



**TERMS AND CONDITIONS REGARDING PURCHASING OF**  
**GOODS**

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## **1. DEFINITIONS; AGREEMENT.**

As used throughout these terms and conditions, the following terms shall have the meanings set forth below.

“Buyer” means FOX VALLEY METAL TECH, INCORPORATED (“FOX VALLEY METAL TECH”).

“Order” means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are attached and/or incorporated by reference.

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will furnish the supplies or services provided for therein.

“Specifications” means characteristics, designs, drawings, dimensions, measurements, standards, material, methods and processes: (a) set forth in the applicable Order and any related request for proposal or request for a quote; (b) otherwise provided by Buyer; or (c) attendant to any sample or prototype provided or accepted by Buyer; and (d) all laws, statutes, regulations, rules and orders of any federal, state or local government, court, governmental agency or governmental authority (“Laws”) applicable to the Seller or the sale, purchase, export, import, transport, use or other disposition of the Goods. Seller shall not modify or alter the Specifications, except as expressly authorized in writing signed by an authorized officer of Buyer.

Except as otherwise provided in these terms and conditions, the term “subcontract” includes purchase orders issued by Seller under the Order but does not include Seller’s employment relationships.

All references to “works,” “supplies,” “articles,” “products,” or “items” shall include “services,” if the Order, wholly or in part, provides for the furnishing of services.

These Terms and Conditions of Purchase (the “Terms”) of FOX VALLEY METAL TECH (“Buyer”) shall apply the purchase of any goods, materials, services or work product (“Goods”) by Buyer from the seller thereof (“Seller”) pursuant to any purchase order issued by Buyer (an “Order”) and acknowledged by Seller. Except to the extent expressly otherwise agreed in writing signed by an authorized officer of Buyer, these Terms and the applicable Order (together, this “Agreement”) constitute the entire agreement between Buyer and Seller regarding the Goods, and acceptance is limited to the terms of this Agreement. Any additional or contrary terms or conditions proposed by Seller (including, without limitation, by incorporation or reference in any proposal, quotation, acknowledgement or invoice issued by Seller) are hereby expressly objected to, rejected and shall be of no force or effect, regardless of Buyer’s acceptance of such proposal, quotation, acknowledgement, invoice or Goods. Seller’s written acknowledgment, commencement of work on the Goods, or shipment of such Goods, whichever occurs first, shall be deemed an effective mode of acceptance of this Agreement.

## **2. INDEPENDENT CONTRACTOR.**

Seller is, and shall be deemed to be, an independent contractor and not an agent, legal representative or employee of Buyer either expressly or impliedly. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order shall grant to either party the right to make commitments of any kind for, or on behalf of, the other party.

## **3. PACKING AND SHIPMENT.**

Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. See FOX VALLEY METAL TECH website for further guideline and requirements which are incorporated herein by reference. <https://www.fvmt.com/suppliers> Seller shall make delivery of the Goods

("Delivery") strictly in accordance with the schedule set forth in the Order or otherwise agreed upon in writing (the "Delivery Schedule"). Seller shall promptly notify Buyer in writing if a delay in meeting the Delivery Schedule becomes reasonably foreseeable by Seller, explaining the reasons for, and specifying the anticipated duration of, such delay. In the event of any actual or anticipated delay in Delivery, Seller shall cooperate with the reasonable instructions of Buyer and use its best efforts to expedite production, packaging, transportation and Delivery so as to minimize or eliminate such delay at the sole cost and expense of Seller.

#### **4. INSPECTION.**

Buyer shall be permitted to inspect Seller's manufacture, fabrication, and testing. For these purposes, and upon reasonable advance notice, Seller shall provide access to Seller's facilities to enable Buyer and its representatives to perform inspections and to determine Seller's orderly, timely and satisfactory compliance with the requirements of the Order. Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of the Order. Any work, or item, which, in Buyer's sole discretion, fails to meet the Order requirements may be rejected. If delivered to Buyer's destination, rejected work or items shall be removed promptly by Seller at Seller's expense and risk. Final acceptance shall not be inclusive with respect to latent defects or misrepresentations. Goods may be rejected, at Buyer's sole discretion, for defects or defaults revealed by inspection, analysis or subsequent manufacturing operations even though such items previously may have been accepted.

Seller shall comply with quality control systems and procedures which Seller represents in any promotional material, quote or acknowledgement as being undertaken by Seller, to the extent such quality control systems and procedures are not inconsistent with those prescribed or provided by Buyer. In no event shall Seller's compliance with the quality control systems and procedures limit, eliminate or operate as a waiver of any of Seller's representations or warranties under this Agreement. Seller shall, upon not less than forty-eight (48) hours' advance notice from Buyer, make Seller's facilities, processes, personnel and records available for inspection and review by Buyer or its designated Representatives (as defined below). Seller shall cooperate with Buyer in good faith to promptly resolve any unsatisfactory condition or non-compliance with this Agreement identified by Buyer to Buyer's reasonable satisfaction. At any time upon request by Buyer, Seller shall promptly certify to its compliance with this Agreement in writing signed by an authorized officer of Seller.

#### **5. TITLE AND RISK OF LOSS.**

Title shall pass to Buyer at the specified destination. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any Goods at Buyer's sole discretion. Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereby until delivered at the specified destination. Seller shall bear all risks as to rejected items after notice of rejection.

#### **6. SELLER WARRANTY.**

Seller represents and warrants to Buyer, which representations and warranties shall survive Delivery and acceptance of the Goods and this Agreement, that: (a) Seller has inspected the Goods prior to Delivery, and such Goods are not Defective (as defined below); (b) Seller has all requisite power and authority to enter into this Agreement and fulfill its obligations hereunder, and that this Agreement does not violate or conflict with any agreement, order or law by which Seller or the Goods are bound; and (c) Seller is in compliance with all applicable Laws.

Goods shall be deemed "Defective" if Buyer determines that such Goods: (a) do not strictly conform to the Specifications; (b) are not merchantable; (c) are not fit for the purposes for which they are intended; (d) are not free from all liens or encumbrances of Seller or any third party; (e) do not comply with all applicable Laws; (f) standing alone, or when used or incorporated into any product or item, misappropriate or infringe any Intellectual

Property (as defined below), confidential information or other proprietary right of any third party in any jurisdiction; (g) are not appropriately marked with the country of origin in accordance with all applicable Laws of the United States; (h) are not new, unused and of first-class materials and workmanship; (i) are not free from contamination, rust, waste or deterioration; and/or (j) are not safe, free from defects and workmanship and, to the extent of any Specifications provided or approved by Seller, free from defects in design.

Seller shall be liable for all costs, expenses and losses arising out of Defective Goods. With respect to any Defective Goods, Buyer may, in its sole discretion and in addition to any other right or remedy available to Buyer under this Agreement or at law, do one or more of the following, each at Seller's sole cost and expense: (a) refuse or reject Delivery of Defective Goods; (b) return any Defective Goods to Seller at any time following Delivery or acceptance by Buyer; (c) accept Delivery of the Defective Goods; (d) require Seller, on an expedited basis, to replace, repair or remanufacture the Defective Goods, or otherwise remedy any condition rendering such Goods Defective; (e) take any action, or engage any third party to take such action, that Buyer deems necessary or desirable to remedy any condition rendering such Goods Defective; (f) obtain, on an expedited basis, repair or replacement of such Goods from any third party satisfactory to Buyer; (g) cancel the applicable Order and any other outstanding Order to Sellers; and/or (h) recover compensatory and consequential monetary damages, together with interest thereon, regardless of whether such damages were foreseeable to Seller or whether Seller was advised of the possibility thereof.

Buyer may inspect Goods upon Delivery based on accompanying documents only for identity, quantity, and readily apparent damage. Buyer may, in its sole discretion, inspect any sample of the Goods at any time upon or after Delivery, and deem all Goods subject to an Order Defective upon identification of Defective Goods in any sample thereof. Buyer reserves the right to identify any Defective Goods at any time, including, without limitation, during the ordinary course of Buyer's business, or upon any claim by a customer or end user of Buyer for warranty or defect of any product or item into which the Goods are incorporated. Buyer shall notify Seller of any Defective Goods within a reasonable time, and Seller hereby irrevocably waives any right to object to such notification of Defective Goods on grounds of delay. No inspection or failure to inspect the Goods by Buyer shall limit, eliminate, or operate as a waiver of any of Seller's representations, warranties, or obligations under this Agreement or any right or remedy of Buyer regarding Defective Goods.

## **7. SPECIAL TOOLING OR FIXTURES.**

Buyer shall exclusively own all tools, equipment or materials provided, made available or paid for by Buyer ("Buyer Tools"), including, without limitation all replacements thereof and any tools, equipment or materials manufactured or procured by Seller at Buyer's expense. Seller shall, at its sole cost, expense and risk of loss, and at no cost or expense to Buyer: (a) clearly and conspicuously identify, segregate and mark all Buyer Tools as Buyer's property; (b) keep the Buyer Tools free of all liens, encumbrances, claims and other rights of Seller or any third party; (c) hold, store and maintain the Buyer Tools in good condition and repair; (d) repair or replace all Buyer Tools that reach the end of their useful life or become lost, damaged, destroyed; (e) insure the Buyer Tools against all loss (including, without limitation, fire, flood, theft, vandalism, and extended coverage perils) and furnish Buyer a certificate of insurance naming Buyer as additional insured and loss payee; (f) use the tools exclusively for the purpose of fulfilling the Order and Seller's obligations under this Agreement, and for no other purpose or benefit; (g) upon fulfillment or cancellation of the Order, the expiration or termination of this Agreement, or at any time upon request of Buyer, promptly return and surrender the Buyer Tools to the location designed by Buyer in accordance with all instructions provide by Buyer; and (h) not scrap the Buyer Tools without Buyer's prior written consent signed by an authorized officer of Buyer. Except as otherwise expressly agreed in writing signed by an authorized officer of Buyer, Seller shall have no right, license, lien, set-off or claims with respect to Buyer Tools.

## **8. BUYER-FURNISHED PROPERTY AND MATERIAL.**

Property and/or material made available or paid for by Buyer for use and performance of fulfillment of the Order ("Buyer Materials"), including, without limitation, all replacements thereof and any materials manufactured or procured by Seller at Buyer's expense. Seller shall, at its sole cost, expense and risk of loss, and at no cost or expense to Buyer: (a) clearly and conspicuously identify, segregate and mark all Buyer Materials as Buyer's property; (b) keep the Buyer Materials free of all liens, encumbrances, claims, or other rights of Seller or any third party; (c) hold, store and maintain Buyer Materials in good condition; (d) replace all Buyer Materials which become lost, damaged or destroyed; (e) insure the Buyer Materials against all loss (including without limitation, fire, flood, theft, vandalism, and extended coverage perils) and furnish Buyer a certificate of insurance naming Buyer as an additional insured and loss payee; (f) use Buyer Materials exclusively for the purpose of fulfilling the Order and Seller's obligations under this Agreement, and for no other purpose or benefit; (g) upon fulfillment or cancellation of the Order, the expiration or termination of this Agreement, or at any time upon request of Buyer, promptly return and surrender the Buyer Materials to the location designated by Buyer in accordance with all instructions provided by Buyer; and (h) not scrap Buyer Materials without Buyer's prior written consent signed by an authorized officer of Buyer. Seller shall have no right, license, lien, set-off or claims with respect to Buyer Materials.

## **9. PAYMENTS, PRICING, AND INVOICING.**

The prices for the Goods specified in the Order (the "Price") is fixed and may not be modified except in accordance with the express provisions of this Agreement or by mutual written agreement of the parties signed by an authorized officer of Buyer. The Price includes all costs and services ordinarily attendant to "Delivery Duty Paid" DDP (Incoterms 2020), including, without limitation, all costs and expenses relating to packaging (and the return or disposal thereof), transportation, Delivery, import and export licenses, customs duties and tariffs, insurance, warehousing and storage prior to Delivery, return of exchangeable containers, and all taxes, duties or levies imposed on the Goods or the transport, transfer, export, import, Delivery or purchase thereof (including, without limitation, any value added tax or excise tax). Seller represents and warrants to Buyer that the Price is not more, and the commercial terms of this Agreement are not less favorable, than the price(s) and commercial terms generally offered by Seller to any third party purchaser of similar goods or services purchased by third parties in substantially similar volumes for comparable purposes. If any third party offers to supply the Goods to Buyer at a lower Price or upon terms more favorable to Buyer, Buyer may submit such offer in writing to Seller, and if Seller does not match such Price or conditions within ten (10) days following the date of such notice, Buyer shall have the option, exercisable in its sole discretion, to cancel the applicable Order without further obligation or liability to Seller.

Seller shall invoice Buyer separately for each Order, as and when Seller ships the Goods pursuant to an Order subject to this Agreement. Seller shall not invoice Buyer for Goods not yet actually shipped. Seller's invoice must prominently reference the Buyer's Order number, the date of the Order, the date of Delivery, the identity and quantity of Goods (with reference to Buyer's item number where applicable), and the Price in U.S. Dollars. Invoices received concurrent with Delivery will not be processed.

Seller's properly submitted invoice shall become due and payable thirty (30) days following receipt of such invoice, all documentation relating to Delivery and all documents of title to the Goods by Buyer. Buyer may, in its sole discretion, pay such invoice by wire transfer to an account designed by Seller, by check or other bill of exchange. Buyer may, in its sole discretion, retain the amount of any actual or reasonably anticipated claim against Seller, and set-off all amounts due from Seller to Buyer (whether arising under this Agreement or otherwise), from any payment or other amount due and owing to Seller. Seller hereby irrevocably waives any right of set-off or counterclaim against amounts due and owing to Buyer. The payment due date for any invoice or Goods subject to a bona fide dispute shall be suspended until such dispute is resolved; provided, however, that Buyer notifies Seller of such dispute in writing and pays, when due, that portion of the invoice not subject to dispute. Buyer and Seller

shall cooperate in good faith to resolve the dispute regarding the Goods or Seller's invoice therefor in good faith, and Seller shall not suspend performance or Delivery of any Order on account of any such dispute.

If this is a cost reimbursement type order or if the Order specifies fixed hourly rates for services, a statement of accounts or invoice, shall be sent to Buyer's Accounts Payable Department monthly. Invoices tendered for payment shall show the monthly rate of expenditure by labor classification as well as other costs allowable under the Order. Delays in receiving a statement or invoice, and errors and omissions on the statement, will be considered just cause for deferring payment without losing discount privilege.

#### **10. ACCEPTANCE.**

Seller's response to any request for proposal, request for quote or Order issued by Buyer, Seller's issuance of any proposal, quotation or invoice to Buyer, or Seller's performance of this Agreement, shall be deemed Seller's unconditional consent to this Agreement and acceptance of the Order and these Terms. Seller shall acknowledge all Orders within two (2) days of the date of such Order, and Buyer shall have the option to revoke or rescind any Order not timely acknowledged by notice to Seller. Seller will send an Order Acknowledgment to Buyer within three (3) days of receiving Buyer's purchase Order. Any deviation from, modification of or supplement to an Order shall only be effective if explicitly and separately identified by Seller as a deviation, modification or supplement and expressly approved in writing signed by an authorized officer of Buyer.

Upon receipt of an Order, Seller is responsible to review and fully understand the Specifications, and shall promptly bring any inquiry, defect, deficiency, incompatibility, or inconsistency relating thereto the attention of Buyer for clarification. Any such clarification shall be deemed incorporated into the Specifications. In no events shall Buyer's provision or approval of the Specifications limit, eliminate or operate as a waiver of any of Seller's representations or warranties under this Agreement.

#### **11. PURCHASE ORDER CHANGES.**

Seller shall cooperate in good faith with Buyer to accommodate any change or modification to the Order, Specifications or Delivery Schedule requested or proposed by Buyer, and the Price shall be subject only to equitable adjustment in proportion to the change in Seller's costs and expenses of labor and materials in fulfilling the Order directly attributable to such change or modification. No change or modification to the Order, Specifications or Delivery Schedule, and no corresponding change in the Price shall be valid unless expressly set forth in writing signed by an authorized officer of Buyer. This Agreement and any Order may not be amended or modified, and no provision of this Agreement or any Order may be waived, except as expressly agreed in writing signed by an authorized officer of Buyer. No failure to exercise any right or remedy shall be deemed or construed as a waiver of such right or remedy, and no written waiver of any breach shall be deemed or construed as a waiver of any continuing breach or any other provision of this Agreement.

#### **12. STOP WORK ORDER.**

The Buyer may, at any time, by written notice to Seller, require Seller to stop all or part of the work called for by the Order for a period of ninety (90) days after such notice is delivered to Seller. Within ninety (90) days after such notice is delivered to Seller, or within any extension of the period to which the parties have agreed, Buyer shall either:

(a) withdraw the notice and direct Seller to resume work, in which event Seller may be entitled to receive an equitable adjustment of the Order price or schedule or both, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or

(b) terminate the work and the Order or part thereof.

### **13. WRITINGS REQUIRED.**

(a) No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.

(b) No oral statement of any person whatsoever shall in any manner or degree, modify or otherwise affect the terms of the Order.

(c) No extra charge of any kind or change in the price or schedule or terms and conditions of the Order will be allowed unless specifically agreed to in writing by an authorized representative of the Buyer's Purchasing Department.

### **14. RECORDS.**

Seller agrees that its manufacturing plant, or such part of any manufacturing plant as may be engaged in the performance of the Order, and its records shall at all reasonable times be subject to examination and audit by any person designated by Buyer.

Such books and records shall be maintained by Seller for a period of seven (7) years after final payment is made under the Order.

### **15. TERMINATION FOR CONVENIENCE.**

(a) Buyer may, at its option, terminate the Order, in whole or in part, for Buyer's convenience, by written notice, including fax notice to Seller, effective at date of sending. Upon termination hereunder, Seller shall: (i) forthwith stop work under the Order on the terminated portion thereof and place no further Orders or lower-tier subcontracts hereunder, (ii) terminate or, if so, directed by Buyer, assign to Buyer, Orders or subcontracts outstanding hereunder, and (iii) take any necessary action to protect property, Buyer Tools and Buyer Materials in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same. Within three (3) months after receipt of such notice of termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:

(1) The Order Price for articles which have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable adjustment will be made to the Order Price for such articles.

(2) The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose Price is paid, except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. If the Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours expended in conformity with the provisions of the Order.

(3) Commercially reasonable expenses actually incurred by Seller in settling Seller's terminated Orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

(4) Such allowance for profit on the work performed as may be commercially reasonable and allocable under the circumstances; provided, however, that if it appears that Seller would have incurred a loss if the Order had not



been terminated, no profit shall be allowed and Buyer's payments pursuant to subparagraph (2) above will be reduced by the proportionate amount of such loss as the terminated portion of the Order relates to the entire Order.

(b) Payments including all payments made under the Order prior to the termination, shall in no event exceed the aggregate Price specified in the Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed, with Buyer's approval, may retain the same at an agreed price, or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any Orders and subcontracts that Seller has terminated in accordance with this clause TERMINATION FOR CONVENIENCE.

(c) In no event will Seller be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed above, nor shall Seller be allowed to recover any cost incurred prior to termination unless such cost was allocated to the Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

#### **16. TERMINATION FOR DEFAULT.**

(a) Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof including warranties or fails to make progress as to endanger performance of the Order in accordance with its terms. Termination hereunder shall be affected by written notice to Seller.

(b) In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under this clause.

(c) Except with respect to defaults of subcontractors at any tier, Seller shall not be liable for excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required Delivery Schedule.

(d) If the Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of:

(i) any completed Goods, and

(ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "Manufacturing Materials") as Seller has specifically produced or acquired for the performance of such part of the Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed Goods delivered and accepted by Buyer shall be at the Order Price. Payment for Manufacturing Materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or Manufacturing Materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of the Order under the provisions of this clause 16, it is determined for any reason that Seller was not in default under the provisions of this clause 16, or that the default was excusable under the provisions of clause 16(c), the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause 15 and the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly.

(f) The rights and remedies of Buyer provided in this clause 16 shall not be exclusive and are in addition to any others provided by law or the Order.

#### **17. ORDER OF PRECEDENCE.**

If any of the provisions of the Order are in conflict, the following will be the order of precedence:

- (a) typed provisions on the face of the Order,
- (b) Buyer's Order attachments, including these Terms and conditions,
- (c) other Specifications or documents incorporated by reference,
- (d) Seller's proposal or other documents only when specifically referenced on the Order. In the event of any conflicting provisions, the Seller shall promptly notify Buyer thereof.

#### **18. PROPRIETARY INFORMATION.**

As between Buyer and Seller, and unless specifically and expressly agreed to the contrary in writing signed by an officer of Buyer, Buyer shall exclusively own all patents, copyrights, trademarks, trade secrets or other intellectual property or proprietary rights and any improvements, modifications or derivative works relating thereto ("Intellectual Property") provided or made available by Buyer pursuant to this Agreement, the Order, or incorporated into the Goods or the Specifications by Buyer or Seller (the "Buyer Intellectual Property"), including, without limitation, any information, formulations, drawings, models, tools, technical records, procedural methods, data, software, code, samples, and knowhow. All Buyer Intellectual Property created or developed in whole or in part by Seller shall be deemed a "work made for hire." Seller hereby assigns, agrees to assign, and shall cause its affiliates and contractors and its and their respective employees, agents, and representatives to assign, all right title and interest in the Buyer Intellectual Property to Buyer. As between Buyer and Seller, all business or technical information, formulations, drawings, models, tools, technical records, procedural methods, data, software, code, samples, and knowhow disclosed, provided or made available by Buyer or obtained by Seller (whether verbally, in writing, by observation, by inspection or by any other means) pursuant to this Agreement, the Order, or incorporated into the Goods or the Specifications by Buyer or Seller, which Buyer deems confidential or proprietary ("Confidential Information"), shall be the exclusive property of Buyer. Confidential Information shall not include information that Seller can prove:

- (a) is or becomes available to the public through no fault of Seller; or
- (b) is provided to Seller without restriction on use or disclosure by a third party duly authorized to provide such information.

Seller shall maintain all Confidential Information in strict confidence, and shall not disclose any Confidential Information to any third party except: (i) as expressly permitted in writing signed by an authorized officer of Buyer; or (ii) as required pursuant to applicable law; provided, however, that Seller first promptly notifies Buyer of such obligation, cooperates with Buyer to contest such disclosure or seek a protective order or other appropriate remedy at Buyer's expense, and then discloses only so much of the Confidential Information as Seller, in the good faith opinion of its legal counsel, is legally compelled to disclose.

Seller may only make Buyer Intellectual Property and Confidential Information available to its representatives who: (a) have a need to know such Buyer Intellectual Property or Confidential Information to fulfill the Order or Seller's obligations under this Agreement; (b) agree for the benefit of Buyer to abide by binding obligations restricting the use or disclosure of such Buyer Intellectual Property and Confidential Information as provided in this Agreement; and (c) for whom Seller shall be responsible for any breach or noncompliance with this Agreement, as if committed by Seller. Nothing in this Agreement shall grant Seller any right or license to the Buyer Intellectual Property or Confidential Information of Buyer. Seller may use the Buyer Intellectual Property and the Confidential Information only for purposes of fulfilling the Order and Seller's obligations under this Agreement, and for no other purpose or benefit. Seller shall not decompile or reverse engineer or assist or facilitate any third party to decompile or reverse engineer, any Buyer Intellectual Property. Upon fulfillment or cancellation of the Order, expiration or termination of this Agreement, or at any time upon the written request of Buyer, Seller shall promptly return or, at the option of Buyer, destroy, all information or materials (including any notes, summaries, reports or other materials created by Seller) containing or incorporating any Buyer Intellectual Property or Confidential Information and certify in writing to the return or destruction thereof.

#### **19. EXPORT COMPLIANCE (ITAR)**

Information exchanged pursuant to the Order may include the use of, or access to, Technical Data (as defined in the Export Regulations defined herein) that is subject to export controls under 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Regulations"). U.S. law prohibits the transfer or export of Technical Data without an export license to any employee or other person who is not a United States Citizen or Permanent Resident Alien, as well as to corporations or to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States. Seller acknowledges that it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided access to Technical Data provided under the Order. If any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately notify Buyer's authorized Purchasing Department representative. For further ITAR detail see [www.pmdtc.state.gov](http://www.pmdtc.state.gov).

#### **20. ADVERTISING, USE OF NAME.**

Seller shall not, without first obtaining written consent of an authorized representative of Buyer's Purchasing Department, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles or services provided for in the Order. Seller agrees that it shall not use the Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer's prior written consent in each instance.

#### **21. INDEMNITY.**

To the fullest extent permitted by law, Seller shall indemnify, defend and hold Buyer, its affiliated entities, and its and their respective shareholders, members, partners, directors, officers, managers, employees, contractors, customers, agents and representatives (together, "Representatives") harmless from and against any and all claims, demands, judgments, orders, damages, fines, penalties, costs, liabilities or losses (collectively, "Losses"), including, without limitation costs of negotiations, proceedings or enforcement, and any attorneys,' accountants' and expert witnesses' fees, arising out of, relating to or resulting from:

(a) breach of any representation, warranty, covenant, or other obligation set forth in this Agreement on the part of Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller;

(b) Defective Goods;

(c) premature, delayed, incomplete or excess Delivery of Goods or other failure to comply with the Delivery Schedule;

(d) actual or alleged infringement or misappropriation of any Intellectual Property, Confidential Information, or other proprietary right of Buyer or any third party on the part of Seller or the Goods, except to the extent directly resulting solely from the negligence of Buyer;

(e) death, personal injury, or damage to property of any of Seller's representatives or relating to Defective Goods or the incorporation of Defective Goods into any product or article;

(f) voluntary or mandatory recall or repair campaign relating to any Defective Goods, or products or items incorporating Defective Goods; and/or

(g) negligent acts or omissions, willful or reckless misconduct, or violation of applicable law on the part of Seller or its representatives. Seller's indemnification obligations set forth in this clause 21 shall not apply to the extent of Losses caused solely by negligent acts or omissions, willful or reckless misconduct, or violation of applicable law on the part of Buyer or its Representatives. Buyer shall retain sole authority to negotiate, litigate, settle, and resolve all Losses subject to indemnification pursuant to this clause 21, by counsel and representatives satisfactory to Buyer, in its sole discretion. Buyer shall notify Seller of any Losses subject to indemnification pursuant to this clause 21 within a reasonable time; provided, that failure to provide such notice shall in no event limit, eliminate or waive Seller's indemnification obligations pursuant to this clause 21.

## **22. INSOLVENCY AND BACKRUPTCY**

Buyer may, in its sole discretion, terminate this Agreement or cancel any Order in whole or in part without further obligation or liability to Seller upon: (a) Seller's insolvency, inability to pay debts as they become due; (b) the voluntary or involuntary filing of any petition for insolvency, bankruptcy or reorganization on the part of Seller; (c) appointment of a receiver or trustee for Seller; or (d) Buyer's determination that Seller will be unable to fulfill any Order or its obligations pursuant to this Agreement.

## **23. INSURANCE.**

At Seller's own cost, Seller shall procure and maintain policies of insurance with reputable insurers with AM Best Company's or similar which have a financial rating of not less than "A-:VII" or "Excellent" or the equivalent from a reputable rating agency (such as Standard and Poor's). The policies of insurance shall be written on an occurrence basis or on a claims made basis in which event insurance shall be maintained during the term of this Agreement. The Seller shall maintain insurance coverage in amounts not less than the following: (a) Worker's Compensation – Statutory Limits for the state or states in which this Agreement is to be performed (or evidence of authority to self-insure); (b) Employer's Liability - \$1,000,000; (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability) - \$1,000,000 per person, \$1,000,000 per occurrence (personal injury) and \$1,000,000 per occurrence (property damage), and (d) Automobile Liability (including owned, non-owned and hired vehicles) - \$1,000,000 per person, \$1,000,000 per occurrence (personal injury) and \$1,000,000 per occurrence (property damage). Seller shall furnish certificates of insurance to Buyer evidencing the coverage required pursuant to this clause, naming Buyer as an additional insured and providing that such policies of insurance may not be cancelled, terminated or not renewed upon not less than thirty (30) days' advance notice to Buyer. Seller hereby irrevocably waives, and shall cause its insurers to waive, any right of subrogation against Buyer. In no event shall Seller's liability to Buyer be limited to the amount of available insurance

## **24. TAXES.**

### **I. Domestic (U.S.):**

(a) Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order.

(b) Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this domestic clause 24(l), as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.

(c) Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this clause 24(l), when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

II. Foreign (Non-U.S.): The total purchase amount of the Order does not include any taxes or duties of any foreign country, jurisdiction, government, or subdivision thereof, including but not limited to income tax, value added tax, withholding tax, sales tax, use tax, excise tax, personal property tax, assessments, ad valorem tax, stamp and documentary taxes, import duties and all other governmental charges, fees, fines, interest or other penalties whatsoever, in each case imposed by the applicable foreign country, jurisdiction, government or subdivision thereof. Seller shall not be required to file, and Buyer shall arrange for a tax exemption for any such taxes or duties imposed by the foreign country, jurisdiction, government or subdivision thereof, in a manner acceptable to the applicable foreign taxing jurisdiction or authorities, or otherwise to be responsible for payment of such taxes or duties. If Seller is required to pay any applicable foreign taxes, duties, or any other foreign governmental charges, fees, fines, interest, or other penalties whatsoever, Buyer agrees to pay or reimburse Seller any such amounts as they become due.

## **25. FORCE MAJEURE.**

Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (a) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, epidemics, pandemics, or unusually severe weather affecting either party; or (b) similar causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Seller, Buyer, at its option, may purchase Goods from other sources and reduce its schedules to Seller by such quantities, without liability to Buyer, or cause Seller to provide the Goods from other sources in quantities and at times requested by Buyer and at the Price set forth in this Agreement. If requested by Buyer, Seller shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Seller does not provide adequate assurance that the delay will cease within such time period, Buyer may, among its other remedies, immediately terminate this Agreement without liability.

## **26. COMPLIANCE WITH LAWS.**

Seller understands and acknowledges that Buyer is committed to compliance with all applicable domestic and foreign Laws affecting its business and operations. Seller agrees that in performing its duties under the Order, Seller will conduct itself in strict adherence to all applicable Laws, rules, and regulations.

## **27. DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS)**

The Buyer may require a flow down clause to Seller for military contracts. This is a rated Order certified for national defense use, and Seller agrees to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR Part 700), incorporated herein by reference.

## **28. ASSIGNMENT/SUBCONTRACTING**

Seller may not assign, delegate, or subcontract any of its rights or obligations under the Order or this Agreement without prior written consent signed by an authorized representative of Buyer, in Buyer's sole discretion. Any attempted assignment, delegation or subcontract of Seller's rights or obligations under the Order or this Agreement in violation of this clause shall be null and void. Notwithstanding any assignment, delegation or subcontract of the Order or this Agreement authorized by Buyer, Seller shall at all times remain liable to Buyer for the fulfillment of the Order, the performance of this Agreement, and any act or omission Seller's assignee, delegate or subcontractor and its and their respective representatives, as if committed by Seller. This Agreement shall inure to the benefit of the parties, their respective successors and permitted assigns. There are no third-party beneficiaries of this Agreement.

## **29. LIMITATION ON BUYER'S LIABILITIES.**

In no event shall Buyer be liable to Seller for anticipated profits or for incidental, special or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from the Order or this Agreement, or from any performance or breach, shall in no case exceed the Price allocable to the Goods or services which directly gives rise to the claim.

## **30. DISPUTES.**

In the event of any dispute arising hereunder between Buyer and Seller, Seller shall proceed with performance under the Order pursuant to the position taken by Buyer in such a dispute.

## **31. ATTORNEY FEES.**

If Buyer deems it necessary to obtain legal representation to enforce any part of the Order or this Agreement, Seller agrees to bear the court costs and the attorney fees provided Buyer is the prevailing party.

## **32. APPLICABLE LAW; VENUE.**

The Order and this Agreement is made in the English language only and shall be governed and construed exclusively in accordance with the Laws of the United States and the State of Wisconsin, without regard to any conflicts of law's provisions. Any dispute or proceeding arising out of or in connection with this Agreement shall be heard exclusively before the federal courts of the United States located in the Eastern District of Wisconsin and the courts of the State of Wisconsin located in Brown County.

The parties hereby voluntarily, knowingly, and irrevocably consent to the personal jurisdiction of such courts and waive any objection as venue or forum. Notwithstanding the foregoing, Buyer may enforce any judgment or seek any injunctive or equitable relief against the Seller in any court with component jurisdiction over Seller or its assets. For the avoidance of doubt, the UN Convention on the International Sale of Goods (C.I.S.G.) and other international conventions or uniform law on the sale of Goods shall not be applicable.

This Agreement shall be enforced without applicability of any rule of construction or prejudice against the party that drafted this Agreement. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions in this Agreement shall continue in full force and effect and, to the extent permitted by law, the invalid or unenforceable provision shall be deemed modified to the limited extent

necessary to render it valid and enforceable in accordance with the intentions of the parties as expressed in this Agreement.

**33. NON-WAIVER.**

The failure of Buyer to insist, in one or more instances upon strict performance or to exercise any rights shall not waive or relinquish to any extent Buyer's right to assert or rely upon any such terms or rights on any future occasion.

**34. ORDERS WITH ASSIGNMENT OF CERTAIN PERSONNEL.**

If the Order contains a key personnel clause and the designated employee(s) of Seller become unavailable to perform services under the Order, a replacement for that individual with comparable abilities and qualifications shall be promptly assigned. Seller shall promptly furnish an authorized representative of Buyer's Purchasing Department with resume(s) and any other information Buyer may reasonably request to support assignment of the replacement personnel.

**35. CREDIT.**

The Seller shall credit to the Buyer within thirty (30) days of both parties agreeing to the cash refund, the applicable portion of any income, rebate, allowance, or other credit related to cost for which the Seller has been reimbursed by the Buyer.

**36. TRAVEL COSTS.**

Unless otherwise noted in the Order, travel costs shall be reimbursed at cost, provided airfare cost does not exceed the cost of coach airfare and meals and incidental expenses do not exceed \$1,000.00 in the aggregate. The Price may also include the assembly and/or installation of the Goods at Buyer's facility if expressly set forth in the Order in such case the Seller shall be responsible for all tools, travel, consultation or other costs incurred in connection therewith.

**37. ENTIRE AGREEMENT.**

These Terms and conditions and those on the face of the Order to which these Terms are attached including other specifications, attachments or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral between the parties related to the subject matter of the Order. In the event of any conflict or inconsistency between these Terms and the other provisions of the Agreement set forth in the Order or available at the Web Portal, these Terms shall control and govern in all respects. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by an authorized representative of Buyer's Purchasing Department.

In the event the Order is for temporary labor, including job shopper services, PERSONNEL UNDER TEMPORARY LABOR ORDERS, TRAVEL COMPENSATION, INVENTIONS AND COPYRIGHT AGREEMENT, PERSONNEL QUALIFICATIONS and/or EXECUTIVE ORDERS shall also apply.

**38. PERSONNEL UNDER TEMPORARY LABOR ORDERS.**

If the Order is for contract labor, the Buyer may interview, test, and evaluate the qualifications of any person nominated for work under the Order, and may reject any such individual. If any such individual is rejected by Buyer, Seller shall supply additional candidates in a timely manner. Upon approval, Buyer will reimburse persons retained beyond an initial five (5)-day probationary period for actual travel costs to the job site, designated on the face of the Order. In no event shall such costs exceed a single round trip, Coach airfare, from each such

individual's present location to the job site. If the Buyer rejects anyone within the first five (5) days of service for any reason, or if anyone involved should resign within the first five (5) days of service or fail to work for five (5) consecutive working days, Buyer shall have no obligation to reimburse such individual for said transportation costs.

**39. PERSONNEL QUALIFICATIONS.**

The Buyer may interview, test, and evaluate the qualifications of any person nominated for work under the Order, and may reject any such individual. If any such individual is rejected by Buyer, Seller shall supply additional candidates in a timely manner.

**40. EXECUTIVE ORDERS.**

Seller shall comply with: (a) Executive Order 11246, "Vietnam Era Veteran Readjustment Assistance Act of 1974" and "Section 503 of the Vocational Rehabilitation Act of 1973" and (b) Executive Order 13496, "Notification of Employee Rights Under Federal Labor Laws", 29 CFR Part 471, Appendix A to Subpart A.

[END]

REVISED AND UPDATED OCTOBER 16, 2020