



## GEORGE INDUSTRIES LLC

### Purchase Order Terms and Conditions

The following are the exclusive terms and conditions ("Terms and Conditions") that apply to each Purchase Order ("Order") issued by George Industries LLC ("Buyer") to any supplier or vendor ("Seller") and pursuant to which Buyer is sold and provided goods and/or services.

**1. Order; Acceptance and Agreement.** The Order represents an offer by Buyer which may only be accepted subject to its terms and these exclusive Terms and Conditions. Buyer expressly rejects any other terms or conditions. These Terms and Conditions, together with the Order and any related supply agreement, if any, executed by and between Buyer and Seller, collectively constitute the contract governing the business relationship between Buyer and Seller (collectively, the "Agreement"). The Order will be deemed accepted by Seller on the first to occur of Seller's shipment of goods, performance of services, commencement of work under the Order, written acknowledgement, or other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter of the Order. These Terms and Conditions are incorporated into and are an integral part of each Order and any related supply agreement between Buyer and Seller. To the extent of any conflict between the Order, any supply agreement and these Terms and Conditions, such documents shall control in the following order of priority: (a) the Order, (b) the supply agreement, if any, and (c) these Terms and Conditions.

**2. Shipment and Delivery.** Buyer may by written notice to Seller change the time or rate of scheduled shipments, the quantity of shipments or direct temporary suspension of scheduled shipments. Time is of the essence regarding the Agreement. The required delivery date shall be set forth in the Order. Unless otherwise stated in the Agreement, all shipments shall be F.O.B. Buyer's facility and deliveries shall only be accepted by Buyer or its designee during Buyer's normal business hours. Acceptance by Buyer of a late delivery of either the whole or part of the goods under the Order shall not constitute a waiver of any claim of Buyer for any damages resulting from the late delivery. Where Buyer agrees in writing to accept delivery in installments, failure by Seller to deliver any one installment shall entitle Buyer, at its option, to cancel some or all of the Order and/or to terminate the Agreement. If the goods are delivered to Buyer in excess of the quantities ordered, Buyer shall not be bound to pay for the excess and any excess will be and will remain at Seller's risk and will be returnable, at Buyer's sole option, at Seller's expense. Premium expenses necessary to satisfy the delivery date set forth in the Order are Seller's sole responsibility. The transfer of title of and risk of loss to goods under the Agreement shall only pass to Buyer upon acceptance of delivery at Buyer's facility or Buyer's otherwise specified delivery location.

**3. Inspection and Acceptance.** Receipt by Buyer of any goods shall not be deemed acceptance. Final inspection of goods shall be made by Buyer at Buyer's facility or Buyer's otherwise specified delivery location. Buyer, Buyer's customers, and applicable regulatory authorities shall have the right, but not the obligation, to inspect goods being manufactured for Buyer under the Agreement, at any time, at Seller's premises. The exercise of such right shall not be a waiver or Buyer's right to final inspection as provided herein. If Buyer determines that the goods do not conform or are unlikely to conform to the Agreement then, without limitation as to Buyer's other remedies, Seller shall promptly, within not more than ten (10) business days, take such action as Buyer may reasonably deem necessary to ensure conformity or, at Buyer's option, replace the nonconforming goods. Notwithstanding any inspection or testing or payment for goods by Buyer, Seller will remain fully responsible for the goods and any such inspection or testing or payment shall not diminish or otherwise affect Seller's obligations, or Buyer's rights and remedies, under the Agreement.

**4. Most Favored Customer.** By acceptance of the Order, Seller represents and warrants that the prices, allowances and other terms and conditions applicable to the Agreement are at least as favorable as any currently offered by Seller to any other customer purchasing similar types and quantities of goods. If more favorable prices, allowances or other terms and conditions are offered by Seller to any other customer during the term of the Agreement, Seller shall immediately notify Buyer in writing and any such more favorable prices, allowances and such terms and conditions shall apply to the Agreement.

**5. Payment and Price.** Payment from Buyer shall be due within the time stated in the Agreement. The payment due date shall be based upon the later of Buyer's receipt of all goods provided for in the Agreement or Buyer's receipt of a satisfactory invoice by Buyer that complies with these Terms and Conditions. The price of the goods as stated in the Agreement shall be deemed to include any price guaranty(ies) contained in Seller's quotation, which price guaranty(ies) are hereby expressly incorporated into the Agreement and, unless otherwise expressly provided, shall be inclusive of any and all packaging, shipping, handling and transportation charges, as well as any and all applicable customs, duties, and similar charges, and any and all taxes, of any kind or nature, imposed by any federal, state, local or foreign government or any agency, department, or instrumentality or political subdivision thereof, all of which shall be the sole responsibility of Seller. Promptly after each complete shipment of goods, Seller will issue a single invoice for such shipment to Buyer at the address specified in the Order. Each invoice



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must comply with applicable law and include the following information regarding the corresponding shipment of goods: (a) the amount due (in the currency specified in the Order and, if not specified or unless otherwise provided, in the currency of the United States of America); (b) the date and location of delivery; (c) a summary description of goods, including part, product, model or serial number(s), as applicable, and quantity to be delivered; and (d) the Order number. Buyer may reject any invoice that is inaccurate or does not conform to these requirements. Buyer will pay for all conforming goods delivered by Seller in accordance with the payment terms specified in the Order. Payments may be made by check or electronically (including, without limitation, by bank transfer or recorded bill of exchange, where applicable). If Buyer reasonably believes that any goods provided by Seller under the Order may be subject to any liens, claims, interests, or encumbrances, Buyer may withhold payment pending its receipt of evidence, satisfactory to Buyer, that such goods are free of all liens, claims, interests, and encumbrances. All amounts due to Seller will be considered net of indebtedness of Seller and its affiliates and subsidiaries to Buyer and its affiliates and subsidiaries; and Buyer and its affiliates and subsidiaries will have the right to setoff against or to recoup from any amounts otherwise due to Seller and its affiliates and subsidiaries from Buyer and its affiliates and subsidiaries.

**6. Warranties.** Seller warrants that all goods sold to Buyer will be new, of good quality, material and workmanship, will be merchantable, free from defect, and will be in conformance with all specifications, drawings, descriptions, design criteria and quality standards furnished by Buyer to Seller. Seller further warrants that any goods sold to Buyer shall conform to, and shall be of the same or better quality as any samples provided to Buyer and that any weights, measures, signs, legends, words or description stamped, printed or otherwise attached to the goods or containers or referring to the goods sold to Buyer shall be true and correct and comply with all applicable laws, rules and regulations. Seller further warrants that Seller shall comply with all of these Terms and Conditions and all of the other terms, obligations and requirements of the Agreement. In addition, Seller acknowledges that Seller knows of Buyer's, and Buyer's customers', intended use of the goods and Seller warrants and guarantees that such goods will be fit and sufficient for the particular purpose intended by Buyer and/or Buyer's customers. All warranties shall survive inspection, testing, acceptance and payment by Buyer. Without limitation to any other remedies of Buyer, on Buyer's written notice to Seller, at Buyer's option, Seller shall repair or replace any non-conforming goods at Seller's sole expense. Seller will convey good title to goods to Buyer, free and clear of all liens, claims, interests and encumbrances whatsoever. All non-conforming goods returned to Seller may be returned to Seller, at any time, at Seller's sole expense.

Unless otherwise set forth in the Agreement, the duration of the warranty provided by Seller to Buyer for the goods will begin on the date of receipt of the goods by Buyer and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the goods, (b) expiration of any warranty applicable to the goods provided by Buyer to Buyer's customer for the customer's product into which the goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Agreement, including in Buyer's specifications or quality standards. All warranties expressly set forth herein or otherwise in the Agreement are in addition to any and all other warranties provided by law.

Notwithstanding the foregoing, if Buyer or Buyer's customer, voluntarily or pursuant to a government mandate, makes an offer, to owners of finished products on or into which the goods or any parts, components or systems incorporating the goods are installed, to provide remedial action to address a defect or condition that relates to safety or the failure of the goods or products into which the goods are incorporated (e.g., a vehicle) to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a "Remedial Action"), the warranty will continue for such time period as may be required by Buyer's customer or the federal, state, local or foreign government where the goods are used or provided. Notwithstanding any expiration of a warranty period set forth in this section, Seller will be liable for costs and damages associated with any Remedial Action to the extent that such Remedial Action is based upon Buyer's reasonable determination that the goods fail to conform to Seller's warranties. Where applicable, Seller will pay all reasonable expenses associated with determining whether a Remedial Action is necessary.

Seller warrants and guarantees that services covered by the Agreement will be performed by personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and that Seller will at all times devote adequate resources to satisfy its obligations under the Agreement.

The warranties provided for in this section may not be limited or disclaimed by Seller. Buyer's approval of Seller's designs, materials, processes, drawings, specifications or the like will not be construed to relieve Seller of any warranties, nor will a waiver by Buyer of any required specification as to any particular goods constitute a waiver of any such requirements for any other goods.



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**7. Quality Management System.** Seller shall implement and maintain a Quality Management System (QMS) acceptable to Buyer. Such QMS shall conform to a recognized industry standard acceptable to Buyer and shall at all times be certified and remain certified consistent therewith. Seller shall provide prompt written notice to Buyer if the QMS has any lapse in such certification. The QMS shall include a process that prevents the use or production of counterfeit parts or materials. Seller shall provide Buyer a material and testing Certification of Compliance with each delivery when applicable and as specified.

**8. Ingredients Disclosure, Warnings and Instructions.** Seller will disclose to Buyer, in such form and detail as Buyer may reasonably direct, all ingredients and materials incorporated in the goods and the amount of such ingredients and materials. Seller will also furnish to Buyer sufficient advance warning and notice, in writing (including, without limitation, appropriate labels on the goods, containers and packaging), of any dangerous goods or hazardous material that is an ingredient or a part of any shipment of goods, together with such special handling instructions as may be necessary to advise carriers and Buyer of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent personal injury or property damage in the handling, transportation, processing, use or disposal of the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

**9. Changes by Seller.** Seller shall not make changes to its processes, locations, facilities, equipment, materials, suppliers or product designs which affect Buyer's Order without prior written approval from Buyer. The above requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

**10. Changes by Buyer.** At any time prior to shipment, Buyer may, by written notice to Seller, make changes in the scope of the Order relating to specifications or descriptions, types, quantities, testing, place of delivery, method of shipping or packing and Buyer's delivery schedule. If any changes by Buyer cause an increase or decrease in the cost, timing, or the delivery schedule, Seller shall provide a written quote to Buyer reflecting an equitable adjustment in the price, delivery schedule or both. Any claims by Seller for adjustment under this provision shall be deemed waived unless asserted in writing within ten (10) business days from Seller's receipt of written notice of the change from Buyer. Once asserted, Buyer shall have the option to accept the adjustment or reject and cancel the order upon written notice, and without liability, to Seller. Buyer will have the right to verify all claims for adjustment hereunder by auditing relevant records, facilities, work or materials of Seller. In any event, Seller will promptly implement such changes as directed by Buyer without delay.

**11. Conformity.** Seller shall strictly adhere to any and all requirements of Buyer and whether specified in drawings, product specifications, quality standards, or otherwise in, or in connection with, the Agreement. Seller shall identify, segregate and control goods and materials that departs from the drawings, Order, specifications and regulatory requirements to prevent unauthorized use or delivery to Buyer. When goods are found to be non-conforming, Seller must notify Buyer for disposition prior to shipment to Buyer. If Seller identifies a non-conformance or potential non-conformance after the shipment has already been made to Buyer, Seller must notify Buyer of the non-conformance in writing as soon as practicable, but, in any event, not later than within one business day of the discovery. If requested by Buyer, Seller must provide samples of such non-conforming items to Buyer for evaluation. Seller is solely responsible for the cost of shipping, inspection, and testing to determine the potential acceptability of material or product. Any Buyer approval of a deviation is specific to the particular material or product submitted to Buyer for evaluation and shall not be construed as Buyer's consent to a permanent change.

**12. Incorporation of Customer Requirements.** Any specifications, drawings, notes, instructions, engineering notices, technical data or supplemental Order terms and conditions referred to in the Agreement are incorporated into and are an integral part of the Agreement. Seller acknowledges that it has reviewed, or has had the opportunity to review, the requirements and specifications between Buyer and Buyer's customer ("Customer Requirements") and agrees to be bound to Buyer by the terms of such Customer Requirements insofar as they are applicable to the Agreement. Where any provision of the Customer Requirements is inconsistent with any provisions of the Agreement, and unless otherwise stated, the Customer Requirements shall govern.

**13. Regulatory Compliance.** For goods or systems purchased from Seller that have specific government regulatory performance requirements, Seller must provide Buyer with evidence of compliance, in the form of a test report and/or engineering analysis, validating conformance to those specific regulatory requirements. Seller must provide the same evidence of compliance whenever a change is made to a particular product or system that



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affects the performance of that product or system to a specific government regulatory performance requirement. Seller must complete a letter of conformance and timely provide the same to Buyer as requested.

**14. Audits; Record Retention.** Seller grants Buyer and/or Buyer's designee(s), including, without limitation, Buyer's customers and/or any regulatory authorities, access to Seller's premises and books and records, at any time, solely for the purpose of auditing Seller's compliance with the terms of the Agreement and any Customer Requirements. Seller will cooperate with Buyer and Buyer's designees so as to facilitate any such audit. Unless otherwise required by law, any applicable contract to which Buyer is bound, or as may be otherwise customary in the applicable industry (e.g., automotive, aerospace, defense), whichever is greater, Seller will preserve all records pertinent to the Agreement, and Seller's performance under the Agreement, for a period of not less than ten (10) years after Buyer's final payment to Seller under the Agreement. Thereafter, Seller may dispose of such records only with the prior written approval of Buyer. All records shall be maintained in a commercially reasonable manner. Any audit conducted by Buyer or its designees will not constitute acceptance of any goods nor relieve Seller of any obligation under the Agreement (including, without limitation, changes under the Agreement), nor will any inspection or conducting of an inventory and/or testing of finished goods, work-in-process, raw materials, any of Buyer's property and all production processes, work or other items to be performed and/or provided pursuant to the Agreement located at Seller's premises.

**15. Seller's Assurance of Performance.** Should Buyer have reasonable grounds for insecurity with respect to Seller's continued performance under the Agreement, Buyer may, in writing, demand adequate assurance of such performance from Seller. After receipt of such demand, Seller's failure, within a reasonable period of time (not to exceed 10 calendar days), to provide assurances adequate under the circumstances will be deemed a breach of the Agreement by Seller.

#### **16. Intellectual Property.**

**Applicability.** This section will apply where the parties have not entered into a separate written agreement signed by their respective authorized representatives with respect to the parties' Intellectual Property Rights (defined below) that expressly prevails over the Agreement.

#### **Definitions.**

**"Intellectual Property Rights"** means any patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, trade names, slogans and logos of Seller and Buyer unless specifically identified as a deliverable or work product of Seller pursuant to the Agreement.

**"Background Intellectual Property Rights"** means any Intellectual Property Rights of either Buyer or Seller relating to the goods or services contracted (a) existing prior to the effective date of the Agreement or prior to the date Buyer and Seller began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (b) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under the Agreement.

**"Foreground Intellectual Property Rights"** means any Intellectual Property Rights, except Background Intellectual Property Rights, (a) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with the Agreement or (b) relating to the goods or services contracted.

**Foreground Intellectual Property Rights.** Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors ("Personnel"). Buyer will own any Foreground Intellectual Property Rights. Buyer does not grant any license on Foreground Intellectual Property Rights to Seller. As long as they have been created or made by it or the needs of the Agreement, Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation.



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**Background Intellectual Property Rights.** Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights. Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import the goods or services that are the subject of the Agreement (the "Background License").

**Copyrights.** To the extent that the Agreement is issued for the creation of copyrightable works, the works will be considered "works made for hire" for Buyer, except to the extent that the works do not qualify as "works made for hire" for Buyer in which case Seller hereby assigns to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.

#### 17. Infringement; Indemnification.

A. Seller will investigate, defend, hold harmless and indemnify Buyer, its agents, employees, officers, directors, members, attorneys, affiliates, customers, successors and assigns (individually and collectively, the "Indemnitees") from and against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees and costs) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively "IP Claims"). Seller waives any claim or defense against Indemnitees that any such IP Claims arose out of compliance with Buyer's or its customers' specifications or directions.

B. Seller further agrees to indemnify, hold harmless and defend Indemnitees from and against any claims, suits, actions, judgments, liabilities, damages, costs or expenses, including attorneys' fees and other defense costs, due to bodily injury, including death, property damage, including loss of use thereof, economic loss or otherwise arising, or allegedly arising, from (a) any defect in any product manufactured or sold by Seller to Buyer, (b) any actual or alleged failure of any product manufactured or sold by Seller to conform to the representations of the labeling thereon, (c) the failure of such labeling to comply with any applicable federal laws or regulations, whether or not any negligence of any Indemnitee contributed thereto, or (d) any and all failures of Seller to comply with any of these Terms and Conditions or any of the terms, obligations or requirements of the Order.

**18. Bailment.** From time to time, Buyer may deliver to Seller certain goods and materials in connection with Seller providing goods and/or services to Buyer. Seller acknowledges and agrees that any and all such goods and materials are the sole and exclusive property of Buyer and are merely bailed to Seller. Seller is and shall be responsible, as a bailee, for any loss of, and/or damage to, any such goods and materials bailed to it by Buyer. Seller shall: (a) take reasonable precautions to protect and to properly segregate, maintain and insure such goods and materials similar to the precautions Seller takes to protect its own goods and materials; (b) mark Buyer's goods and materials as "Property of George Industries LLC"; and (c) refrain from commingling the goods and materials with the property of Seller or with that of a third party. Buyer shall have the right to enter Seller's premises at any time during Seller's regular business hours, and outside of Seller's regular business hours with reasonable notice, to inspect Buyer's goods and materials and to take possession of them.

**19. Subcontractors.** Seller may not subcontract any portion of any Order without the prior written approval of Buyer, in Buyer's sole discretion. To be eligible for any such approval, Seller must first obtain the written agreement of the particular subcontractor to be legally obligated to Buyer to perform in accordance with the Agreement. Notwithstanding any authorized subcontract, Seller is and shall not thereby be relieved of any responsibility to fully perform Seller's obligations under the Agreement and Seller assumes liability to Buyer for any and all work performed by the subcontractor.

**20. Insurance.** Seller shall procure and maintain (a) commercial general liability insurance, including products liability, completed operations and contractual liability coverage, on an occurrence basis with limits of not less than \$1,000,000.00 for bodily injury or death and property damage for each occurrence; \$1,000,000.00 personal and advertising injury; \$2,000,000.00 general aggregate and \$2,000,000.00 products/completed operations aggregates, and (b) umbrella liability insurance with limits of not less than \$5,000,000.00 each occurrence/\$5,000,000.00 aggregate. The coverages shall be with insurers having current A.M. Best's ratings of no less than A X. A broad form vendor's endorsement shall be provided for the policy with Buyer, its affiliates and subsidiaries, named as additional insureds. Seller's liability insurance shall be primary and non-contributory for any claim made against any of the additional insureds. Any insurance, self-insurance, deductible or self-insured retention maintained by Buyer or any of the other additional insureds shall be excess to Seller's insurance policy.



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Seller shall deliver to Buyer a current certificate of insurance, and provide renewals of the certificate for any policies which expire during the coverage period, showing the coverage required by this paragraph, as well as a copy of the vendor's endorsement evidencing Buyer, its affiliates and subsidiaries, as additional insureds. Seller further agrees that upon notice of a claim against Buyer or any of its affiliates or subsidiaries involving goods or equipment sold to Buyer under an Order that Seller shall immediately, and without delay, notify all insurers which issued policies to the broad form vendors endorsement naming Buyer and its subsidiaries and affiliates as additional insureds of any such claim.

**21. Customs and Origin.** Credits or benefits resulting or arising from the Agreement, including trade credits, export credits or the refund of duties, taxes or fees, will belong to Buyer. Seller will provide all information necessary to permit Buyer to receive such benefits, refunds or credits, as well as to fulfill its import and, where required by the Agreement, export customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Seller will undertake such arrangements as necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will comply with the recommendations or requirements of all applicable Authorized Economic Operator (AEO), governmental security/anti-terrorism and enhanced border release programs (including, without limitation, the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT), and, if applicable, the Canada Border Services Agency's Partners in Protection initiative and Administración General de Aduanas de Mexico's Nuevo Esquema Empresa Certificada (NEEC) program). At the request of Buyer or the appropriate customs authority, Seller will certify in writing that it has complied with the foregoing, as applicable.

**22. Insolvency of Seller.** In addition to Buyer's other rights to terminate the Agreement, Buyer may immediately terminate the Agreement without liability to Seller in any one or more of the following or other comparable events: (a) insolvency of Seller (including, without limitation, a circumstance in which Seller's liabilities exceed its assets or Seller is unable to pay its debts as they come due); (b) appointment of a receiver, trustee or administrator over Seller or its assets; or (c) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event. Seller will inform Buyer immediately should any of these events occur or Seller becomes aware of events or circumstances likely to give rise to any such events. Seller will reimburse Buyer for all costs and expenses incurred by Buyer in connection with any of these events (regardless of whether Buyer exercises its termination rights with respect thereto, including, without limitation, all legal or other professional fees and costs).

**23. Termination for Cause.** Buyer may terminate all or any part of the Agreement, without liability to Seller, if Seller (a) breaches any term of the Agreement (including, without limitation, Seller's warranties) or (b) threatens not to perform or otherwise rejects its obligations under the Agreement; provided, however, that if any breach or threat of breach is curable, Buyer will provide Seller an opportunity to cure within a commercially reasonable period of time, in no case exceeding 10 business days after Buyer provides written notice of the failure or breach to Seller. In addition, Buyer may terminate the Agreement upon giving at least 30 days' written notice to Seller, without liability to Seller, if a direct or indirect change in control or ownership of Seller occurs without Buyer's prior written consent.

**24. Termination for Convenience.** In addition to any other rights of Buyer to terminate the Agreement, Buyer may, at its option, terminate all or any part of the Agreement before the expiration date of the Agreement, at any time, by giving written notice to Seller, in the event that Buyer's customer terminates or gives notice of termination of the corresponding primary contract with Buyer associated with the goods and/or services being furnished by Seller, or in the event Buyer's customer materially reduces its purchases from Buyer pursuant to such primary contract. In the event Buyer exercises its right to terminate for convenience under this section, Buyer will pay to Seller only the following amounts, without duplication: (a) the contract price for all goods and services that have been completed in accordance with the Agreement and not previously paid for; and (b) Seller's actual, documented costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under the Agreement, to the extent such costs (i) do not exceed a two-week supply of work-in-process and raw materials, respectively, under Buyer's releases and (ii) are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the Agreement; less, however, (iii) the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Any request for payment submitted to Buyer under this section must include sufficient supporting data to permit an audit by Buyer. Any amount otherwise due to Seller pursuant to this section will be reduced by any amount owed by Seller to Buyer under the Agreement or otherwise. Any payment under this section will not be deemed a waiver of any of Buyer's other rights arising under the Agreement or applicable law. Notwithstanding any other provision of the Agreement, Buyer will make no



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payments under this section for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's delivery schedules or any undelivered goods that are in Seller's standard stock or that are readily marketable. Further, any payments made under this section will not exceed the aggregate price payable by Buyer for finished goods or services that would have been produced or performed by Seller under Buyer's delivery schedules outstanding at the date of termination. Except as expressly provided in this section, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, overhead, interest on claims, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of the Agreement. The payment specified in this section is Seller's sole remedy for termination of the Agreement under this section.

**25. Consequential Damages.** In no event shall Buyer be liable to the Seller for incidental, special or consequential damages, including, without limitation, lost revenue, lost profits, loss of use, or of any other loss of any kind or nature, whether based in contract, tort, negligence, strict liability, economic loss or otherwise arising from performance, or failure to perform, under the Agreement.

**26. Limitations of Liability.** Notwithstanding anything in the Agreement or these Terms and Conditions to the contrary, no recourse under or upon any obligation, covenant or term of the Agreement or for any claim based thereon, including but not limited to contract, negligence, strict liability or other legal or equitable theory, shall be had against Buyer in any amount in excess of any specific sum agreed by Buyer to be paid to Seller under the Agreement. No liability, right or claim at law or in equity shall attach to, or shall be incurred by Buyer in excess of such amounts, and any and all such rights or claims of Seller against Buyer, are hereby expressly waived and released as a condition of and as consideration for the execution and delivery of the Agreement.

**27. Confidentiality.** Each party acknowledges that in the course of the performance of the Agreement by Buyer and Seller, either party may obtain the Confidential Information of the other party. Such information, whether or not labeled or expressly designated as Confidential Information, shall and include, but not be limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, and other proprietary information that gives the party an advantage in the marketplace and that the party protects from dissemination to the general public by reasonable measures of secrecy. Each party will, at all times, keep in confidence and trust all of the other party's Confidential Information. Each party will take reasonable steps to prevent unauthorized disclosure or use of the other party's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Each party agrees not to disclose Confidential Information of the other party to any person or entity, without the prior written consent of the other party, except that it may disclose such for its officers, employees, contractors, and consultants who need access to such Confidential Information in order to effectuate the intent of the Agreement and who will be bound by this provision as the agents or employees of the party. Each party will immediately give notice, followed by written notice, to the other party of any unauthorized use or disclosure of the party's Confidential Information. Each party agrees to assist the other party to remedy such unauthorized use or disclosure of its Confidential Information. Each party shall return to the other party or destroy any Confidential Information that it has received pursuant to the Agreement within thirty (30) days of termination or expiration of the Agreement or to certify its destruction.

**28. No Third Party Beneficiaries.** The Agreement is intended to be for the exclusive benefit of Buyer and Seller and their permitted successors and assigns. No other person or entity shall have rights thereunder whether as a third party beneficiary or otherwise.

**29. Publicity; Advertising.**

A. Seller will not directly or indirectly issue or permit the issuance of any press release, public statement or publicity regarding Buyer or its agreements with Buyer without prior written approval by Buyer.

B. Seller will not, without first obtaining the written consent of a duly-authorized officer Buyer, in any manner (i) advertise or publish the fact that Seller has contracted to furnish Buyer the goods covered by any Order; (ii) use Buyer's trademarks, trade names or confidential information in Seller's advertising or promotional materials; or (iii) use Buyer's trademarks, trade names or confidential information in any form of electronic communication such as web sites (internal or external), blogs or other types of postings.

**30. Specific Performance.** Seller acknowledges and agrees that money damages will not be a sufficient remedy for any actual or threatened breach of the Agreement by Seller and that, in addition to all other rights and remedies that Buyer may have, Buyer will be entitled to specific performance and temporary, preliminary and permanent



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injunctive relief in connection with any action to enforce the Agreement, without any requirement of a bond or other security to be provided by Buyer.

**31. Force Majeure.** Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that Seller is unable to produce, sell or deliver, or Buyer is unable to accept delivery, buy or use, the goods or services covered by the Agreement, directly as the result of an event or occurrence beyond the reasonable control of such party, without such party's fault or negligence, including, if applicable, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage; provided that written notice of such force majeure event (including the anticipated duration of the delay) must be given by the affected party to the other party as soon as possible (but in no event more than 10 days after the force majeure event occurs).

**32. Cumulative Remedies.** The rights and remedies of Buyer under the Agreement shall be cumulative and non-exclusive and in addition to any and all other rights and remedies provided by law.

**33. Compliance with Laws.** Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, without limitation, those relating to environmental matters, the handling and transportation of dangerous goods or hazardous materials, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Seller further represents that neither it nor any of its subcontractors, vendors, agents or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this Contract. Seller agrees to comply with all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and that neither it nor any of its subcontractors, vendors, agents or other associated third parties will engage in any form of commercial bribery, nor directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. At Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional fees) arising from or relating to Seller's noncompliance.

#### **34. Export Control.**

A. Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. 730-774, including the requirement for obtaining any export license or agreement, if applicable (together "Export Controls"). Without in any way limiting the foregoing, Seller agrees that it will not transfer any Export Controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without authority of an export license, agreement or applicable exemption or exception.

B. Seller shall notify Buyer of the export classification of any deliverable under this Order under applicable Export Controls.

C. Seller shall immediately notify Buyer in writing if Seller is or becomes listed on any U.S. Export Control or Sanctions list (including, but not limited to, the Denied Persons List, the Unverified List, the Entity List, the Specially Designated Nationals List, and the Debarred List), or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by the Government.

D. If Seller is a U.S. Party that is engaged in the business of either exporting or manufacturing (whether exporting or not) Defense Articles or furnishing Defense Services as those terms are defined in the ITAR, Seller represents that it is registered with the Directorate of Defense Trade Controls at the Department of State, as required by the ITAR, and that it maintains an effective export/import compliance program in accordance with the ITAR.



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D. If Seller is a U.S. Party that is not currently engaged in the business of either exporting or manufacturing Defense Articles or furnishing Defense Services, and Buyer provides Seller with technical data controlled by the ITAR, Seller agrees to register with the Directorate of Defense Trade Controls at the Department of State, as required by the ITAR, and maintain an effective export/import compliance program in accordance with the ITAR.

E. Seller shall provide prompt written notification to Buyer in the event of any violation or potential violation of the Export Controls, or the initiation or existence of a government investigation that could affect Buyer or Seller's performance under this Order.

F. Seller shall be responsible, and will be indemnify and defend Buyer, for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, suppliers, agents, or subcontractors at any tier in the performance of any of its obligations under this section.

**35. Relationship of the Parties.** The relationship of Buyer and Seller is that of independent contractors. Neither party is the agent or legal representative of the other party. Neither Buyer nor Seller shall be liable for any obligation or liability of the other party or any of the other party's agents or contractors, except as may be otherwise expressly provided in the Agreement.

**36. Complete Agreement, Understanding and Authority; Amendment; Assignment.** The Agreement represents the entire agreement and understanding between the parties hereto with regard to the subject matter of the Agreement and supersedes all prior negotiations, correspondence, agreements, representations, or undertakings by or between the parties, whether oral or written, with respect to the subject matter thereof, if any. Any amendment of the terms of the Agreement will only be valid if made in writing and signed by both of the parties or their authorized representatives. Each party represents it is authorized to enter into the Agreement with the other and that doing so does not violate any other obligation it may have pursuant to any other agreement, court order or applicable law. Seller shall not be permitted to delegate any duties nor attempt to assign any rights or claims under the Agreement without the prior written consent of Buyer. Buyer may freely assign any or all of its rights, claims and interests under the Agreement.

**38. Severability; Waiver.** If any term of the Agreement is determined to be invalid or unenforceable under applicable law or regulation, such term will (i) in a manner that best reflects Buyer's and Seller's intent under the Agreement, be reformed or (ii) if it is not possible to so reflect Buyer's and Seller's intent, be deleted, but in either case only to the extent necessary to comply with such applicable law or regulation, and the remaining provisions of the Agreement will remain in full force and effect. Either party's failure to insist on performance of any term or condition of the Agreement or to exercise any right or remedy with respect thereto shall not waive any such term, condition, right or remedy nor affect such party's subsequent right to compel compliance with any such term or condition or to otherwise pursue its rights and remedies with respect thereto.

**39. Governing Law; Waiver of Jury Trial.** The Agreement shall be governed by and construed in accordance with the laws the State of New York, without regard to principles of any conflicts of law that would require application of another choice of law. Any action or proceeding by Buyer against Seller may be brought by Buyer in any court(s) having jurisdiction over Seller or, in Buyer's discretion, in the Federal or state court(s) in Broome County, New York, in which event Seller irrevocably consents to such jurisdiction and venue and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer may be brought by Seller only in the Federal or state court(s) in Broome County, New York. **THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT.**

**40. Continuing Obligations.** These Terms and Conditions will survive expiration, non-renewal or termination of the Agreement.