

**PURCHASE / WORK ORDER  
TERMS AND CONDITIONS**

**1. ACCEPTANCE**

Acceptance of the purchase order or work order (hereinafter referred to as the "Order") that accompanies these Purchase/Work Order Terms and Conditions (also referred to as the "agreement") is made expressly conditioned upon Seller's assent to the exact terms contained herein. "Seller", which is defined to include a supplier or contractor, is the entity set forth on the front of the Order, or in lieu thereof, the entity to whom the Order is placed. "Buyer" shall have the same meaning as specified in the Order. Any delivery made or work performed in accordance with the Order constitutes an acceptance of these terms and conditions by Seller. Where the Order includes services, all references to "goods" or "products" hereunder shall apply to the services to the fullest extent practicable. Upon acceptance of the Order, the terms and conditions hereof and any supplemental terms and conditions as agreed to in writing and signed by Buyer constitute the entire agreement between the parties.

**2. ACKNOWLEDGEMENT**

Except where the Order is issued pursuant to the terms and conditions of a master document signed by Seller and Buyer, which such master document shall control if any conflicting language exists between the master document and this agreement, the Order becomes a binding contract subject to these terms and conditions when accepted by Seller by acknowledgment of the Order or by Seller's performance pursuant to the Order.

Subject to the terms and conditions of a master document that has been signed by Seller and Buyer, this agreement supersedes all prior proposals, negotiations, representations, agreements and understandings between the Seller and Buyer, and all terms and conditions contained in any Seller-provided Order acknowledgement or acceptance, invoice, quotes or proposals, packing slips or similar documentation, and constitutes the complete and exclusive agreement between Seller and Buyer regarding the goods and/or services subject to the Order. No other agreement or stipulation shall be binding unless made in writing and signed by the authorized representatives of Seller and Buyer. Notice is hereby given to Seller that Buyer objects to any and all additional or inconsistent terms that are not stated herein or separately agreed to in writing. Seller acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Buyer which is not set out in this agreement. Any reference to any Seller-provided Order acknowledgement or acceptance, invoice, quotes or proposals, packing slips or similar documentation stated in an Order or via any other communication (whether verbal or written) is solely for Seller's convenience in record keeping, and no such reference to or request by Buyer for the provision of goods and/or services of Seller shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such Seller-provided documentation. Any such associated terms and conditions in Seller-provided documentation shall be of no force and effect, and shall not in any way be deemed to amend, modify, supersede, alter or supplement this agreement.

**3. PRICING**

Any price specified in this Order for the provision of goods and/or services to be provided by Seller is fixed and not subject to increase, and must not be invoiced at a price higher than that shown on the Order without the prior written consent of Buyer. Except as may be provided on the face of the Order, Seller shall pay all sales, consumer, use, and other similar taxes and expenses, and import duties and tariffs required by law (collectively the "Taxes") on the sale of goods or services to be performed, and shall secure, at Seller's expense, all permits, fees and licenses necessary for the execution of any services unless otherwise instructed by Buyer in writing.

**4. PACKING, LABELING, SHIPPING, AND INVOICING**

Seller shall ship all goods in accordance with the instructions of Buyer. If Buyer does not specify the method of transportation or the route of the shipment, Seller shall select such method and such route as shall provide the most expeditious delivery consistent with the lowest practicable transportation cost. Any freight charges for delivery of goods that are paid by Seller and added to Seller's invoice, if previously agreed by Buyer in writing, shall be properly itemized and supported by copies of receipted freight bills evidencing such payment. All goods purchased or processed pursuant to the Order shall be properly packed and marked by the Seller in accordance with the requirements of the common carrier selected to transport such goods. Seller shall supply material safety data sheets with each Order as required by federal, state or local laws. Seller shall enclose packing slips with all shipments showing the Order number, description, part number and quantity. If improper packing or marking by Seller shall cause loss or additional expense to Buyer, the Seller shall, upon receipt of proof of such loss or expense, promptly reimburse Buyer therefore. Separate invoices must be rendered for each Order. No charge will be allowed for packing, crating, boxing, storage, dunnage, drayage, freight, express or cartage unless stated in the Order. Where Buyer has agreed to accept such charges, the invoice must itemize transportation charges and Taxes as separate items. Seller shall comply with all Applicable Laws relating to the inclusion of all warnings, instructions as to use, disclosure of country of origin, classification of goods and any other packaging and labeling requirements applicable to the goods in the United States and/or other countries to which the goods may be shipped. Seller shall comply with all customs laws and requirements of the United States and of each country in which goods are made or are likely to transit under the Order with respect to: (a) the labeling of the goods and their packaging, and/or (b) the export and import of the goods and the subsequent distribution of the goods to Buyer and/or directly to the Buyer's customers, including but not limited to the completion and submission of all required documentation, and the payment of all Taxes and similar expenses.

**5. DELIVERY / PERFORMANCE**

The delivery of the goods and/or performance of services will be made in the quantities and/or at or by the dates specified in the Order. If the Order specifies a delivery or performance date, Seller, by accepting this agreement, undertakes to deliver or perform by such date(s) as specified in the Order and agrees to be responsible for, and indemnify Buyer against, all loss or claims for loss caused by delivery or performance after such date(s). If Seller learns that timely delivery cannot be made, Seller shall immediately give written notice thereof to Buyer setting forth the cause of delay and probable delivery date. Buyer shall use reasonable diligence in attempting to reduce such loss so far as practicable. Upon receipt of such notice, or upon occurrence of an actual delay or Seller's refusal to make timely delivery, Buyer may, in its sole discretion, without having any liability to Seller: (a) direct expedited routing of the goods, or (b) cancel the Order or any part thereof by written notice to Seller and purchase substitute goods elsewhere. In all such cases, the Seller shall be responsible for all resulting excess costs, including without limitation, any increase in the price paid for the goods and any expenses to expedite routing of substitute goods. Goods that are delivered in advance of specified delivery dates may, at Buyer's option, either: (i) be returned at Seller's expense for redelivery at the scheduled delivery date, or (ii) have payment withheld by Buyer until the date that goods are actually scheduled for delivery. Unless otherwise specified herein, title to goods shall pass to Buyer at the delivery location(s) specified by Buyer. Delivery by carrier will be at Seller's risk. Custom duties, consular fees, insurance charges and other fees related to exportation and importation shall be borne by Seller. Buyer shall not be liable for any error in shipment, such as shipments in excess of quantities specified or for shipment of the wrong goods, and Buyer may reject and return such shipments at Seller's expense which shall include transportation charges both ways. Buyer shall not be liable for any prevention or delay in its performance resulting, in whole or in part, directly or indirectly, from force majeure events, including fires, floods, or other acts of God, strikes, lockouts, or labor disputes, wars, riots, or embargoes, actions by foreign, federal, state or local governments, shortages of transportation equipment, fuel, labor, or any other circumstance beyond Buyer's reasonable control. **TIME IS OF THE ESSENCE UNDER THE ORDER.**

**6. CHANGES**

Buyer shall have the right to make changes to the Order by a written supplemental Order (also may be referred to as a "Change Order") issued to Seller, which may include, but is not limited to, changes in: (a) the specifications, drawings and samples; (b) the method of shipment or packaging; (c) the place and timing of performance or delivery; and (d) the goods and materials, including the types and quantity thereof, or services to be furnished by Seller. If any such change causes an increase or decrease in the cost of, or time required for performance of the Order, Seller shall notify Buyer in writing of such change within five (5) days of receipt of the Change Order and an equitable adjustment may be made to the contract price or performance schedule, or both, by mutual written agreement. Otherwise, Seller will be deemed to have accepted the Change Order without any need for adjustments. Upon receipt of such supplement to the Order or notice thereof, Seller shall promptly take all practicable action to prevent such change from causing any unnecessary or unreasonable cost to Buyer. Buyer shall have no obligation to pay Seller for any standard goods normally stocked by Seller for the Change Order unless Seller shall have shipped such goods to Buyer prior to receipt by Seller of such supplement or notice thereof. Buyer agrees to pay reasonable compensation to Seller for work done prior to receipt by Seller of such supplement or notice thereof where this agreement covers goods to be manufactured, processed or fabricated to Buyer's specification or specifications specially prepared by Seller for Buyer, and Seller shall credit Buyer for all savings caused by such change. Any claim by Seller for adjustment under this clause must be asserted as soon as is practical, but in no event more than thirty (30) days from the date of receipt by Seller of the notification of change.

**7. CANCELLATION**

Buyer may cancel the Order and terminate performance thereunder, in whole or in part, for any or no reason, effective immediately, upon written notice to Seller. Upon receipt of any such notice of cancellation, Seller shall not, unless the notice otherwise directs, ship any goods ordered under the Order and Seller shall immediately discontinue all work and place no further orders for materials and supplies in connection with this agreement, and shall immediately cancel, or attempt to cancel, all existing orders and subcontracts made pursuant to the Order. In no event shall cancellation of the Order by Buyer, or any notice thereof, constitute a waiver by Buyer of any rights against Seller. Cancellation shall not affect any other orders placed or any fully paid up license granted to Buyer or Buyer's rights as to the portions of the Order not cancelled. Upon cancellation, Seller will promptly advise Buyer of the quantity of applicable work and material on hand or purchased prior to cancellation and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Within thirty (30) days after receipt of the notice of cancellation, Seller will submit all claims resulting from each cancellation. Buyer will have the right to investigate such claims, at any reasonable

time or times, by inspecting and auditing the records, facilities, work or materials of Seller relating to the Order. In the event of such cancellation, Buyer will pay to Seller the Order price for finished work accepted by Buyer and the cost to Seller of work in process and raw materials related to the terminated work, based on any audit Buyer may conduct using generally accepted accounting principles. Payment under this clause will constitute Buyer's only liability in the event that the Order is cancelled hereunder. Except as otherwise provided in the Order, the provisions of this clause will not apply to any cancellation by Buyer for breach or default by Seller or for any other cause allowed for under the law. Buyer may immediately cancel the Order by providing written notice to Seller, if Seller: (a) breaches any term or condition contained herein or in any other agreement between Buyer and Seller; (b) becomes insolvent or suspends its business; (c) makes a general assignment for the benefit of creditors, except as required in the ordinary course of business; (d) files a voluntary petition in bankruptcy; (e) suffers or permits the appointment of a receiver for its business or assets; (f) becomes subject to any proceeding under any bankruptcy or any insolvency law, whether domestic or foreign; or (g) has wound up or liquidated its business voluntarily or otherwise. In the event of Seller's failure to perform any of its obligations hereunder, Buyer may, at its option, recover from Seller its expenses, cancellation fees, foreign exchange losses, the Order price less market value differential at the point of delivery, reasonable attorneys' fees, and any other actual, incidental, indirect, special or consequential damages, and may exercise any and all rights and remedies as may be available to Buyer under law or equity, including without limitation the Uniform Commercial Code. Notwithstanding anything herein to the contrary, nothing in the Order shall be deemed to limit any rights Buyer may have against Seller either at law or in equity. Upon receipt of any such notice of cancellation, Seller shall not, unless the notice otherwise directs, ship any goods ordered hereunder and Seller shall immediately discontinue all work and place no further orders for materials and supplies in connection with this agreement, and shall immediately cancel, or attempt to cancel, all existing orders and subcontracts made pursuant hereto. Adjustments, if any, arising out of such termination of goods and/or services due to the cancellation of the Order, in whole or part, shall be made on an equitable basis. The respective obligations of the parties under the Order that by their nature would continue beyond the termination, cancellation or expiration of the Order shall survive any such termination, cancellation or expiration, including, but not limited to, obligations to indemnify, insure, maintain confidentiality, and continued availability of goods support and warranty.

## **8. WARRANTIES**

Seller warrants that Seller possesses and will comply with all applicable permits and licenses, and that Seller will comply with all Applicable Laws in the delivery and performance of the Order. Seller warrants that the goods and/or services supplied shall be of the highest grade and quality unless otherwise specified; shall conform to the specifications, drawings, samples or other descriptions contained in the Order or furnished or specified by Buyer; shall be performed in a professional and workmanlike manner; shall be fit and sufficient for the purpose intended; and shall be merchantable, of good material, design and workmanship, and free from defects. Seller further warrants that the goods and/or services furnished hereunder which are subject to the federal Occupational Safety and Health Act of 1970, as amended ("OSHA"), or any OSHA state equivalent statute and the rules and regulations thereunder, will conform to all applicable standards and requirements as set forth therein. These warranties are in addition to those implied by or available at law to Buyer and shall exist notwithstanding the acceptance and/or inspection by Buyer of all or part of the goods or services. Seller agrees to furnish Buyer, at Seller's expense and upon Buyer's written request, with such certificate or certificates as are normally furnished in the industry or trade, by a person or firm satisfactory to Buyer, containing analysis of the type so requested by Buyer of the materials used in filling this Order. Seller's warranties shall survive cancellation of the Order or any part thereof and shall survive any intermediate or final inspections, delivery, acceptance, or payment by Buyer. All warranties shall extend to Buyer, and its affiliates, and their respective successors, assigns, customers, and users of the goods and/or services. No warranties shall be deemed disclaimed or excluded unless such disclaimer or exclusion is in writing and signed by an authorized representative of Buyer. Seller shall make timely repair or replacement of defective or nonconforming goods and/or re-performance of defective or nonconforming services, at no cost to Buyer, in Buyer's sole discretion, at any time within the applicable warranty period of the goods and/or services.

## **9. RISK OF LOSS**

Risk of loss and/or damage to any goods furnished or services performed hereunder shall be borne by Seller until the goods are physically delivered to, or the work is fully incorporated into, Buyer's facility as specified on the face of the Order, and upon Buyer's acceptance thereof.

## **10. PAYMENT**

Upon satisfactory performance by the Seller, the Buyer shall make provision for payment for delivered goods and/or services within a reasonable time after receipt of the goods and/or completion of the service, as agreed to by both parties. All payments to be made hereunder may be withheld by Buyer on account of: (a) defective or nonconforming goods or services not remedied; (b) claims made or filed; (c) unsatisfactory performance; (d) failure of Seller to pay any subcontractors; or (e) any amounts owed by Seller to Buyer or its affiliates. Acceptance of any payment made by Buyer shall constitute Seller's release of any lien rights and any and all claims arising prior thereto which Seller may have against Buyer or Buyer's inventory, equipment, or property for the goods supplied or services performed by Seller for which payment was made. Should any fine, excise tax, countervailing, antidumping, or other duty or surcharge be assessed against a shipment, Seller shall be responsible for such fines, duties or charges, whether assessed against Seller, Buyer, or Buyer's customer. Payment in accordance with the Order does not constitute acceptance of the goods and/or services by Buyer under this agreement.

## **11. INDEMNIFICATION / RELEASE**

Seller agrees to indemnify, hold harmless, protect and defend Buyer and its affiliates, and their respective directors, officers, employees, successors, assigns, agents, guests, invitees, customers, and users of Seller's goods and/or services (collectively "Buyer Group") from and against any and all liability, loss, damage, fine, penalty, cost or expense (including attorneys' fees) by reason of any allegation, claim, action or suit, whether for death, personal injury, property damage or otherwise (collectively "Losses"), arising out of or related to: (a) failure of the goods or services supplied to meet specifications or warranties; (b) any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trademark, service mark, trade secret or other intellectual property rights arising from the design, manufacture, purchase, use or sale of such goods or services; (c) any leak or spill of any goods while being transported or delivered to Buyer; (d) any breach by Seller of any term or condition contained in the Order; (e) faulty workmanship or any defect or non-conformance in the goods and/or services; (f) Seller's use of faulty materials; (g) Seller's use, if any, of Buyer's property; or (h) the acts, omissions, or willful misconduct of Seller, Seller's employees and subcontractors, including without limitation their respective agents and representatives, and all other persons performing any services under the Order with the Seller, whether or not caused in part by a party indemnified hereunder.

In the event that the goods or services, in Buyer's reasonable opinion, are likely to infringe upon a patent, copyright, trademark, service mark or other intellectual property right, or misappropriate a trade secret (and in any event, if a court of competent jurisdiction finds that the goods or services do infringe or misappropriate), the Seller shall further provide Buyer one of the following forms of relief to be chosen by Buyer: (a) obtain a license on Buyer's behalf to continue to use or sell the goods or services; (b) redesign the goods or services so that they do not infringe or misappropriate; or (c) refund Buyer the price paid for the goods or services in question and reimburse Buyer reasonable costs for obtaining a substitute seller to provide the goods and/or services.

The indemnification obligations under this section shall not be limited in any way by any indemnity or limitation on the amount or type of damages, compensation or benefits payable by or for Seller, any subcontractor, or anyone directly or indirectly employed by any of them under workers' compensation acts, disability benefit acts, or other employee benefit acts.

To the extent that the Order calls for work to be performed upon property owned or controlled by Buyer, it is agreed that Seller will indemnify, hold harmless, protect and defend Buyer Group from and against any and Losses arising out of or incidental to the performance of the Order. The indemnities given above in this section shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of any indemnified party of the Buyer Group or any other entity or party and shall apply irrespective of whether any claim is based in tort, under contract, or at law or in equity.

## **12. CONFIDENTIALITY**

Seller, and its directors, officers, employees, agents, and permitted assigns shall keep confidential all non-public, confidential or proprietary information, including without limitation, specifications, drawings, prints, technical information, know-how, data, and information furnished by Buyer or prepared by Seller in connection with the performance of the Order (including the existence and terms of the Order) and all other written or oral communications in connection therewith (collectively "Confidential Information") and shall not divulge or use such Confidential Information for the benefit of itself or any other party, except as required for the performance of the Order, unless otherwise agreed to by Buyer in writing. Upon completion of the Order, Seller shall make no further use, either directly or indirectly, of any such Confidential Information and shall return to Buyer or destroy such Confidential Information upon Buyer's request. Patent and all other intellectual property rights in and to any modifications or improvements embodied in designs, tools, patterns, drawings, information and equipment supplied by Buyer under the Order and exclusive rights for the use and reproduction thereof are reserved by Buyer. Seller shall be liable for, and shall indemnify, hold harmless, protect and defend Buyer against, all loss or damage resulting from any unauthorized use or disclosure of Confidential Information as described herein. No information or knowledge disclosed by Seller to Buyer shall be deemed confidential unless Buyer shall have acknowledged in writing, prior to receipt of same, that such information or knowledge is confidential. Buyer shall be bound only by such writing, and in the absence of such writing, shall be free to disclose any such knowledge or information.

## **13. INSPECTION / REJECTION OF GOODS AND/OR SERVICES**

All goods purchased and received and/or services performed hereunder are subject to inspection by Buyer upon delivery or performance to determine conformity with the Order and any additional

specifications stated by Buyer. Buyer shall have a reasonable time after delivery or performance to inspect the goods and/or services, to either accept or reject such goods, or any part thereof; provided however, that if the goods or services have defects of a type not discoverable by visual inspection, Buyer reserves the right to reject such goods or services when such defects are discovered. Buyer shall promptly notify Seller of any goods or services so rejected and may return such goods to Seller for a refund, and/or request re-performance or refund of such services, at Seller's sole cost. Upon receipt of such rejected goods or services, Seller, if Buyer has already paid for same, shall promptly deliver to Buyer a refund in the amount of the price Buyer paid and shall reimburse Buyer for transportation costs both to and from Buyer's location and other costs directly incurred by Buyer as a result thereof. Buyer reserves the right to determine whether any goods received or services performed pursuant to the Order are satisfactory for Buyer's purposes and in no event shall payment by Buyer to Seller constitute a waiver of Buyer's right to inspect, nor shall such payment constitute a waiver by Buyer of any warranties, indemnities, or other rights at law or in equity.

Inspection at Seller's facility: Buyer reserves the right to inspect any goods and/or equipment or any services to be performed at Seller's facility pursuant to the Order during normal business hours. If any such inspection should be performed, the Seller shall furnish without additional charge all reasonable facilities and assistance necessary for such inspection.

The cost of inspection of goods or services rejected by Buyer shall be charged to Seller. If reasonable inspection discloses that part of the goods or services received are defective or nonconforming, Buyer shall have the right to cancel any unshipped goods or unperformed services under the Order. Buyer may, at its option, purchase substitute goods in lieu of any rejected goods, with the Seller being responsible for all resulting costs, including, without limitation, any increase in the price paid for the goods or services and any expenses to expedite routing or performance of the substitute goods or services. Payment for goods or services in the Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller. The making or failure to make any inspection of, or payment for, or acceptance of the goods or services, shall in no way impair Buyer's right to reject defective or nonconforming goods or services, recover damages, or to exercise any other remedies to which Buyer may be entitled. Acceptance of any goods or services by Buyer after breach of the terms and conditions of the Order by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach.

#### **14. COMPLIANCE WITH LAWS**

Seller shall, in filling the Order, comply with all applicable federal, state and local laws, rules and regulations, codes, ordinances and orders (collectively "Applicable Laws"). Applicable Laws include without limitation, the Fair Labor Standards Act of 1938, as amended, the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, Federal Acquisition Regulation (FAR) 52.222-26, Executive Orders 11246, 11375 and 11141 (Title 41, Chapter 60, Code of Federal Regulations), the Vietnam Era Veterans Readjustment Act of 1974, Executive Order 11701, and Title 41, Section 50.250.2, Code of Federal Regulations, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Executive Order 11758, and Title 20, Chapter 6, Part 741, Code of Federal Regulations, Executive Order 11458, and Title 41, Subpart 1-1.13, Code of Federal Regulations, relating to Minority Business Enterprises, and all amendments thereto, and all regulations, rules and orders thereunder. Applicable Laws also includes without limitation, U.S. export control, sanctions, and anti-corruption laws and regulations, such as, but not limited to: the U.S. Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78m, 78dd-1, 78dd-2, and 78dd-3; the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 et seq.; the Export Administration Regulations, 15 C.F.R. §§ 730-744; the U.S. Anti-Boycott Regulations, 15 C.F.R. § 760; and, the United States restrictions pursuant to the Foreign Assets Control Regulations, 30 C.F.R. Parts 500-599, and the Iran Sanctions Act of 1996, (Public Law 104-172, 50 U.S.C. 1701 note, as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195)).

Seller certifies that, unless specifically exempted, all goods and/or services furnished by Seller under the Order have been manufactured, processed and delivered and all labor shall be performed in full conformance with all Applicable Laws and all Seller's invoices delivered to Buyer shall contain a certificate stating compliance. Buyer is an Equal Opportunity Employer, and the Order is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapter 60 and 61 and, unless the Order is exempt, there is incorporated herein by reference and Seller shall comply with: 41 C.F.R. Section 60-1.4; 41 C.F.R. Section 60-250.4, 41 C.F.R. Section 60-741.4; and 41 C.F.R. Section 61- 250.10.

#### **15. CONFLICT MINERALS COMPLIANCE**

Unless Seller and Buyer agree otherwise in writing signed by both parties, Seller warrants that: (1) none of the goods or services provided to Buyer pursuant to the Order will contain any conflict minerals (currently, gold, tin, tantalum, and tungsten) that may be subject to reporting requirements or other restrictions in any country or region; (2) Seller will fully respond within thirty (30) days to Buyer's requests for information regarding the sources of Supplier's conflict minerals, if any; and (3) Seller has implemented conflict minerals supply chain due diligence policies and procedures that are consistent with internationally recognized standards.

#### **16. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT)**

Seller shall confirm to Buyer in writing whether it is C-TPAT certified. If C-TPAT certified, Seller shall provide a copy of documentation verifying the certification to Buyer and also provide Buyer with Seller's SVI#. If Seller is not eligible for C-TPAT certification, Seller shall, if eligible, obtain certification in a commensurate supply chain security program administered by a foreign Customs Administration and provide a copy of documentation verifying the certification to Buyer.

In any event, including where Seller is not C-TPAT certified, Seller shall adhere to the C-TPAT Security Criteria applicable to its function(s) in the supply chain. The C-TPAT Security Criteria are available at <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/security-criteria>. The applicable C-TPAT Security Criteria may include but are not limited to, screening of business partners for compliance with C-TPAT supply chain security requirements and establishing and maintaining applicable cargo and conveyance security procedures, physical access controls, personnel security procedures, procedural security procedures, physical security procedures and information technology security procedures to prevent the introduction of unauthorized materials and contraband into the supply chain.

Seller shall communicate the C-TPAT Security Criteria to its subcontractors, suppliers, transportation/distribution providers, third party service providers and other business partners and, to the extent practicable, condition its business relationships on adherence to the C-TPAT Security Criteria. Seller shall not assign or subcontract its performance under this agreement to any party that does not comply with the C-TPAT Security Criteria.

Seller represents and warrants that all goods and services provided to Buyer will be manufactured, produced, provided and/or procured in compliance with the applicable C-TPAT Security Criteria.

Seller shall provide prompt written confirmation to Buyer that it is in compliance with such applicable C-TPAT Security Criteria upon request. Seller understands and agrees that by accepting the Order it is subject to audit and verification of compliance with the applicable C-TPAT Security Criteria by Buyer or Buyer's authorized representative upon reasonable notice.

Seller understands and agrees that it must regularly review the C-TPAT Security Criteria and ensure that it has the proper supply chain security measures in place.

#### **17. DISPUTES**

Jurisdiction over any controversy or claim arising out of, or relating to the Order or the breach thereof, shall be in a court of competent jurisdiction where Buyer's facility to which the goods are to be delivered and/or services are performed is located. However, Buyer, at its discretion, may elect to have any controversy or claim arising out of, or relating to the Order or the breach thereof, settled by arbitration in the jurisdiction where Buyer's facility to which the goods and/or services are to be delivered or rendered is located, in accordance with the commercial rules (or in case of construction services, the construction rules) then in effect for the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction as provided hereunder. Such arbitration award shall be final and binding and the arbitrator shall not be empowered to award punitive damages.

#### **18. CHOICE OF LAW**

The laws of the State of Texas, except where the delivery of goods and/or performance of services take place in the Ohio in which case the laws of the State of Ohio shall apply and, shall govern the validity, construction, and interpretation of these terms and conditions, without regard to conflict of laws principles. Seller shall comply with all applicable statutes, rules, by-laws, regulations and executive orders of the State of Texas (or Ohio, where applicable as stated hereunder) or of any political or territorial sub-division thereof in connection with the production and/or delivery of the goods or performance of services specified in the Order. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods adopted in Vienna on April 11, 1980 shall not apply to this Order.

#### **19. REMEDIES, WAIVER, AND SEVERABILITY**

All of Buyer's remedies arising under this agreement shall be cumulative and in addition to all other remedies provided at law or in equity. These terms and conditions constitute the entire agreement

between Buyer and Seller. The terms and conditions herein may be waived, supplemented or altered only by instrument in writing executed by a duly authorized officer of Buyer and by a duly authorized officer or employee of Seller. A waiver by Buyer of any breach of any provision hereof shall not constitute a waiver of a subsequent breach of such provision or a waiver of any breach of any other provision. In the event any of these terms and conditions shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other portion of these terms and conditions, and there shall be deemed substituted for such provision(s) that are permitted by Applicable Laws and that will most fully realize the intent of the parties as expressed herein.

#### **20. NOTICE**

Except as otherwise provided herein, any notice or demand required or permitted hereunder pertaining to the Order shall be in writing and shall be deemed sufficient if given by personal delivery, certified mail, with postage prepaid and return receipt requested, or prepaid delivery using a recognized private courier service, to each party at its address set forth in the Order. The parties also may agree in writing to accept identified types of notice or demand by facsimile or email sent to a recipient's designated facsimile number or email address. Either party may, by notice to the other, change its address for receiving such notices.

#### **21. ASSIGNMENT / SUBCONTRACTING**

The Order and the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the prior written consent of the other party and any purported assignment shall be void. Seller will not subcontract this Order or any portion hereof to any third party without Buyer's prior written consent.

#### **22. COPYRIGHT**

By filing the Order, Seller grants Buyer a royalty free license to copy, modify and create derivative works of all documentation and materials received as part of the Order. Buyer shall have the right to use this royalty free license without regard to any copyright notice and/or proprietary notice which Seller may place on such documentation or materials.

#### **23. BUYER'S AUDIT RIGHTS**

During Seller's performance of the Order and for a period of three (3) years following completion of performance, Buyer or its designated third party agent shall have the right upon reasonable notice and during normal business hours to audit the facilities and records of Seller as reasonably necessary in order to ensure compliance with the terms of the Order or for any other purpose relating to the Order. Seller shall retain all records related to the Order for a minimum of three (3) years following completion of Seller's performance. Buyer will use commercially reasonable efforts to minimize any inconvenience to Seller as a result of such audit.

#### **24. NON-SOLICITATION AND PUBLICITY**

During the performance of the Order and for one (1) year thereafter (collectively, the "Restricted Period"), Seller, whether for its own account or the account of any other person or entity at any time, shall not, directly or indirectly, employ, solicit for employment, or induce or attempt to induce any employee of Buyer or its affiliates to terminate their employment with Buyer.

Seller shall not issue or cause to be issued any press release, public announcement or disclosure of any kind or nature whatsoever or otherwise disclose the existence of the Order or the transactions contemplated hereby except to the extent that both parties agree in writing to such press release, public announcement or disclosure. Seller agrees that it will not use Buyer's name, trade name or trademark in any way without the prior express written consent of Buyer.

#### **25. RELATIONSHIP OF THE PARTIES**

Neither party undertakes by the Order or otherwise to perform or discharge any liability or obligation of the other party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other party. Nothing contained in the Order is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers. This agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. In providing any goods or services under the Order, Seller is acting solely as an independent contractor and not as an agent of Buyer. Persons furnished by the Seller shall be solely the employees or agents of Seller, shall be under the sole and exclusive direction and control of the Seller, and shall not be considered employees of the Buyer for any purpose. Seller shall be responsible for compliance with all Applicable Laws involving its employees or agents, including but not limited to employment, hours of labor, health and safety, working conditions and payment of wages. Seller is also responsible for payment of taxes, including federal, state, and municipal taxes chargeable or assessed with respect to its employees or agents, such as social security, unemployment, worker's compensation, disability insurance and federal and state income tax withholding.

#### **26. SELLER'S RESPONSIBILITIES**

Seller shall be solely responsible for all construction methods and procedures and for coordinating performance of the Order, and shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Order. Seller shall give all notices and comply with all Applicable Laws in the performance of the Order and shall promptly notify Buyer in writing in the event of any non-conformance, including without limitation in the specifications or drawings. Seller shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Order and shall comply with all federal and state safety laws, rules, regulations, codes and ordinances as well as Buyer's facility's rules, including without limitation, safety and environmental rules.

#### **27. USE OF EQUIPMENT**

Seller shall not use Buyer-supplied equipment, tools, scaffolding or other materials without Buyer's prior written consent. Seller hereby acknowledges that Seller shall inspect any Buyer-supplied equipment, tools, scaffolding and/or other materials, and that Seller will not use the same unless they are suitable for Seller's intended use and conform to all Applicable Laws. Seller assumes full responsibility for the proper use and safe handling of such equipment, tools, scaffolding and/or other materials and shall return the same to Buyer in a like condition in which they were borrowed. Buyer reserves the right to withhold payment of Seller's invoice until Seller has returned all of Buyer's property in satisfactory condition or has reimbursed Buyer for the fair market value of all loss or damage, if any.

#### **28. INSURANCE**

Seller shall maintain in full force and effect at all times during the performance of this Order, the following policies of insurance issued by a carrier with an A.M. Best rating of A- VIII or better: (a) Workers Compensation Insurance with coverage in all applicable states with limits in accordance with the statutory requirements of each applicable state, and Employer's Liability Coverage, including occupational disease with a limit not less than \$1,000,000 per occurrence; (b) Commercial General Liability Insurance covering Supplier's operations, including without limitation contractual and product liability coverage, with combined single limits for bodily injury, personal injury and property loss or damage not less than \$2,000,000 per occurrence; (c) Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage, including owned, non-owned and hired vehicles; and (d) Professional Liability Insurance in an amount not less than \$2,000,000 per occurrence including without limitation coverage for errors and omissions caused by Supplier's negligence in the performance of its duties under this Order. All insurance policies shall be primary and non-contributory with any insurance available to Buyer, and shall name Buyer as an additional insured and loss payee. Seller shall provide Buyer with written proof of insurance prior to commencing performance of its obligations under the Order and at any time where requested by Buyer in writing. Buyer shall be given at least thirty (30) days written notice prior to cancellation, lapse or any other material change to insurance policies described above. The insurance required in this section shall not affect Seller's other obligations under this agreement and shall not be deemed to limit Supplier's liability in any manner.

#### **29. CONSTRUCTION ZONE**

To the extent possible, Buyer will relinquish control over the construction zone to Seller for the duration of any construction related services to be performed under the Order and Seller hereby assumes exclusive control over services performed in the construction zone. To the extent possible, Seller shall physically separate the construction zone from the remainder of the premises. To the extent possible, Buyer's use of the construction zone will fully cease upon Seller's entrance to the construction zone. Seller is hereby assigned the full responsibility for safety and management over persons and property within the construction zone in conjunction with Buyer's safety policies and procedures. Seller agrees to explicitly warn and notify its subcontractors and its and their employees, agents, representatives, guests and visitors of any risks, hazards, or peculiar dangers associated with the construction zone for which Buyer has made Seller aware, or for which Seller should be reasonably aware. Seller shall periodically, as necessary, but not less than once a day, inspect the construction zone for risks, hazards and dangers, whether patent or latent, and Seller shall thereafter eliminate such risks, hazards or dangers, or to the extent not eliminated, warn its subcontractors and its and their respective employees, agents, representatives, guests and visitors of such risks, hazards or dangers. The foregoing responsibilities of Seller shall continue throughout the period of construction.