet if one is available for the Goods. Seller shall include with the packing slip for each shipment a detailed, complete bill of materials that lists each part and component of the Goods purchased by Buyer and indicate which components are and are not included in the shipment. Additionally, Seller shall label, tag, stamp, or otherwise identify each unit of all Goods with any additional equipment or project-specific information specified by Buyer in the Purchase Order. Buyer reserves the right to reject Goods not completely identified as specified in this Section and to return such Goods to Seller at Seller's cost. All Goods (a) shall be properly packed, marked and shipped to meet the requirements of the common carrier, provide for efficient handling, and insure adequate protection against damage to the Goods, and (b) shall be shipped and routed in accordance with Buyer's instructions. Unless otherwise specified, Seller's shipments shall be declared at the value with the lowest transportation charge. Seller shall send Buyer an original bill of lading or a signed delivery receipt with Seller's invoice as evidence of shipment. Buyer shall not pay for packing, crating, freight, express cartage, or other additional costs unless specified in the Contract. If any Goods are not delivered within the applicable times specified in the Contract (or within a reasonable time if no time is specified), Buyer may, at its sole option, (i) refuse to accept such goods and terminate the Purchase Order, or (ii) cause Seller to ship such goods by the most expeditious means of transportation at no additional cost to Buyer. Unless otherwise specified on the face of the Purchase Order, title, and risk of loss with respect to the goods shall pass from Seller to Buyer upon delivery of the goods to Buyer's facility. If the risk of loss passes to Buyer at the shipping point and if Seller fails to ship in the manner or route directed by Buyer, Seller agrees to reimburse Buyer for any loss, delay, or damage which Buyer suffers. Seller shall insure all shipments for the face value of the Goods for the benefit of Buyer.

9. **TIME IS OF THE ESSENCE.** Time is of the essence to Buyer. Seller shall deliver all Goods and Services hereunder, within Buyer's delivery schedule as set forth in the Purchase Order. If Seller for any reason anticipates difficulty in complying with the required delivery or performance

date or in meeting any of the other requirements of the Purchase Order, Seller shall promptly notify Buyer in writing.

10. **SPECIAL ITEMS.** The Goods shall include, and Seller shall deliver to Buyer upon termination or cancellation of the Contract or upon earlier delivery of the Goods hereunder, all customized tooling, dies, and other equipment that (a) Seller makes or acquires solely for purposes of providing Goods to Buyer, and (b) are directly or indirectly paid for by Buyer.

11. **BUYER'S CHANGES.** At any time, Buyer may request additions, deletions or modifications (each, a "Change") to the Goods or Services, or to the quantities of Goods, to delivery dates for Goods, or to any other condition or term of the Purchase Order (individually or collectively, the "Changed Criteria"), upon request in writing (which may be via email) or orally with a prompt written confirmation (which may be via email). If Buyer submits to Seller a Change that will cause a material increase or decrease in the cost to Seller or the time required for Seller to perform under the Purchase Order, Seller shall respond to Buyer within one (1) business day of the Change notification with a written statement setting forth the effect that such Change would have on the Changed Criteria. If Seller's costs are reduced because of changes, Seller shall reduce the Purchase Order price to reflect all such quantifiable cost savings, whether direct or indirect. If Seller's costs are increased because of changes, Buyer will consider Seller's request for a reasonable adjustment to the Purchase Order price; provided, however, that if Seller does not notify Buyer of a cost impact within ten (10) days of the issuance of the revision/release, then Seller shall be deemed to waive any claim for a price increase due to the revision/release; and provided further, that if Seller does provide notice of a cost impact and the parties cannot agree upon a reasonable price adjustment within ten (10) days of such notice, the revision/release will not become effective, Seller shall not be entitled to any additional compensation or price changes, and the Buyer may terminate the Purchase Order without liability to Seller. Written or verbal acceptance of a revision or release and/or the provision of Goods or Services to Buyer after receipt of a revision to the Purchase Order constitutes Seller's assent to such revision. If Buyer elects to proceed, then Seller shall perform such Change in accordance with Buyer's request and an equitable adjustment shall be mutually agreed in writing in the form of a change order ("Change Order") revising the Purchase Order price and/or delivery schedule.

12. **SELLER'S CHANGES.** Seller shall give Buyer prior notice of any change to Seller's or Seller's subcontractor's manufacturing process that could affect the performance characteristics of the Goods; provided, however, that all Goods shall be manufactured to conform to the Specifications. Seller shall not perform any change unless and until such change is expressly authorized in writing signed by Buyer, and should Seller perform or claim to perform any additional or changed work prior to authorization by Buyer in the form of a Change Order, Seller shall not be entitled to reimbursement from Buyer for such additional or changed work and all such costs and expenses incurred by Seller shall be the obligation and responsibility of Seller.

13. **TERMINATION.** Buyer may terminate, cancel, or suspend the Contract, in whole or in part, at any time with or without cause upon written notice to Seller. If Buyer terminates the Contract for any reason, Seller's sole and exclusive remedy is payment for the Goods/Services received and accepted by Buyer prior to the termination.

14. **BUYER'S RIGHTS AND REMEDIES.** Termination, cancellation, or suspension of the Contract by Buyer shall not prejudice any claim for damages or non-performance Buyer would otherwise have against Seller. The rights and remedies of Buyer set forth in the Contract are not exclusive and are in addition to all other rights and remedies of Buyer.

15. **AUDIT.** Seller shall maintain a true and correct set of books and records relating to the Goods and Services, and Seller's performance of its obligations hereunder (collectively, "Records") and shall retain all Records for a minimum period of three (3) years after final payment hereunder or for such period as is required by applicable law, whichever is longer. At any time until expiration of such period, Buyer and its authorized representatives may, upon written notice to Seller, (a) inspect and audit any Records for purposes of verifying Seller's compliance with the Contract, and (b) reproduce and retain copies of any such Records. In the event that any error is discovered as a result of such audit, the parties shall remedy such error, including, if applicable, by the payment by each party of any additional amount owed by such party within thirty (30) days of such discovery.

16. **ASSURANCE OF PERFORMANCE.** If Buyer has reasonable grounds for insecurity about Seller's performance of the Contract, Buyer may make a demand for an adequate assurance of due performance ("Assurance") from Seller. This demand shall be in writing and shall state in reasonable detail the grounds for such insecurity. Upon receipt of such a demand, Seller shall promptly provide Buyer with Assurance that is adequate in resolving the grounds for such insecurity, as reasonably determined by Buyer. Buyer may (a) suspend its performance under the Contract until Buyer receives such an Assurance and (b) terminate the Contract (without prejudice to any other rights or remedies Buyer may have) if Seller does not promptly provide such Assurance.

17. **HAZARDOUS MATERIALS OR SUBSTANCES.** Seller shall notify Buyer in advance of shipment, or at any other time it becomes known, if the Goods are or could be considered hazardous or dangerous, including Goods containing materials, substances, pollutants, or contaminants which could be hazardous to human health and/or the environment ("Hazardous Materials"). Seller shall (a) comply with applicable law relating to the protection of the environment, including those related to the transportation, management, or disposal of Hazardous Materials, and (b) furnish Buyer with copies of all relevant information concerning the physical, chemical, and toxicological properties of the Goods, and emergency steps to be used in the event of a health, safety, or environmental incident involving the Goods.

18. **SELLER DEVELOPED INFORMATION.** As between Buyer and Seller, Seller shall retain ownership of all proprietary intellectual property rights owned by Seller and developed by it prior to the Contract (hereinafter referred to as "Seller's Intellectual Property"). Seller's Intellectual Property shall not include any Buyer data or Buyer's Confidential Information as defined herein. With respect to such Seller's Intellectual Property and third party intellectual property relating to the Goods and/or Services under the Contract, Seller hereby grants Buyer an irrevocable, non-exclusive, perpetual, royalty-free and fully paid-up right and license (including with right to assign such license without consent) to use, modify, copy, and in any other way exploit such Seller's Intellectual Property and third party intellectual property for any purpose relating to the Goods and/or Services or the Contract. Subject to the above, all intellectual property and results of services, all documents, materials, software, or information developed, authored, conceived, originated, prepared, or created by or on behalf of Seller as a result of the relationship created under the Contract, including, without limitation, any invention, discovery, know-how, or improvement conceived or reduced to practice in connection with the Purchase Order (collectively, "Seller Developed Information"), shall be transferred to Buyer upon the earlier of the delivery of the Goods or the cancellation or termination of the Contract for any reason. All Seller Developed Information shall be deemed to be the sole and exclusive property of Buyer, as well as "works made for hire" as contemplated by the U.S. Copyright Act (17 U.S.C. § 101). To the extent any rights, title, or interest

(including intellectual property rights) in or to any Seller Developed Information (or any element thereof) do not vest in Buyer, including where any Seller Developed Information is not eligible for "works made for hire" treatment, Seller hereby irrevocably assigns, at no additional cost, all rights, title, and interest (including all intellectual property rights) in and to such Seller Developed Information to Buyer. Seller agrees to do all things reasonably necessary to protect the interests of Buyer in the Seller Developed Information, including but not limited to (i) cooperating with Buyer so that Buyer, at its expense, can obtain patents and copyrights and (ii) executing and delivering (and causing its subcontractors and its and their respective personnel to execute and deliver) such documents as may be reasonably requested by Buyer to effect the foregoing assignment or to prosecute, register, perfect, record, or enforce Buyer's rights in or to any Seller Developed Information. Without limiting the foregoing obligations of Seller, Seller hereby appoints Buyer as Seller's attorney-in-fact with full irrevocable power and authority to execute any such documents if Seller refuses or, within a period deemed reasonable by Buyer, otherwise fails to do so. To the extent rights in or to any Seller Developed Information (or any element thereof) are not assigned by Seller to Buyer, Seller hereby grants to Buyer a nonexclusive, perpetual, sub-licensable (through multiple tiers), irrevocable, transferable, worldwide, fully paid-up, and royalty-free license to all of the Seller Developed Information, to use, copy, distribute, display, modify, maintain, support, and create derivative works of the same at Buyer's sole discretion.

19. **CONFIDENTIAL INFORMATION:** Seller covenants and warrants that it and its employees, officers, directors, and agents shall keep strictly confidential all Seller Developed Information, and all information (in any form, including, without limitation, oral or visual, or recorded in writing or electronically, or in any other form or medium or by any other method) received by, becoming known to, or observed by Seller concerning Buyer's inventions, discoveries, know-how, trade secrets, improvements or methods, business plans, ventures or practices, products, operations, facilities, processes, intentions, enterprises, explorations, mining information, manufacturing or other plant design, location of operation, or any other information affecting the business operations or affairs of Buyer (collectively, "Confidential Information") and shall not sell, trade, publish, or otherwise disclose any such Confidential Information to any party in any manner whatsoever, including by means of photocopy, reproduction, or electronic media, without the prior written consent of Buyer, except that Seller may disclose such Confidential Information (a) to Seller's agents, employees and representatives who have a clear need to know such Confidential Information in connection with the Purchase Order and who are subject to confidentiality obligations as least as stringent as those contained in the Purchase Order and to which Buyer is a third-party beneficiary; provided that Seller shall be liable for any unauthorized disclosure by such agents, employees and representatives, or (b) to the extent such Confidential Information is required to be disclosed under applicable law or stock exchange regulations, provided that Seller, subject to applicable law, gives prompt written notice to Buyer prior to such disclosure to afford Buyer an opportunity to object to or limit the information required to be disclosed; provided also that Seller ensures such disclosures shall be in writing and marked "Confidential"; and provided further that, in any case, Seller shall only disclose that portion of the Confidential Information that, in the opinion of Buyer's legal counsel, is required to be disclosed. Seller will (i) use the Confidential Information only for performing the Purchase Order, (ii) protect the Confidential Information with at least a reasonable standard of care to prevent unauthorized disclosure of the Confidential Information, (iii) promptly notify Buyer if any Confidential Information is disclosed in breach of the Purchase Order, (iv) ensure that any copies of Confidential Information are marked "Confidential", and (v) stop using and promptly return or destroy all Confidential Information and all copies thereof (except the terms of the Purchase Order) upon the earlier

termination of the Purchase Order or upon Buyer's request, except that Seller may retain one (1) record set of the Work Documents, subject to its confidentiality obligations set forth herein. Notwithstanding restrictive legends to the contrary, no confidentiality obligations will be imposed on Buyer by acceptance of materials supplied by Seller.

The term Confidential Information shall be deemed not to include information that, as shown by written or electronic evidence of Seller: (1) is already lawfully known to Seller and is not otherwise governed by a confidentiality obligation, (2) is already in possession of the public or becomes available to the public other than through the act or omission of Seller, (3) is acquired independently by Seller from a third party that has the right to disseminate such information at the time it is acquired by Seller, or (4) is developed by Seller independently of Confidential Information, other than Seller Developed Information.

All Confidential Information shall be and remain the sole property of Buyer. Seller agrees that money damages would not be an adequate remedy for any breach of its obligations related to the non-disclosure of Confidential Information and that Buyer will be entitled to seek specific performance and other equitable relief by way of injunction if Seller or any of its representatives' breaches or threatens to breach any provision related to the non-disclosure of Confidential Information. Seller further agrees to waive any requirement for the posting of a bond in connection with any such equitable relief. The foregoing remedies shall not be deemed to be exclusive remedies for a breach of this Section by Seller or any of its representatives but shall be in addition to all other remedies available to Buyer, at law or in equity.

20. **PUBLICITY.** Except to the extent required by applicable law, Seller shall not issue or release for publication, or make any reference to Buyer or any member thereof in, any press release, public announcement, advertising, circular, promotional material, or publicity matter in any form (including print, electronic, or interview) relating to Buyer or its business, affairs or facilities, the existence of the Contract or the subject matter hereof and shall not use the name, logo, or trademarks of Buyer without the prior written consent of Buyer.

21. **INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER, ITS OWNERS, AFFILIATED COMPANIES OF BUYER, THEIR PARTNERS, REPRESENTATIVES, MEMBERS, DESIGNEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CUSTOMERS, SUCCESSORS AND ASSIGNS (COLLECTIVELY "INDEMNIFIED PARTIES"), FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, CAUSES OF ACTION, CONTROVERSIES, LIABILITIES, FINES, REGULATORY ACTIONS, SEIZURES, FORFEITURES, LOSSES, SUBROGATION CLAIMS BY SELLER'S INSURERS, COSTS AND EXPENSES, WHETHER INCURRED BY AN INDEMNIFIED PARTY OR A THIRD PARTY, (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, EXPERT WITNESS FEES AND LITIGATION OR ARBITRATION EXPENSES), AND THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION UNDER THIS CONTRACT AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, INCURRED BY INDEMNIFIED PARTIES (COLLECTIVELY, "LOSSES") WHETHER BASED ON STATUTORY OR COMMON LAW, TORT (INCLUDING NEGLIGENCE) OR CONTRACT LAW, OR OTHERWISE, WHETHER FOR PERSONAL INJURY, PROPERTY DAMAGE, OR OTHER CLAIMS, ARISING FROM OR IN CONNECTION WITH: (A) ACTUAL OR ALLEGED DEFECTS IN GOODS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, THE DESIGN, MATERIAL, WORKMANSHIP, AND/OR MANUFACTURING OF GOODS; (B) RECALLS OF THE GOODS, WHETHER VOLUNTARY OR REQUIRED BY A COURT OR REGULATORY AUTHORITY; (C) NEGLIGENT ACTS OR OMISSIONS OF SELLER, ITS OWNERS, AFFILIATED COMPANIES OF SELLER, THEIR PARTNERS, REPRESENTATIVES, MEMBERS, DESIGNEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, SUCCESSORS AND ASSIGNS; (D) INTENTIONAL OR WILLFUL MISCONDUCT OF SELLER, ITS OWNERS, AFFILIATED COMPANIES OF SELLER, THEIR PARTNERS, REPRESENTATIVES, MEMBERS, DESIGNEES,

OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, SUCCESSORS AND ASSIGNS; (E) VIOLATIONS OF ANY LAW, REGULATION, OR OTHER GOVERNMENTAL REQUIREMENT RELATED TO THE COMPONENT SOURCING, MANUFACTURE, LABELING, SALE OR USE OF GOODS; (F) LOSS OR COMPROMISE OF BUYER'S CONFIDENTIAL INFORMATION TO WHICH SELLER OBTAINS ACCESS; (G) INFRINGEMENT OR MISAPPROPRIATION OF THE PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY RESULTING FROM (i) INDEMNIFIED PARTIES' USE OF INTELLECTUAL PROPERTY AS DEFINED HEREIN, OR (ii) INDEMNIFIED PARTIES' OR INDEMNIFIED PARTIES' CUSTOMERS' USE OR POSSESSION OF GOODS; (H) MECHANICS' LIEN OR MATERIALMEN'S LIENS FILED BY ANY CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, SUPPLIERS, OR LOWER TIER SUBCONTRACTORS (EXPECT TO THE EXTENT TO WHICH BUYER HAS NOT PAID FOR THE GOODS), WHEREAS SELLER AGREES TO TAKE ALL STEPS NECESSARY AND PROPER FOR THE RELEASE AND DISCHARGE OF SUCH LIEN IN THE MANNER REQUIRED BY LAW IN THE STATE IN WHICH THE LIEN HAS BEEN FILED ON RECEIPT OF DEMAND FROM BUYER, AND IN DEFAULT OF PERFORMING SUCH OBLIGATION, AGREES TO REIMBURSE BUYER, ON DEMAND, FOR ALL MONIES PAID BY BUYER IN THE RELEASING, SATISFYING AND DISCHARGING OF SUCH LIENS, INCLUDING REASONABLE ATTORNEYS' FEES AS DISBURSEMENTS; AND (I) ENVIRONMENTAL CLAIMS, INCLUDING CLEANUP COSTS BY REASON OF (i) ANY ENVIRONMENTAL DEFECT, (ii) THE PRESENCE, DISPOSAL, ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS AS DEFINED HEREIN ON, FROM, OR AFFECTING ANY PROPERTY, (iii) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS, (iv) ANY LAWSUIT BROUGHT OR THREATENED, SETTLEMENT REACHED, OR GOVERNMENT ORDER RELATING TO SUCH HAZARDOUS MATERIALS, OR (v) ANY VIOLATION OF ENVIRONMENTAL LAWS, ORDERS, ORDINANCES, REGULATIONS, REQUIREMENTS, OR DEMANDS OF GOVERNMENT AUTHORITIES, WHICH ARE IN ANY WAY RELATED TO SUCH HAZARDOUS MATERIALS, OR ANY OTHER ENVIRONMENTAL DEFECTS IN CONNECTION WITH THE CONTRACT, INCLUDING, WITHOUT LIMITATION, THE COSTS AND EXPENSES OF ANY REMEDIAL ACTION, ATTORNEY AND CONSULTANT FEES, INVESTIGATION AND LABORATORY FEES, COURT COSTS, AND LITIGATION EXPENSES.

IF BECOMES AT ANY POINT NECESSARY, UPON BUYER'S DEMAND, SELLER HEREBY AGREES TO PROCURE BUYER THE RIGHT TO USE OR MODIFY THE GOODS. THIS OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND SHALL APPLY WHETHER OR NOT IT IS ALLEGED THAT BUYER IN ANY WAY CONTRIBUTED TO THE CLAIMS OR IS LIABLE DUE TO A NON-DELEGABLE DUTY. NOTWITHSTANDING THE FOREGOING, SELLER SHALL NOT HAVE ANY INDEMNITY OBLIGATION TO BUYER WITH RESPECT TO ANY CLAIMS THAT RESULT SOLELY FROM THE NEGLIGENCE OF BUYER AND THIS INDEMNITY PROVISION DOES NOT PURPORT TO INDEMNIFY BUYER SOLELY FOR ITS OWN NEGLIGENCE TO THE EXTENT SUCH INDEMNIFICATION IS CONTRARY TO LAW. SELLER, FOR ITSELF AND ITS INSURERS, EXPRESSLY WAIVES ANY AND ALL LIMITATIONS OR LIABILITY CAPS, IF ANY, ON SELLER'S CONTRIBUTION LIABILITY TO BUYER, AND ANY AND ALL STATUTORY OR COMMON LAW LIEN RIGHTS OR CLAIMS AGAINST BUYER, ARISING FROM ANY APPLICABLE WORKERS COMPENSATION OR DISABILITY ACTS, WHICH SELLER MIGHT OR COULD ASSERT AGAINST BUYER OR BUYER'S INSURERS IN THE EVENT OF THE PERSONAL INJURY OR DEATH OF SELLER'S EMPLOYEES, REPRESENTATIVES OR AGENTS. WITHOUT LIMITING THE FOREGOING, SELLER, FOR ITSELF AND ITS INSURERS, ALSO WAIVES ANY CLAIMS, LIENS, OR OTHER RIGHTS IT MAY HAVE AS A RESULT OF BEING SUBROGATED TO ANY RIGHTS OF ITS EMPLOYEES, REPRESENTATIVES, OR AGENTS.

22. **INSURANCE.** At all times during the term of the Contract and until expiration of Seller's warranties hereunder, Seller shall obtain and maintain in effect, at its sole cost and expense occurrence based Commercial General Liability Insurance from an A.M. Best "A" rated carrier including products/completed operations, blanket contractual, and independent contractor coverages, with insurance coverage of not less than \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence, unless otherwise agreed to by the parties in writing, and Contractor Professional Liability Insurance with insurance coverage of not less than \$2,000,000.00 per occurrence for Services. Seller shall also maintain, as applicable, all Workers' Compensation Insurance (or its equivalent outside of the U.S.) in accordance with all applicable statutory and legal requirements, and Employer's Liability Insurance (or its equivalent outside the U.S.), with insurance coverage of not less \$500,00 per accident/per employee.

Seller's obligation to procure and maintain insurance pursuant to this provision may be fulfilled by a combination of primary or excess insurance and deductibles or self-insured retentions. Any such deductibles or self-insured retentions shall be borne by, and be the sole responsibility of, Seller. Excess/umbrella coverage shall be no less restrictive than the scope of the coverage afforded by the primary layer. Only to cover to the fullest extent of Seller's liabilities and obligations under or in connection with the Contract, the insurance coverage required hereunder shall: (i) be primary and non-contributing with any other insurance available to Buyer, (ii) provide for a waiver of insurance companies' rights of subrogation against Buyer, its members, subsidiaries, and affiliated companies or against their respective agents, employees, officers, invitees, contractors, subcontractors, underwriters, and insurance companies on all such policies, unless specifically prohibited by local statutory requirements, and (iii) name Buyer, its members, partners, subsidiaries, and affiliated companies and their respective employees, officers, and agents as additional insured in each of Seller's policies except worker's compensation.

The insurance coverage required under the Contract shall be additional security for Seller's liability and shall not limit such liability, nor shall such requirements be considered the ultimate amount or types of insurance Seller should carry.

Seller shall assure that if any of the above required insurance coverages are written with annual or policy term aggregate limits, there will be sufficient limits available to meet the per accident or occurrence limits required above throughout the term of the Contract. In the event that liability for any loss or damage is denied by the insurance company(ies) in whole or in part due to the breach of said insurance by Seller, or for any other reason attributable to Seller (including failure to maintain any of the insurance herein required), then Seller shall release, protect, defend, indemnify and hold harmless Buyer from and against any Claims and Losses which would otherwise have been covered by said insurance.

If requested by Buyer, Seller shall promptly furnish Buyer with insurance certificates evidencing the coverages required by this Section. Copies of endorsements evidencing the required additional insured status and waiver of subrogation provision shall be attached to the insurance certificates. Seller agrees that it will not cancel, reduce, restrict, or materially change the policy in a way that adversely affects Seller's or Buyer's rights under such policy (including any endorsements) without giving Buyer thirty (30) days' advance written notice. Buyer may request verification of insurance evidenced in the certificates of insurance from Seller's insurance agent or broker, and Seller shall authorize and facilitate the prompt furnishing of that verification. Buyer's failure to request, or respond to, any deficient insurance certificate received by Buyer shall not constitute a waiver of Buyer's rights, or Seller's insuring obligations, under this Section. No insurance certificate or other evidence of

insurance will serve to amend the insurance requirements herein without consent of Buyer.

23. **FORCE MAJEURE.** Seller or Buyer shall each be excused from performing its obligations under the Contract if and only to the extent that such performance is directly and materially delayed or prevented by an event reasonably beyond the control of such party and that was not reasonably foreseeable and that occurs without the fault or negligence of such party, and limited to the following (each as applicable, a "Force Majeure Event"): catastrophic floods and named storms, tornadoes, hurricanes, lightning strikes, and earthquakes directly impacting work or services under the Contract, any strike or labor dispute (excluding strikes or labor disputes involving only employees or staff of Seller, explosions and fires not caused by a Seller, commercial embargoes, epidemics (other than Existing COVID-19 Restrictions), riots, governmental actions, sabotage, acts of terrorism, or war. The party affected by such Force Majeure Event shall give written notice thereto to the other party as soon as reasonably practicable, but not later than three (3) business days after the occurrence thereof; with such notice setting forth the details of the Force Majeure circumstances, including the duration and extent of such circumstances. Failure to give notice of a Force Majeure Event within such period of time shall be deemed an irrevocable waiver with respect to such Force Majeure Event. The party affected by such Force Majeure Event shall also give written notice to the other party when the affected party believes the delay occasioned by such Force Majeure Event has ended. For purposes of clarity, a "Force Majeure Event" does not include (a) normal wear and tear, random flaws, or breakdowns of materials and equipment used by Seller in the performance of its obligations under the Contract, (b) late arrival or lack of availability of personnel, (c) market conditions or fluctuations (including a downturn in the business of Seller, (d) weather conditions, including storms, rain, snow, and precipitation (other than catastrophic floods and named storms directly impacting the work or services performed under the Purchase Order), (e) events involving a condition that existed as of the effective date of the Purchase Order, and Existing COVID-19 Restrictions (provided that, if additional restrictions and limitations to the Work arise from a COVID-19 variant that did not exist as of the effective date of the Purchase Order, then such additional restrictions and limitations shall constitute a Force Majeure event). The burden of proof as to whether a Force Majeure event has occurred shall be upon the Party claiming Force Majeure. "Existing COVID-19 Restrictions" means all applicable law and all restrictions and limitations with respect to the performance of the work or services under the Purchase Order arising out of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), as identified by the World Health Organization and further abbreviated by such organization as "COVID-19", existing as of the effective date of the Purchase Order.

The party affected by a Force Majeure Event shall use due diligence and reasonable commercial efforts (including the expenditure of reasonable funds) and take reasonable precautions to prevent and mitigate the effects of the occurrence or continuation of such Force Majeure Event on the performance of its obligations and the date for delivery or performance shall not be extended pursuant to this provision to the extent that such efforts, if made, would have mitigated such adverse effects. The party affected by a Force Majeure Event shall promptly resume such obligations following the cessation of such Force Majeure Event. In no event shall Seller be entitled to any price adjustment or other financial relief under the Contract as a result of any Force Majeure Event.

If a Force Majeure Event diminishes the quantity of available Goods, Seller shall provide Buyer with at least the portion of Goods available that Buyer would receive under a fair and equitable allocation among Buyer and Seller's other customers with written contracts, and Buyer shall be entitled to purchase from a third party the quantity of Goods not delivered by Seller due

to the Force Majeure Event, and, in such event, the amounts so purchased from third parties shall be deducted from the quantity to be purchased by Buyer under the Contract. The Contract shall otherwise remain unaffected; provided, however, that Buyer may, at its sole option, terminate the Contract if a Force Majeure Event continues for thirty (30) consecutive days.

24. **LAWS AND REGULATIONS.** Seller represents and warrants that performance of the Contract and all Goods, including the manufacture and transportation of the Goods, will be in strict compliance with (a) all applicable law, including anti-corruption/anti-bribery laws, international trade control compliance laws, and all applicable export control Laws (including (i) all applicable law relating to import, export, re-export, and transfer of products, software, technical data, services, and technologies, and (ii) all comparable applicable laws outside the United States) (collectively, "Export Control Laws"), and (b) the Responsible Care initiative of the American Chemistry Council. At all times while Seller's employees or other representatives are on Buyer's premises, they shall act in strict compliance with all of Buyer's policies on health, environment, safety, security, and substance abuse which Seller shall be deemed to have received, reviewed and understood prior to entering onto Buyer's premises. In no event shall Seller be entitled to any adjustment of the compensation or delivery schedule agreed to in the Contract as a result of compliance with such policies and procedures or any removal of any personnel necessitated by non-compliance. Prior to the performance of any work or the rendering of any services pursuant to the Contract, Seller shall procure at its expense all permits, certificates and licenses required in connection with the performance of such work and services. Seller represents that neither Seller nor any of its shareholders, directors, officers, or employees is a target of domestic or foreign economic sanctions laws and regulations ("Sanctions"). Seller further represents and warrants that it is not owned 50% or more by any person or entity that is a target of Sanctions, and is not located or organized in, or owned 50% or more by, persons resident in, or entities organized in, a jurisdiction that is subject to comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria, and the Donetsk, Luhansk, and Crimea Regions of Ukraine) ("Sanctioned Jurisdiction"). Seller warrants that none of the Goods will be procured, manufactured, sourced, or otherwise originate, from a Sanctioned Jurisdiction. Seller acknowledges that Buyer has entered into the Purchase Order based upon various factors, including the reputation of Seller, leading Buyer to believe that Seller and its subcontractors and representatives will not violate, or cause Buyer or its affiliates to violate any applicable laws.

25. **EMPLOYMENT.** Seller represents and warrants that it will comply with all applicable laws prohibiting discrimination against any applicant for employment or employee for reasons based on race, color, religion, sex, age, marital status, political preference, sexual orientation, gender identity, national origin, protected status, or disability status.

26. **ASSIGNMENT.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Contract without the prior written consent of Buyer. Any purported assignment or delegation in violation hereof shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Contract without Seller's prior written consent.

27. **WAIVER AND MODIFICATION.** No claim of waiver, modification, supplement, amendment, consent, or acquiescence with respect to any provision of the Contract or the transactions contemplated hereunder shall be made against either Buyer or Seller except on the basis of a written instrument executed by or on behalf of such party. No waiver of any of the provisions of the Contract by Buyer or Seller, nor default by the other hereunder, shall be

deemed or shall constitute a waiver by such party of any other provision, nor shall any such waiver constitute a continuing waiver.

28. **SURVIVAL.** Provisions of the Contract which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Contract including, but not limited to, the following provisions: Warranties, Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction, and Survival.

29. **SEVERABILITY.** If any provision of the Contract is or becomes invalid, illegal, or otherwise void, the remaining provisions of the Contract shall not be affected and shall continue in full force and effect. If such invalidity, illegality or voidness becomes known or apparent to a party, that party shall promptly notify the other party, and the parties shall promptly negotiate in good faith in an attempt to make appropriate changes to the Contract to achieve as closely as possible, consistent with applicable law, the intent and spirit of that illegal, invalid or void provision, and in the event that, for any reason, such changes are not made, then the invalid, illegal or void provision shall be reformed so as to effect, to the fullest extent possible consistent with applicable law, the original intent and spirit of such invalid, illegal or void provision.

30. **NOTICES.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Contract, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this provision.

31. **HEADINGS.** The section headings or titles in these Terms and Conditions are included for ease of reference only and do not affect any part of the text or affect its meaning or interpretation. The terms of these Terms and Conditions will not be construed against either party on account of either party being considered the drafter of these Terms and Conditions or any provision herein. The terms "include," "includes," and "including" or variant thereof mean including without limitation unless expressly stated to the contrary.

32. **GOVERNING LAW AND JURISDICTION.** THE PARTIES AGREE THAT THE LAWS OF THE STATE OF OKLAHOMA SHALL GOVERN THIS ORDER, WITHOUT THE APPLICATION OF CHOICE OF LAWS RULES. THE PARTIES VOLUNTARILY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL OR STATE COURTS OF OKLAHOMA COUNTY IN THE STATE OF OKLAHOMA FOR THE ADJUDICATION OF THEIR LIABILITIES AND RESPONSIBILITIES UNDER THIS ORDER, INCLUDING THE RESOLUTION OF ANY CLAIM, DISPUTE, CONTROVERSY, DIFFERENCE, DISAGREEMENT, OR GRIEVANCE (OF ANY AND EVERY KIND OR TYPE, WHETHER BASED IN CONTRACT, TORT, STATUTE, REGULATION OR OTHERWISE) ARISING OUT OF, CONNECTED WITH, OR RELATING IN ANY WAY TO THIS ORDER (INCLUDING THE CONSTRUCTION, VALIDITY, INTERPRETATION, TERMINATION, ENFORCEABILITY, OR BREACH OF THIS ORDER), ALL OF WHICH SHALL BE FINALLY DECIDED BY LITIGATION BROUGHT EXCLUSIVELY IN THE FOREGOING JURISDICTIONS. EACH PARTY AGREES TO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE LAWS OF THE STATE OF OKLAHOMA, ANY CLAIM OR OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE, THAT VENUE OR PERSONAL JURISDICTION IS NOT PROPER

WITH RESPECT TO ANY SUCH DISPUTE, INCLUDING ANY CLAIM THAT ANY DISPUTE BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. IF A DISPUTE OR CLAIM ARISES OUT OF THIS ORDER, SELLER SHALL CONTINUE TO PERFORM UNDER THIS ORDER PENDING RESOLUTION OF SUCH DISPUTE OR CLAIM IN ACCORDANCE WITH THIS ORDER.

33. **ANTI-CORRUPTION.** In connection with the Contract and all Goods to be provided and Services to be performed thereunder, Seller has not and will not offer, promise to pay or authorize the payment, directly or indirectly, any monies or anything else of value to any current or former government official, any political party or official of a political party, any candidate for public office, or any close family members of these individuals, in order to obtain or retain business, direct business to another person or entity, or to obtain an improper advantage. Seller acknowledges that, for purposes of the Contract, a "government official" is (i) any officer or employee of a governmental entity, (ii) any officer or employee of a public international organization such as the United Nations or the World Bank; (iii) any individual acting in an official capacity for or on behalf of a governmental entity or of a public international organization; (iv) any officer or employee of a company owned or controlled by a governmental entity; or (v) any member of a royal family who may lack formal authority but who may otherwise be influential, including by owning or managing state-owned or controlled companies. Neither will Seller, in connection with the Contract, provide, offer, promise, or authorize or direct to provide, directly or indirectly, any hospitality or entertainment to any government official, including employees of state-owned entities, that is excessive, extravagant, or that could otherwise create an appearance of impropriety related to the Contract.

34. **USE OF NAME.** Seller agrees not to use (a) Buyer's name, (b) the name of any officer, director, employee, representative or agent of Buyer, or (c) any trademarks, service marks or trade names owned or controlled by Buyer, in any sales, promotional, advertising or other publication, without the express prior written permission of Buyer. In no event shall Seller or its employees, agents or subcontractors represent themselves as employees or agents of Buyer.

35. **LIMITATION OF BUYER'S LIABILITY.** BUYER'S ENTIRE LIABILITY TO SELLER OR ANY THIRD PARTY, FOR ANY CLAIMS, DEMANDS, CAUSES OF ACTION, ARISING IN TORT, CONTRACT, OR OTHERWISE, INCLUDING WITH RESPECT TO ANY STATUTORY CLAIM, IS LIMITED SOLELY TO THE PRICE ACTUALLY PAID BY BUYER UNDER THE CONTRACT. NOTWITHSTANDING THE FOREGOING LIMITATION, BUYER SHALL NOT BE LIABLE TO SELLER FOR SPECIAL, INDIRECT, ECONOMIC, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING UNDER THESE TERMS, OR OTHERWISE, WITH RESPECT TO THE SALE, PURCHASE, OR USE OF THE GOODS AND/OR SERVICES INCLUDING ANY LOST REVENUE OR PROFITS, BUSINESS INTERRUPTION OR DAMAGE TO BUSINESS REPUTATION, REGARDLESS OF THE THEORY UPON WHICH ANY CLAIM MAY BE BASED, INCLUDING, WITHOUT LIMITATION, TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCT LIABILITY OR ANY STATUTORY CAUSE OF ACTION.

36. **ATTORNEY'S FEES.** In the event it becomes necessary for Buyer to enforce the Contract, or to defend or prosecute any litigation arising out of or as a result of the Contract, or in connection with the sale of the Goods and/or provision of Services to Buyer by Seller, Buyer shall be entitled to recover from Seller, in addition to any other relief granted, reasonable attorneys' fees, expert fees, costs and expenses of litigation to the extent Buyer is the substantially prevailing party.

37. **CUMULATIVE REMEDIES.** Buyer's rights and remedies under the Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

38. ADDITIONAL CONDITIONS AS TO QUALITY

GENERAL

- A. Buyer reserves the right to review the processes and records associated with any order at all Seller's facilities with appropriate notification. This right extends to Buyer's customers, applicable regulatory agencies, and any sub-tier suppliers used in the fulfillment of this order.
- B. As referenced in Paragraph 15 hereinabove, Sellers must maintain records regarding the product or service provided regarding all orders for a minimum of 3 years. All conformance records must be shipped with products/services provided.
- C. Sellers that fail to meet these requirements may be issued a formal corrective action to complete and return for Seller to take action to prevent recurrence. Seller agrees to complete and return any formal corrective actions within a defined and reasonable amount of time.
- D. The Seller agrees to adhere to legal requirements enforced by all applicable local and international agencies. Such requirements should include proper business ethics of personnel and business practices, safety provisions, human rights, and acceptable labor conditions/practices.
- E. Sellers ensure proper security is in place to prevent loss or breach of electronic information. NIST 800-171 can be used as a guideline.

PART / COMPONENT / MATERIAL PROVIDERS

- A. Seller agrees to provide parts defined within the associated PO to the revision level noted. If no revision level is noted, the latest revision level is requested.
- B. Seller agrees to provide conformance records of parts provided to ensure items meet specification and performance requirements where requested. A Certificate of Conformance is acceptable for parts and components. Chemical and Physical test reports are preferred for all raw materials.
- C. Seller agrees to adhere to all conflict mineral laws for materials provided.

MANUFACTURERS

- A. Certificates of Conformance (when requested) are required for each line item listed on the PO as directed.
- B. All special processes required by Buyer's Purchase Order must be performed by qualified personnel and the processes must be periodically validated to ensure output meets requirements. Process validation records will be made available upon request.
- C. Any differences between what Buyer ordered and what is to be provided by the Seller must be clearly identified, communicated, and approved prior to shipping. Seller shall not modify drawings, specifications, or product characteristics without written consent of Buyer's engineering and quality departments.
- D. When utilizing sampling inspection as a means of verification, Seller's method must be in accordance with a statistically valid standard (i.e. ANSI Z1.4 or equivalent).
- E. Seller's detection of a nonconforming product regarding any order (currently in work or previously shipped) must be promptly communicated to Buyer's quality department for evaluation.

- F. If any of this order is outsourced to your suppliers, all applicable requirements and specifications must be communicated (including all applicable key characteristics) to each sub-tier supplier used.

PROCESS/SERVICE PROVIDERS

- A. If providing calibration services, all certificates must identify standards used and must be traceable to NIST (National Institute of Standards Technology). Calibration certificates must note "received" and "as left" conditions.
- B. Providers of welding services must maintain qualified and certified personnel and make the records of qualification available upon request.
- C. All special process providers must perform tasks according to applicable and stated specifications (ASME, Mil Specs, etc.). Conformance records provided must indicate specifications in which processes were performed.
- D. Service Providers performing tasks that directly impact product quality are required to provide evidence of competence to complete specific actions.

EXPRESS WARRANTY

- A. All products/services provided determined not to conform to stated requirements will be returned to the Seller for credit or replacement.
- B. Notification and return of items will be processed in a timely manner.