



## GENERAL TERMS & CONDITIONS of PURCHASE ("GTC")

- 1. DEFINITIONS:** These GTC are hereby incorporated into every Purchase Order ("PO") from SWJ Technology US, LLC, and each of its related entities, including North Georgia Equipment Solutions, LLC, ProjectOne US, LLC and SWJ Energy US, Inc. ( hereinafter individually and collectively "Buyer"). Buyer is the purchaser of the of goods and services (individually and collectively "Deliverables") identified in the PO. Vendor shall supply Deliverables to Buyer, and Buyer shall purchase Deliverables from Vendor, in accordance with the PO and these GTC as hereinafter provided. All Deliverables provided by Vendor to Buyer shall meet all of Buyer's specifications, CAD Drawings, CATIA, plans, samples, drawings, models, designs, conditions, schedules, performance specifications, and Buyer's quality requirements (collectively "Specifications").
- 2. ENTIRE AGREEMENT:** The Entire Agreement between Buyer and Vendor is contained in the PO and GTC, as well as any contracts, schedules, Specifications, or other items specifically incorporated into and/or referenced by the PO and GTC ("Related Documents"). If there is a conflict between the PO, these GTC, and/or any of the Related Documents, the terms of these GTC shall control, and then the PO. The PO and GTC supersede all prior written or oral promises, terms, conditions, discussions, communications, negotiations, and agreements, all of which are hereby merged into the PO and GTC, and unless explicitly set forth in the PO and/or GTC shall not be binding upon Vendor. **VENDOR ACKNOWLEDGES AND AGREES THAT VENDOR HAS READ AND UNDERSTANDS THE PO, GTC AND RELATED DOCUMENTS.** (The PO, GTC, and Related Documents shall hereinafter be collectively referred to as the "Contract"). Vendor and Vendor's agents, servants, employees, suppliers, contractors, subcontractors, parents, subsidiaries, affiliates, related entities, officers, directors, shareholders, members, managers, licensees, and/or any other persons acting for or on behalf of Vendor (collectively "Vendor's Agents"), shall be bound by such Contract insofar as applicable to Vendor's Deliverables, so that Vendor and Vendor's Agents shall have the same duties and obligations to Buyer with regard to Vendor's Deliverables as Buyer has to Buyer's customer(s) and end-users of the Deliverables. Neither Vendor nor Vendor's Agents shall communicate or contract directly or indirectly with Buyer's customer(s) and end-users regarding the subject matter of the Contract without Buyer's prior written consent.
- 3. ACCEPTANCE:** Unless otherwise specified in writing by Buyer, Buyer agrees to purchase the Deliverables or services described herein from Vendor, only on the express condition that Vendor assents to the exact terms and conditions set forth in this Contract and to no other terms and conditions. Vendor's written acceptance or commencement of work under the PO shall constitute acceptance by Vendor of the Contract. **ANY ADDITIONAL, CONFLICTING, OR DIFFERENT TERMS OR CONDITIONS STATED BY VENDOR IN ANY ACKNOWLEDGEMENT FORM, OR IN VENDOR'S OWN FORM OF ACCEPTANCE, GENERAL TERMS AND CONDITIONS, OR INDICATED BY VENDOR IN ITS QUOTATION OR OTHERWISE INDICATED BY VENDOR (ORAL OR WRITTEN) ACKNOWLEDGING OR ACCEPTING THIS PO, THE GTC AND/OR RELATED DOCUMENTS ARE DEEMED BY BUYER TO BE A MATERIAL ALTERATION AND/OR A REJECTION OF THE CONTRACT, TO WHICH BUYER OBJECTS AND REJECTS, UNLESS SPECIFICALLY ACCEPTED IN WRITING BY AN AUTHORIZED AGENT OF BUYER. BUYER'S ACCEPTANCE OF AND/OR PAYMENT FOR THE DELIVERABLES (OR ANY PART THEREOF) SHALL NOT CONSTITUTE BUYER'S ACCEPTANCE OF OR ASSENT TO ANY ADDITIONAL, DIFFERENT, CONFLICTING OR NON-CONFORMING TERMS OF VENDOR'S OFFER, EXPRESSION OF ACCEPTANCE, CONFIRMATION, OR ANY OTHER COMMUNICATION FROM VENDOR TO BUYER WHICH IS DIFFERENT FROM, INCONSISTENT WITH, OR IN ADDITION TO THE TERMS AND CONDITIONS OF THE CONTRACT, NOR SHALL IT BE DEEMED A WAIVER BY BUYER OF ANY SUCH TERM OR CONDITION.** If any term or condition is unacceptable to Vendor, Vendor must notify Buyer in writing within 10 days of its receipt hereof.
- 4. TERM:** The Term shall be as specified on the front of the PO, as it may be amended in writing by Buyer from time to time, unless earlier terminated as provided herein.



**5. PURCHASE PRICE:** Unless otherwise indicated, the prices for each Deliverable stated on the front of the PO are firm for the duration of the Contract and not subject to increase for any reason, including but not limited to changes in volume, raw material costs, labor or other manufacturing costs, shipping costs, storage costs, development costs, currency valuation, or for any other reason, unless otherwise agreed upon in writing by Buyer prior to the increase. Vendor must submit, in writing, any such proposed request for price increase to Buyer no less than sixty (60) days prior to the requested effective date of the price increase. Vendor warrants that the prices for the Deliverables hereunder are no less favorable than those currently extended to any other customer for the same or similar merchandise in similar quantities. In the event Vendor reduces its price for such merchandise during the term of this PO, Vendor agrees to notify Buyer promptly of such reduction and reduce its prices for the Deliverables ordered hereunder correspondingly. Vendor's invoices will not be accepted if invoice price exceeds the price on the PO. Prices are based on, and must be made in, U.S. dollars. Vendor warrants that the prices shown on this PO shall be full and final price, and no additional charges of any type shall be added without Buyer's express, prior written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating. Vendor shall be responsible for any taxes or duties on any Deliverables, except for any such taxes or duties imposed by applicable law specifically upon Buyer and which Vendor is required to collect from Buyer. No interest shall be paid on overdue invoices. Without notice to Vendor, Buyer shall have the right, at any time, to recover, recoup and/or set-off any amounts that are or will become due or payable to Vendor from Buyer or Buyer's Agents. Payment for Deliverables shall not constitute acceptance of non-conforming Deliverables, nor negatively affect any rights or remedies of Buyer.

**6. INVOICES:** All invoices shall be mailed to Buyer at its office as indicated on the face of the PO and will state Buyer's PO Number clearly on the Invoice. Invoice and duplicates shall be rendered for each order or for each shipment if more than one is made on a PO. No invoice shall be delivered by Vendor to any employee or customer of Buyer.

**7. TAXES:** In the event that a sales, use, privilege, value added, excise, services or similar tax is assessed on the sale of the Deliverables by Vendor to Buyer, Buyer shall be responsible for and pay the amount of any such tax, exclusive, however, of franchise taxes and taxes based on the net income of Vendor. For such purpose, unless a different delivery address is shown in this PO, the Deliverables shall be considered delivered to Buyer at its principal office in Tuscaloosa, Alabama, and invoices for the Deliverables shall be submitted to Buyer at such office to the attention of such person as Buyer may indicate from time to time. The parties shall cooperate reasonably with each other to determine accurately each party's tax liability and to minimize such liability to the extent legally permissible. To substantiate any claimed exemptions, Buyer shall supply to Vendor the appropriate exemption or resale certificates.

**8. CHANGES:** Changes in quantity, price, requirements, terms, conditions, or delivery shall be made only with prior written authorization executed by Buyer's authorized agent. Buyer reserves the right to change quantities, delivery schedule and/or Specifications upon notice to the Vendor. Buyer shall submit any change requests in writing to Vendor. Amendments or changes to the PO shall be issued at the sole discretion of Buyer. If Vendor claims that such changes or any other circumstance justify a change in price or time for performance, Vendor shall notify Buyer in writing within ten (10) days of the occurrence giving rise to Vendor's claim or sixty (60) days prior to commencing the changed work (whichever occurs first). Vendor's notice shall include sufficient documentation in support of the claim to enable Buyer to evaluate its merits. All of Vendor's charges for changed or extra work are subject to approval by Buyer. Failure by Vendor to provide such notice shall be Vendor's acknowledgement that no adjustment to price or delivery is justified. Pending resolution of any claim, Vendor shall proceed with its work as directed by Buyer. Should any claim for extra compensation, time or damages arise from an act, omission, change, neglect, or other circumstances caused by Buyer's customer, Buyer's customer's agents, or any contractor employed



by Buyer's customer (other than Buyer), or from any other cause not initiated by Buyer, Vendor shall be entitled only to such extra compensation, time or damages, or portion thereof, which Buyer obtains from its customer or customer's agent or contractor for Vendor's work.

**9. FREIGHT AND DELIVERY:** Delivery shall be F.O.B. Delivery Location specified on the PO. Time is of the essence with respect to delivery. Vendor acknowledges that Buyer is relying upon timely delivery. Vendor shall pay Buyer 5% of the price of each Deliverable for each day that a Deliverable is late. Buyer reserves the right to reject delivery made ahead of schedule unless Vendor has secured Buyer's prior written authorization. Buyer's acceptance of any partial deliveries of Deliverables or services shall not be deemed to constitute a waiver of Buyer's right to reject future deliveries. Time of delivery at Buyer's designated receiving facility is of the essence with respect to this Contract.

**10. RISK OF LOSS; TITLE; QUALITY AND INSPECTION:** Risk of loss or damage and title shall pass to Buyer when the Deliverables arrive at the specified location of delivery. Vendor shall provide and maintain a quality assurance system and associated record keeping which meets Buyer's requirements. Vendor shall perform inspections as specified by Buyer, and Vendor shall make inspection systems, procedures, and records available to Buyer upon request. Vendor shall provide Buyer and Buyer's customer, upon request, access to Deliverables, whether completed or in-progress, and all designs, equipment and materials used in Vendor's process, wherever located, including Vendor's and Vendor's Agents' premises. All Deliverables shall be received subject to Buyer's inspection and rejection. Buyer shall be under no duty to inspect Deliverables at delivery or before payment or resale is made by Buyer. Buyer specification or lack of specification of a particular defect(s) upon which Buyer's rejection of the Deliverables is based shall not prevent Buyer from relying on other defect(s) to justify its earlier rejection of the Deliverables or to establish a breach of the Contract by Vendor. Deliverables which are defective, breach any of Vendor's warranties, or do not meet the Specifications or requirements of the Contract, ASTM and/or ISO and/or revisions thereto, will be rejected, and at Vendor's risk and expense, held for Vendor's instruction. If Vendor so directs, Deliverables will be returned and/or discarded at Vendor's risk and expense. Vendor shall pay all costs of receiving, inspecting, analyzing, and sorting Deliverables. No Deliverables returned as defective shall be released without a new PO. The acceptance or use by Buyer or Buyer's customers of any Deliverables or service under a PO shall not relieve Vendor for any liability which may subsequently arise due to latent or other defects in the Deliverables. If the Deliverables are defective or breach any warranty, Buyer may choose to: (1) cancel the contract after informing the Vendor, and/or; (2) obtain, at the Vendor's expense, immediate replacement of the non-conforming Deliverables with identical Deliverables of better quality under the same price conditions within fifteen (15) days of receipt of the claim, without prejudice to any compensation that may be claimed by Buyer for all of the direct and indirect monetary consequences resulting from loss of business from Buyer's customer and/or damages of any kind caused to people or Deliverables, as well as measures to withdraw the products, Deliverables or services for any reason.

**11. WARRANTIES:** Vendor certifies that Vendor is an expert in the Deliverables. As an expert, Vendor represents and warrants that all Deliverables shall be provided in accordance with the Specifications, Contract, ASTM and/or ISO and/or revisions thereto and meet and/or exceed all warranties of Buyer, Buyer's customer(s), and Buyer's end-user(s). Deliverables received which do not conform with Specifications, the Contract, ASTM and/or ISO and/or revisions thereto, and/or Buyer's (and its customer's(s') and/or end-user's(s')) warranties, may be returned to Vendor at Buyer's discretion, and at Vendor's risk and expense. Alternatively, at Buyer's option, Buyer may perform or cause to be performed any corrective work necessary to cause such non-conforming Deliverables to comply with the Contract, ASTM and/or ISO and/or revisions thereto, and/or Buyer's (and its customer's(s') and/or end-user's(s')) warranties and may charge the cost of such corrective work to Vendor's account. Vendor further represents and warrants that all Deliverables under this Contract shall be as follows: (i) of merchantable quality; (ii) have good and marketable title, free and clear of any and all liens, defects, claims,



encumbrances and/or interests of any other person, firm, corporation, or entity, including without limitation, Vendor's subcontractor(s); (iii) free from all defects in materials and workmanship; (iv) free from all liens, patent infringements and claims for intellectual or industrial property rights; (v) to the extent that the Deliverables were designed by Vendor or Vendor's Agents, free from all defects in design; (vi) fit for the particular purposes for which the Deliverables are intended and purchased; (vii) prices for Deliverables are not less favorable to Buyer than any other prices provided by Vendor to any other customer of same/similar Deliverables, or offered to Buyer by any other Vendor for the same/similar Deliverables; (viii) shall comply with all applicable country of origin, countries of passage, federal, state and local laws, rules, regulations, and ordinances; (ix) shall be produced in compliance with all local, state, federal, or other laws, rules, and regulations regarding non-discrimination and worker's safety; and (x) shall be accompanied, where required, by Material Safety Data Sheets ("MSDS") which comply with OSHA's Hazard Communication Standards under 29 CFR §1910.1200. Without prior written consent of an authorized agent of Buyer, any attempt by Vendor to limit, disclaim, or restrict any warranties, or any remedies of Buyer, by acknowledgement or otherwise in accepting or performing under the Contract, shall be null, void, and ineffective. The warranties provided herein shall survive and extend beyond the term of the Contract and shall be no less than the warranties provided by Buyer to its customer(s) and end-user(s). Vendor further understands and agrees that Buyer may extend these warranties to Buyer's customer(s) and end-user(s), and Vendor expressly represents and warrants that Vendor's warranties shall remain effective as long as the warranties of Buyer, Buyer's customer(s) and Buyer's end-user(s) are in effect. The inclusion herein of express warranties and representations by Vendor shall not be deemed a waiver of such other warranties as may be implied in law or in fact or provided for by any federal, state, or local statute, regulation, rule, or ordinance. All warranties, express or implied shall survive delivery, inspections, acceptance and payment by Buyer and Buyer's customer(s)/end-user(s).

**12. INSURANCE:** At Vendor's sole expense, Vendor shall procure and maintain insurance, including but not limited to Commercial General Liability Insurance, Products Liability Insurance, Completed Products and Operations Hazard Insurance, Professional Liability Insurance, Umbrella Insurance, Workers Compensation Insurance, Property Insurance, and Recall Insurance. Each of these liability policies of insurance shall provide coverage of no less than one million dollars for each claim and/or occurrence, and with no less than three million dollars in annual aggregate coverage. The Umbrella Policy shall provide no less than three million dollars per occurrence and ten million dollars in annual aggregate coverage. Each policy shall be provided from a reputable insurance company with no less than AAA rating. Each policy of insurance shall provide coverage insuring against any and all public, premises, and contractual liability, including property damages, personal injuries (up to and including death), and damage to Vendor's property, arising out of or related to the actions, omissions, and/or Deliverable(s) provided by Vendor or Vendor's Agents. Each policy of insurance shall name Buyer as an additional insured. Each policy of insurance shall waive subrogation against Buyer and Buyer's Agents. Vendor shall furnish to Buyer copies of each policy of insurance, executed certificates of such insurance and renewals thereof, and any other information concerning the insurance. Each policy of insurance shall provide permit material changes of terms and/or cancellation only after thirty (30) days' prior written notice to Buyer. The insurance provided for and required herein shall not limit Vendor's liability.

**13. HAZARDOUS SUBSTANCE:** Vendor shall furnish Buyer an MSDS, as well as a detailed listing and description of all ingredients or components in Deliverables under the PO which include or utilize ingredients which could reasonably be considered to be pollutants, contaminants, chemicals, deleterious substances or industrial, toxic or hazardous materials, wastes or substances under any international, federal, state and/or local treaty, convention, law, statute, ordinance, rule and/or regulation; and thereafter any changes in such ingredients.

**14. LABOR DISPUTES:** Vendor will notify Buyer immediately of any actual or potential labor dispute of Vendor or Vendor's suppliers delaying or threatening to delay timely performance of the Contract and



will provide all relevant information to Buyer. Vendor will notify Buyer in writing at least six (6) months in advance of the expiration of any current labor contracts. If requested by Buyer, Vendor will deliver a supply of finished Deliverables at least thirty (30) days prior to the expiration of any such labor contract in quantities and for storage at the place or places designated by Buyer.

**15. CONFIDENTIAL INFORMATION:** Vendor and Vendor's Agents shall keep and maintain, in strict confidence, all information provided by Buyer to Vendor, including pricing, types, quantity, quality, and Specifications of Deliverables for Buyer, as well as all intellectual property, drawings, technical, business, and/or other information furnished by Buyer and/or Buyer's customer(s), and all legally protectable elements, enhancements, modifications, or derivative works thereof, all of which shall constitute confidential and proprietary information ("Confidential Information"). All Confidential Information is and shall remain the property of Buyer. Vendor and Vendor's Agents shall treat all Confidential Information as strictly confidential and utilize Confidential Information solely for the intended purpose under the Contract. Vendor and Vendor's Agents shall not use Confidential Information for any other purpose without the prior written consent of an authorized agent of Buyer. Vendor and Vendor's Agents shall not reproduce, disseminate, or publish Confidential Information or any portion of the Confidential Information, and shall take all necessary precautions to prevent such an occurrence, and shall return all Confidential Information, copies, compilations, excerpts, and summaries thereof, immediately upon the request of Buyer. Vendor's and Vendor's Agents' obligations under this section shall extend beyond the termination of the Contract for a period of seven (7) years or as long as the Confidential Information constitutes a trade secret of Buyer or its customers or affiliates, whichever is later.

**16. INDEMNIFICATION:** Vendor shall defend, indemnify, and hold harmless Buyer, and Buyer's agents, servants, employees, officers, directors, shareholders, members, managers, contractors, subcontractors (other than Vendor), related entities, affiliates, parents, subsidiaries, licensees, customers, and end-users ("Buyer Indemnified Parties") from and against all claims, suits, demands, actions, causes of action, litigation, judgments, obligations, losses, costs, penalties, fees (including reasonable attorneys' fees and litigation costs), fines, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, awards exceeding actual damages and/or including attorneys' fees and/or costs), expenses, liabilities and damages (including but not limited to consequential, special, direct, indirect, incidental, and punitive damages, including, without limitation, any interruption or loss of production, lost business, lost profits, as well as any losses such as anticipatory damages, recalls, customer and/or field service activities, personnel and administrative costs, inspection costs, handling and reworking costs, and/or personal injury or death) (hereinafter "Claims"), caused to Buyer and/or Buyer Indemnified Parties, regardless of whether they are legal or equitable, in contract or in tort, direct or contingent, which in any way arise out of or are related to: (i) Vendor's Deliverables, (ii) the actions, omissions, breaches and/or misrepresentations of Vendor or Vendor's Agents; (iii) any alleged default or breach by Vendor and/or Vendor's Agents of the Contract, ASTM and/or ISO and/or revisions thereto, and/or warranties, (iv) any alleged infringement on patent, trademark, license, copyright or other industrial or intellectual property rights, (v) any activities of Vendor or Vendor's Agents, performed on Buyer's premises or otherwise, and (vi) injury or damage to Buyer, Buyer's agents, employees, customers, end-users, or any third-party arising out of their presence or work on Vendor's premises. Vendor shall also indemnify, defend, and hold harmless Buyer and Buyer Indemnified Parties, from any and all Claims related to the actual or alleged infringement of any United States or foreign IP right and arising out of the manufacture, sale or use of Deliverables by Buyer, Buyer's customer, or Buyer's end-user. Buyer will notify Vendor of any such Claim, and Vendor shall, at its own expense, fully defend such Claim on behalf of Buyer and Buyer Indemnified Parties.

**17. ASSIGNMENT:** Vendor shall not assign, transfer, or novate the Contract, or any portion thereof, without the prior written consent of Buyer.

**18. INSOLVENCY:** If Vendor ceases to conduct its operation in the normal course of business, including





but not limited to Vendor's inability to meet its financial, commercial or other obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Vendor, or a receiver for Vendor is appointed or applied for, or an assignment for the benefit of creditors is made by Vendor, or Vendor has a change in management, control, or merges with another company, Buyer may immediately terminate the Contract without liability.

**19. CANCELLATION:** Buyer may cancel the Contract for the convenience of Buyer or Buyer's customers. Buyer may also cancel the Contract if the Vendor defaults or fails to perform, repudiates, breaches, or threatens to breach this Contract or warranties of Vendor, or fails to provide Buyer with most competitive price, or fails to provide Deliverables in accordance with the Contract. Vendor may cancel the Contract for just cause, but only upon three (3) months' prior written notice to Buyer. Further, Buyer shall have ninety (90) days from receipt of notice by Vendor in which to cure any defect or alleged breach by Buyer giving rise to such just cause. Vendor shall be responsible for all damages (including but not limited to all items for which Vendor and Vendor's Agents must provide indemnification to Buyer) caused to Buyer arising out of the termination of the Contract by Vendor or for Vendor's or Vendor's Agents' default, failure to perform, repudiation, breach, or threat to breach, the Contract, or any warranty under the Contract, failure to provide Buyer with the most competitive price, or failure to provide Deliverables in accordance with the Contract. Buyer may also cancel this PO if the Vendor defaults or fails to perform, repudiates, breaches, or threatens to breach the Contract or any warranty under this Contract, fails to provide Buyer with most competitive price, or fails, in any way, to provide Deliverables in accordance with this PO. Buyer may also cancel this PO if Vendor suffers financial difficulty or is insolvent or is the subject of a bankruptcy or receivership proceeding or fails to provide Buyer with reasonable and adequate assurances to Buyer, or Vendor has a change in ownership or control.

**20. APPLICABLE LAW; FORUM:** Buyer and Vendor acknowledge and agree that this Contract was negotiated and executed in the State of Alabama and shall be governed exclusively by the substantive and procedural laws of the State of Alabama, U.S.A. which are in effect as of the date of the PO, but without regard to conflicts of law principles. **IN ORDER TO INDUCE THE PARTIES TO ENTER THIS AGREEMENT, AND REGARDLESS OF ANY PLACE TO WHICH THE PARTIES MAY MAINTAIN THEIR LEGAL DOMICILE OR PRINCIPAL PLACE OF BUSINESS, AS APPLICABLE, AND TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY AGREES AND CONSENTS THAT ALL ACTIONS OR PROCEEDINGS RELATING TO AND/OR ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH THE CONTRACT (INCLUDING NEGOTIATION AND EXECUTION THEREOF), AND THE DELIVERABLES AND PERFORMANCE THEREOF, SHALL BE LITIGATED SOLELY IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, WESTERN DIVISION, AND HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF AND VENUE IN SUCH COURT, AND WAIVES ANY AND ALL JURISDICTIONAL AND VENUE DEFENSES THAT SAID PARTY OR PARTIES MAY HAVE TO INSTITUTION OF SUCH AN ACTION IN SUCH COURT.** The United Nations Convention on Contracts for the International Sale of Goods, as amended, IS EXCLUDED, and shall not apply to any of the Contract. Vendor consents to personal jurisdiction in these courts and shall not commence any lawsuit against Buyer arising from or related to the Contract (including the negotiation and execution thereof) or the Deliverables furnished thereunder, except in one of these courts. Any proceedings commenced in state or federal court relating to and/or arising in connection with the Deliverables, Contract (including negotiation and execution thereof) and/or performance thereof, shall be tried before and decided by the presiding judge without a jury, and Buyer and Vendor each expressly waive any right to have such proceedings determined by trial by jury.

**21. DEFAULT:** Buyer may, by written notice of default to Vendor, cancel the whole or any part of the Contract or exercise any other remedy provided Buyer by law or in equity (including any remedy under the Uniform Commercial Code) in any of the following circumstances; (i) Vendor fails to make delivery of the Deliverables within the time specified; (ii) Vendor is in breach of any of the terms and conditions of



the Contract; or (iii) Vendor becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Vendor any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Vendor's property.

**22. RIGHT OF RECOVERY:** Any claims of Buyer (or any affiliate of Buyer) against Vendor (including any affiliate of Vendor) may, at Buyer's option and without limiting other remedies, be deducted, and recouped by Buyer from the amount of the PO at the time of payment.

**23. GENERAL; REMEDIES CUMULATIVE:** Each transaction between Buyer and Vendor is separate and distinct. The remedies described in these GTC shall be cumulative and in addition to any other remedies available under applicable law.

**24. FINANCIALS:** On no less than an annual basis, Vendor shall provide Buyer, at Buyer's request, with updated financial statements. Vendor shall also provide Buyer with financial information upon Buyer's request, should Buyer request that Vendor provide reasonable and adequate assurances of Vendor's financial status.

**25. WAIVER:** No delay or omission to exercise any right or power arising under the Contract shall impair any such right or power or be construed to be a waiver of any such right or power. No waiver of any breach of any term of the Contract shall be deemed a waiver of any succeeding breach, nor shall such waiver be deemed a modification of the PO's terms, or as a waiver, acquiescence in or consent to any further or succeeding breach of the same term or condition or any other term or condition of the same or different nature of the Contract or any other order or agreement of Buyer.

**26. SEVERABILITY AND BINDING EFFECT:** Each provision hereof shall be separate and independent and shall be valid and enforceable to the fullest extent allowed by law. If any provision hereof or the application thereof to any person or circumstance shall to any extent be or become invalid or unenforceable, such provisions shall be deemed severed as to that person or circumstance, and the remaining provisions hereof or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby. All provisions shall be binding upon, inure to the benefit of, and be enforceable by each party's successors and assigns to the same extent as if named as a party hereto.

**27. FORCE MAJEURE:** If Vendor is unable to supply Deliverables, or Buyer is unable to purchase or receive Deliverables, due to a "Force Majeure" event or occurrence beyond their respective control and without their respective fault, then any delay or failure of performance will only be excused as long as that event or occurrence continues, and the affected party provides written notice of the event and the expected duration thereof. "Force Majeure" includes an act of God, act of a public enemy, war, insurrection, ordinance, blockage, rioting, lightning, fire, storm, hurricane, flood, explosion, act or restraint by government, pandemic, epidemic, landslide, earthquake, or washout. During any delay or failure due to Force Majeure, Buyer may procure substitute Deliverables, and Vendor shall be liable for any additional costs to Buyer of such procurement. If Vendor fails to provide adequate assurance to Buyer that the delay or failure will not exceed ten (10) days, then Buyer may cancel the Contract.

**28. RELATIONSHIP OF THE PARTIES:** Buyer and Vendor are independent contracting parties, and nothing contained in the Contract shall be deemed to make either Buyer or Vendor to be the agent of the other, or to create a partnership or joint venture, as neither Buyer nor Vendor has any authority to control, assume or create any obligation on behalf of the other party.

**29. COMPLIANCE WITH ALL LAWS:** Vendor and Vendor's Agents, and all Deliverables provided by Vendor, shall comply with all applicable local, state, federal and international rules, regulations, orders, conventions, treaties, laws, ordinances, and standards of the location of origin and the location of destination. Upon Buyer's request, Vendor shall certify Vendor's compliance. Without acting as a limitation, Vendor shall comply with (i) all applicable country laws relating to anti-corruption and/or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-



operation and Development “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” (the “OECD Convention”) or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, (“FCPA”) (15 U.S.C. §§78dd-1, et. seq.) regardless of whether Vendor is within the jurisdiction of the United States. Vendor shall not, directly nor indirectly, pay, offer, give, or promise to pay or give, money or anything of value to a public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery. Vendor warrants that neither Vendor, nor Vendor’s Agents have offered or given, or will offer or give, any gratuities to Buyer’s employees, agents, or representatives for the purpose of securing the Contract or securing favorable treatment from Buyer. Buyer’s internal policies, procedures and codes are not intended to, and do not, create any right or benefit enforceable by Vendor against Buyer.

**30. LIMITATION OF DAMAGES:** Buyer shall not be liable for any claims, demands, losses, costs, expenses, fees (including reasonable attorneys’ fees and litigation costs), fines, and damages (including but not limited to consequential, punitive, exemplary, special, direct, indirect, and incidental damages, and including, without limitation, any loss or interruption of Vendor’s production, business, goodwill and profits and any losses such as anticipatory damages, lost profits, goodwill, recalls, data, customer and/or field service activities, personnel and administrative costs, inspection costs, handling and reworking costs, and/or personal injury or death) caused to Vendor, directly or indirectly, by Buyer or its agents, servants, employees, suppliers, contractors, subcontractors, affiliates, related entities, parents, subsidiaries, officers, directors, shareholders, members, managers, or any other persons acting for or on behalf of Buyer (“Buyer’s Agents”), or by the defaults, breaches, actions and omissions of Buyer or Buyer’s Agents.

**31. ENVIRONMENTAL HEALTH AND SAFETY PERFORMANCE.** Vendor acknowledges and accepts full and sole responsibility to maintain an environment, health, and safety management system (“EMS”) appropriate for its business throughout the performance of the PO. Buyer expects that Vendor’s EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Vendor shall convey the requirement of this section to Vendor’s suppliers. Vendor shall not deliver goods that contain any asbestos mineral fibers.

**32. BUYER POLICIES:** Buyer’s internal policies, procedures and codes guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit enforceable by Vendor against Buyer.

**33. TRADE CONTROL COMPLIANCE:** The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to the PO, including but not limited to the Export Administration Regulations (“EAR”) of the U.S. Department of Commerce, the International Traffic in Arms Regulations (“ITAR”) of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the anti-boycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, “Trade Control Laws”). Vendor shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of the PO in compliance with all applicable Trade Control Laws. Vendor shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Vendor, or Vendor’s suppliers or Vendor’s non-U.S. affiliates or subsidiaries) any export-controlled item, data, or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority. Vendor shall notify Buyer if any Deliverables is restricted by export control laws or regulations. Subject to applicable Trade Control Laws, Vendor shall provide Buyer with the export control classification of any commodity or technology, including software. Vendor represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. If Vendor is engaged in the business of exporting or manufacturing defense articles or furnishing defense services, Vendor represents that it is registered with the Office of Defense Trade Controls. A copy of process control documents and other documents reasonably requested by Buyer





related to Vendor's compliance with applicable Trade Control Laws shall be made available to Buyer upon request. Vendor shall promptly notify Buyer if Vendor is, or becomes, listed in any Denied Parties List or if Vendor's export privileges are otherwise denied, suspended, or revoked in whole or in part by any Governmental entity. If Vendor is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Vendor shall provide prompt notification to the Buyer's Procurement Representative in the event of changed circumstances that could affect the Vendor's performance under the PO. Vendor shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations in Vendor's performance under the PO and shall comply with all reasonable requests from Buyer for information regarding any such violations. Vendor accepts responsibility for factory and container security until such time as the container/merchandise is delivered to an authorized forwarding agent per Buyer's Routing Instructions or per the instructions of the Import/Export Manager. Vendor shall not, without the prior written consent of Buyer, in any manner publish the fact that Vendor has furnished or contracted to furnish Buyer goods and/or services, or use the name or trademarks of Buyer, its products, or any of its associated companies in Vendor's advertising or other publication. Vendor shall not place its, or any third party's trademark or other designation on the part if the product bears a Buyer trademark or an identifying mark specified by Buyer, or if the product is peculiar to Buyer's design ("Marked Product"). Vendor will sell Marked Product, and similar goods, only to Buyer and will not sell Marked Product or similar goods to third parties without Buyer's prior written consent.

**34. NON-SOLICITATION:** During the term of PO, and in the first two (2) years thereafter, neither the Vendor, nor the Vendor's Agents, shall recruit, solicit, contract with, or employ any of the agents, servants, employees, or contractors of Buyer who are involved with the PO, regardless of whether such individuals or entities are in-house, freelance-based or contract-based. (Notwithstanding the foregoing, general, non-targeted ads for employment or services by Vendor shall not be considered a breach of this section.) For each such breach of this provision, the Vendor shall pay to Buyer a finder's fee in the amount equal to one-half (50%) of the annual compensation received by said individual or entity from Buyer in the preceding 12 months. If the Buyer's employee has worked less than 12 months, then the 50% shall be determined by multiplying the average hourly rate (including benefits and bonuses) by 2000. The right of Buyer to assert additional claims for damages remains unaffected. The Vendor undertakes to inform Buyer immediately if it becomes aware of unauthorized attempts by individual employees of Buyer to render engineering, consultancy, or other services in his/her/its own name or on his/her/its own account. If Buyer uses a contractor on its customer's premises, then the Vendor shall not enter into direct or indirect contractual relationships with such contractor both during deployment and for a period of two years upon termination of the PO in cases where such relationships would involve activities under the PO previously handled by Buyer.

**35. NON-CIRCUMVENTION:** During the term of PO, and in the first two (2) years thereafter, neither the Vendor, nor the Vendor's Agents, shall directly or indirectly, whether for its own account or the account of any other person or entity, attempt to circumvent Buyer, including without limitation (a) using, selling, offering to sell, market or license, any goods or services using Buyer's Confidential Information; (b) owning, managing, operating, joining, controlling, participating in, or being connected as a joint-venturer, partner or otherwise, with the formation, design, construction, operation, business and/or activity which will utilize any of Buyer's Confidential Information; or (c) soliciting, contacting or inducing Buyer's current suppliers, customers, and/or end-users (or individuals or entities identified by Buyer as prospective customers) to sell, purchase or provide any Deliverable to or from Buyer's current suppliers, customers, and/or end-users (or individuals or entities identified by Buyer as prospective customers), which are the



subject of the Contract or the Confidential Information protected herein, or which are already being sold, purchased or provided to or from said customers, suppliers, or end-users.

**36. ELECTRONIC SIGNATURE:** These GTC and PO may be delivered by facsimile, PDF or by other means of electronic signature. Electronically or other properly stored copies of these GTC and PO shall constitute complete, valid, authentic, and enforceable copies of these documents.

**37. LEGAL FEES:** If and to the extent that Buyer engages attorneys to assert or enforce Buyer's rights under these GTCs or the Contract, and regardless of whether suit is filed, then the Vendor shall be liable for Buyer's reasonable attorneys' fees and expenses, as well as all costs of litigation.

**38. ENTIRE AGREEMENT:** These GTCs, the PO, and the Related Documents constitute the entire agreement between Vendor and Buyer with respect to the subject matter hereof and supersedes any prior or other agreements, written or oral, between the parties. No amendment, modification, waiver, or release of any provision thereof shall be binding upon Buyer or Vendor unless in writing, signed by Buyer's or Vendor's authorized representative, as the case may be.