

These Purchase Terms and Conditions and Purchase Order for Buyer and its affiliates and subsidiaries, constitutes the only terms and conditions applicable to the provisioning of Goods, Services and Deliverables between the Parties. These Purchasing Terms and Conditions together with the Purchase Order and any attachments appended hereto and documents incorporated herein will comprise the complete and exclusive agreement ("Agreement") for the purchase of Goods, Services and Deliverables.

## 1. DEFINITIONS

As used throughout this General Purchasing Terms & Conditions for Goods & Services and any Purchase Order, terms shall have the meaning as normally accepted, unless otherwise specified herein. The following terms shall have the meanings:

- a. **"BUYER"** means Buyer or its affiliates and subsidiaries that are contracting with Supplier for Goods and/or Services and identified as the purchasing entity in the Purchase Order.
- b. **"DELIVERABLES"** the quantifiable Goods or Services named in the PO that must be provided as agreed upon.
- c. **"GOODS"** means the product(s) supplied by Supplier under this PO, including without limitations all articles, supplies, components, raw materials, equipment, and intermediate assemblies thereof.
- d. **"PARTY"**, or **"PARTIES"** means Buyer and Supplier individually a "Party" and collectively "Parties".
- e. **"PO"** or **"Purchase Order"** shall mean the document issued by Buyer stating types, quantities, specification, Delivery Dates, agreed process, Deliverables, Delivery Point for Goods and/or Services.
- f. **"SUPPLIER"** means the Party contracting to supply the Good(s) and /or Services with the purchasing entity on the face of the PO.
- g. **"SERVICES"** work performed by Supplier for Buyer by virtue of Supplier's job, profession or training.

## 2. PURPOSE

Buyer agrees to engage and pay Supplier to provide Goods and Services as defined in the PO.

## 3. TERM

These terms and conditions shall commence upon issuance of the PO and naturally expire upon completion of the delivery of Goods or performance of Services unless terminated earlier pursuant to the termination provisions of these terms or as otherwise agreed upon.

## 4. TERMS AND CONDITIONS

These terms shall be applicable to all PO issued by Buyer. Supplier's written acknowledgement or Supplier's full or partial performance, whichever occurs first, will constitute acceptance of all terms and conditions contained herein. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of Buyer's PO is hereby objected to and rejected. Buyer's offer shall be deemed accepted by Supplier without said additional or different terms.

## 5. COMPENSATION, PAYMENT TERMS, SET-OFF , TAXES AND PAYMENT DISPUTES

- a. **Compensation** The price of the Goods and Services is the price agreed by the Parties and stated on the PO (the "Price"). If no Price is included in the PO, the Price shall be the price set out in Supplier's published price list in force as of the date of the PO. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Supplier shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the terms herein.
- b. **Standard Payment Terms** Buyer shall pay all properly invoiced amounts due to Supplier within 60 days after Buyer's receipt of such invoice. All payments hereunder must be in US dollars and made by electronic funds transfer or wire transfer.
- c. **Taxes** Unless otherwise specified, Prices include all applicable federal, state and local taxes, duties, tariffs, VAT and similar fees imposed by any government, all of which shall be listed separately on the invoice. If Buyer, for any reason, pays for any taxes for which Supplier is responsible, Supplier shall promptly reimburse Buyer for such payment, along with any expenses thereto.
- d. **Set-off** Buyer shall be entitled to set off any amount owing from Supplier under this Agreement, an issued PO or to any outstanding orders from Buyer's affiliated companies against any amount payable.
- e. **Payment Disputes** In the event of a payment dispute, Buyer shall deliver a written statement to Supplier of the disputed invoice listing all disputed items and provide a reasonably detailed description of each disputed item. Amounts not disputed are deemed accepted and must be paid, notwithstanding disputes on other items. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Supplier shall continue performing its obligations under this PO notwithstanding any such dispute.

## 6. SUPPLIER OBLIGATIONS; WORK ON PREMISES; ACCESS TO NETWORK

"Premises" as used in this section means premises of Buyer, its customers, or other third parties where Services are being performed.

- a. Supplier shall ensure that Supplier personnel working on Premises comply with all rules and regulations and any on-premises policies and: (i) do not bring weapons of any kind onto Premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (iii) do not possess hazardous materials of any kind on Premises without Buyer's authorization; (iv) remain in authorized areas only; (v) do not conduct any non-Buyer related business activities (such as interviews, hiring, dismissals or personal solicitations) on Premises; (vi) do not send or receive non-Buyer related mail through Buyer's or third party's mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without Buyer's written permission or as permitted by law; and (viii) follow instruction from Buyer in the event of an actual or imminent safety or environmental hazard on Premises.
- b. Supplier acknowledges that all persons, property, and vehicles entering or leaving Premises are subject to search.
- c. Supplier shall promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.
- d. Prior to entry on Premises, Supplier shall coordinate with Buyer to gain access. Supplier shall provide information reasonably required by Buyer to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status. For Supplier personnel requiring unescorted access to Premises a background check will be conducted by Buyer's preferred supplier. All activities and expenses related to the background checks will be Supplier's obligation.
- e. Supplier shall ensure that Supplier personnel: (i) do not remove Buyer, customer, or third party assets from Premises without Buyer authorization; (ii) use Buyer, customer, or third party assets only for purposes of this Agreement; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by Buyer; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Supplier's data residing on Buyer, customer, or third party assets on Premises.
- f. Supplier shall advise the Buyer of any unauthorized direction or course of conduct.
- g. Supplier shall immediately report to Buyer all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work. Supplier shall provide Buyer with a copy of any reports of such incidents Supplier makes to governmental authorities.
- h. As it applies, Supplier shall comply with all federal, state, or local anti-drug, alcohol abuse and/or drug testing statutes or regulations for any of its employees who may be covered by such statutes or regulations.
- i. Supplier shall have, retain, and be able to provide to Buyer, upon request, an approved drug and alcohol misuse prevention plan.
- j. Supplier shall comply with security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons
- k. Supplier shall obtain Buyer's written consent, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Supplier to provide any Services to Buyer (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Consent may be given or withheld in Buyer's sole discretion. Buyer's consent shall not relieve Supplier of its obligations and Supplier shall remain fully responsible for the performance of each such Permitted Subcontractor and for their compliance with all of these terms and conditions as if they were Supplier's own employees. require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;
- l. Supplier shall ensure and warrant that all persons, whether employees, agents, Permitted Subcontractors, or anyone acting for or on behalf of Supplier, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services and warranty promptly and efficiently.
- m. Buyer may at its sole discretion, require Supplier to remove a Supplier's employee from the Premises and require that such employee not be reassigned to any Premises under this Agreement.
- n. Violation of this section may result in termination of this Agreement in addition to any other remedy available to Buyer at law or in equity. Supplier shall reimburse Buyer, customer, or third party for any unauthorized use of Buyer, customer, or third party assets.

## 7. REPORTS AND RECORDS

- a. **Records** Supplier shall maintain complete, true and accurate records. All charges for

Goods and Services will be substantiated by proper receipts, bills of lading, time vouchers, or other similar records signed by employees doing work.

**b. Reports** Supplier shall render progress reports as often as reasonably requested by Buyer, pertaining to the Goods and Services performed hereunder, showing Goods delivered and time expended daily by each of its personnel for each component of various projects both periodically and cumulatively. Such reports shall be in a form that will enable Buyer to evaluate the progress made and the schedules to be met, and to keep a current account of time and monies expended upon each and every project.

## 8. WARRANTY

**a. Service Warranty** Supplier shall warrant all Services against defects in performance for a period of one (1) year following delivery unless stated otherwise in the documents accompanying these terms and conditions. For the provision of Services, Supplier warrants that it has and will maintain sufficient trained personnel whom shall, promptly and efficiently execute the Services contemplated under this Agreement. Supplier further warrants that the services shall be performed to at least the standard of performance reasonably expected of similar service Suppliers in Buyer's geographic region. In the event of a service defect, the Supplier shall, at Buyer's discretion, repair or re-perform the defective services at no cost to Buyer.

**b. Goods Warranty** Supplier warrants that all Goods furnished pursuant to this Agreement shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Agreement, and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Goods are identified within the warranty period, Supplier, at Buyer's option, shall promptly repair or replace Goods. Transportation of replacement Goods and the return of nonconforming Goods shall be at Supplier's expense. If repair or replacement of Goods is not timely, Buyer may elect to return, repair, replace, or re-procure the nonconforming Goods at Supplier's expense. All warranties shall extend to Buyer and its customers.

## 9. INSURANCE

Supplier shall produce to Buyer a certificate of insurance showing that the following insurance coverage is in place:

**a. Commercial General Liability (CGL)**, in the amount no less than \$1,000,000.00 any one occurrence and in the aggregate for bodily injury and property damage. This CGL coverage shall include Buyer as an additional insured and shall include endorsements for: Products and completed operation liability coverage; personal injury; contractual liability; and independent contractors' coverage.

**b. Workers' Compensation Insurance** At all times during the term of this Agreement, Supplier will carry and maintain in full force and effect, Workman's Compensation Insurance as required by applicable law covering all personnel engaged in furnishing of Services under this Agreement.

**c. Automobile Liability Insurance** for Suppliers' owned, non-owned, and leased automobiles, having a limit of not less than \$1,000,000.00 per each occurrence.

## 10. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

**a. Delivery** Supplier shall deliver the Goods in the quantities and on the date(s) specified in the PO or as otherwise agreed in writing by the parties (the "Delivery Date").

i. If Supplier does not comply with the stated delivery schedules, Buyer may, in addition to any other rights Buyer may have, require the Supplier to make delivery by fastest way, with the full cost of such delivery absorbed by Supplier. Supplier shall immediately notify Buyer in the event of any actual or anticipated difficulty in complying with the delivery date.

ii. In the absence of specific instructions from Buyer, DAP Buyer's Facility (Incoterms 2010 shall apply for the entirety of this document). Supplier will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under Warranty hereunder, all responsibility of Supplier, including but not limited to risk of loss for goods purchased hereunder by Buyer, shall pass to Buyer once off-loaded the transport conveyance at Buyer's facility. Seller shall make all claims to the carrier for goods damaged or lost in transit, except when Buyer is responsible for transportation.

iii. Supplier will deliver Goods DAP Buyer's Facility if located within the continental US and DDP (INCOTERMS 2010) for international transactions. Goods title and risk of loss or damage to such Goods shall pass to Buyer upon Delivery. Supplier shipments must comply with all DOT and IATA shipping regulations. Any fines and violations resulting from the Supplier's lack of adherence are solely the responsibility of the Supplier.

**b. Change Orders** Buyer may at any time, by written instructions issued to Supplier PO changes to the Services. Supplier shall, within five business days of receipt of a change order submit to Buyer a firm cost proposal for the change order. Parties agree to negotiate should

an adjustment in the Supplier's compensation or the performance deadlines under this PO change. If Buyer accepts such cost proposal, Supplier shall proceed with the changed services subject to the cost proposal and the terms and conditions of this PO.

**c. Notification** In the event Supplier for any reason anticipates any difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Agreement, Supplier shall promptly notify Buyer in writing.

**d. Late Delivery** If Supplier fails to deliver the Goods in full on the Delivery Date, Buyer may at its sole discretion:

- i. terminate this PO immediately by providing written notice to Supplier and Supplier shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods on the Delivery Date;
- ii. require the Supplier to make delivery by fastest way, with the full cost of such delivery absorbed by Supplier;
- iii. enforce all or part of the Late Delivery Fees.
- iv. waive a portion or all late charges by written approval/notice from Buyer if there are uncontrollable circumstances that prevent the Supplier from completing the Work.
- v. Late Delivery Fees If Supplier fails to have the Goods delivered in the time period stated in the PO or proposal, Buyer has the option to enforce the following late fees: 1% of invoice price after 7 days 2% after 14 days, 5% after 30 days, 9% after 45 days and 15% of final invoice price after 60 days.

**e. Title to Large Equipment Purchase(s)** and ownership of new equipment and hardware shall pass from Supplier to Buyer when DAP incoterm applies, upon completion of the unloading at Buyer's facility or when FCA incoterm applies, upon loading of the Equipment into Buyer's transportation vehicle at Supplier's facility. Buyer shall maintain insurance coverage under FCA incoterm when Buyer is responsible for transportation. Title and right of possession for equipment or hardware supplied by Buyer for repair or modification hereunder shall remain with Buyer, subject to any applicable lien rights of Supplier. Title and right of possession of any equipment and hardware supplied for further processing or integration shall remain with Supplier or Buyer and cannot be encumbered or disposed of by the subcontractor or Supplier. Reasonable access to the equipment and hardware shall be provided to employees or representatives of Supplier and Buyer.

## 11. TERMINATION

In addition to any remedies that may be provided under these terms, Buyer may terminate this PO with a 30-day written notice to Supplier, either before or after the acceptance of the Goods or the Supplier's delivery of the Services, 1) for any reason or 2) if Supplier has not performed or complied with any of these terms, in whole or in part and if Supplier has not cured any breach within 20 days form notice date. If Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this PO immediately without advance notice to Supplier. If Buyer terminates the PO for any reason, Buyer shall remain responsible for payment for the Goods or Services received and accepted by Buyer prior to the effective date of termination and any late fees assessed during the term of the PO.

## 12. CONFIDENTIALITY

All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Supplier, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as private and proprietary ("Confidential Information") in connection with this PO is confidential, solely for the purpose of performing this PO and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Supplier shall promptly return all documents and other materials received from Buyer except that which Supplier retains in archive in the ordinary course of business. Buyer shall be entitled to seek injunctive relief for any violation of this Section. Confidential Information does not include information that is: (a) in the public domain; (b) known to Supplier at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. In the event the Parties have signed a Non-Disclosure or Confidentiality Agreement for the purchase of Goods or use of the Services prior to the effective date of this PO, the terms of Non-Disclosure or Confidentiality Agreement shall govern the Parties obligations relating to Confidential Information.

## 13. GENERAL INDEMNIFICATION

Supplier shall indemnify and hold harmless Buyer and Buyer's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance Suppliers (collectively, "Losses") arising out of or

occurring in connection with the Goods and Services purchased from Supplier or Supplier's negligence, willful misconduct or breach of these terms. Supplier shall not enter into any settlement or admission of guilt on Buyer's behalf without Buyer's prior written consent.

#### 14. PATENT INDEMNITY

Supplier shall indemnify and hold Buyer and its customers harmless from and against any expense or liability, including costs, fees, damages, or Losses arising out of any claim, suit, proceeding that the manufacture or furnishing of Works under this Agreement, or the use of such Goods or sales of such Goods constitutes misappropriation or infringement of any patent, trade secret, or copyright of any third party. If an injunction should issue prohibiting Buyer or Indemnitees use of the Goods, Supplier shall procure for Buyer and its customers the rights to continue using said Goods, or modify them in a manner acceptable to Buyer so they become non-infringing, or with the written approval of Buyer, remove said Goods and refund the purchase price in addition to the incidental and consequential costs to procure replacement goods. In no event shall Supplier enter into any settlement or admission of guilt on Buyer's behalf without Buyer's or Indemnitee's prior written consent. Supplier's indemnity obligations under this provision are exclusive of and outside of any limitation of liability negotiated between the Parties.

#### 15. GENERAL PROVISIONS

**a. Amendments and Notices** These terms may only be amended or modified in a writing stating specifically that it amends these terms and signed by an authorized representative of each Party. Any notice required by this PO and requests, claims, demands, communication or waivers (each a "Notice(s)") to this PO must be in writing and will be accepted if sent by registered prepaid post, or delivered personally to the binding representatives of this PO.

**b. Assignment** Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under this PO without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this PO without Supplier's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

**c. Audit Rights** Buyer shall have the right to conduct audits of Supplier's records pertaining directly to this PO for a period of up to twenty-four (24) months subsequent to the effective date of termination or cancellation of this PO. Upon reasonable Notice, during regular business hours, abiding by Suppliers current safety and security policy and at Buyer's expense, Supplier shall allow Buyer to inspect and make copies of such records and interview Supplier personnel in connection with the provisions of the Goods or Services provided under this Agreement.

**d. Disputes** If any dispute arises with respect to the execution or interpretation of this PO, the Parties shall attempt to settle their differences amicably. If the Parties fail to reach a mutual agreement, the dispute may be resolved by binding arbitration according to the Rules of Arbitration of the American Arbitration Association. Any arbitration shall occur in New York NY unless the Parties agree otherwise. With respect to any judgment or decision, the prevailing Party shall be entitled to recover its reasonable actual legal fees and disbursements and collection expenses without limitation by any rule of court or statute. All information and data disclosed by either Party in connection with the arbitration of any dispute relating to this PO shall be treated as confidential by the Parties.

**e. English Language** Except as the Parties may otherwise agree, this PO, data, Notices, shipping invoices, correspondence and other writings shall be written in the English language. In the event of any inconsistency between any terms of this PO and any translation thereof into another language, the English language meaning shall control.

**f. Entire Agreement** This PO and its appendices constitute the entire agreement between the Parties with regard to the subject matter herein and supersede all other contracts, understandings of the matters herein subject, including the issuance of any agreement or invoicing terms provided by Supplier. Annexes shall be applicable as specified in the PO. In case of any conflicts or inconsistencies between the provisions of this PO and the appendices attached hereto, the provisions of this PO shall prevail.

**g. Export Compliance** Supplier will be the importer/exporter of record of the Goods, Equipment, Deliverables and, unless the Parties otherwise agree in writing, Supplier will be responsible for obtaining all necessary import/export licenses, permits and other required authorizations. All delivered items (including technical data) shall at all times be subject to all applicable import and export regulations including, without limitation, the U.S. Export Regulations, International Traffic in Arms Regulations of the U.S., and applicable U.S. Customs Regulations. Supplier will not dispose of USA-origin items furnished by Buyer (including technical data) other than in and to the country of ultimate destination specified in the PO, government license(s), and authorization(s), except as law and regulation permit.

**h. General Compliance** Supplier represents, warrants, and covenants that it shall supply all Goods in compliance with all applicable federal, provincial, international, national, state and local laws, legislation, rules, codes, regulations and governmental agencies standards,

including, but not limited to, conflict minerals and specialty metals, anti-bribery, labor, environmental, counterfeit goods and counterfeit electronic parts, health and safety laws and regulations, having jurisdiction over activities relating to a PO. Supplier agrees to comply with Buyer's "Supplier Code of Conduct" hyperlinked below (available upon request)<http://www.Buyer.com/AboutUs/Legal/SupplierPortal.aspx>

**i. Governing Law and Submission to Jurisdiction** This PO shall be governed by the laws of the state of New York without reference to its conflict of law provisions. The Parties hereby consent to the exclusive jurisdiction of the courts of New York.

**j. Gratuities/Kickbacks** Supplier shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a supplier to Buyer.

**k. Independent Contractor** It is understood that Supplier is an independent contractor of Buyer. Nothing in this PO shall constitute Supplier or their Permitted Subcontractor being an employee, partner, or agent of, or attorney for Buyer for any purpose, nor is Supplier granted any right or authority to assume or to create any obligation or responsibility, whether express or implied, on behalf of or in the name of Buyer or to in any way bind Buyer. Supplier shall not hold itself out as having any authority to bind Buyer.

**l. Limitation of Liability** IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OR EXPENSES OR LOST PROFITS OR DIMUNUTION IN VALUE, REGARDLESS OF HOW CHARACTERIZED AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY PURCHASE ORDER UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY OR OTHERWISE. THE AGGREGATE LIABILITY OF BUYER FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT PAID FOR THE SPECIFIC PRODUCT OR SERVICE THAT GIVES RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER BUYER'S LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT, OPERATION OF LAW, OR OTHERWISE. NOTHING IN THIS PO SHALL EXCLUDE OR LIMIT SUPPLIER'S LIABILITY UNDER THIS PO, OR SUPPLIER'S LIABILITY FOR FRAUD, PERSONAL INJURY, OR DEATH CAUSED BY ITS NEGLIGENCE OR WILLFUL MISCONDUCT.

**m. Releases and Publicity** No public release of information regarding this PO shall be made without the prior written approval of Buyer.

**n. Remedies** Except as otherwise specified in this Agreement, the rights and remedies of Buyer and Buyer affiliates set forth herein are not exclusive and are in addition to any other rights and remedies available to Buyer and Buyer affiliates at law or in equity.

**o. Security Interests** Supplier hereby represents and warrants that its Services or Goods provide will be free and clear of any and all security interests, liens, claims, charges and encumbrances of any nature whatsoever.

**p. Severability and Interpretation** If any such provision is declared by an arbitrator or a court of competent jurisdiction to be invalid and unenforceable, the validity of the remainder of the PO shall not be affected. Each provision of this PO is severable from the other. Headings in this PO are for the purpose of convenience only and shall not be used in the interpretation of any part of this PO. In this PO, the use of the singular includes the plural and vice versa and the use of any one gender includes all genders.

**q. Survivability** Notwithstanding any expiration or cancellation of this PO, Supplier shall remain obligated under all those provisions which expressly or by nature extend beyond and survive such expiration or cancellation.

**r. Third Party Benefit** This PO has been entered into by Buyer and Supplier and is not intended to and shall not create any rights in or against any third party. Furthermore, if Buyer issues an PO under a US government contract, Supplier hereby acknowledges that any PO placed by Buyer is solely a transaction between Buyer and Supplier and Supplier is prohibited against pursuing any claim directly against the U.S. Government and shall not acquire any direct claim or direct course of action against the US Government except as may be expressly set forth in this terms and conditions document with the Government Contracting Officer's express consent

**s. US Government Orders** If the Goods or Services sought by Buyer are related to a US Government Order, Buyer shall include all applicable clauses set forth in the Federal Acquisition Regulation (FAR) and Department of Defense Federal Acquisition Regulation Supplement (DFARS), as the Government Purchasing Addendum Terms and Conditions attached to this PO (hereinafter the "Addendum"). Such clauses are hereby incorporated and are applicable hereto by this reference except for those that are specially excepted by the FAR/DFARS text of each clause. Where necessary to make the context of these clauses applicable to this PO, the term "Contractor" shall mean "Supplier", the term "Contract" shall mean this "Order," and the Terms "Government," "Contacting Officer," and equivalent phrases shall include "Buyer". The clauses listed shall be those in effect on the date such Order is issued and those clauses are hereby incorporated by reference, if and only to the extent they apply to

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the Goods or Services provided by Supplier without exception or waiver based upon the type, nature, value and location for production of the Goods procured or Services performed under this PO. With regard to each clause, in the event this precondition does not exist, or a waiver or exception applies as set forth in the clause or its implementing regulation, such clause shall be self-deleting. In case of conflict between the body of the PO and the Government Purchasing Addendum Terms and Conditions ("Addendum"), the Addendum will prevail. Supplier shall include in each lower-tier subcontract the appropriate flow down Addendum clauses as required by FAR and DFARS.

**t. Waiver** Failure by either Party to enforce any provision of this Agreement shall not operate as a waiver of the requirements of such provision or law, or as a waiver of the right of a Party thereafter to enforce such provision or law.