



## MEURER RESEARCH, INC. ("Buyer") GENERAL TERMS AND CONDITIONS

**I. ACCEPTANCE.** Seller acknowledges and agrees that these General Terms and Conditions ("Terms") are incorporated in, and a part of, the Purchase Order and each purchase order, change order, release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form or by electronic data interchange, relating to the goods and/or services to be provided by Seller to Buyer (hereinafter collectively referred to as "Purchase Order"). Seller acknowledges and agrees that it has read and understands these Terms and the Purchase Order. If Seller accepts the Purchase Order in writing OR commences any of the work or services that are the subject of the Purchase Order, Seller will be deemed to have accepted the Purchase Order and these Terms in their entirety without modification. Any additions to, changes in, modifications of, or revisions of the Purchase Order, including these Terms, which Seller proposes will be deemed to be rejected by Buyer except to the extent that Buyer expressly and specifically agrees in writing to accept any such proposals. However, the Purchase Order shall not operate as a rejection of Seller's entire offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods. If the Purchase Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained herein. Should Seller not deliver to Buyer, within ten (10) Days of the issuance of the Purchase Order, a copy of the Purchase Order bearing Seller's acceptance thereof in the manner required therein, Buyer may deem Seller to have repudiated the Contract, and Buyer may thereupon, or at any time thereafter, retract the Purchase Order without in so doing incurring any liability and without prejudice to any other rights, remedy or recourse Buyer may have as a result of such repudiation.

**II. SCOPE OF WORK.** (A) Seller shall manufacture, supply and deliver all the equipment or material and perform all the work required, or necessarily implied (collectively the "Work"), strictly in accordance with the Purchase Order. Where the specification indicates that the equipment as delivered by Seller is required for a particular purpose, the equipment will be fit for that purpose, regardless of any claim to the contrary by the Seller. (B) The equipment and all required or necessarily implied work shall be complete in all respects (except in respects expressly excluded by the specification). If any detail shown on drawings which are a part of the documentation is omitted from the text of the specification or vice versa, Seller shall, notwithstanding such omission, supply such detail and shall be deemed to have allowed for the same in the price. (C) Unless otherwise agreed in writing by Buyer, all the equipment shall be new and unused and shall be designed and manufactured in accordance with the specification and/or documentation. Where no standard or codes of practice are specified, the equipment and all associated work shall be in accordance with the generally accepted best codes of practice of the industry concerned. (D) Before commencement of the Work, Seller must ensure entire scope of Work, along with any drawings and/or specifications provided by Buyer, is completely understood. Where Seller discovers any error, omission, inconsistency, ambiguity, conflict, uncertainty or other defect in the drawings and/or specifications, it shall promptly (and before proceeding with the Work affected thereby) bring it to the attention of Buyer in writing, and Buyer shall advise and instruct Seller as to the desired interpretation.

**III. SPECIFICATION, DESIGN & SCOPE CHANGES.** Buyer may at any time require Seller to implement changes to the specifications or design of the goods or to the scope of any services or work covered by the Purchase Order, including work related to inspection, testing or quality control. While Buyer will endeavor to discuss any such changes with Seller as early as practical, Seller will promptly implement such changes. Buyer will equitably determine any adjustment in price or delivery schedules resulting from such changes. In order to assist in the determination of any equitable adjustment in price or delivery schedules, Seller will, as requested, provide information to Buyer, including documentation of changes in Seller's cost of production and the time to implement such changes. In the event of any dispute arising out of such changes, Buyer and Seller will work to resolve said dispute in good faith; provided, however, that Seller will continue performing under the Purchase Order, including prompt implementation of changes required by Buyer, while Buyer and Seller resolve any such dispute.

**IV. SHIPPING.** Seller shall: (a) properly pack, mark and route/ship goods as instructed by Buyer or any carriers in accordance with applicable laws and regulations; (b) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in the Purchase Order; and (c) provide packing slips with each shipment that identifies the Purchase Order and/or release number and the date of the shipment.

**V. BILLING.** If the Purchase Order is not priced, it shall not be filled at prices higher than those last quoted and charged Buyer for comparable goods or services. Upon the submission of proper invoices, Seller shall be paid the prices stipulated in the Purchase Order for goods and services delivered and accepted less adjustments for shortages, rejections, back charges or other provisions of the Purchase Order. Buyer may withhold payment for any goods or services until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances or claims on such goods and services by any entity, specifically including the project Owner or Contractor. No payment is final acceptance of goods or services nor is it a waiver by Buyer of any of its rights or remedies under the Purchase Order. Provided Buyer is paying Seller in accordance with the Purchase Order, Seller shall pay when due all of its obligations to third parties incurred in connection with any goods and/or the performance of any services and shall keep Buyer's property free and clear of all liens and other encumbrances arising out of any goods or services. If Seller should breach this Section, then, in addition to any other rights that Buyer may have against Seller, Buyer may withhold payment from Seller until sufficient funds have been withheld to satisfy such obligations and/or to cause the release of such liens or other encumbrances.

**VI. PAYMENTS TO SUB-SELLERS.** (A) In the event circumstances so require, Buyer shall, upon advance written notice to Seller, have the right to pay directly to any Sub-Seller (or employee of Seller or of a Sub-Seller) any sum due or to become due from Seller or a Sub-Seller to any of them for performing or providing any work, labor, material, supplies, tools, equipment or other things used, or intended for use, in connection with the Work. (B) Any sums paid pursuant to Section A or by agreement with Seller or which Buyer may howsoever be bound or compelled to pay to a Sub-Seller or such an employee, shall, as between Buyer and Seller, be deemed to have been paid to Seller and may be deducted from monies owed Seller, or Seller shall upon demand reimburse the same to Buyer.

**VII. DELIVERY SCHEDULES.** Deliveries will be made in the quantities, on the dates, and at the times specified by Buyer in the Purchase Order or any subsequent release, change order or instruction Buyer issues under the Purchase Order. **Time is of the essence with respect to all delivery schedules Buyer establishes.** Buyer will not be required to pay for any goods that exceed the quantities specified by Buyer or to accept goods that are delivered in advance of the delivery date specified in Buyer's delivery schedules. At the option of the Buyer, all such over-shippments or early shipments may be returned at the Seller's expense and risk of loss. If Buyer determines that the requirements of Buyer's customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the date of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other modification of the Purchase Order.

**VIII. PREMIUM SHIPMENTS.** If Seller fails to have goods ready and complete for shipment in time to meet Buyer's delivery schedules using the method of transportation originally specified by Buyer and, as a result, Buyer requires Seller to ship the goods using a premium (more expeditious) method of transportation, Seller will ship the goods as expeditiously as possible. Seller will pay, and be responsible for, the entire cost of such premium shipment.

**IX. QUALITY INSPECTION.** Goods shall be subject to Buyer's reasonable inspection and approval. Inspection may take place at any time and at any place as designated by Buyer. Buyer shall have a reasonable time, but not less than six (6) months, within which to reject or revoke acceptance of any goods or services. Buyer reserves the right to refuse any goods or services and to cancel all or any part of the Purchase Order if Seller fails to deliver any part of the goods or services in accordance with the Purchase Order or if Seller fails to perform in compliance with the Purchase Order. Goods rejected at the delivery address will be held for Seller's instructions, and Buyer's reasonable expenses incurred in connection therewith shall be for Seller's account. Goods rejected at Seller's location will be reworked to meet Buyer's expectations as specified in the Purchase Order. Buyer's failure to inspect shall not constitute a waiver of any of Buyer's rights or remedies or relieve Seller of any of its obligations under the Purchase Order. Buyer's inspection of goods shall not constitute acceptance of such goods. Title to the goods shall pass to Buyer at such time as

Buyer takes actual possession of the goods at the delivery address. Seller shall be liable and pay for all costs of transporting the goods to the delivery address and shall bear all risk of loss of, or damage to, the goods from any cause whatsoever until Buyer takes actual possession at the delivery address. All goods designated for international delivery shall be shipped on the basis of and in accordance with such of the then most recently published Incoterms as conform to the preceding two sentences hereof.

**X. PLANNING, SCHEDULING AND PROGRESS REPORTING.** (A) Unless otherwise specified in the Purchase Order, or unless previously provided, Seller shall deliver to Buyer, no later than ten (10) Days following the Purchase Order effective date, for Buyer's approval, in a digital format, a complete detailed schedule covering the Work (the "Work Schedule"). The Work Schedule shall (i) be consistent with the key milestones as noted on the Purchase Order, (ii) be in a format enabling Buyer to continuously monitor progress against the original and contractual schedule, (iii) as a minimum contain the phases of, as applicable, design, engineering (including two (2) weeks for Buyer's review time), procurement of materials / components from Sub-Sellers (tracking major items separately), receipt of materials / components, a sequenced timing of fabrication (including required hold-points, inspection and testing) and the time allotted for the preparation for shipment. Seller shall provide update on work schedule to Buyer at a frequency of minimum two (2) weeks unless specifically mentioned otherwise in Purchase Order. (B) There shall be no revision to the Work Schedule, except in accordance with the terms hereof, without Buyer's prior written approval. (C) Seller shall immediately notify Buyer if Seller becomes aware of any event or situation likely to delay or otherwise impact the Work Schedule (including, without limitation, difficulties in procurement, labour disputes, Force Majeure events, events affecting Seller, Sub-Sellers or their respective shareholders, organizations, etc.). Seller's notice shall (i) describe the event or situation, (ii) describe the consequences thereof on the Work Schedule, (iii) describe any corrective action taken or proposed to be taken by Seller. This information shall not release Seller from its obligation to carry out the Work in accordance with the Work Schedule nor shall it oblige Buyer to accept the consequences of any such event or situation. Seller's notice shall also notify Buyer, if applicable, that Seller intends to claim any relief or compensation, and state the grounds relied upon by Seller in so doing. Should Seller fail to so notify Buyer within ten (10) Days of Seller becoming aware of the event or situation, Seller shall be deemed to have waived any right it may have to claim relief or compensation on the grounds thereof.

**XI. NON-CONFORMING GOODS.** Buyer is not required to perform inspections of any goods or services, and Seller waives any right to require Buyer to conduct any such inspections. Seller will not substitute any goods for the goods covered by the Purchase Order unless Buyer consents in writing. Seller understands that Buyer is a provider of quality goods and services and as a vendor/subcontractor (independent) of Buyer, Seller is required to provide exceptional quality in its work; otherwise, Buyer may reject such goods as non-conforming. If Buyer rejects any goods as non-conforming, Buyer may, at its option, (a) reduce the quantities of goods ordered under the Purchase Order by the quantity of non-conforming goods, (b) require Seller to replace the non-conforming goods, and/or (c) exercise any other applicable rights or remedies. If Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming goods within forty-eight (48) hours of notice of Buyer's rejection of non-conforming goods (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to dispose of the non-conforming goods and may elect to arrange for the shipment of any non-conforming goods back to Seller at Seller's expense. Seller will bear all risk of loss with respect to all non-conforming goods and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose of any non-conforming goods. Buyer's payment for any non-conforming goods will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming goods. Seller understands that if there have been any previous projects between Buyer and Seller where Seller provided Buyer with similar goods or services, said previous project(s) have no bearing on the quality required pursuant to the Purchase Order.

**XII. FORCE MAJEURE.** Either party shall be excused from performance of its obligations under the Purchase Order if such party suffers a force majeure event, which shall mean and be limited to an event caused by an act of God, epidemic, earthquake, fire, flood, riot, civil disorder, terrorism, government regulation or action, or other substantially similar cause, and which could not have been prevented or circumvented by reasonable precautions or commercially accepted processes of the party experiencing the force majeure event; provided that a party that suffers a force majeure event shall immediately inform the other party upon the occurrence of such event and shall take all reasonable steps to remedy the situation so that it is again able to perform its obligations under the Purchase Order. A force majeure event does not include labor disputes or shortages of raw materials, transportation, fuel or supplies. Buyer may immediately terminate the Purchase Order without liability upon notice of any such force majeure event.

**XIII. WARRANTY.** (A) Seller warrants and guarantees to Buyer, its successors, assigns and customers that the goods and services covered by the Purchase Order will (a) conform to all applicable specifications, drawings, samples, descriptions, brochures and manuals furnished by Seller or Buyer, (b) be merchantable, (c) be of good material and workmanship, (d) be free from defect, (e) be fit and sufficient for the particular purposes intended by Buyer and any customer of Buyer, (f) be new, not reconditioned or used, or repaired, unless otherwise specified on the Purchase Order by the Buyer, and (g) be free of all liens and encumbrances. The Seller is responsible and accountable for ensuring the authenticity of the goods delivered pursuant to the Purchase Order. The Seller shall immediately replace any counterfeit, fraudulent and/or substandard products discovered during the warranty period with authentic products, and Seller shall be responsible for any associated rework or repair costs associated with any such replaced counterfeit, fraudulent and/or substandard products. The Seller understands that delivery by the Seller of any counterfeit, fraudulent and/or substandard products may result in penalties and/or criminal charges. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs or back charges for nonconforming goods; (B) Unless otherwise noted in the Purchase Order, the period of each foregoing warranty will be twelve (12) months from equipment being put in operation or twenty-four (24) months from date of shipment whichever is earlier. (C) If any fault or defect in, or nonconformity of the Work is discovered by either Party during the Warranty Period, that Party shall so advise the other, and Seller shall take all measures necessary to correct any and all such faults, defects or nonconformities, or to replace or have replaced the faulty, defective or nonconforming Work with the greatest diligence. Without detracting from or limiting the generality of the foregoing, Seller shall (i) as soon as possible but in any event within two (2) business days of the discovery (if discovered by Seller) or Buyer's notice (if discovered by Buyer), advise Buyer of the measures intended to be taken by Seller and Seller's proposed schedule for so doing, (ii) amend such plan in accordance with Buyer's reasonable requirements, if any, and (iii) promptly implement such plan. All costs associated with the foregoing, including, without limitation, dismantling and reinstallation of the Work, supervision, travel, shipping and insurance, shall be borne by Seller. Seller shall compensate Buyer for all costs associated with the foregoing incurred by Buyer, including, without limitation direct expenses along with reasonable administrative expenses. (D) Should there be urgency in rectifying any such faults, defects or nonconformities, Buyer may, by notice to Seller, take any of the actions required to be taken by Seller or such other actions as are reasonable in the circumstances, without in so doing relieving Seller of any of its obligations and Seller will pay all costs incurred by Buyer in so doing. (E) In the event any software, hardware or firmware forms any part of the Work, Seller warrants that such software, hardware or firmware will perform in substantial conformance with the documentation delivered with it and will contain no back door, time bomb, drop dead device, or other software routine designed to disable the system automatically with the passage of time or under the positive control of a person other than the end user, and such software, hardware or firmware shall be free from any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access, or to disable, erase or otherwise harm software or hardware.

**XIV. SUSPENSION OF PERFORMANCE.** Buyer may at any time, at its sole discretion, upon giving written notice to Seller, order a suspension of the Work, in whole or in part; such suspension shall entitle Seller to an extension of time (but not more than on a day-for-day basis) and compensation for unavoidable costs incurred as a direct result of the suspension; provided that where Buyer instructs Seller to postpone Delivery, no such compensation shall be payable in respect of the first sixty (60) days of postponement.

**XV. TERMINATION FOR CAUSE** (A) Buyer may, by written notice to Seller, terminate the Purchase Order, or any part thereof, if Seller breaches the Purchase Order or Terms, or becomes insolvent, or files for bankruptcy protection ("Seller Event of Default"). By way of example, a Seller Event of Default could be, but is not limited to, (a) a failure by Seller to make timely, complete and conforming delivery of goods and/or services, or (b) a breach of the representations or warranties set forth in the Purchase Order. (B) Upon the occurrence of a Seller Event of Default, Buyer may do any or all of the following, upon giving written notice thereof to Seller, and without in so doing waiving any other right or remedy of Buyer: (i) order a suspension of the Work, in whole or in part; in such case Seller shall not be entitled to any relief or compensation on account of such suspension; (ii) take, at Seller's cost, whatever steps and perform whatever tasks Buyer deems advisable with a view of alleviating to or remedying the Seller Event of Default; (iii) remove the Work from Seller's hands, in whole or in part, and perform or arrange for the performance of the Work, at Seller's cost, by whatever means Buyer deems appropriate under the circumstances; in such case Seller, at no additional charge to Buyer, will promptly, and in any event within two (2) business days, provide Buyer with all documents, records and work in progress that may be required by Seller; (iv) take possession of all or part of the Work

(including any materials, parts and components intended therefore); (v) take possession of any of Seller's property or Seller's rights in any property, tangible or intangible, being used in the performance of the Work, or intended to be so used, including, without limitation, facilities, machinery, tools, software and designs, and use such property, or allow it to be used by others, in the performance of the Work; (vi) take assignment of any or all of Seller's Subcontracts; in such case Seller, at no additional charge to Buyer, will promptly, and in any event within two (2) business days, provide Buyer with all documents and records and lend any assistance Buyer may require in that regard; (vii) terminate this Contract immediately, without any cost to Buyer. (C) Should a court of competent jurisdiction or arbitrator subsequently determine that Buyer's termination for cause was wrongful or unjustified, then such termination shall be automatically subject to the Termination for Convenience provision below and Seller shall have all rights under that provision, but no other rights or claims for damages.

**XVI. TERMINATION FOR CONVENIENCE.** Buyer may, by written notice to Seller, terminate the Purchase Order, or any part thereof, for any or no reason, for Buyer's convenience. Upon notice of termination, Seller shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the Purchase Order. If Buyer terminates for convenience per this provision, Buyer shall pay Seller for goods and services accepted as of the date of termination, and, subject to the Indemnification provision below, for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. Buyer shall have no responsibility for work performed after Seller's receipt of notice of termination.

**XVII. INDEMNIFICATION.** Seller shall, at its sole expense, indemnify, hold harmless and defend Buyer and its parents, subsidiaries and affiliates and their respective directors, officers, employees, representatives and agents from and against any claim, demand, cause of action, backcharge, liability, loss or expense of any kind (including without limitation, penalties, interest and actual court costs, expert costs, expert fees and attorney fees) for personal injury (including death), property damage and any other damage, loss or expense arising from or related in any way to (1) Seller's failure to comply with Seller's obligations hereunder; (2) acts or omissions of employees, subcontractors or agents of Seller in the performance of the Purchase Order or at the premises owned or controlled by Buyer; or (3) defects in the material, equipment, work or items supplied by Seller pursuant to the Purchase Order. Seller's obligation per this paragraph shall survive Buyer's acceptance of, and payment for, the goods, products, systems, and/or work.

Seller shall, at its sole expense, indemnify, hold harmless and defend Buyer and its parents, subsidiaries and affiliates and their respective directors, officers, employees, representatives and agents from any claim, expense loss or expense of any kind, (including without limitation, penalties, interest and actual court costs, expert costs, expert fees and attorney fees) based on alleged infringements of trademarks, copyrights, patent rights or of any kind of trade secret arising from the use of goods or services provided pursuant to the Purchase Order. If any such goods or services are held to constitute infringement or their use is enjoined, Seller, if unable within a reasonable time to secure the right for Buyer to continue to use such goods or services, by suspension of the injunction, by procuring for Buyer a license or otherwise, will at the option of Buyer and at Seller's own expense either replace such goods or services with non-infringing goods or services, or modify them so that they become non-infringing, or remove the infringing goods and stop the infringing services and refund all sums paid therefore. Seller's indemnifications to Buyer set forth herein shall survive acceptance of the goods or services by Buyer and payment therefore.

**XVIII. CONFIDENTIALITY & USE.** Seller agrees that all proprietary information, including but not limited to any and all design information, trade secrets, diagrams, know-how, blueprints, drawings, specifications, process knowledge, flow sheets, sketches, reports and notes, inventions, discoveries, improvements, and any and all other technical, engineering, operational or economic knowledge, information or data received by Seller from Buyer, either orally, or in writing (hereinafter "Proprietary Information") shall be deemed as received and held by it in a fiduciary capacity solely for the benefit of Buyer and is to be held by Seller in trust solely for the benefit of Buyer. Seller shall treat as confidential, to the extent permitted by applicable law, and shall not, at any time prior to, during or following the term or termination of the Purchase Order, directly or indirectly use or disclose any Proprietary Information received from Buyer, without the prior express written permission of the Buyer. Seller further agrees to immediately return any Proprietary Information to Buyer if so requested by Buyer, or in the alternative, confirm in writing the destruction of any such Proprietary Information. Destruction and return will apply to any and all versions of such Proprietary Information, including electronic and digital copies. Notwithstanding anything to the contrary herein, Buyer may seek enforcement of any breach of this Confidentiality & Use section without the necessity of complying with the Dispute Resolutions provisions of these Terms.

**XIX. RECORDS RETENTION.** Seller shall retain, for at least five (5) years following the end of the Warranty Period or the final settlement date of all outstanding claims and disputes, whichever is later, the following: (a) proper accounts and records of the cost to Seller of the Work and of all expenditures or commitments made by Seller in connection therewith, and all invoices, receipts and vouchers relating thereto; (b) all Seller's Subcontracts and correspondence in connection therewith; (c) all pertinent commercial documentation in respect of this Purchase Order and all Subcontracts, such as, but not limited to, copies of invoices, freight bills, dock receipts, freight forwarder receipts, bills of lading, certificates of origin, and any other pertinent documents; and (d) all documents recording or evidencing Seller's compliance with this Purchase Order, such as, but not limited to, drawings, calculations, and inspection records. All of the foregoing shall at all times be open to audit, inspection and examination by the authorized representatives of Buyer, who may make copies and take extracts thereof, but only for the limited purpose of (i) verification of Seller's compliance with the terms of this Purchase Order, (ii) enforcement of Buyer's rights hereunder, or (iii) ascertaining amounts owed by Buyer, where relevant, such as for pricing of changes or claims.

**XX. COMPLIANCE WITH LAWS.** Seller, and any goods or services supplied by Seller, will comply with all laws, rules, regulations, orders, conventions, ordinances and standards of the country(ies)/state(s) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon Buyer's request, Seller will certify in writing its compliance with the foregoing.

**XXI. INSURANCE.** Seller will maintain insurance coverage as required by applicable law or as reasonably requested by Buyer, in its sole discretion, with carriers reasonably acceptable to Buyer. At a minimum, Seller agrees to procure and maintain insurance that will provide for the Terms of this Purchase order and in the amounts necessary to provide for such Terms. Examples of the types of insurance coverages are as follows: (a) Commercial General Liability insurance, endorsed to name Buyer as an additional insured, with limits not less than \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations, \$1,000,000 Personal/Advertising, (b) Commercial Auto insuring all vehicles used by Seller (including all owned, hired and non-owned vehicles), and (c) Worker's Compensation with statutory limits and a waiver of subrogation in favor of Buyer, and Employer's Liability with limits not less than \$500,000 each accident and \$5,000,000 Disease – Each Employee. With respect to any such insurance coverage, Seller will furnish to Buyer, upon Buyer's request, either a certificate evidencing satisfaction of the above-mentioned insurance requirements or certified copies of all insurance policies, within ten (10) days after Buyer's request. The furnishing of certificates of insurance and purchase of insurance will not limit or release Seller from Seller's obligations or liabilities under the Purchase Order. If insurance is not obtained and maintained as required by Buyer, in its sole discretion, Buyer shall have the right to immediately terminate the Purchase Order, or to suspend delivery of the goods and/or performance of the services without paying for such goods and/or services, if applicable.

**XXII. BUYER'S PROPERTY.** (A) All supplies, materials, tooling, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items Buyer furnishes, either directly or indirectly, to Seller, or for which Buyer gives consideration to Seller in whole or in part ("Buyer's Property"), will be and remain the property of Buyer and be held by Seller on a bailment basis. To the extent that the Purchase Order provides that Buyer will reimburse Seller for any specific items of Buyer's Property (such as tooling), Seller will purchase and pay for such Buyer's Property as agent of Buyer. To the extent that the Purchase Order provides that Seller will obtain any specific items of Buyer's Property (such as tooling) without separate or additional payment or reimbursement by Seller, Seller acknowledges and agrees that Buyer's issuance of the Purchase Order is good and sufficient consideration for such Buyer's Property and that title to such Buyer's Property shall vest immediately in Buyer and be held by Seller pursuant to this Article. Seller shall assign to Buyer any Purchase Order rights or claims in which Seller has an interest with respect to Buyer's Property. Seller shall also execute (i) any bills of sale or other documents of conveyance Buyer requests to evidence the transfer to Buyer of title to any Buyer's Property, related Purchase Order rights and claims and (ii) any financing statements or other documents Buyer requests to evidence Buyer's ownership of Buyer's Property. Title to all replacement parts, additions, improvements and accessories purchased by Seller will vest in Buyer immediately upon attachment to or incorporation into Buyer's Property. Seller will not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of Buyer's Property. Furthermore, Seller will not assert, or permit any person claiming an interest

through Seller to assert, any claims of ownership to or any other interest in Buyer's Property. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or in any of Buyer's Property for work performed on such property or otherwise. Goods manufactured based on Buyer's drawings and/or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written authorization; (B) While Buyer's Property is in Seller's possession and until Seller delivers Buyer's Property per the Purchase Order, Seller bears the risk of loss and damage to Buyer's Property. Seller will be responsible for the cost of repairing or replacing Buyer's Property if it is damaged or destroyed regardless of cause or fault. Seller will at all times: (a) regularly inspect, maintain in good condition, and repair Buyer's Property at Seller's own expense, (b) use Buyer's Property only for the performance of the Purchase Order, (c) deem Buyer's Property to be personal property, (d) conspicuously mark Buyer's Property as the property of Buyer and maintain such markings, (e) not commingle Buyer's Property with the property of Seller or with that of a third party, (f) not move Buyer's Property from Seller's premises without Buyer's written approval, and (g) use Buyer's Property in compliance with Buyer's or the manufacturer's instructions and in compliance with all federal, state and local laws, ordinances and regulations. Buyer will have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Seller agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer's Property; (C) If, because of Buyer's Property, Buyer is assessed any loss, damage, injury or expense of any kind or nature by its customer(s) due to any error, omission or any other failure or negligence on the part of Seller, Seller shall be liable for said loss, damage, injury or expense, including, without limitation, the repair, service or adjustment thereof, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation, any loss of anticipatory damages, profits or any other indirect, special or consequential damages.

**XXIII. INTELLECTUAL PROPERTY.** Any and all engineering, fabrication, consulting or development services funded under the Purchase Order that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property shall be the sole property of Buyer (hereinafter "Intellectual Property"). Seller agrees to assign all right, title and interest in and to Intellectual Property that results from engineering, fabrication, consulting or development services provided by Buyer. Seller shall notify Buyer of the existence of such Intellectual Property and assist Buyer in every reasonable way to perfect its right, title and interest in such Intellectual Property, such as by executing and delivering all additional documents reasonably requested by Buyer in order to perfect, register, and/or enforce the same, and Buyer shall reimburse Seller for reasonable costs incurred by Seller in providing such assistance. Buyer shall have the right, at no additional charge, to use and/or reproduce Seller's applicable literature, including operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature pertaining to the goods and services purchased by Buyer pursuant to the Purchase Order.

**XXIV. SERVICE AND REPLACEMENT PARTS.** During the term of the Purchase Order, Seller will sell to Buyer goods necessary to fulfill Buyer's service and replacement parts requirements to Buyer's customers at the then current production price(s) under the Purchase Order. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs.

**XXV. SETOFF AND RECOVERY.** With respect to any monetary obligations of Seller or Seller's affiliates to Buyer or Buyer's affiliates, Buyer may (i) setoff such obligations against any sums owing to Seller or Seller's affiliates and/or (ii) recoup such obligations from any amounts paid to Seller or Seller's affiliates by Buyer or Buyer's affiliates.

**XXVI. NO IMPLIED WAIVER.** The failure of either party at any time to require performance by the other party of any provision of the Purchase Order will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of the Purchase Order constitute a waiver of any succeeding breach of the same or any other provision. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Purchase Order or any other previous purchase order between Buyer and Seller.

**XXVII. ASSIGNMENT.** Buyer may assign its rights and obligations under the Purchase Order without Seller's prior written consent. Any such assignment, transfer or conveyance shall include, where applicable, the benefit of all Seller's obligations, covenants, representations and warranties under the Purchase Order. Seller may not assign or delegate its rights or obligations under the Purchase Order without Buyer's prior written consent.

**XXVIII. GOVERNING LAW AND JURISDICTION.** This Purchase Order shall be deemed entered into and subject to performance in the State of Colorado. Accordingly, it is agreed the rights and obligations of Seller and Buyer with respect to this Purchase Order shall be governed by the laws of the State of Colorado, without regard to its principles of conflict of laws. Any Action or proceeding by Buyer against Seller may be brought by Buyer in any court or dispute resolution forum having jurisdiction over Seller or, at Buyer's option, in the court or dispute resolution forum having jurisdiction over Buyer's location, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any Action or proceeding by Seller against Buyer may be brought by Seller only in the court or dispute resolution forum having jurisdiction over the location of Buyer from which the Purchase Order is issued.

**XXIX. DISPUTE RESOLUTION.** Any dispute, claim or controversy arising out of or relating to any provision of the Purchase Order, including these Terms, will be finally settled by binding arbitration in Fort Lauderdale, Colorado in accordance with the rules of the American Arbitration Association by one arbitrator appointed in accordance with said rules. The arbitrator shall apply Colorado law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute, controversy or claim. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision. This arbitration provision shall not apply to the Confidentiality provision above.

**XXX. SEVERABILITY.** If any provision of this Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Purchase Order will remain in full force and effect.

**XXXI. ENTIRE AGREEMENT.** The Purchase Order, together with any attachments, exhibits, supplements or other terms of Buyer specifically referenced in the Purchase Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Purchase Order and supersedes all prior oral or written representations and agreements. A written Purchase Order Amendment or Change Order issued by Buyer may only modify the Purchase Order. Notwithstanding anything to the contrary contained herein, Buyer explicitly reserves, and the Purchase Order will not constitute a waiver or release of, any rights and claims against Seller arising out of, or relating to, any fraud or duress in connection with the formation of the Purchase Order or any breach or anticipatory breach of any previously existing Purchase Order between Buyer and Seller (whether or not such previously existing Purchase Order related to the same or similar goods or subject matter as the Purchase Order). All payments by Buyer to Seller under the Purchase Order are without prejudice to Buyer's claims, rights, or remedies.