



**THESE TERMS AND CONDITIONS OF PURCHASE CONTAIN DEFENSE, INDEMNITY, RELEASE,
AND ARBITRATION PROVISIONS AND SHOULD BE REVIEWED PRIOR TO ACCEPTANCE**

TERMS AND CONDITIONS OF PURCHASE

1. Purpose and Scope.

A. These Terms and Conditions of Purchase, together with any Order and other documentation issued, provided, or given by Company, (the “Agreement”) set forth the terms and conditions that apply to the purchase, from time to time, by Company, or any of its affiliates, of goods and/or services (the “Goods”) from Contractor, or any of its affiliates. “Company” and “Contractor” shall be as set forth and identified in the Agreement or other documentation provided by Company, where Company is the buyer or purchaser, and Contractor is the seller or provider, of such Goods. Company and Contractor shall be, individually, a “Party” and, collectively, the “Parties.” Contractor agrees, and it is specifically understood, that all Goods will be sold and purchased subject to all the terms, conditions, and covenants of this Agreement, which are hereby incorporated into every Order by reference, and, in the event that any conflict exists between the provisions of this Agreement and any other terms, conditions, or covenants set forth in either Company or Contractor sales order, purchase orders, work orders, work tickets, invoices, statements, bills of lading, email, or any other type of communication or other documents used by either Party in the normal course of business, whether oral or written, the provisions of this Agreement shall govern and control, regardless of whether this Agreement is, or its terms, conditions, or covenants are, referenced in such communication (oral or written) or documentation. Any invoice, acknowledgment, quotations, or other communication or documentation issued by Contractor arising out of, in connection with, or related to this Agreement shall be construed to be for record keeping and accounting purposes only; any terms, conditions, or covenants stated in such communication or documentation (i) shall not be applicable to this Agreement or the purchase, or performance, of Goods, (ii) are expressly rejected by Company and shall be null and void, and (iii) shall not be considered to be Contractor’s exceptions to the provisions of this Agreement.

B. Contractor shall be, and shall act as, an independent contractor and not an agent, representative, or employee of Company. Contractor shall be fully responsible for and shall have exclusive direction and control of Contractor and its affiliated, parent, and subsidiary entities, and its and their respective owners, directors, officers, managers, employees, operators, principals, agents, representatives, independent contractors and subcontractors, and any other parties for whom Contractor may be responsible or legally liable (collectively, “Contractor Parties”), and shall control the manner and method in which Contractor Parties sell or perform Goods and carry out its obligations under this Agreement. Nothing in this Agreement or otherwise shall deem any Contractor Party as an employee, partner, agent, co-venturer, or other ownership participant in the business or activities of Company. Contractor Parties have no authority to bind any Company Party in any manner.

C. Nothing in this Agreement is to be construed as a guarantee or representation to Contractor that any Company Party will order or obtain any minimum amount of Goods. Contractor understands and agrees that Company Parties are not entering into an exclusive arrangement with any Contractor Party for the provision of Goods such as those addressed in this Agreement, and any Contractor Party may, in its sole discretion, enter into agreements with other suppliers, service providers, or contractors for the provision of goods or services similar to



those provided for in this Agreement. A Company order for Goods (“Order”) shall become a binding agreement upon Contractor (i) signing and returning an acceptance copy of such Order, (ii) otherwise acknowledging such Order, or (iii) commencing work on, or performance of, the Goods under such Order. Trade custom and/or trade usage are superseded by this Agreement and shall not be applicable in the interpretation of this Agreement or any Order.

D. The terms, conditions, and covenants applicable to each Order are those set forth in this Agreement. Only Company and Contractor as designated in the Order will have any of the rights and obligations of Company and Contractor respectively relative to that particular Order (whether such rights and obligations are expressed in this Agreement, in the Order, by law or otherwise), and such rights and obligations under that particular Order extend only to the Goods addressed in that Order.

2. Delivery; Title and Risk; Performance; Changes.

A. Unless otherwise provided to the contrary in the Agreement, all Goods will be furnished by Contractor to Company Incoterms 2020 Delivered Duty Paid (Company’s named place of destination) as noted on the Agreement. Risk of loss for the Goods shall pass from Contractor to Company after the Goods have been delivered to Company and inspected and accepted by Company. Contractor shall ensure that each shipment contains an itemized packing slip listing contents and any other requirements as set forth in the Agreement.

B. Title to all or any portion of the Goods shall pass to Company upon the earlier to occur of (i) identification of the Goods or components thereof; (ii) any payment by or on behalf of Company therefore; (iii) tender of Goods to the applicable transportation provider for delivery in accordance with the terms of the Agreement; or (iv) incorporation of Goods into Company’s facility (or, in the case of Goods being produced at an off-site fabrication facility, upon incorporation into such fabricated portion). Transfer of title shall be without prejudice to Company’s right to reject defective Goods (after inspection) or any other right or obligation in the Agreement.

C. Contractor acknowledges that the Goods are critical to Company’s operations and failure to receive the Goods in a timely manner would have a negative impact on such operations, as well as Company’s obligations to third parties. Time is of the essence, and Contractor shall continuously monitor the performance of the Agreement so as to know at all times the planned and actual progress, and to have the earliest practicable awareness of matters that could affect the timing of the shipment or delivery of the Goods. Contractor shall immediately report to Company any actual, anticipated, or foreseeable delay in the shipment or delivery of the Goods and its cause, and Contractor shall advise Company at once in writing if it is unable to meet specified shipping or delivery dates. Contractor shall implement in good time, at its cost, all reasonable measures to avoid or end delays and take all reasonable steps to mitigate the effect of delays on performance, shipping or delivery of the Goods, which steps shall include, at a minimum, advanced planning and contingency planning. Contractor shall not give priority to work for its other clients to the detriment of the timely shipment or delivery of the Goods. Company reserves the right to cancel the Agreement at any time for Contractor’s default if the specified shipping or delivery dates are not met or will not be met. Contractor shall be liable for any and all Claims incurred by Company arising out of, in connection with, or related to late, or delayed, delivery by Contractor Parties.



D. Company shall have the right, but not the obligation, to make inspections of, perform tests on, and witness inspections or tests performed by Contractor or its subcontractors or suppliers on, the Goods at any reasonable time or place, including the facilities of Contractor or any of its subcontractors or suppliers. Contractor shall provide assistance to Company in carrying out or witnessing such inspections and/or tests and shall supply, upon request from Company, test reports and material certificates. Contractor shall also supply, upon request from Company, copies of any license, permit, bond, report, certificate, or other document maintained, compiled, or required by governmental authorities or the Agreement. Any inspection, or lack of inspection, by Company shall not in any manner relieve Contractor of any of its obligations with respect to the Goods.

E. Company may reject and hold, at Contractor's sole cost and expense, any of the Goods which are not as warranted or otherwise not in conformity with the requirements of, and specifications in, the Agreement, Company's request for quote, or which exceed the quantity ordered. Under no circumstances shall Company be required to resell the Goods which are rejected. Without limiting any other rights Company may have, Company, at its sole option, may require Contractor to repair or replace any or all of the Goods rejected by Company, at Contractor's sole cost and expense, or to refund the price of any or all rejected Goods. Contractor's obligations with regard to the repair or replacement of Goods shall include the obligation to replace any items of Company's property that are damaged by such Goods, and shall include transportation and any other costs and expenses incurred by Company.

F. Company shall have the right by written direction to make changes in the specifications and drawings for the Goods. If Contractor believes that such change affects the price or delivery date for such Goods, Contractor shall so notify Company in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Contractor shall suspend performance of the change unless thereafter released in writing by Company to perform said change, and Company and Contractor shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Contractor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Contractor receives direction to make such changes. Contractor shall not suspend performance of the unaffected portion of the Agreement while Company and Contractor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Company. If released in writing by Company, Contractor shall comply with and perform such change in accordance with the terms of the Agreement during the time Contractor and Company require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions or terms of the Agreement shall be binding upon Company, nor will extra compensation be paid by Company, unless the agreement or understanding is made in writing and signed by an authorized representative of Company. In no event shall any changes or substitutions be made by Contractor in or to the Agreement without the prior written consent of Company.

3. **Compensation; Invoices; Payment**

A. Unless otherwise provided to the contrary in the Agreement, Contractor shall be compensated for the Goods in the amount provided for in the Agreement. No minimum order charges, or charges for packing or handling, cartage, insurance, or value charges by any mode of transportation shall be payable or paid by Company unless so specified in the Agreement. Contractor shall show all applicable cash discounts for early payment on all invoices.



Discount periods will be computed from the date a complete and accurate invoice with all required supporting documentation is actually received by Company.

B. Unless otherwise provided to the contrary in the Agreement, Contractor shall submit its invoice, in United States dollars, within fifteen (15) days after the end of each calendar month for amounts payable for Goods delivered to Company during the previous calendar month. Invoices shall be submitted in such form, containing such reference numbers and information, and accompanied by such certification and documentation as Company may request. Paper invoices are to be submitted to Company to the BILL TO location set out in the Agreement, or as otherwise noted by Company.

C. Unless otherwise provided to the contrary in the Agreement, Company shall pay, or cause to be paid, the approved amount of such invoice, within thirty (30) days of Company's receipt and acceptance of the Goods and a proper invoice, together with all required supporting documentation. If Company disputes any invoice, in whole or in part, Company shall pay the undisputed portion of the invoice and shall give Contractor prompt notice of the dispute. Company and Contractor shall endeavor to settle and adjust any disputed amount promptly. Company may set-off against payments due Contractor any amount due and owing Company from Contractor for any reason under the Agreement. Any payments made by Company shall not prevent Company from filing Claims, or prejudice its right to recover the amount of any such Claims, however or whenever they may have arisen. Without limiting the type or nature of such Claims, Company may recover any sums paid Contractor by mistake of law or fact. Payments shall not be construed as acceptance, or evidence of approval, of any Goods.

4. **Insurance.**

Prior to commencing any work on, or performance of, any Goods, Contractor shall secure and maintain the insurance in the types and amounts, under the conditions as detailed below, with companies satisfactory to Company, having a rating of A-VII or better in the most current Best's Key Rating Insurance Guide, with policy limits not less than those indicated, and shall furnish on state approved ACORD style forms of Certificates of Insurance which shall evidence such insurance.

Contractor shall immediately notify its underwriters and Company, and shall furnish all necessary information concerning, any occurrence which may give rise to a claim under any of the insurance policies described below. Reasonable deductibles are acceptable and shall be for the account of Contractor.

None of such insurance shall be cancelled, altered, or amended without 30 days prior written notice having been furnished to Company. The acceptance of a certificate of insurance which does not comply with the requirements herein shall not be deemed a waiver of these requirements. If requested, Contractor will provide the endorsements, and not just the Certificates of Insurance, to Company. Limits of coverage required under this Article are in excess of defense (and related) costs.

Contractor shall add, or otherwise name, Company and its affiliated, parent, and subsidiary entities, and its and their respective owners, directors, officers, managers, employees, operators, agents, representatives, successors, and assigns (collectively, "Company Parties") as additional insureds (on form CG 2010 1001 and



2037 1001, or equivalent) on all insurance policies (except Workers' Compensation) maintained, or required to be maintained hereunder, by Contractor. Any insurance maintained by Company shall be excess and non-contributory with any of the coverages secured or maintained by Contractor and no "other insurance" clause may be invoked by any insurer. All insurance policies maintained by Contractor shall contain an endorsement waiving all rights of subrogation against Company Parties, or otherwise waive such rights of subrogation. All claims made policies shall include a retro date that precedes the Order or any work performed by Contractor, whichever is earlier. Continuous coverage must be maintained through the applicable statute of limitations. The types and amounts of insurance (including endorsements thereto) carried in compliance with, or in addition to, the requirements contained in this Article are not to be construed as a limitation of Contractor's liability.

Workers' Compensation Insurance and Employer's Liability Insurance. Workers' Compensation insurance in accordance with the laws of the State or Territory in which the Goods (or work thereon) are performed and Employer's Liability insurance with the minimum limits of \$1,000,000 per accident, \$1,000,000 per illness, per employee, and \$1,000,000 per illness, in the aggregate. Such insurance shall protect the Company Parties as alternate employers against any claims asserted against any Company Parties by any of Contractor's employees as "borrowed servants" or statutory employees, and shall be endorsed to include Alternate Employer endorsement, naming Company Parties. In all cases where Contractor's employees and the employees of any subcontractors (including direct, borrowed, special, nominal, or statutory employees) are covered by a state's worker's compensation law, Company and Contractor agree that all Goods provided by Contractor and its employees pursuant to the Agreement are an integral part of and are essential to the ability of Company to generate Company goods, products, and services. Furthermore, Company and Contractor agree that Company is the statutory employer of Contractor's employees. Irrespective of Company's status as the statutory employer or special employer of Contractor's employees, Contractor shall remain primarily responsible for the payment of the worker's compensation benefits to its employees and Contractor shall not be entitled to seek contribution for any such payments from Company. **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COMPANY PARTIES FOR ANY WORKERS' COMPENSATION PAYMENTS TO CONTRACTOR'S EMPLOYEES WHICH PAYMENTS WERE MADE BY COMPANY.**

General Liability Insurance. Commercial General Liability, including coverage for "Action Over" claims, Products and Completed Operations, and other contractual obligations as respects the Agreement and proper coverage for all other obligations assumed in the Agreement. The minimum limit shall be \$1,000,000 combined single limit per occurrence for personal injury, bodily injury, death, accident or property loss, destruction, or damage. If the policy has an annual aggregate limit, the aggregate will be at least \$2,000,000, and Contractor shall carry Excess Liability (or Umbrella) coverage that will "drop down" over each claim if such primary limit becomes exhausted.

Automobile Liability Insurance. Automobile Liability insurance covering owned, non-owned and hired automotive equipment, including broadened pollution coverage, with minimum limits of \$2,000,000 combined single limit for bodily injury and property damage. If hauling hazardous materials or heavy equipment is part of the Goods, the policy must include an MCS 90 endorsement and the ISO Form 9948.

Cargo Insurance. If applicable, Cargo insurance in an amount equal to the full value of the maximum quantity of Goods expected to be transported at any one time under the Agreement, but in no event in any amount less than



\$300,000.00 per shipment. Contractor's cargo insurance shall provide "all risks" and "broad form" coverage and meet all applicable legal requirements for such coverage.

Professional Liability Insurance. If applicable, Professional Liability insurance covering negligent acts, errors and omissions in the performance of professional services, with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.

Excess Liability Coverage. **Excess (or Umbrella) Liability will be carried in the amount of \$5,000,000, shall be "Follow Form" Coverage (including coverage enhancements) on the General, Automobile, and Employer's Liability policies, and the limit shall be reported on the required Certificate of Insurance. Company, at its sole discretion, may require Contractor to carry such additional Excess Liability coverage in amounts as Company deems reasonably appropriate prior to any work on, or performance of, Goods hereunder. Where allowed by law, vertical exhaustion shall be required.**

Subcontractors' Insurance. If Contractor will have any subcontractors on Company's work sites or performing or supplying any portion of the Goods Contractor has agreed to perform for or supply to Company, then Contractor shall require all such subcontractors to provide the foregoing coverages, as well as any other coverages that Contractor considers necessary, it being the intent of Contractor to provide the insurance and endorsement protections stated in the Agreement that are in favor of any Company Parties. Such policies shall include the Additional Insured and Waiver of Subrogation endorsement clauses as set forth above. However, the fact that any subcontractor provides or does not provide any of the foregoing coverages, or any other coverages that Contractor considers necessary, shall not itself relieve Contractor of its obligations to provide said coverages.

Nothing in this section shall be deemed to extend to Company a right of control or direction over Contractor's employees or to affect or modify either Contractor's status as an independent contractor or Contractor's obligations under any other provision of this Agreement.

Failure to Comply with Insurance Requirements. **CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY PARTIES FROM ANY AND ALL CLAIMS ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO CONTRACTOR OR CONTRACTOR'S SUBCONTRACTOR'S FAILURE TO COMPLY WITH ALL OF THE ABOVE INSURANCE REQUIREMENTS, INCLUDING THE OBTAINING WAIVERS OF SUBROGATION, OR DUE TO ANY INSURANCE COVERAGE BEING INVALIDATED DUE TO CONTRACTOR OR CONTRACTOR'S SUBCONTRACTOR'S FAILURE TO COMPLY WITH THE TERMS, CONDITIONS, AND WARRANTIES OF THE INSURANCE, REGARDLESS OF HOW ANY OF THE FOREGOING ARE CAUSED, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE (ACTIVE, PASSIVE, JOINT, CONCURRENT, CONTRIBUTORY) OR STRICT LIABILITY OF, OR MISREPRESENTATION, BREACH OF WARRANTY, CONTRACT, OR STATUTORY DUTY BY, ANY COMPANY PARTIES, OR ANY OTHER THEORY OF LEGAL LIABILITY.**

5. **Liens; Claims.**



A. Goods shall be provided solely by Contractor or by those subcontractors that Company may from time to time allow by its prior written approval. No approval shall relieve Contractor of any of its obligations under the Agreement. Contractor shall be responsible to Company for Goods provided or performed by all Contractor's subcontractors to the same extent Contractor is responsible for activities performed by Contractor's employees. Contractor shall ensure that all its contracts with its subcontractors contain terms and conditions that are in conformity with and no less stringent than the terms and conditions of the Agreement between Company and Contractor. Contractor shall provide Company with a list of all subcontractors, if any, providing Goods together with evidence satisfactory to Company that all of Contractor's employees and subcontractors have been paid in full for Goods provided or performed.

B. Contractor shall pay and completely satisfy all claims or demands for labor, services, supplies, equipment, rentals, and material employed or used by it arising out of, in connection with, or related to the Agreement when those claims become due and payable. Contractor shall allow no lien or charge to be fixed upon the property (owned, leased, or hired) of Company, and Contractor shall ensure that no liens of any kind are fixed upon or against such property of Company by Contractor's employees, subcontractors, or subcontractors' employees. **CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY PARTIES FROM ALL SUCH LIENS AND RELATED CLAIMS.** Company reserves the right to require Contractor to furnish it with satisfactory evidence that Contractor has paid all labor and material claims chargeable to Contractor. If a lien does attach and is not removed, Company may pay such claim and remove such encumbrance, and Contractor shall thereupon be liable to Company for the full amount of such claim, together with all costs and expenses arising therefrom, including attorney fees.

6. **Indemnity.**

A. **CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DISPUTES, CONTROVERSIES, COMPLAINTS, INVESTIGATIONS, HEARINGS, CHARGES, LAWSUITS, PROCEEDINGS, LIABILITIES, LOSSES, DAMAGES, AWARDS, JUDGMENTS, FINES, PENALTIES, RULINGS, LIENS, ORDERS, DECREES, COST AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPERT FEES), AND SETTLEMENTS (COLLECTIVELY, "CLAIMS") ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO (i) ANY BREACH OF CONTRACT BY CONTRACTOR, OR OTHER BREACH BY CONTRACTOR OF ITS WARRANTIES, COVENANTS, OR OBLIGATIONS UNDER THE AGREEMENT; (ii) ANY PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR ECONOMIC LOSS ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO (a) GOODS SUPPLIED, OR PERFORMED, BY CONTRACTOR PARTIES UNDER THE AGREEMENT, OR (b) ACTS OR OMISSIONS OF CONTRACTOR PARTIES; (iii) ANY FAILURE TO COMPLY WITH APPLICABLE LAWS, RULES, OR REGULATIONS; OR (iv) ANY INFRINGEMENT, ACTUAL OR ALLEGED, OR CONTRIBUTORY INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT, OR OTHER PROPRIETARY INTEREST.**

B. **CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS**



COMPANY PARTIES FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO (i) ANY LOSS OR DESTRUCTION OF, OR DAMAGE TO, PROPERTY OWNED, LEASED, OR HIRED BY ANY CONTRACTOR PARTIES, OR (ii) ANY PERSONAL OR BODILY INJURY TO, OR DEATH OF, ANY CONTRACTOR PARTIES.

C. THE RELEASE, DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATIONS OF CONTRACTOR SHALL APPLY REGARDLESS OF HOW THE CLAIMS ARISE OR ARE CAUSED, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE (ACTIVE, PASSIVE, JOINT, CONCURRENT, CONTRIBUTORY, OR GROSS) OR STRICT LIABILITY OF, OR ANY MISREPRESENTATION, BREACH OF WARRANTY, BREACH OF CONTRACT, OR BREACH OF DUTY (STATUTORY OR OTHERWISE) BY, ANY COMPANY PARTIES, ANY DEFECT OF PREMISES, OR ANY OTHER THEORY OF LEGAL LIABILITY. The release, defense, indemnity, and hold harmless obligations of Contractor shall (i) apply regardless of the claimant or plaintiff, including, without limitation, the injured individual and their heirs, beneficiaries, and family members, (ii) expressly include Claims arising out of, in connection with, or related to loss of consortium, loss of affection, loss of companionship, or any other similar claim or causes of action, (iii) apply regardless of whether such Claims are actual, potential, threatened, or pending, and (iv) survive termination or expiration of the Agreement or purchase of the Goods. Contractor shall be strictly liable for all Contractor Parties.

7. Limitation of Liability. COMPANY PARTIES SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY CLAIMS EXCEEDING THE PURCHASE PRICE OF THE AGREEMENT. COMPANY PARTIES SHALL NOT BE LIABLE FOR, AND CONTRACTOR HEREBY RELEASES COMPANY PARTIES FROM, ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR SPECIAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFIT, BUSINESS, OR CONTRACT. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER SUCH CLAIMS ARE FORESEEABLE OR HOW SUCH CLAIMS ARISE OR ARE CAUSED, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE (ACTIVE, PASSIVE, JOINT, CONCURRENT, CONTRIBUTORY, OR GROSS) OR STRICT LIABILITY OF, OR ANY MISREPRESENTATION, BREACH OF WARRANTY, BREACH OF CONTRACT, OR BREACH OF DUTY (STATUTORY OR OTHERWISE) BY, ANY COMPANY PARTIES, ANY DEFECT OF PREMISES, OR ANY OTHER THEORY OF LEGAL LIABILITY.

8. Warranty.

A. Contractor hereby warrants: (i) legal title to and ownership of the Goods shall be free and clear of any and all liens, Claims, restrictions, reservations, security interests, and any other encumbrances when title thereto passes to Company; (ii) the Goods shall be designed and manufactured, and be performed, utilizing competent and skilled personnel in a good and workmanlike manner consistent with generally accepted industry and/or professional standards; (iii) the Goods shall be complete and free of defects in design, materials and construction; (iv) the Goods and components thereof shall be in full compliance with all applicable laws, rules, and regulations; (v) the Goods shall be new, of merchantable quality, and fit for their intended purpose; and (vi) all Goods shall be in accordance with the specifications and drawings approved by Company.



B. If any of the Goods are found to be defective or not in conformance with these warranties, Contractor shall promptly repair, replace, or reperform (at Company's option) any defective or nonconforming Goods at Contractor's own cost. Contractor shall also be responsible for the cost of the removal and/or replacement of any portion of the facilities necessary to locate, remove, repair, replace, or reperform any such defective or nonconforming Goods, as well as for the repair or replacement of any parts of Company's facilities damaged by such access, repair, or replacement and for the removal from the Site and disposal of all scrap, trash and debris generated by such removal, repair, replacement or reperformance.

C. Should Contractor refuse or fail to commence repair, replacement, or reperformance of any such defective or nonconforming Goods within twenty-four (24) hours after Company has provided notification of such defective or nonconforming Goods, or once commenced Contractor fails to diligently effect such repair, replacement, or reperformance to completion, Company shall have the right to perform the repair, replacement, or reperformance of the Goods, or to have the repair, replacement, and/or reperformance performed by a third party on an expedited basis. Contractor shall be responsible for all reasonable costs of such repair, replacement, or reperformance including, but not limited to, any amounts payable to third parties, third-party certifications and testing, and Company's internal costs, and Company may collect such amount directly from Contractor or by offset against performance security, if any, or by deduction from other amounts due Contractor.

9. **Termination.**

A. Notwithstanding anything contained herein to the contrary, Company shall have the absolute right to terminate the Agreement, for its convenience, without cause, and without liability to Contractor, by providing thirty (30) days written notice to Contractor. Upon receipt of such notice, Contractor shall immediately cease all work, and shall mark and identify any Goods associated with execution of the Agreement. Company shall only be liable to pay Contractor for Goods satisfactorily completed, which are non-defective and timely delivered or performed, prior to such termination.

B. Company may terminate the Agreement for cause if Contractor fails to make any payments to its subcontractors or suppliers in connection with the Goods under the Agreement when due, Contractor fails to diligently provide the Goods under the Agreement, or Contractor otherwise fails to perform or fulfill any material obligation under the Agreement and fails to correct any such failure within ten (10) days of notice from Company. Notwithstanding the foregoing, Company may immediately terminate the Agreement for cause if (i) Contractor commits any material safety violations in providing the Goods; (ii) Contractor is in default under, or violates, any of the material terms or conditions of the Agreement; or (iii) Contractor becomes insolvent, has a receiver appointed, makes a general assignment or filing for the benefit of creditors, or files for bankruptcy protection. In the event of a termination under this Article, Company shall make no further payments until Company has obtained replacement Goods. Once the replacement Goods are obtained and all charges therefore are settled, Company shall pay Contractor the remaining amount due Contractor for the portion of Goods delivered prior to the effective date of termination, less any costs of obtaining replacement Goods for undelivered portions in excess of the amount that would have been paid to Contractor for delivery and performance of all the Goods had Contractor not been in breach



or default, and any administrative, legal, and other expenses incurred by Company arising out of, in connection with, or related to Contractor's default and Company's termination of the Agreement. The termination and deduction of costs and expenses shall be without prejudice to any other legal or equitable remedies available to Company

10. **Taxes.**

A. Contractor shall be responsible for the reporting, filing, and payment of any income, profits, capital gains, business, gross receipts, excise, payroll, unemployment, medical, social, or other taxes, duties, imposts, fees, licenses, and other similar charges of every kind, and all penalties or interest, which may be assessed or imposed, directly or indirectly, on Contractor or its subcontractors or their respective employees or agents as a result of the provision of the Goods under the Agreement, and **CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY PARTIES FROM AND AGAINST ANY AND ALL CLAIMS AND FOR ALL SUCH TAXES WHICH MAY BE ASSESSED OR LEVIED DIRECTLY OR INDIRECTLY AGAINST ANY COMPANY PARTIES, OR AGAINST ANY CONTRACTOR PARTIES, BY ANY TAXING AUTHORITIES CLAIMING JURISDICTION OVER THE AGREEMENT.** Except as otherwise set forth herein, all applicable taxes and social charges, including withholding taxes, for which Contractor is liable are included in the rates, prices, and mark-ups applicable to the Agreement, and Company shall have no responsibility to separately reimburse Contractor for any such taxes or social charges.

B. Company, without any liability on the part of Company, shall withhold from sums otherwise due Contractor any taxes or amounts required by applicable law to be withheld and shall pay the same when due to the appropriate taxing authorities. For Goods provided in California by non-California residents, or for rent paid to non-California residents on assets located in California, nonresident California withholding tax may apply. Company shall provide Contractor with available governmental receipts evidencing payment of taxes withheld. Should Contractor claim exemption from withholding, Contractor shall provide Company with all evidence as may be required by applicable law to substantiate that Company is not required to withhold the applicable amounts from payments to Contractor. Taxes withheld pursuant to this Article shall be for Contractor's account only, and Company shall have no obligation to reimburse Contractor for any such taxes withheld.

C. Unless otherwise allowed or required by applicable law or agreed to by Company and Contractor, invoiced compensation payable to Contractor shall be exclusive of sales, use, excise, value added, goods and services, and other similar taxes, where applicable. Any such taxes shall be shown separately on the invoice, and Company shall pay such amounts to Contractor, in addition to the compensation payable. Contractor shall make all reasonable efforts to minimize its liability to pay and to recover from Company any sales, use, excise, value added, goods and services, and other similar taxes which may be assessed on compensation or payments under the Agreement, and Contractor shall cooperate fully with Company in any reasonable and lawful effort by Company to reduce or eliminate any such taxes for which Company or Contractor may be liable under the Agreement. If Company is authorized to issue a sales/use tax exemption or other certificate in lieu of paying sales/use taxes, Company will provide to Contractor such properly completed certificate.

11. **Force Majeure.** Neither Party shall be responsible for its failure to perform due to causes beyond its



reasonable control and not caused by its negligence or other avoidable fault, such as acts of God, fire, earthquakes, war, riot, embargoes, or acts of civil or military authorities (“Force Majeure”). If delivery or performance under the Agreement is to be delayed by Force Majeure, Contractor shall immediately notify Company in writing, and Company may either: (a) extend Contractor’s time of performance; or (b) terminate the uncompleted portion of the Agreement, at no cost to Company.

12. **Export Control Compliance.**

A. With respect to the Goods subject to the Agreement, Contractor shall comply, and shall require that Contractor Parties comply, with all applicable laws, rules, regulations, and requirements relating to sanctions and export and re-export control (“Export and Sanctions Law”). Nothing shall be shipped to, transshipped through, or sourced from, either directly or indirectly, any country, company, person, or for any end-use that is prohibited under Export and Sanctions Law. If Contractor, or one or more of Contractor Parties, are or become identified on any export denial, blocked, debarred, Specially Designated National, or other similar list maintained by the United States or other applicable jurisdiction, Company may terminate the Agreement upon written notice to the other at any time. Each of Company and Contractor shall be excused from performance of any obligation under the Agreement to the extent that such performance is prohibited under Export and Sanctions Law.

B. Contractor shall be responsible for obtaining any authorizations or licenses required under applicable export control regimes, including, without limitation, licenses required for the transfer of any regulated technology to nationals of certain countries. Contractor shall timely (i) identify in writing to Company those Goods for which an export authorization is required and (ii) provide in writing to Company export control classification and licensing information necessary for export documents (e.g., Export Control Classification Numbers (ECCN) for items originated from the United States). Contractor agrees to keep records of its export and re-export related activities for a minimum of five years or such period as required by all relevant laws, whichever is greater, and shall make those records available to Company upon request.

C. Nothing in the Agreement is intended to be, or shall be construed as, an agreement by either Contractor or Company to take or refrain from taking any action that is or would be prohibited or penalized under U.S. anti-boycott laws, rules, or regulations.

D. CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY PARTIES FROM ANY AND ALL CLAIMS ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO ANY BREACH, ACTUAL OR ALLEGED, BY ANY CONTRACTOR PARTIES OF THE OBLIGATIONS UNDER THIS ARTICLE.

13. **Ethics and Conflicts of Interest; Anti-Bribery.**

A. Contractor shall not, and Contractor shall require that Contractor Parties, shall not, directly or indirectly, (i) (a) pay (or agree to pay) any money, commissions, or fees, or (b) give, promise, or provide any rebates or any other things of value, of any nature, to any Company Parties or any other third party; (ii) give or provide any Company Parties, or any other third party, with donations or gifts, entertainment of unreasonable cost or value, or services or



goods sold or transferred at less than full market value; or (iii) enter into business arrangements with any Company Parties, unless employees or officers of Company are acting as representatives of the Company. Company Parties are committed to the highest standard of business ethics and conduct.

B. Contractor represents and warrants that it shall comply with, and has required or will require Contractor Parties to comply with, all applicable anti-bribery laws and anti-money laundering laws, rules, and regulations of the United States, the United Kingdom, the European Union or any member state thereof, the Republic of Singapore, and any other similar laws, in all applicable jurisdictions, including, without limitation, the currently effective or successor versions of the U.S. Foreign Corrupt Practices Act; the UK Bribery Act 2010; the UK Money Laundering Regulations 2007; the UK Anti-Terrorism, Crime, and Security Act 2001; the Proceeds of Crime Act 2002; and the Singapore Penal Code. If Company reasonably believes that Contractor or Contractor Parties has or will engage in improper conduct in breach of this Article, Company may, at its sole discretion, suspend any further performance by Contractor and withhold further payment to Contractor or terminate the Agreement with immediate effect.

C. CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY PARTIES FROM ANY AND ALL CLAIMS ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO ANY BREACH, ACTUAL OR ALLEGED, BY ANY CONTRACTOR PARTIES OF THE OBLIGATIONS UNDER THIS ARTICLE.

14. **Hazardous Materials.** For Goods that may contain potentially hazardous or restricted materials, or are otherwise subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other environmental or health or safety regulation, Contractor shall notify, and promptly furnish to, Company: (a) a list of all potentially hazardous, restricted, or toxic materials or substances; (b) the quantity of one or more such materials or substances; (c) appropriate material safety data sheets for each such materials and substances; and (d) all instructions for shipping, safety, handling, exposure, and disposal of such materials or substances, in a form sufficiently clear for use by Company personnel and sufficiently specific to identify all action which the user must take concerning such materials or substances. Contractor shall comply with all applicable federal, state, local, and international laws (as applicable), rules, and regulations related to such materials and substances.

15. **Compliance with Laws.** Contractor shall at all times comply, and act in a manner consistent, with all applicable laws, rules, and regulations. All Goods shall conform to, and comply with, all applicable laws, permits, specifications, industry standards, codes, and practices of best-in-class suppliers of such goods and/or services.

16. **Governing Law; Dispute Resolution.** The interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, except for any rule or law of the State of Texas which would make the law of any other jurisdiction applicable. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to, and shall be excluded from, this Agreement or any Order. The Parties agree that any dispute, claim, or controversy arising out of the Goods, this Agreement, any Order, or the interpretation or applicability of any of the terms, conditions, or covenants contained herein or therein, whether arising in contract, tort, or otherwise, ("Dispute") which cannot be resolved through negotiation shall be submitted to binding arbitration. The Dispute will be arbitrated in accordance with the rules of the American



Arbitration Association under its existing Commercial Arbitration Rules (the “Rules”), and will be held in Houston, Harris County, Texas before a single arbitrator. Each Party shall bear its own attorneys’ fees and legal costs, and each Party shall split equally the arbitration expenses and arbitrator’s fees, subject to the Rules and applicable law. If any Party prevails on a statutory claim which affords the prevailing Party attorneys’ fees and/or legal costs, the arbitrator may award reasonable attorneys’ fees and/or legal costs to the prevailing Party consistent with applicable law. The Parties agree to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of said claims. **THE PARTIES UNDERSTAND AND AGREE THAT BY AGREEING TO THE EXCLUSIVE RESOLUTION OF DISPUTES THROUGH BINDING ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHTS TO BRING SUCH DISPUTES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL.** The award of the arbitrator may be enforced in any court of competent jurisdiction.

17. **General Provisions.**

A. Contractor shall provide all permits, certificates, and licenses which may be required for the performance of the Agreement.

B. Unless otherwise expressly set forth herein, all remedies available to Company are cumulative and may be exercised concurrently or separately; and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

C. Notwithstanding any provision of this Agreement to the contrary, the expiration or termination of this Agreement or any Order will not relieve the Parties of any obligations that, by their nature, survive such expiration or termination, including any Claims arising out of the Good, warranties, indemnities, insurance requirements, governing law, and dispute resolution procedures, and obligations regarding confidential information and taxes.

D. No waiver by either Party of any one or more defaults by the other Party in the performance of the Agreement shall operate or be construed as a waiver of any future default or defaults by the same Party, whether of a like or different character.

E. Each Party agrees that it has had the opportunity to be represented by counsel in connection with the drafting and negotiation of the Agreement, and the Parties agree that the Agreement and the terms hereof shall not be construed more severely against one of the Parties than the other. Specifically, but not by limitation, the Parties agree that no term of the Agreement shall be construed more severely against the Party deemed to be the drafter of such term than against the other Party.

F. It is intended that if any provision of the Agreement is determined to be unenforceable or void for any reason, such provision shall be adjusted, if possible, in order to achieve the intent of the Parties. In any event, all other provisions of the Agreement shall be deemed valid, binding and enforceable.

G. Contractor shall not, without the prior written consent of Company, disclose any information arising out of, in connection with, or related to the Agreement to any third party. Any drawings, specifications, or other materials



or information submitted or revealed by Company to Contractor are confidential and proprietary to Company and shall not be disclosed or utilized by Contractor in any manner except as such utilization may be required in order for Contractor to perform under the Agreement. Contractor shall not use Company's name in connection with any publicity, release, advertisement, or other publication.

H. The Agreement reflects the entire agreement between the Parties with respect to its subject matter. All other oral or written agreements, contracts, understandings, conditions, warranties, or representations, with respect to the subject matter of the Agreement, are superseded by the Agreement.

I. Each number shall include all numbers, and each gender (male, female, or neuter) shall include all genders. The captions of the Articles are for convenience only and shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself. The words "hereof," "herein," "hereunder," "hereinafter," and the like refer to this entire instrument, not just to specific Articles in which such words appear. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". Where the context permits, the use of the term "or" shall be equivalent to the use of the term "and/or." In each instance where any of the phrases "related to," "based upon," "arising out of," "resulting from," "in connection with," "with respect to," or any similar phrases or words, or any combination of such phrases or words, are used in this Agreement, such phrase or phrases shall be deemed to be followed (by references) by all of the other phrases, including any similar phrases or words, and such provision shall be read as if all such phrases apply. References herein to specific statutes or laws shall also be references to any amendments of or applicable successor statutes or laws. All definitions in this Agreement shall be equally applicable to both the singular and plural forms for the defined term; any defined terms which include a listing shall be read to mean any or all of the listing, as individuals or as the collective.

IN ADDITION TO THE TERMS AND CONDITIONS SET FORTH ABOVE, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO ANY ORDER FOR VALUE ADDED PROCESSING SERVICES ("VAP PO").

18. Title; Risk of Loss. All tangible property which is transferred, provided, or issued to Contractor under a VAP PO ("Company Property") is and shall remain the exclusive property of Company, and Company shall retain title to Company Property. Contractor shall have no right, title, or interest in Company Property. Risk of loss of Company Property shall pass from Company to Contractor upon the Company Property being tendered to the first common carrier (or other carrier designee); risk of loss shall pass back from Contractor to Company when Company Property is tendered by Contractor to the common carrier (or other carrier designee) for return shipment of Company Property to Company. Contractor shall be liable to Company for all shortages, deterioration, theft, loss, damage, or destruction of Company Property while Company Property is in the possession, or under the care, custody, or control, of Contractor, regardless of how such shortages, deterioration, theft, loss, damage, or destruction occurs.

19. Assurance of Title. Contractor shall cooperate with and assist Company in connection with establishing and maintaining Company's (a) title to Company Property, and (b) priority of ownership interest in and to Company Property as against claims of secured and unsecured creditors of Contractor. Contractor shall be obligated to execute



all UCC financing statements and assist in the filing thereof. Contractor further shall assist Company in fulfilling any and all notice requirements for the purpose of Company maintaining its priority ownership interest in and to Company Property.

20. Insurance. Contractor shall maintain an all-risk property insurance on all Company Property for the full replacement value. Such insurance shall be endorsed to name Company Parties as loss payee.

21. Maintenance of Company Property. Contractor shall not sell, encumber, transfer, assign, or dispose of Company Property. Contractor shall provide routine care and maintenance of Company Property, at Contractor's sole cost and expense, and shall keep all Company Property segregated from the goods of all other persons and not commingled with any such goods.

22. Inspection; Audit. Contractor shall keep a true record of all Company Property in its possession and shall give Company representatives and employees access to such records; Contractor shall permit Company representatives and employees access to Company Property in order to ensure compliance with the terms, conditions, covenants, and duties under this Agreement.