



TERMS & CONDITIONS

FOR

SUBCONTRACTS ISSUED

FOR

TIME & MATERIAL & LABOR HOUR ORDERS  
(NON-FLIGHT)

## TABLE OF CONTENTS

1.	DEFINITIONS .....	1
2.	ACCEPTANCE OF TERMS .....	1
3.	QUALITY AND WORKMANSHIP .....	1
4.	PROGRESS AND COMPLETION .....	1
5.	INSPECTION AND ACCEPTANCE .....	1
6.	BUYER-FURNISHED PROPERTY .....	1
7.	DELIVERY OF MATERIALS .....	2
8.	PACKING AND MARKING .....	2
9.	CHANGES .....	2
10.	STOP WORK ORDERS .....	2
11.	EXCUSABLE DELAYS .....	3
12.	TERMINATION FOR CONVENIENCE .....	3
13.	TERMINATION FOR DEFAULT .....	4
14.	INDEMNITY BY SELLER .....	4
15.	INSURANCE .....	4
16.	LIMITATION OF LIABILITY .....	4
17.	CLAIMS .....	4
18.	DISPUTES/ARBITRATION .....	5
19.	PROPRIETARY INFORMATION .....	5
20.	PUBLIC RELEASE OF INFORMATION .....	6
21.	RIGHTS IN INVENTIONS .....	6
22.	INTELLECTUAL PROPERTY INDEMNITY .....	6
23.	SUBCONTRACTS .....	7
24.	OTHER CONTRACTS .....	7
25.	NOTICE TO BUYER OF LABOR DISPUTES .....	7
26.	ACCIDENT PREVENTION, SAFETY RULES AND PRACTICES .....	7
27.	FIRE PRECAUTIONS AND PROTECTION .....	7
28.	SELLER'S RESPONSIBILITY FOR PERSONAL INJURIES AND PROPERTY DAMAGE .....	7
29.	PERFORMANCE BOND .....	7
30.	PLANT RULES AND SECURITY REQUIREMENTS .....	7
31.	AUDIT BY BUYER .....	7
32.	INJURY, ILLNESS PREVENTION PROGRAM .....	7
33.	RIGHT TO WORK .....	7
34.	PAYMENTS .....	8
35.	TAXES .....	9
36.	INTEREST .....	9
37.	LIENS .....	9
38.	ASSIGNMENT .....	9
39.	WAIVER .....	9
40.	GOVERNING LAW .....	9
41.	COMPLIANCE WITH LAWS .....	9
42.	EXPORT CONTROL .....	9
43.	IMPROPER PAYMENTS, KICKBACKS, GIFTS AND GRATUITIES .....	10
44.	SEVERABILITY .....	10
45.	ENTIRE AGREEMENT AND AMENDMENTS .....	10
46.	SURVIVAL .....	10

## 1. DEFINITIONS

The following definitions apply throughout this Order unless otherwise specifically stated:

- (a) "Buyer" or "Robotics" means Maxar Space Robotics LLC.
- (b) "Contract" means the contract (s) between Buyer and its Customer under which this Order is issued.
- (c) "Customer" refers to Robotics' customer(s).
- (d) "Days" means calendar days.
- (e) "Lower Tier Subcontractors" refers to Seller's subcontractors at any tier.
- (f) "Order" means the purchase order, subcontract, blanket purchase agreement, or long term purchase agreement entered into between Buyer and Seller and includes, without limitation, the Schedule, these Terms and Conditions and all exhibits and/or attachments and any amendments thereto.
- (g) "Party" refers to Buyer or Seller individually and "Parties" refers to Buyer and Seller collectively.
- (h) "Seller" means the legal entity which contracts with Buyer under this Order.
- (i) "Services" shall mean all services, tasks, functions and other responsibilities and activities as set forth in this Subcontract to be performed by Seller.

## 2. ACCEPTANCE OF TERMS

Seller shall be deemed to have accepted all of the terms of this Order without change or modification upon written acceptance of this Order, upon acceptance of any payment or upon the commencement of work, whichever shall occur first. Unless specifically accepted by Buyer in writing, contrary or additional terms provided or submitted by Seller are rejected and shall not bind Buyer.

## 3. QUALITY AND WORKMANSHIP

(a) All equipment, materials and articles used to perform the Services shall be free from defects and of the most suitable grade for the purpose intended. All Services under this Order shall be performed in a skillful and workmanlike manner and shall be consistent with the best practices of Seller's industry. Seller shall use an adequate number of qualified individuals who possess the requisite training, education, licensing, experience and skill to perform its obligations hereunder. All deliverables provided shall be free from defects, errors and deficiencies and fit for the purposes and uses intended by Buyer. If at any time Buyer notifies Seller that any such equipment, material, article or workmanship fails to meet the foregoing standards, Seller shall, at its expense, promptly take all remedial steps required to meet those standards.

(b) The provisions of this Clause 3 shall survive the completion, expiration or termination of this order.

## 4. PROGRESS AND COMPLETION

Seller shall exert every reasonable effort to meet the promised completion dates. Seller shall notify Buyer immediately if at any time it appears that the completion schedule set forth herein may not be met. Such notification shall include the reasons for any possible delays, steps being taken to remedy such problems, and a proposed

new completion date. The furnishing by Seller of such notice shall not constitute a waiver of any of Buyer's rights under this Order.

## 5. INSPECTION AND ACCEPTANCE

(a) Seller shall provide and maintain an inspection and quality assurance system covering the work hereunder that is acceptable to Buyer and in conformance with the requirements of this Order.

(b) All work shall be subject to inspection by Buyer prior to acceptance at such times and places as reasonably directed by Buyer. Except with respect to Latent Defects, fraud or such gross mistakes as amount to fraud, the work shall be considered to be accepted by Buyer upon the occurrence of any of the following conditions:

- (1) Buyer makes final inspection of and gives written notice of final acceptance;
- (2) The conclusion of a ninety (90) day inspection period following the completion of work, provided that no nonconformance with any requirements of this Order is found; or
- (3) Buyer's written approval of Seller's correction of defects or deviations from requirements discovered by Buyer during the inspection process.

(c) Upon receipt of notice from Buyer, Seller shall promptly correct all defects discovered during the inspection process. If Seller fails to promptly correct such defects, Buyer may have any or all such defects corrected through other means at Seller's expense.

(d) "Latent Defects", for purposes of this Clause 5, are defects or conditions resulting in noncompliance of the work with one or more Order requirements, which noncompliance was not disclosed through the Order's inspection or test programs.

(e) Buyer's inspection and acceptance of work and/or approval of data and documentation submitted by Seller shall not constitute a waiver of any of Buyer's rights provided in this Order and shall not excuse Seller from full compliance with all requirements of this Order.

(f) Customer and Customer representative(s) accompanied by Buyer shall have the same access, rights to inspect, safety protection and relief from liability that this Clause affords to Buyer.

## 6. BUYER-FURNISHED PROPERTY

(a) All property, including but not limited to, materials, documentation, supplies, components, parts, jigs, fixtures, molds, tooling, gauges, devices and equipment which are either furnished to Seller by Buyer for performance of this Order or for which Buyer has specifically agreed to pay Seller to purchase or develop ("Buyer-Furnished Property") shall be and remain the property of Buyer. Incorporation or attachment to any other property shall not affect title to Buyer-Furnished Property. All Buyer-Furnished Property shall be kept and maintained by Seller in the condition it was originally received, excluding normal wear and tear. In the event that any Buyer-Furnished Property, while in Seller's custody, possession or control, is lost or damaged in any way from any cause, Seller shall promptly replace such Buyer-Furnished Property at its expense. Seller shall only use Buyer-Furnished Property in the performance of this Order or as may otherwise be authorized in writing by Buyer. Seller shall deliver Buyer-Furnished Property to Buyer's designated carrier FCA Seller's plant in accordance with ICC INCOTERMS 2010, or shall make such other disposition as Buyer may direct.



Seller shall bear the risk of loss or destruction of and damage to Buyer-Furnished Property until delivered or returned to Buyer's designated carrier. Seller shall deliver or return Buyer-Furnished Property in the same condition as when manufactured, acquired or received from Buyer, except for reasonable wear and tear or for utilization thereof in accordance with the terms of this Order. Seller hereby waives all liens or similar remedies Seller may have or be entitled to assert against any Buyer-Furnished Property.

(b) The provisions of paragraph (a) of this Clause shall apply with respect to any property provided by Customer and authorized for use under this Order.

## **7. DELIVERY OF MATERIALS**

(a) Seller shall be responsible for the unloading, checking, and storing of all materials owned or used by it in connection with the work.

(b) Seller shall cause all materials which it purchases for use on the work to be consigned directly to Seller as consignee, and shall handle all matters pertaining to freight charges and charges for demurrage directly with the carriers involved.

## **8. PACKING AND MARKING**

Seller shall pack and mark all goods and supplies in compliance with good commercial practice in a manner that will prevent damage to or deterioration of the goods and supplies in transit. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage or storage unless specifically stated in this Order. Seller shall reimburse any expense incurred by Buyer as a result of improper packaging, packing or marking. Copies of packing lists showing the Order number (and release number, if applicable) shall be included with each shipment and each container shall be marked to show the Order number and any other information specified in the Order. Seller will ensure that the packaging and marking of hazardous materials, or goods or supplies containing hazardous materials, must conform to all laws and regulations of any governmental agency having jurisdiction.

## **9. CHANGES**

(a) Buyer may at any time during the period of performance of the Order, without invalidating this Order, by a written contract change notice issued by Buyer's authorized purchasing representative ("Contract Change Notice"), unilaterally direct changes within the general scope of this Order. Such changes may include, without limitation, changes in drawings, designs, specifications, quantities, method of shipment or packing, place or time of delivery, additional or modified work requirements or omissions of work.

If any such change causes an increase or decrease in the cost of and/or the time required for the performance of this Order, an equitable adjustment shall be made in the price and/or delivery schedule, provided that Seller shall only be entitled to an equitable adjustment if within thirty (30) Days from the date of receipt of the Contract Change Notice Seller submits a settlement proposal to Buyer, in writing, for an adjustment in the price and/or the time of performance necessitated thereby. This settlement proposal shall include a detailed breakdown of the cost of the work, labor, Services and materials to be altered, added or modified and all delivery schedule impacts. If Seller fails to submit a settlement proposal within this thirty (30) day period, Seller waives any right to an adjustment of the price and/or delivery schedule as a result of such change. If the cost of supplies or materials made obsolete or excess as a result of a change is included in the negotiated price adjustment, Buyer shall assume title to such supplies or materials and shall prescribe the manner of disposition.

(b) If Seller submits a proposal pursuant to paragraph (a) of this Clause, Seller shall prepare and furnish to Buyer a detailed accounting of cost elements and any other data as determined by Buyer to be necessary to determine reasonableness of the amount of any increase or decrease in the cost of, or the time required for the performance of this Order as modified by the change notice.

(c) Upon the receipt by Buyer of Seller's proposal, with supporting cost details as requested by Buyer, the Parties shall attempt to reach agreement on the price and/or delivery schedule impacts of the Contract Change Notice, in which case the Parties shall mutually execute an amendment setting forth the results of such negotiations. In the event the Parties are unable to reach agreement on the price and/or schedule impact of the Contract Change Notice, the matter shall be resolved in accordance with Clause 18, Disputes/Arbitration. Upon receipt of a Contract Change Notice, Seller shall promptly proceed with the change in the work even if Buyer and Seller have not yet reached agreement regarding price and/or delivery schedule adjustments. Nothing in this Clause 9 shall excuse Seller from promptly proceeding with the change as directed.

## **10. STOP WORK ORDERS**

(a) Buyer may at any time, by written order to Seller, require Seller to stop all or any part of the work called for under this Order for a period of up to one hundred eighty (180) Days, and for any further period as required by Buyer. Any such order shall be specifically identified as a stop work order issued pursuant to this Clause. Upon receipt of such an order, Seller shall immediately comply with its terms and take all steps to minimize the expenditure of costs allocable to the work covered by the order during the period of work stoppage. Within a period of one hundred eighty (180) Days after a stop work order is delivered to Seller or within any extension thereof as required by Buyer, Buyer shall either:

- (1) Cancel the stop work order and authorize resumption of work, or
- (2) Terminate the work covered by such stop work order as provided in Clause 12, Termination for Convenience, or Clause 13, Termination for Default.

(b) If a stop work order issued under this Clause is canceled or the period of the stop work order or any extension expires, Seller shall promptly resume work in accordance with the terms of this Order. In such event, an equitable adjustment shall be made in the delivery schedule or Order price, or both, if:

- (1) The stop work order resulted in an increase in the time required for, or in Seller's cost properly allocable to the performance of the work contained in the stop work order, and
- (2) The Seller submits a proposal for such adjustment within thirty (30) Days after the end of the period of work stoppage.

(c) If the work covered by a stop work order is terminated in whole or in part for the convenience of Buyer, Seller's reasonable costs resulting directly from the stop work order shall be allowed in arriving at a termination settlement, but only if Seller submits a settlement proposal for such adjustment within thirty (30) Days after the work covered by such stop work order is terminated.

(d) If Seller submits a proposal pursuant to paragraphs (b) or (c) of this Clause, Seller shall prepare and furnish to Buyer a detailed accounting of cost elements and any other data determined by Buyer to be necessary to assess the reasonableness of the Seller's claim for adjustment.



(e) If Seller fails to submit a proposal within the thirty (30) day period specified in paragraphs (b) or (c) of this Clause, Seller waives any right to an adjustment of the Order price or delivery schedule as a result of the applicable stop work order. In the event the Parties are unable to reach agreement on the price and/or schedule impact of a stop work order, the matter shall be determined in accordance with Clause 18, Disputes/Arbitration.

## 11. EXCUSABLE DELAYS

(a) Events beyond the reasonable control and without the fault or negligence of a Party or its employees, agents or subcontractors, which may include, without limitation, acts of God, acts of government, fires, floods, epidemics, acts of war, quarantine restrictions, labor disputes and embargoes ("Force Majeure Events"), shall constitute a basis for excusable delay, provided:

- (1) Notice is given to the other Party within seven (7) Days of the occurrence of such Force Majeure Event, which notice shall contain the date of the event, a description of the event, an assessment of the impact of and the anticipated duration of the Force Majeure Event; and
- (2) The Party seeking relief can establish that the Force Majeure Event has delayed its performance under this Order.

(b) If a Force Majeure Event affecting Seller's performance is likely to continue for such a duration that will adversely impact Buyer's performance under its Contract(s), Buyer may obtain goods or Services covered by this Order elsewhere, in which case Buyer may, without any obligation or liability to Seller, unilaterally reduce and cancel the quantity or amount of goods or Services called for in this Order and terminate the Order. If Buyer opts to terminate the Order under this paragraph (b), Seller shall refund to Buyer any and all amounts paid by Buyer for any undelivered or unaccepted goods or Services. All expenses incurred by Seller on goods or Services cancelled under this paragraph (b) shall be borne solely and entirely by Seller.

(c) If Buyer is temporarily unable to receive or use goods or Services called for herein for reasons beyond Buyer's control and without its fault or negligence, Buyer may suspend Seller's performance for the period of such disability by written notice to Seller, without additional liability to Seller for such suspension.

(d) Notice shall be given to the other Party within seven (7) Days of the termination of a Force Majeure Event.

(e) In the event of an excusable delay resulting from a Force Majeure Event, the Order delivery schedule may be extended on no more than a day for day basis for the period of time of the excusable delay condition. A delivery schedule extension of greater than day for day shall be subject to negotiation. However, the Order price shall not, under any circumstances, be increased as a result of a Force Majeure Event experienced by Seller. If the Parties are unable to reach agreement on a time extension, if any, to the Order delivery schedule, the matter shall be determined in accordance with Clause 18, Disputes/Arbitration.

## 12. TERMINATION FOR CONVENIENCE

(a) This Order may be terminated for the convenience of Buyer, at its option, in whole or in part, at any time during the period of performance of the Order. Such termination shall be effected by delivery to Seller of a written notice of termination ("Termination Notice") specifying the extent to which performance of work under

this Order is terminated, the effective date of the termination and the instructions for accomplishing the termination.

(b) Upon receipt of a Termination Notice, Seller shall:

- (1) Stop work as directed;
- (2) Terminate all purchase orders and subcontracts relating to the performance of the work being terminated;
- (3) With the approval of Buyer, settle all outstanding liabilities and claims, if any, arising out of the termination of such purchase orders and subcontracts;
- (4) Transfer title and deliver to Buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of, the performance of the work being terminated, (ii) the completed or partially completed plans, drawings, information and other property which, if this Order had been completed, would be required to be furnished to Buyer, and (iii) the jigs, dies, fixtures and other specific tools and tooling acquired or manufactured for the performance of this Order for the cost of which Seller has been or will be reimbursed under this Order;
- (5) Take all actions necessary to protect property in Seller's possession in which Buyer has or may express an interest; and
- (6) Complete performance of such part of this Order, if any, that is not terminated.

(c) Upon termination by Buyer under this Clause, Buyer's sole obligation shall be to pay to Seller the following amounts without duplication:

- (1) An amount for labor which shall be determined by multiplying the number of direct labor hours (as defined in the body of this Order) expended prior to the effective date of the Termination Notice by the hourly rate or rates set forth in this Order, less any hourly rate payments previously made to Seller;
- (2) An amount (computed pursuant to the provisions of this Order relating to payment for materials) for expenses for materials incurred prior to the effective date of the Termination Notice not previously paid to Seller for the performance of this Order;
- (3) The actual costs incurred by Seller in accordance with this Order, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this Order, including the actual cost of work in process and materials delivered by Buyer in accordance with paragraph (b) of this Clause, and including the reasonable cost of discharging liabilities which are so allocable or apportionable; and
- (4) The reasonable costs incurred by Seller in protecting property in its possession in which Buyer has or may acquire an interest.

(d) Within sixty (60) Days after the effective date of termination under this Clause (unless otherwise extended in writing by Buyer), Seller shall submit to Buyer a termination settlement proposal, which shall contain detailed back up data and any other information



requested by Buyer to determine the reasonableness of all amounts being sought by Seller. Buyer shall have access to Seller's premises and records, prior or subsequent to any payment, to verify charges supporting any termination settlement proposal. In the event the Parties are unable to reach agreement on the termination settlement, the matter shall be determined in accordance with Clause 18, Disputes/Arbitration.

(e) The provisions of this Clause do not apply if this Order is terminated by Buyer for the default of Seller pursuant to Clause 13, Termination for Default.

### **13. TERMINATION FOR DEFAULT**

(a) Buyer may by written notice of default to Seller, terminate the whole or any part of this Order in any one of the following circumstances:

- (1) If Seller fails to (i) make delivery of the Services within the time specified herein or any extension thereof; (ii) commit either the necessary skilled personnel or provide for materials of a level of quality consistent with industry standards, as determined solely by Buyer; (iii) perform any of the other material provisions of this Order; or (iv) fails to make progress as to endanger performance of this Order in accordance with its terms, and in each case Seller does not cure such failure within a period of ten (10) Days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure; or
- (2) If Seller becomes insolvent or is the subject of a voluntary or involuntary petition in bankruptcy.

(b) In the event Buyer terminates this Order in whole or in part as provided in paragraph (a) of this Clause, Buyer may take over such terminated work and prosecute the same to completion by contract or otherwise and deduct the cost thereof from any monies then due or thereafter to become due to Seller, provided that Seller shall continue the performance of this Order to the extent not terminated under the provisions of this Clause.

(c) In the event Buyer terminates this Order in whole or in part as provided in paragraph (a) of this Clause, Buyer shall be at liberty, without prejudice to such other rights and remedies as may be available to it, to enter upon the premises, take possession of all materials, tools and equipment as Seller has specifically produced or acquired for the performance of this Order, and employ, upon such basis as to it may seem proper, any other person or persons to complete the work called for under this Order.

(d) If, after notice of termination under the provisions of this Clause 13, it is determined for any reason that Seller was not in default under the provisions of this Clause or that a delay was excusable under the provisions of Clause 11, Excusable Delays, the rights and obligations of the Parties shall be the same as if the Termination Notice had been issued pursuant to Clause 12, Termination for Convenience.

(e) The rights and remedies of Buyer provided in this Clause 13 are in addition to any other rights and remedies provided by law or under this Order.

### **14. INDEMNITY BY SELLER**

Seller shall defend, indemnify and hold harmless Buyer and Customer, and their respective affiliates, officers, directors, employees, shareholders and agents, from and against all losses, costs, damages,

suits, expenses and liabilities (including, but not limited to, reasonable attorneys' fees) arising from or related to the actions or omissions of Seller or its employees, agents, and/or Lower Tier Subcontractors in the performance of this Order.

### **15. INSURANCE**

(a) Seller shall procure and maintain, at its sole cost and expense, during the entire performance period of this Order, general liability, property damage, Worker's Compensation, automotive liability insurance and such other insurance as may be specified in this Order in prudent, reasonable and/or statutory amounts adequate to cover Seller's obligations, including those detailed in Clause 14, Indemnity by Seller.

(b) At all times during the performance of this Order, Seller shall provide, upon Buyer's request, certificates of insurance executed by the insurer or its authorized representative that certify the required coverage.

(c) The furnishing of acceptable evidence of the required coverage shall not relieve Seller from any liability or obligation for which it is responsible.

(d) If, at any time, Seller fails to maintain the insurance required pursuant to this Order or fails to deliver evidence of insurance as required, Buyer may, but only upon giving Seller five (5) Days prior written notice, effect such insurance as the agent and at the expense of Seller, by taking out policies with insurers acceptable to Buyer running for a period not exceeding one (1) year in any one policy. Buyer shall be entitled to recover the uninsured amount of any loss or damages and the cost and expenses of suit suffered or incurred during any period when Seller shall have failed or neglected to provide such insurance.

### **16. LIMITATION OF LIABILITY**

In no event shall Buyer be liable directly or indirectly to Seller, its officers, directors, employees, subcontractors at any tier, agents or any permitted assignees, for any incidental, special, consequential or punitive damages, lost profits, lost revenue, or any other indirect damages in connection with this Order, regardless of whether the basis of such liability is in contract, tort, or any other legal or equitable theory. In no event shall Buyer's total liability under or in connection with this Order exceed the Order price.

### **17. CLAIMS**

(a) The term "Claim" means a written demand or assertion by Seller seeking an adjustment or interpretation of the terms of this Order, payment of money, an extension of time, or any other relief with respect to the work being performed pursuant to this Order. A Claim must include the following: (1) a statement that it is a Claim and a request for decision pursuant to this Clause 17; (2) a detailed description of the act, error, omission, unforeseen event or other condition giving rise to the Claim; (3) a detailed breakdown with supporting back up of all amounts, if any, being claimed; and (4) if the Claim seeks a time extension, a detailed schedule analysis demonstrating Seller's entitlement to a time extension.

(b) Claims must be submitted to Buyer within thirty (30) Days after the occurrence of the event-giving rise to such Claim. Seller agrees that strict compliance with the requirements of this paragraph (b) is an express condition precedent to Seller's right to pursue its Claim against Buyer in arbitration or otherwise.

(c) Buyer shall review Claims submitted by Seller on a timely basis. If Buyer determines that additional supporting data is





necessary to fully evaluate a Claim, Buyer will request such additional supporting data, and such data shall be furnished by Seller within thirty (30) Days after the date of such request. Buyer shall render a decision within sixty (60) Days after the later of the receipt of the Claim or the receipt of any additional supporting data requested by Buyer. Buyer's decision shall be final and binding unless appealed in accordance with paragraph (d) of this Clause.

(d) If Seller disputes Buyer's decision on a Claim, Seller shall have the right, within ninety (90) Days after Buyer's decision is issued, to commence arbitration against Buyer in accordance with Clause 18, Disputes/Arbitration. If arbitration is not commenced by Seller within ninety (90) Days after Buyer's decision is issued, Buyer's decision on a Claim shall be final and binding and not subject to appeal or challenge.

(e) Notwithstanding any other provisions herein, any decision of Customer under the Contract which binds Buyer shall also bind Seller to the extent that it relates to this Order, provided Buyer shall have notified Seller promptly of such decision and if requested by Seller, shall have appealed the decision in accordance with the disputes clause (via arbitration, litigation or otherwise) of the Contract. A final judgment in any such appeal shall be conclusive, final and binding upon Buyer and Seller. If Buyer under this Clause prosecutes any appeal, Seller shall be permitted at Seller's expense to participate fully in such prosecution for the purpose of protecting Seller's interest (provided the Buyer retains overall control over the prosecution of such appeal). Each Party shall cooperate fully in assisting the other Party in such proceedings. Buyer agrees that after Seller has commenced to participate in any appeal against the Customer pursuant to this Clause, Buyer will not enter into a settlement agreement with the Customer or take any other action which would prejudice Seller's rights in such appeal without Seller's consent. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal initiated by Buyer solely at Seller's request shall be paid by Seller; otherwise each Party shall bear its allocable share of the expense.

(f) Unless otherwise directed by Buyer, during the pendency of any Claim proceeding, Seller shall proceed diligently with performance of this Order.

## 18. DISPUTES/ARBITRATION

(a) Except for any appeal covered under Clause 17, paragraph (c) above, any dispute or disagreement arising between Seller and Buyer in connection with this Order, or the validity or enforceability thereof, which is not settled to the mutual satisfaction of Seller and Buyer, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that such notice is given. The arbitration shall be conducted in Palo Alto, California by a panel of three (3) arbitrators. The Party which demands arbitration shall choose and nominate a competent person to act as an arbitrator; thereupon, within thirty (30) Days after receipt of such written notice, the other Party shall, in writing, choose and nominate a competent arbitrator. The two arbitrators so chosen shall meet and endeavor to select a third arbitrator, giving written notice to both Parties of the choice so made. In case the two arbitrators shall fail to agree upon a third arbitrator within a reasonable period of time, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or in the filling of a vacancy or in the failure or refusal of any arbitrator or arbitrators to attend or fulfill its or their duties, then upon application by either Party, an arbitrator shall be named by the chairman of the American Arbitration Association. Proceedings and documents produced therein shall be in the English language. The arbitration award shall be final and binding upon the Parties and judgment may be entered thereon, upon the application of either Party, by any court having jurisdiction.

(b) Each Party shall bear its own costs and expenses (including the costs and expenses of the arbitrator it selected) and one-half of the costs and expenses of the third arbitrator.

(c) Unless otherwise directed by Buyer, during the pendency of any arbitration proceeding, Seller shall proceed diligently with performance of this Order.

## 19. PROPRIETARY INFORMATION

(a) "Proprietary Information" means all confidential and proprietary information (other than deliverable data and documentation which is subject to the Deliverable Reports and Documentation Article in the Schedule), in whatever form transmitted, including without limitation, designs, drawings, specifications, technical information, financial information and funding, pricing or schedule details, which is disclosed by a Party ("Disclosing Party") to the other Party hereto ("Receiving Party") and: (i) is identified as proprietary by means of a written legend thereon or (ii) if disclosed orally, is identified as proprietary at the time of initial disclosure and then summarized in a written document, with the Proprietary Information specifically identified, that is supplied to the Receiving Party within thirty (30) Days of initial disclosure. Proprietary Information shall not include any information that: (1) is already known to the Receiving Party at the time of its disclosure; without an obligation of confidentiality; (2) is or becomes publicly known through no wrongful act of the Receiving Party; (3) is subsequently and rightfully obtained by the Receiving Party from a third party who is not under an obligation of confidentiality; or (4) is independently developed by the Receiving Party without reliance on the Proprietary Information as evidenced by written records.

(b) Subject to Paragraph (a) above, for a period of ten (10) years after receipt of any Proprietary Information, the Receiving Party shall not disclose Proprietary Information that it obtains from the Disclosing Party to any person or entity except its employees, attorneys, agents, representatives (who are not direct competitors of the Disclosing Party), and Customers (in the case of Buyer), who have a need to know, who have been informed of and have agreed in writing (or are otherwise subject to confidentiality obligations consistent with the obligations set forth herein) to abide by the Receiving Party's obligations hereunder. The Receiving Party shall use at least the same degree of care to avoid disclosure of such Proprietary Information as it uses for its own Proprietary Information of like importance but in no event less than a reasonable degree of care.

(c) Notwithstanding the foregoing, the Receiving Party may disclose Proprietary Information in response to a subpoena or other court order, or as required by applicable law or regulation, without liability as long as it: (1) promptly provides written notice to Disclosing Party prior to making such disclosure to allow Disclosing Party a reasonable opportunity to obtain a protective order, (2) fully cooperates with the Disclosing Party if it decides to contest disclosure, (3) discloses only such Proprietary Information as is legally required and (4) exercises reasonable efforts to obtain proprietary treatment for any Proprietary Information being disclosed.

(d) All Proprietary Information disclosed by the Disclosing Party to the Receiving Party shall be and remain the sole property of Disclosing Party. The Receiving Party shall use the Disclosing Party's Proprietary Information only for the performance of work under this Order (or as otherwise authorized in writing by the Disclosing Party) and for no other purpose. Furthermore, Seller agrees to make no use of drawings, specifications and technical information or data (1) furnished by Buyer, or (2) prepared by Seller or its employees and agents during the course of performance of work under this Order, except as required to perform hereunder. The



Receiving Party will not disclose to any third party any information it has acquired under, or as a result of this Order or negotiations leading to it concerning the Disclosing Party's plans, business objectives, customers, personnel, products, processes, work or services without the other Party's prior written consent unless such confidential information becomes generally known without fault of the Receiving Party or it is obtainable from other sources without breach of this Order.

(e) Upon completion of this Order or upon the Disclosing Party's request at any time, the Receiving Party shall, at the Disclosing Party's option, promptly: (1) return to Disclosing Party, all Disclosing Party's Proprietary Information, or (2) destroy all Proprietary Information, and provide a certificate of destruction, except for one (1) copy which may be retained for legal purposes.

(f) If Buyer and Seller have entered into a Non-Disclosure Agreement ("NDA") in connection with the work to be performed under this Order, the Parties agree that any Proprietary Information exchanged under such NDA shall be deemed to be Proprietary Information provided under this Order and subject to the terms of this Clause 19.

(g) All technical information disclosed heretofore or hereafter by Seller to Buyer in connection with the goods or services supplied under or pursuant to this Order shall be disclosed on a non-confidential basis. Buyer and its Customer shall have the unlimited right to use, for any purpose, all technical data and documentation, and the information contained therein, which is required to be delivered under this Order.

## 20. PUBLIC RELEASE OF INFORMATION

Prior to the release of news releases, articles, brochures, advertisements, prepared speeches and other informational releases concerning the existence of this Order or the work performed or to be performed hereunder to any third parties, Seller must obtain the written approval of Buyer concerning the content and timing of such release.

## 21. RIGHTS IN INVENTIONS

(a) Subject Inventions.

(1) "Subject Invention" means any invention, idea, concept, technique, discovery, improvement or innovation of more than a trifling or routine nature, whether or not patentable, conceived of or first actually reduced to practice in the performance of work under this Order. Subject Inventions shall constitute a "work made for hire" for Buyer, as that phrase is defined in Section 101 and 201 of the Copyright Act of 1976 (Title 17, United States Code), including without limitation a work specially commissioned by Buyer.

(2) Seller agrees that all Subject Inventions, together with any and all intellectual property rights, including without limitation all copyright, patent, trademark and trade secrets, shall be the property of the Buyer, whether the work or goods to be delivered are completed or not. Buyer agrees to and hereby grants to Seller a revocable, royalty-free, non-exclusive license to Subject Inventions to the extent reasonably necessary to enable Seller in the performance of the work or Services under this Order. For the avoidance of doubt, this license is limited to the performance work or Services for Buyer.

(3) Seller shall furnish to Buyer a written disclosure of each Subject Invention promptly and in no event later than three (3) months after its conception or first actual reduction to

practice. This disclosure shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation and, to the extent known, the physical, chemical or electrical characteristics of the Subject Invention to a person who is skilled in the applicable technical aspects thereof. Seller shall give Buyer all reasonable assistance in obtaining patent protection and in preparing and prosecuting any patent application filed by Buyer, and shall cause to be executed assignments and all other documents or instruments necessary to carry out the intent of this Clause.

(b) Background Inventions.

(1) "Background Invention" means any invention, idea, concept, technique, discovery, improvement or innovation, other than a Subject Invention, whether or not patentable, which invention is incorporated or utilized in any work by Seller performed under this Order.

(2) Seller agrees to and does hereby grant to Buyer an irrevocable, royalty-free, non-exclusive license, with right of sublicense, to practice and have practiced throughout the world any Background Invention to the extent reasonably necessary to enable Buyer and/or Buyer's Customer to maintain, operate or manufacture any goods in accordance with, or using the Background Invention.

(3) Seller hereby grants to Buyer an irrevocable, nonexclusive, paid-up, worldwide license under each and every copyright of Seller that is applicable to any works of authorship fixed in any tangible medium of expression (including, without limitation, drawings, prints, manuals and specifications) furnished to Buyer in the course of Seller's activity hereunder, to reproduce the copyrighted work, to prepare derivative works based thereon, to distribute copies of the copyrighted work to the public, and to display the copyrighted work publicly, subject to other provisions hereof.

(c) Seller shall include the substance of this Clause, granting rights to Buyer and Buyer's Customer as provided above, in all Lower Tier Subcontracts hereunder.

## 22. INTELLECTUAL PROPERTY INDEMNITY

(a) Seller, at its expense, agrees to defend, indemnify and hold harmless Buyer and Buyer's Customer, and their respective officers and directors, from and against any claim, suit, losses, or liabilities based on an allegation that (1) the use or sale of goods, or (2) the use or sale of the goods ordered herein in combination in accordance with Seller's specification or recommendations infringes any intellectual property rights of third parties. Buyer shall give prompt written notice of such claim or suit and shall provide reasonable assistance and information to Seller. Any such assistance or information furnished by Buyer shall be at Seller's expense.

(b) If the use or sale of any goods is enjoined or otherwise prohibited as a result of an intellectual property claim or suit, Seller shall at its own expense (1) resolve the matter so that the injunction or prohibition no longer remains, (2) procure for Buyer and/or Buyer's Customer the right to use the infringing item, or (3) modify the infringing item so that it becomes non-infringing or replace the infringing item with a non-infringing item, provided such item is fully equivalent in function and performance, subject to the technical approval of Buyer and Buyer's Customer. If Seller is unable to accomplish (1), (2), or (3) as stated above, Buyer shall have the right to terminate this Order for default with respect to such goods, return





such goods to Seller and receive a refund of the amounts paid for such goods. In addition, Seller shall be liable for all additional costs and damages incurred by Buyer and Buyer's Customer arising as a result of such injunction.

### **23. SUBCONTRACTS**

(a) Seller shall not subcontract with any other party to furnish any of the work herein contracted for without the written approval of Buyer.

(b) Seller agrees that no subcontract placed under this Order shall provide for payment on a cost plus percentage of cost basis.

### **24. OTHER CONTRACTS**

Buyer or Customer(s) may undertake or award other contracts for additional work, and Seller shall fully cooperate with such other contractors and carefully fit its own work to such additional work as may be directed by Buyer. Seller shall not commit or permit any act that will interfere with the performance of work by any other contractor.

### **25. NOTICE TO BUYER OF LABOR DISPUTES**

(a) Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.

(b) Seller shall insert the substance of this Clause, including this paragraph (b), in any lower-tier subcontract and shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Lower-Tier Subcontractor shall immediately notify its next higher-tier subcontractor or Buyer, as the case may be, of all relevant information with respect to such dispute.

### **26. ACCIDENT PREVENTION, SAFETY RULES AND PRACTICES**

(a) Seller shall comply with all applicable industry safety rules and practices including the established safety rules and practices of Buyer and those of Customer(s).

(b) Seller shall properly protect site and adjoining property from damage. Any damage to same shall be made good without delay. Seller shall exercise particular care to protect all vegetation that are to remain, including the roots of same.

(c) Seller shall provide and properly maintain warning signs and lights, barricades, railings and other safeguards for the protection of workers and others on, about or adjacent to the work, as required by the conditions and progress of the work.

### **27. FIRE PRECAUTIONS AND PROTECTION**

Seller and its Lower-Tier Subcontractors shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent damage to any construction work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private.

### **28. SELLER'S RESPONSIBILITY FOR PERSONAL INJURIES AND PROPERTY DAMAGE**

Seller shall be exclusively responsible for, shall bear, and shall relieve Buyer from liability for all loss and/or expense and/or damage and/or claims, including attorneys' fees, that result from bodily injury, sickness

or disease, including death, at any time resulting therefrom, sustained by any person or persons, and/or on account of damage to or destruction of property, including that of Buyer, and/or on account of loss of use of such property arising out of, or in connection with the performance of any work called for by this Order, including all work assigned to Seller under this Order, whether such loss, expense, damage and/or claims to be caused by or result, in whole or in part, from the negligence or other conduct of Seller, any subcontractor and/or Buyer or any of the employees, agents, or servants of any of them, or any other person or persons whatsoever, except that, Seller shall neither be responsible nor relieve Buyer from liability from the willful misconduct or the sole negligence of Buyer or any of its employees, agents, or servants.

### **29. PERFORMANCE BOND**

If requested by Buyer, Seller shall furnish a surety company bond in form satisfactory to Buyer conditioned upon the faithful performance of this Order and the payment of all obligations arising thereunder. Buyer shall pay the premium charge for such bond.

### **30. PLANT RULES AND SECURITY REQUIREMENTS**

The employees and agents of Seller and of Seller's subcontractors shall, while on the premises, comply with all plant rules and regulations in effect at such premises, including security requirements where work under classified or unclassified contracts is being performed for the United States Government.

### **31. AUDIT BY BUYER**

Seller agrees to keep such books and records and shall readily disclose the basis for any charges, ordinary or extraordinary, billed to Buyer under this Order and shall make them available for examination and audit by Buyer and its agents prior to, and for a period of two years after, receipt by Seller of final payment under this Order. For such period of two years, Buyer and its agents shall have the right to audit the books and records relating to all such charges, and Seller, upon request of Buyer, shall make all such books and records available for such examination.

### **32. INJURY, ILLNESS PREVENTION PROGRAM**

Seller will comply with Buyer's "Contractor/Subcontractor Environmental Health & Safety Agreement", which is available upon request and is incorporated in full into this Order by reference. Seller will provide Buyer with copy of Seller's Injury, Illness Prevention Program ("IIPP") as part of its proposal package.

### **33. RIGHT TO WORK**

Seller agrees that all employees assigned to perform work for Buyer under this Order shall provide proof of the right to work in the United States to Buyer on or before the first day that employee performs any work for Buyer.

Seller understands that Buyer has export control and security obligations and responsibilities that require attention to the foreign national status of any individuals performing work on its behalf. Accordingly, Seller agrees that if it offers for assignment any individual who is not a United States citizen or a lawful permanent resident of the United States, it will disclose such individual's status to Buyer prior to offering the individual for assignment so that Buyer may determine whether any export control or security issues are raised by the assignment of the individual to perform work for it.

## 34. PAYMENTS

Seller shall be paid as follows upon submission of invoices or vouchers approved by Buyer's purchasing representative or his authorized designee.

### (a) Hourly Rate:

- (1) The amounts computed by applying the appropriate hourly rate or rates set forth in the body of this Order to the number of hours performed, which rates shall include wages, overhead, general and administrative expenses and profit. Fractional parts of an hour shall be payable on a prorated basis. Seller will substantiate billings by evidence of actual payment and by individual daily job timecards signed by the workers performing the Services or such other substantiation approved by Buyer's purchasing representative. Payments will normally be made at Seller's payroll intervals but may be varied by Buyer if conditions so warrant.
- (2) Unless otherwise specified in this Order, the hourly rate or rates set forth in this Order shall not be varied by virtue of Seller having performed work on an overtime basis. If this Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Buyer.

### (b) Materials and Subcontracts:

- (1) Costs of direct materials are reimbursable when the requirement for such materials is specified in this Order. Reasonable and allocable material handling costs may be included in the charge for material only if they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with Buyer's usual accounting practices. Seller shall be reimbursed for items and services purchased directly for this order only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials shall mean those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.
- (2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with paragraph (b)(3) of this Clause. Reimbursable cost in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under paragraph (b)(1) of this Clause. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under paragraph (a)(1) of this Clause.
- (3) Seller shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify Buyer to that effect, and give the reason therefore, credit shall be given to the Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable,

commissions, and other amounts that have been accrued to the benefit of Seller, or would have so accrued except for the fault or neglect of the Seller. Such benefits lost through no fault or neglect on the part of Seller, or lost through fault of Buyer, shall not be deducted from gross costs.

(c) It is estimated that the total cost to Buyer for the performance of this Order will not exceed the ceiling price set forth in the body of this Order. Seller agrees to use its best efforts to perform the work specified in this Order and all obligations under this Order within such amount. Seller shall notify Buyer if, at any time, Seller has reason to believe that the costs which it expects to incur in the performance of this Order in the next succeeding thirty (30) Days, when added to all other costs previously incurred, will exceed eighty-five percent (85%) of the ceiling price then set forth in this Order. Seller shall give its revised estimate of total cost for the performance of this Order. If, at any time during the performance of this Order, Seller has reason to believe that the total obligations of Buyer for the performance of this order will be substantially greater or less than the then stated ceiling price thereof, Seller shall so notify Buyer, giving its revised estimate of total cost for the performance of this Order.

(d) Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price set forth in this Order, and Seller shall not be obligated to continue performance by virtue of which Buyer's obligation hereunder would exceed the ceiling price set forth in this Order, unless and until Buyer shall have notified Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling price which shall thereupon constitute the ceiling price for performance under this Order.

(e) At any time or times prior to final payment under this Order, Buyer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by Buyer not to have been properly payable, and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers. Upon receipt and approval of the voucher or invoice designated by Seller as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by Seller with all provisions of this Order, (including without limitations, provisions relating to proprietary rights and the provisions of subparagraphs (f) and (g) below), Buyer shall as promptly as may be practicable pay any balance due and owing Seller.

(f) Seller and each assignee under an assignment entered into under this Order and in effect at the time of final payment under this Order shall execute and deliver at the time of and as a condition precedent to final payment under this Order, a release discharging Buyer, its officers, agents, and employees of and from all liabilities, obligations and claims arising out of or under this Order. However, no assignment of any nature may be made without the prior written approval of Buyer.

(g) Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by Seller or any assignee which arise out of the performance of this Order and on account of which Seller has received reimbursement shall be paid by Seller to Buyer. Seller and each assignee under an assignment entered into under this Order shall execute and deliver at the time of and as a condition precedent to final payment under this Order, an assignment to Buyer of refunds, rebates, or credits (including any interest thereof) arising out of the performance of this Order, in form and substance satisfactory to Buyer.

(h) Subject to Clause 21(b)(2), all material and work under this Order, upon payment, shall become the sole property of Buyer or Buyer's Customer. This provision shall not be construed as relieving



Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any defective work, or as waiving Buyer's right to require the fulfillment of all of the terms hereof.

### **35. TAXES**

Unless otherwise stated in the Order, the Order Price includes all applicable taxes, tariffs, fees and/or duties that may be due under any law, which becomes due by reason of the performance of this Order. Seller will not pay, or claim reimbursement for any taxes on any purchase or other transaction thereunder, which the taxing authority recognizes as being exempt; and if Seller pays any such tax for which Seller later receives a refund, such refund will be promptly reported to Buyer.

### **36. INTEREST**

(a) To the extent Buyer receives any interest which is allocable to a claim of Seller arising under this Order and included in Buyer's claim on which such interest was received, Buyer shall pay Seller the portion thereof allocable to Seller. Otherwise, Buyer shall not be obligated for interest on any claim of Seller hereunder.

(b) Any liquidated amount owed by Seller to Buyer shall bear interest unless paid within thirty (30) Days, at six percent per annum from the date due until paid unless otherwise stipulated.

### **37. LIENS**

(a) If required by Buyer, Seller shall deliver to Buyer, before submitting any invoices for payment under this Order, or at any other time required by Buyer, satisfactory release of all liens arising from the materials, or equipment supplied and the Services rendered by Seller under this Order.

(b) Buyer may withhold from a payment otherwise due to Seller any amount that Buyer has reason to believe may be necessary to satisfy any lien arising out of the performance of Seller under this Order. Prior to the time of any such withholding, Buyer shall notify Seller in writing as to the nature of the lien and the amount of money to be withheld.

(c) Seller shall reimburse Buyer for all amounts spent in removing liens arising out of the performance by Seller under this Order, including all costs and legal fees. Such reimbursement may be deducted by Buyer from any payment otherwise due to Seller. If Buyer does not hold amounts otherwise due to Seller, Seller shall promptly, upon request by Buyer, pay Buyer any amount due under this Clause.

### **38. ASSIGNMENT**

Neither Buyer nor Seller shall assign, transfer or delegate any of its rights or obligations hereunder to any third party (except to a legally recognized successor in interest to all or substantially all of the Party's assets) without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This Order shall bind any successors and assignees of the Parties as if they were an original Party to this Order.

### **39. WAIVER**

(a) No delay or omission by Buyer to exercise any right or remedy hereunder shall be construed as a waiver of such right or remedy. Further, the waiver by Buyer of a particular breach of this Order by Seller shall not be construed as, or constitute, a continuing waiver of

such breach, or a waiver of any other breaches of the same or other provisions of this Order.

(b) Any waiver of a requirement granted by Buyer or acceptance of a non-compliant condition applies only to the specific unit(s) identified. Said waiver or acceptance of a non-compliant condition does not constitute a change to or a waiver of any requirement of this Order.

(c) Buyer reserves the right to grant a waiver or deviation that is non-compliant with the requirements specified in the Order subject to certain limitations, conditions or equitable adjustment to the Order price.

### **40. GOVERNING LAW**

This Order shall be interpreted, construed and governed by the laws of the State of California, U.S.A., without regard to its conflicts of laws rules.

### **41. COMPLIANCE WITH LAWS**

(a) In the performance of this Order, Seller shall fully comply with all applicable laws, rules, codes, regulations, restrictions and orders of any governmental authority having jurisdiction, including without limitation, Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, relating to equal opportunity, and the Federal Occupational Safety and Health Act of 1970. If Buyer is fined or penalized as a result of any violation of any law or regulation committed or caused by Seller or Seller's Lower Tier Subcontractors, or if Customer reduces the price of the Contract as a result of actions or failure to take actions by Seller or Seller's Lower Tier Subcontractors, Buyer shall reduce the price of this Order by the same amount. Buyer's exercise of its rights under this Clause shall not be a waiver of any rights Buyer has under any other Clause or provision of this Order.

(b) The supplies or Services sold by Seller to Buyer shall conform to the requirements of such laws, orders and regulations.

(c) This Order shall be deemed to incorporate by reference all the Clauses required by the provisions of said laws, orders and regulations.

(d) Design and performance of the supplies sold by Seller (including foreign-manufactured equipment) shall meet all U.S. safety and environmental codes, regulations and standards including, but not limited to, U.S.E.P.A. (CFR Title 40) and Federal OSHA standards (CFR Title 29).

(e) Buyer shall not be responsible for the consequences, direct or indirect, of noncompliance by Seller or its Lower Tier Subcontractors and their employees, of applicable laws or statutes. Seller shall indemnify Buyer, its officers, employees, agents or assignees from and against any claims or action therefor.

### **42. EXPORT CONTROL**

(a) Designation of Defense Articles: The supplies, data and/or Services provided hereunder by Seller are intended for use as, or as part of, an item designated as a defense article listed on the U.S. Munitions List ("USML"), which is contained in the International Traffic in Arms Regulations ("ITAR"), and/or the Commerce Control List ("CCL"), which is contained in the Export Administration Regulations ("EAR").

Seller shall promptly notify Buyer if any U.S. or foreign export control regimes pertain to the supplies, data and/or Services that Seller provides to Buyer hereunder.



(b) Export Compliance: It is the policy of Buyer to require that its subcontractors comply strictly and completely with U.S. and foreign government export laws and regulations in performance of subcontracts issued by Buyer. In furtherance of this policy, Seller agrees that no employee or other person acting on its behalf in connection with this Order, will ship, mail, hand carry or in any other way export any USML commodity, including technical data, to a Foreign Person (as defined by ITAR or EAR, as applicable) within or outside the United States, or knowingly cause or permit any other person to do so, without being certain:

- (1) That such export may lawfully be made to the intended third party recipient;
- (2) That the export is covered by either an approved United States export license or a valid United States export license exemption or exception; and
- (3) That all documentation required for the transfer has been prepared as required by United States regulations and accompanies the export.

No technical information, hardware and/or software received from Buyer may be furnished to any Foreign Person or re-transferred to any third party without Buyer's prior written approval and all required export authorizations.

Seller is responsible for the application of markings to the technical data generated by the Seller in performance of this Order which will alert recipients to the nature of the data and the requirements for handling, storage and return or destruction of the data.

(c) Indemnification: Seller shall strictly comply with all applicable laws for the export and import of hardware, software, data and/or services to and from the United States and foreign countries (when applicable) and to defend, indemnify and hold Buyer harmless from any claim, suit, loss, cost, damage, expense (including reasonable attorneys' fees) or liability by reason of Seller's violation thereof.

If Buyer is fined or penalized as a result of any violation of any such law or regulation committed or caused by Seller or Seller's Lower-Tier Subcontractors, or, if Customer reduces the price of the Contract as a result of actions or failure to take actions by Seller or Seller's Lower-Tier Subcontractors, Buyer shall be entitled to reduce the price of this Order by the same amount. Exercise of Buyer rights under this Clause shall not be a waiver of any rights Buyer has under any other Clause or provision of this Order or under law.

If, in order to perform this Order, Seller considers it necessary to file for an export license through an agency of the U.S. government, or to utilize a license exception or exemption authorized by the regulations of such an agency, Seller will provide written notification to Buyer a minimum of ten (10) Days prior to submitting such application or utilizing such exception.

(d) Buyer's Obligations Subject To Export Laws: Buyer's obligations under this Order are subject to and shall be modified if and to the extent required to conform to applicable U. S. and foreign government export laws and/or export license provisions.

#### **43. IMPROPER PAYMENTS, KICKBACKS, GIFTS AND GRATUITIES**

Seller agrees that in carrying out its obligations under this Order, it will not make improper or unlawful payments of any salary, fee, commission or compensation of any kind or grant any improper or unlawful gift or gratuity of any kind, either directly or indirectly, to any officer,

employee, agent or representative of Buyer or Customer. Seller further agrees that if it violates this Clause, all payments due Seller under this Order shall be forfeited and all payment previously made to Seller by Buyer returned, and Buyer shall also have the right to terminate this Order for default as provided in Clause 13, Termination for Default.

#### **44. SEVERABILITY**

If for any reason any provision hereof is found to be illegal, unenforceable, or void, the Parties shall negotiate in good faith to agree upon a substitute provision that is legal, enforceable, and as consistent as possible with the intentions underlying the original provision. If the remainder hereof is not materially affected by such finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted under law.

#### **45. ENTIRE AGREEMENT AND AMENDMENTS**

This Order constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, understandings and agreements with respect to the subject matter hereof. With the exception of a unilateral Contract Change Notice issued by Buyer pursuant to the provisions of Clause 9, Changes, only a written instrument executed by both Parties may amend this Order.

#### **46. SURVIVAL**

A Party's obligations under any provisions set forth in this Order related to ownership of deliverables, confidentiality, publicity, governing law, limitation of liability and indemnification or which contemplate performance or observance subsequent to termination or expiration of this Order shall survive such expiration or termination.