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- 1. **Applicability of Terms and Conditions.** These Terms and Conditions, Purchase Order, Supplier Standards Guide (including any mandated prime contract flow-downs within USG prime contracts) or other document attached by Buyer to or incorporated by Buyer by reference in the Purchase Order or these Terms and Conditions (collectively, this "Order"), establish and constitute the complete and exclusive agreement between Banks Technologies ("Buyer") and the party to whom this Order is addressed and that party's affiliates, parents, subsidiaries, and divisions (collectively, "Seller") with respect to the production, purchase, sale and delivery of the Goods or performance of the Services.
  
- 2. **Definitions.** Capitalized terms used but not defined in these Terms and Conditions have the meaning given to them in the definitions appendix attached at the end of these Terms and Conditions.
  
- 3. **Acceptance.**
  - 3.1 *Timing.* Seller has read and understands this Order. UPON COMMENCEMENT OF WORK ON THE GOODS OR SERVICES, SELLER AGREES THAT IT WILL BE DEEMED TO HAVE ACCEPTED THE ORDER.
  
  - 3.2 *Different or Additional Terms; Precedence.* All terms and conditions added by Seller that are different from or in addition to this Order (whether in Seller's quotation, Seller's Order acknowledgment, Seller's invoice, or otherwise) are expressly rejected by Buyer and shall not become a part of this Order. The parties intend that this Order will exclusively control their relationship, with respect to the Goods. If there is conflict between the Purchase Order, these Terms and Conditions, Supplier Standards Guide, any prior or contemporaneous agreement or document exchanged between Buyer and Seller, or any other document attached to or incorporated into the Purchase Order by reference, (A) the applicable FAR and DFARS clauses incorporated by reference in these Terms and Conditions shall control over any other document, including any other provision of these Terms and Conditions except this Section 3; (B) the terms of the Purchase Order (excluding these Terms and Conditions and any document attached to or incorporated by reference in the Purchase Order) shall control over any other document except the applicable FAR and DFARS clauses incorporated by reference in these Terms and Conditions and this Section 3; and (C) these Terms and Conditions shall control over any document other than the Purchase Order. The parties have agreed and it is their intent that the "battle of the forms" described in Section 2-207 of the Uniform Commercial Code will not apply to this Order or to any invoice or acceptance form of Seller relating to this Order.
  
  - 3.3 *No Modification without Buyer's Consent.* These Terms and Conditions may not be modified or amended without the written consent of Buyer. No officer, employee or other representative of Buyer is authorized to make any oral contract or commitment for the purchase of Goods or to modify or change the terms and conditions of this Order unless such modification or change is in writing and approved by Buyer's Authorized Representative.
  
  - 3.4 *Rated Order Contract.* This Order may contain rated order quantities certified for national defense use, Seller will follow all provisions of the Defense Priorities and Allocation System (DPAS) regulation (15 CFR 700) as it pertains to the rated quantities. Rated quantities will be specifically identified in a Purchase Order. Seller is required to comply with acceptance/rejection guidelines and requirements set forth in 15 CFR §700.13(d). Specifically, Seller must (a) accept

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a DX rated Purchase Order, within ten (10) business days after receipt of this Order or (b) accept a DO rated Purchase Order, within fifteen (15) business days after receipt of this Order, in each case, in the manner prescribed therein (if any). Seller's failure to specifically accept a DX rated or DO rated Purchase Order shall not relieve Seller of its obligations under this Order.

- 4. Duration.** Unless this Order specifies otherwise, and subject to early termination as provided in these Terms, the term of this Order begins on the effective date shown on this Order (the "Effective Date") and continues for the period of time set forth on this Order (the "Term"). After the Term, this Order will expire subject to survival of the sections identified in Section 34.5 of these Terms and Conditions.
- 4.1 *Tooling.* Unless the Order specifies otherwise, and subject to earlier termination as provided in these Terms, the term of this Order commences on the effective date of this Order and continues for the production life of the tooling plus any period of time thereafter during which the tooling is being utilized to produce or manufacture component parts (including the Goods) in accordance with these Terms.
- 5. Price; Payment Terms; Invoices.**
- 5.1 *Price.* Prices for the Goods or Services described in this Order are fixed as specified in the Order and constitute the total price for the manufacture and delivery of the Goods or Services. Seller is not entitled to adjustments in the purchase price except as expressly provided in this Order and will not add charges of any type to an invoice without prior written consent from Buyer, which consent would constitute an amendment to this Order. Prices may be subject to decreases if specified elsewhere in this Order. Seller represents and warrants to Buyer that the price charged to Buyer complies with all applicable governmental laws and regulations in effect at the time of quotation, sale, and delivery.
- 5.2 *Taxes.* Seller's prices must be exclusive of any Federal, State or Local Sales, Use or Excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of this Order. Seller must list separately on its invoice any such tax lawfully applicable to any such goods, and payable by Buyer, with respect to which Buyer does not furnish to Seller an exemption certificate. At Buyer's option, Buyer may pay any taxes directly to the applicable taxing authority and not to Seller. Seller's prices must not include any taxes on property owned by the Government unless authorized in writing by Buyer. Seller agrees to comply with any reasonable request by Buyer regarding payments under protest, and regarding any refunds, claims, litigation or proceedings with respect to any such taxes and to make appropriate adjustments to afford Buyer the benefit of any refund or reduction in such taxes.
- 5.3 *Payment Terms.* Unless otherwise specified on the face of this Order, the payment period must be "NET 60" and calculated from the date of Buyer's acceptance of an invoice submitted in accordance with paragraph 5.4 below; provided, however, Seller must acknowledge receipt of this Order by electronic mail addressed to the representative of Buyer who issued the Order for any invoice to be processed. If a payment date falls on a non-business day, payment will be due on the following business day. When shipments to places other than Buyer's plant are authorized, Seller's invoices will be paid by Buyer at the time specified on the face of this Order but not before acknowledgment of receipt of shipment by the consignee. Buyer must be entitled to any discounts allowable by Seller for prompt payment even though Buyer is unable to make


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payment within the time limits set by Seller where such failure is due to strike or other causes beyond the control of Buyer. Any amount paid by Buyer for Goods or Services will not be deemed to be a waiver of any breach of this Order by Seller or any amount otherwise due to Buyer.

- 5.4 *Invoices.* Seller's invoices must include the Purchase Order number, Buyer's part number, Seller's part number (if applicable), quantity of pieces in the shipment, Seller's name, bill of lading number, and the name of the Seller's representative that is responsible for questions relating to the invoice. No invoice may reference any term separate from or different than these Terms and Conditions or other terms in this Order. Buyer reserves the right to reject and return all invoices or related documents submitted incorrectly. Any payment by Buyer of a nonconforming invoice is not an acceptance of any nonconforming element or terms on such invoice. Seller must provide separate invoices for each shipment and all freight charges billable to Buyer must be issued on a separate invoice regardless of the delivery location. On the date of shipment, Seller must e-mail each invoice to [accountspayable@bankstech.com](mailto:accountspayable@bankstech.com).
- 5.5 *Reserved.*
- 5.6 *Most Favored Customer Pricing.* During the Term, Seller represents and warrants that the price of each and every Good in this Order has not exceeded, does not exceed, and will not exceed the contract price ("Contract Price") for the same or similar Good (without regard to the terms and conditions) in any contract entered into between Seller and any other commercial or non-commercial customer (including the Customer) during the three months prior to this Order and during the term of this Order. If Seller breaches this representation and warranty, the Order price for such Good must be the lower Contract Price and Seller must pay Buyer a refund of the difference between the Order price and the lower Contract Price for every Good that Buyer purchased since Seller gave the other Customer the lower Contract Price. Buyer has the right, but not any obligation, to audit all relevant records of Seller to test, verify and/or assure Seller's compliance with this provision. Seller agrees that Buyer does not waive, forfeit, or otherwise lose or restrict its rights and remedies under this Section by not auditing Seller's records.

## 6. Quantity; Delivery Terms.

- 6.1 *Quantity.* The quantity of Goods or Services required by this Order are specified on the face of this Order. Buyer is not required to make payment for Goods or Services delivered to Buyer which are in excess of the quantity specified on the face of this Order.
- 6.2 *Delivery.* Delivery of Goods and Services must be made both in the quantities and at the times specified by Buyer in this Order, as applicable. Seller must not insure or declare value of any shipment made F.O.B. shipping point. Seller will maintain at its expense and risk a quantity of safety stock of finished Goods and materials at the latest design level. Seller must ensure it has sufficient resources, including equipment and plant capacity, to meet Buyer's needs. Buyer may change the rate or timing of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which will entitle Seller to a modification of the price for Goods or Services covered by this Order. Seller will promptly furnish all properly completed documents and other information required in accordance with customs, tariffs or other applicable governmental


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regulations including, but not limited to, customs documentation and certificates of origin. Buyer reserves the right to cancel this Order without liability and without waiver of any other remedies provided herein or under applicable law if delivery is not effected as specified herein, in the Order.

- 6.3 *Premium Shipping Expenses.* Seller will adhere to shipping directions specified on this Order. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules will be Seller's sole responsibility unless: (i) the delay or expense was solely the result of actions by Buyer which materially breach Buyer's obligations in this Order (if such material breach was not caused by Seller); (ii) Seller provides Buyer with written notice of any claim against Buyer within ten (10) days after the occurrence of the alleged actions of Buyer giving rise to such claim; and (iii) Buyer's purchasing representative specifically authorizes the payment of such premium shipping expenses by Buyer in writing. In addition to any other rights Buyer has under this Order, Buyer reserves the right to set off and recoup (including, without limitation, by debiting Seller's account) premium shipping expenses that are due and payable by Seller.
- 6.4 *Title and Risk of Loss.* Title to Goods and risk of loss pass to Buyer at the time and place of delivery. If no time and place of delivery is specified, title and risk of loss will pass to Buyer upon Buyer's receipt of the Goods at Buyer's facility.
- 6.5 *Delay.* Time is of the essence in performing this Order. Should Seller experience or anticipate any delay in performing this Order, whether or not such delay is excusable under any provision hereof, Seller must immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgment by Buyer must constitute a waiver of this Order's delivery schedule. In addition to any other liability of Seller set forth in this Order, Seller must be liable for any direct, indirect, incidental, special and consequential damages resulting from a delay.
- 6.6 *Personal Purchases.* Notwithstanding anything to the contrary contained herein, under no circumstances may Seller sell Goods or other products or provide services directly to individual employees of Buyer pursuant to, or under, this Order. If Seller makes, sells, or offers to sell Goods or other products or provide services to individual employees of Buyer under this Order then, in addition to any right or remedy Buyer may have under this Order, at law, or in equity, Buyer may immediately terminate this Order without liability to Seller.

## 7. Packaging.


- 7.1 Seller must (i) properly pack, mark and ship Goods in accordance with Buyer's requirements and the involved carrier in a manner to secure the lowest transportation cost; (ii) route shipments in accordance with Buyer's instructions; (iii) make no charge for handling, packaging, storage, transportation (including duties, taxes, fees, etc.), cost of vehicle or other transport expenses unless otherwise approved by Buyer in writing or otherwise set forth in this Order; (iv) provide Buyer with packing slips identifying the Purchase Order number, part number; and (v) promptly forward to Buyer the original bill of lading or other shipment receipt for each shipment that will be sufficient to enable Buyer to easily identify the Goods purchased. Markings must be in English

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unless this Order specifies otherwise. Seller will reimburse Buyer for all expenses, including damage to the Goods incurred due to improper packing, marking, loading or routing.

7.2 In addition to the requirements of Section 7.1, Seller must:

- (A) Provide separate packing lists for each Order and include the packing lists with each shipment. The location of the packing slip must be clearly marked on the container and contain Buyer's part number for the Goods. Packing lists must include the Purchase Order number, Buyer's part number and revision, quantity of pieces in the shipment, and Seller's name.
- (B) Provide the complete Purchase Order number on all documents.
- (C) Identify single item containers with Purchase Order number, part number, and quantity. When multiple Orders or items are combined in one container, Seller must separately package the Orders or items inside the container and the packages must be identified as to Order, part number and quantity.
- (D) Suitably package and prepare all items for shipment to ensure all items withstand normal transportation and stocking functions and otherwise comply with standard packs that Buyer's uses as an integral element of Buyer's standardize material system.
- (E) Deliver items intended for Buyer's production lines in standard quantities and pack sizes if specified by Buyer in the RFQ or PPAP approval and ensure all containers comply with Best Commercial Practices.
- (F) Provide test reports, x-rays, certificates and other supporting documents with each shipment when required by this Order.
- (G) Provide separate bills of lading and separate containers for each shipment destined for different Buyer facilities.
- (H) Provide Goods that are marked, at a minimum, with a human-readable label that identifies: Purchase Order number, Buyer's part number and revision, quantity of pieces, and Seller's name. Labels must be white with black ink and be a minimum of 4.0" high x 6.0" wide and be in accordance with AIAG B-10 requirements. Labels should be placed where easily read and must remain intact during transit.
- (I) Unit package and identify as a complete unit all kits, assemblies, and all article consisting of multiple items (e.g., hardware, pins, gaskets, etc.).

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(J) Mark individually packaged Goods. Seller must tag or bag and separate into lots single Goods that are too small to be separately identifiable. Seller will provide tags and/or bags, for handling and storage purposes, which are properly marked with the Order description and part number.

8. **Quality.** Seller must comply with all quality standards, regulations and legal requirements associated with the Goods or Services, including any specified Customer requirements and the requirements of Buyer's latest Supplier Quality Manual, available at [www.bankstech.com](http://www.bankstech.com), which document is incorporated by reference in this Order. Seller will analyze and review Buyer's specifications and drawings of the Goods before acceptance of this Order and acknowledges that Buyer's specifications and drawings are sufficient and adequate to manufacture the Goods in compliance with this Order.

9. **Specifications.**

9.1 *Compliance.* Unless otherwise specified in this Order, Seller must comply with all drawings and specifications cited in this Order or made part of this Order by reference.

9.2 *Inspection.* Goods or Services purchased under this Order are subject to Buyer's inspection and approval; provided, however, that Seller agrees that Buyer is not required to perform an inspection of incoming Goods and waives any right to require Buyer to conduct such inspections. Buyer may also choose to inspect the Goods in process at facilities of Seller or its lower-tier suppliers. Buyer, at its option, may reject or require corrections to Goods or Services that are defective in material or workmanship or otherwise not in conformity with the requirements of this Order. Goods that are rejected will be returned for credit, replacement or reworking at Seller's risk and expense, and all inspection, rework completed by Buyer, handling, administrative and transportation expenses, both ways, are Seller's responsibility. No Goods returned as defective will be replaced or reworked without written authorization from Buyer.

(A) *Evaluation.* Buyer reserves the right for itself and the Government to conduct surveillance and evaluation of Goods or components thereof at Seller's producing facility and to have Goods inspected by Buyer and/or Government at source. Seller agrees to comply with the requirements of the Government and/or Buyer for source inspection.

(B) *Examination.* Seller must make available for examination results of tests and inspection reports if requested by Buyer and/or Government. Inspection records of the examination and tests performed by Seller must be kept available to Buyer and/or Government for a period of not less than four (4) years, or as required by applicable regulations, following completion of this Order. Buyer reserves the right for itself and the Government to conduct inspection and tests of all Goods to the extent practicable at all times and places, including the place of manufacture.

(C) *Acceptable Goods and Services.* Notwithstanding the provisions of this section, Seller is not in any way relieved of the final responsibility to furnish acceptable Goods or Services in accordance with all the requirements of this Order. Specifically, no inspection or evaluation performed by Buyer or Buyer's Customer shall in any way relieve Seller or its



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suppliers of their respective obligations to furnish all Goods and Services in strict conformance with the requirements of this Order.

9.3 *No Waiver.* Buyer's inspection of Goods or Services, payment for Goods or Services before inspection, or decision not to inspect the Goods or Services, will not (a) constitute acceptance of the Goods or Services. (b) limit or impair Buyer's right to assert any legal or equitable remedy, or (c) relieve Seller's responsibility for any warranty or latent defect. Without limiting the foregoing, and while Buyer reserves the right to inspect and reject Goods or Services, failure of Buyer to inspect or reject shall not waive Buyer's right to reject Goods or Services if defects or non-conformity to specifications are discovered at a later date, whether or not such defects or non-conformity are patent or latent, nor shall failure to inspect or reject Goods or Services affect Buyer's right to damages on account of Seller's delivery of defective or non-conforming Goods or Services.

9.4 *No Defects.* Notwithstanding any other provisions of this Order, all Goods and Services provided by Seller must be free from all defects and imperfections that might affect the serviceability and function of the Goods or Services. The workmanship must be of a quality to assure that the Goods and Services are free from any defects, improper manufacturing or assembly practices that compromise, limit or reduce the Goods' capability or that of Buyer's end-item into which any Good is incorporated.

**10. No Unauthorized Changes.** No changes may be made by Seller without Buyer's prior written approval. Reference Supplier Quality Manual Section 11.

**11. Material, Equipment, Tools and Facilities.**

11.1 *Requirements.* Unless otherwise stated in this Order, Seller must supply all material, equipment, tools and facilities required to perform this Order.

11.2 *Seller Property.*

(A) Unless otherwise agreed to by Buyer, Seller, at its expense, will furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items that are not paid for by Buyer but are necessary for the production of the Goods ("Seller Property"). Seller will insure the Seller Property with coverage for all losses for its replacement value. Seller grants Buyer an irrevocable option to take possession of and title to the Seller Property that is used exclusively for the production of the Goods upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items, but less any amounts otherwise owing to Buyer by Seller.

(B) This option will not apply if: (i) Seller Property is used to produce Goods that are the standard stock of Seller, (ii) Seller Property is used to produce a substantial quantity of like Goods which are being sold by Seller to others, and (iii) in connection with a



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termination of this Order under Section 24 (Termination for Convenience) of these Terms and Conditions. If the Seller has financed any portion of the Seller Property, the Seller will obtain from its financing source for the Buyer any waiver, release or approval necessary for it to exercise the rights granted under this Section.

- (C) To the extent any Intellectual Property owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Seller Property, Seller hereby grants to Buyer a fully paid, irrevocable, non-exclusive, worldwide, royalty- free license, perpetual to the maximum extent permitted by law, with the right to grant sublicenses as necessary for any use of the Seller Property, to use such Intellectual Property.

11.3 *Buyer-Furnished Property.*

- (A) Title to all property furnished to Seller by Buyer or specifically paid for by Buyer, or the cost of which is fully or substantially amortized in the price of the Goods purchased hereunder, and any replacement thereof, must remain in and with Buyer with the right of possession in Buyer.
- (B) Seller must not use, reproduce, appropriate or disclose to anyone other than Buyer any material, preproduction samples, tooling, dies, drawings, designs, specifications, software, technical information and other property or data furnished by Buyer nor shall Seller use the same to produce or manufacture goods other than those required hereunder without prior written authorization from Buyer. Where the Government has received from Buyer the right to authorize such use by Seller, Seller may utilize Buyer's data and information in the manufactured goods for direct sale to the Government; provided, however, that Seller must (i) give Buyer prior written notice of each such proposed use; (ii) prominently identify each item being provided by Seller for direct sale to the Government; and (iii) make no claim against Buyer which arises out of use by Seller of such data and information. Buyer does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by it. Seller must bear the risk of loss, damage or destruction, unless such loss, damage or destruction is solely, directly and proximately caused by Buyer's negligence.
- (C) All Buyer-furnished property, together with spoiled and surplus materials, must be returned to Buyer at termination or completion of this Order unless Buyer must direct otherwise in writing. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies or services by Seller for use in the performance of Buyer's Order, Seller must insert the substance of this provision in its subcontracts. Seller acknowledges that any such data, designs or other information of Buyer are unique, and that Buyer may enforce its rights under this paragraph by specific performance.

11.4 *Reserved.*





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**12. Replacement Parts.** Seller will sell to Buyer Goods necessary for Buyer to fulfill its current model service and replacement parts requirements at the price(s) set forth in this Order. If the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. During the 10-year period after Buyer completes current model purchases, or such longer period as prescribed by applicable law, Seller will sell Goods to Buyer to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first three (3) years of this period will be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for Goods will be as agreed to by the parties. When requested by Buyer, Seller will make service literature and other materials available at no additional charge to support Buyer's service-part sales activities.

**13. Ingredients: Special Warnings.** If requested by Buyer, Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients in the Goods; (b) the amount of all ingredients; and (c) information concerning any changes in or additions to such ingredients. Before and with the shipment of Goods, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on the Goods, containers and packing and/or provision of applicable materials safety data sheets) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer. Seller will also provide Buyer with any information necessary to allow Buyer to comply with any of its reporting processes.

**14. Unilateral Amendments, Modifications, or Changes.**

14.1 Buyer's Right to Amend, Modify or Change. Buyer must have the right at any time, by written direction of Buyer's Authorized Representative that identifies such writing as an amendment, modification, or change to this Order, to (i) suspend all or any portion of Seller's work or (ii) to make changes within the general scope of this Order that affect any one or more of the following:

- (A) drawings, designs, quantities, or specifications of Goods to be provided under this Order;
- (B) the description of Services;
- (C) method of shipment or packing;
- (D) the time or place of performance, inspection, delivery, or acceptance of Goods; and
- (E) the amount of Buyer-furnished or Customer-furnished property or facilities.

14.2 *Price/Delivery Adjustment.* If any such suspension, modification, or change causes a change in the cost of, or the time required for, performance of this Order, Buyer must make an equitable




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adjustment in the price or delivery schedule or both, and Buyer must modify this Order in writing accordingly. Any claim by Seller for such equitable adjustment must be made in writing within 10 days from the date of receipt of a written order from Buyer's Authorized Representative directing such a suspension or change. Buyer has the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Minor design changes will not result in price increases.

- 14.3 *Seller's Obligation to Perform.* Nothing in this Section 14, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this Section 14 must be resolved in accordance with Section 27 of these Terms and Conditions.
- 14.4 *Government Prime Contract.* If this Order is placed under a Government Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, must be in accordance with the cost principles enunciated in Part 31 of the FAR in effect on the effective date of this Order.
- 14.5 *No Constructive Changes.* Information, advice, approvals, or instructions given by Buyer's technical personnel or representatives other than Buyer's Authorized Representative must be deemed expressions of personal opinion only and must not affect Buyer's and Seller's rights or obligations and must not be suspensions or changes within the meaning of this Section 14.

**15. Warranty.**

- 15.1 *Express Warranty.* In addition to the warranties set forth elsewhere in this Order, Seller expressly warrants to Buyer, its successors and Customers that as of the effective date of the Order and at each shipment of Goods or performance of Services under this Order and continuing during the warranty period, such Goods or Services will:
  - (A) conform in all respects to the specifications, standards drawings, samples or other descriptions furnished or specified by Buyer (including, without limitation, as to fit, form, function, and appearance);
  - (B) be useable and merchantable;
  - (C) be free from latent, patent, or other defects in design, material and workmanship;
  - (D) be delivered new, with good title, and free from all liens, claims, and encumbrances;
  - (E) comply with all industry standards, laws, rules, and regulations including such standards, laws, rules, and regulations in force in countries where the Goods or vehicles equipped with such Goods are to be sold; and

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(F) be fit and sufficient for the purposes intended.

- 15.2 *Incorporation of other Warranties.* All warranties are in addition to any Customer-required warranties relating to the Goods or Services into which the Goods or Services are incorporated. All such Customer-required warranties are incorporated by reference in this Order. In addition, the warranties provided hereunder are in addition to all other warranties, express, implied or statutory, and will survive Buyer's inspection, test, delivery, acceptance, use and payment of and for the Goods, and inure to the benefit of Buyer, its successors and assigns, and Buyer's Customers and the users of Buyer's or its Customer's products. Seller may not limit or disclaim the warranties provided hereunder. 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 Good or Service constitute a waiver of any such requirements for the remaining Goods to be delivered or Services to be performed unless so stated by Buyer in writing.
- 15.3 *Warranty Period.* All warranties provided hereunder will be effective for the longer of (a) the period provided by applicable law or (b) the warranty period provided by Buyer to its Customer; provided, however, if Buyer or its Customer, voluntarily or pursuant to a Government mandate, provides a remedial action to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a Recall (as defined in Section 20) or other Customer satisfaction or corrective service action (a "Remedial Action"), the warranty will continue for such time period as may be dictated by Buyer's Customer(s) or the federal, state, local or foreign government where the Goods are used or provided. In addition, and notwithstanding any expiration of a warranty period set forth hereunder, Seller will be liable for costs and damages associated with the conduct of any Remedial Action to the extent that such Remedial Action is based upon Buyer's reasonable determination that the Goods or Services fail to conform to the warranties set forth in this Order.
- 15.4 *Defense of Warranty Claims.* To mitigate its damages, Buyer may, at its sole option, defend any claim that any Goods or Services supplied by Seller are defective, in breach of warranty, or otherwise do not meet applicable legal or contractual requirements. Because Buyer's Customer(s) may attempt to hold Buyer responsible for problems caused in whole or in part by Seller. Seller and Buyer agree that this defense is in the interest of both Seller and Buyer. Seller waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Seller for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

## 16. Intellectual Property.

- 16.1 *Ownership.* Buyer must own any Intellectual Property invented, authored, or developed by Seller in the performance of this Order, and Seller must (i) execute and deliver to Buyer all documents necessary to perfect Buyer's title in such Intellectual Property, including, but not limited to, assignments of all right, title, and interest Seller may have in such Intellectual Property; (ii) obligate Seller's employees and/or contractors involved in the invention or development of such Intellectual Property to execute all documents necessary to perfect Buyer's title in such



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Intellectual Property, including, but not limited to, inventor's declarations and assignments of all right, title, and interest such employees and/or contractors may have in such Intellectual Property; and (iii) obtain and deliver to Buyer all such executed documents as set forth in section (ii) above. All works of original authorship created by Seller in connection with this Order are "works made for hire" as that term is used in connection with the U.S. Copyright Act. Seller will not assert or transfer to any third party a right to assert against Buyer or its Customers any Intellectual Property rights that Seller has or may have that are applicable to the Goods or any works of authorship used or furnished under this Order.

16.2 *Licenses.* Buyer hereby grants Seller a nonexclusive, royalty-free, revocable, worldwide right and license to use Intellectual Property invented, authored, or developed by Seller in the performance of this Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other counties in which Seller may have rights in such Intellectual Property) Goods, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Seller's requirements and responsibilities under this Order that relate to the Goods or Services furnished under this Order. Seller hereby grants Buyer a nonexclusive, royalty-free, irrevocable, worldwide right and license, with the right to grant sublicenses, to use Intellectual Property owned, invented, authored, or developed by Seller prior to the date of this Order that relates to the Goods or Services furnished under this Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) Goods, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Buyer's requirements and responsibilities under this Order or any contract that relates to the Goods or Services furnished under this Order.

16.3 *Intellectual Property Warranty.* Seller warrants that the sale, use, or incorporation into manufactured products of all Goods, Services, devices, software, and rights furnished or licensed hereunder which are not solely of Buyer's design, composition, or manufacture will not infringe on any patent, copyright, trademark or other proprietary rights. Seller must indemnify, defend and hold Buyer and its Customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) growing out of claims, suits, or actions alleging such infringement, including proceedings under 28 USC § 1498, which claims, suits, or actions Seller agrees to defend at Seller's sole cost and expense on behalf of Buyer and Buyer's indemnitees. Buyer agrees to give Seller notice of any such suit or action promptly after notice is received by Buyer and Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, Buyer may, at its own election and expense, supersede Seller at any time in any such defense in which event Seller must thereby be released from its obligation to defend (but not indemnify) Buyer under this paragraph with respect to the particular suit or action involved.

16.4 *Government Prime Contracts.* If this Order is placed under a United States Government Prime Contract or subcontract, the indemnification set forth in Section 16.3 above shall extend to the United States Government only if and to the extent that the United States Government is or may be indemnified by Buyer.

16.5 *Replacement/Modification of Infringing Goods.* Seller may replace or modify infringing Goods or Services with comparable goods or services acceptable to Buyer of substantially the same form, fit, and function so as to remove the source of infringement and must extend this provision to



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such comparable goods or services. If the use or sale of any of the infringing Goods or Services or comparable goods or services is enjoined as a result of such claim, suit, or action, Seller, at no expense to Buyer, must obtain for Buyer and Buyer's Customers the right to use and sell the infringing Goods or Services or comparable goods or services.

- 16.6 *Government Authorization.* Where the Government has received from Buyer the right to authorize use of Buyer's Intellectual Property by Seller, Seller may utilize such Intellectual Property in the manufacture of Goods or provision of Services for direct sale to the Government; provided, however, that Seller must (i) give Buyer prior written notice of each such proposed use; (ii) prominently identify each item being provided by Seller for direct sale to the Government, (iii) pay Buyer any applicable royalty, and (iv) make no claim against Buyer which arises out of Seller's use of Buyer's Intellectual Property.

**17. Proprietary Information.**

- 17.1 Existing NDA Governs. If a proprietary information, mutual confidentiality, or non-disclosure agreement ("NDA") exists between Buyer and Seller covering the Goods, Services, or this Order, the term of such NDA must be and is hereby extended to be co-terminus with this Order, and such NDA is incorporated herein by reference and must govern the use and disclosure of Proprietary Information hereunder.

- 17.2 No NDA. In the event no NDA covering the Goods, Services, or this Order exists between Buyer and Seller, or such NDA does not already include the following terms, the following terms must apply:

- (A) **Marking.** A party disclosing Proprietary Information ("Disclosing Party") must mark or otherwise designate as "proprietary" or "confidential" any written or electronic information that it discloses to a party receiving Proprietary Information ("Receiving Party") under this Agreement. Any Proprietary Information that is disclosed orally must be treated as Proprietary Information for purposes of this Agreement if (i) it is contemporaneously identified by Disclosing Party to Receiving Party as such, and (ii) Disclosing Party gives written notice to Receiving Party within ten (10) days of the disclosure.
- (B) **Confidentiality.** Proprietary Information provided by Buyer to Seller must be kept confidential by Seller, whether or not designated as Proprietary Information, and Seller will not disclose or use, directly or indirectly, such Proprietary Information for the benefit of Seller or any other third party without Buyer's prior written consent and only as required for performance of this Order, except as provided in Sections 17.2(C) and 17.2(D) below. Information, including but not limited to technical information, drawings, and data, submitted at any time by Seller to Buyer relating to Goods or Services covered by this Order or Seller's business are not deemed to be Proprietary Information unless otherwise specifically agreed to in writing by Buyer. Any restrictive markings affixed upon any such information furnished to Buyer must be of no force or effect, may be modified, removed or ignored by Buyer without any liability to Seller, and may be used by Buyer in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents must



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be determined only by valid pre-existing patent rights of Seller as related to the manufacture, use or sale of Goods covered by this Order. Seller agrees to promptly notify Buyer of any pre-existing patents or any other form of protection that Seller holds or knows that relates to the Goods to be provided under this Order.

- (C) No Restriction on Reporting Fraud, Waste, or Abuse. Receiving Party understands that, as provided in the Defend Trade Secrets Act of 2016 ("DTSA"), Receiving Party must not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Furthermore, under the DTSA, nothing in this Agreement prohibits Receiving Party from disclosing a company trade secret to Receiving Party's attorney, or from using trade secret information in a court proceeding in which Receiving Party makes a claim against Disclosing Party for retaliation based on reporting a suspected violation of law, provided that: (1) Receiving Party files under seal any document containing a trade secret; and (2) Receiving Party does not disclose a trade secret, except pursuant to court order. Receiving Party also understands that nothing in this Agreement prohibits or otherwise restricts Receiving Party from: (1) lawfully reporting or seeking to report waste, fraud, or abuse to a designated investigative or law enforcement representative of a U.S. Government department or agency authorized to receive such information; or (2) communicating with any federal, state, or local governmental agency, or participating in an investigation by any such agency. Nothing in this Agreement requires Receiving Party to notify or seek approval from Disclosing Party at any time regarding activities described in this provision.
  
- (D) Government Authorization. Where the Government has received from Buyer the right to authorize Seller to use Buyer's Proprietary Information, Seller may use such Proprietary Information in the manufacture of Goods or provision of Services for direct sale to the Government; provided, however, that Seller must (i) give Buyer prior written notice of each such proposed use; (ii) prominently identify each item being provided by Seller for direct sale to the Government; and (iii) make no claim against Buyer which arises out of Seller's use of Buyer's Proprietary Information.

**18. Subcontracting.**

18.1 *Subcontractors.* Seller will not subcontract any of its duties or obligations under this Order without the prior written approval of Buyer. If Seller subcontracts any of its duties or obligations under this Order with a subcontractor approved by Buyer, Seller will ensure that all such subcontractors comply with the requirements hereunder. At Buyer's request, Seller will certify in writing Seller's and its subcontractor's compliance with all such requirements. Buyer will have the right to audit and monitor Seller's and its subcontractor's compliance with Seller's and its subcontractor's obligations under this Order including, without limitation, verifying at the premises of Seller or any subcontractor that the subcontracted Goods or Services conform to the requirements of this Order. Any audit by Buyer will not (i) shift responsibility for quality by the subcontractor from Seller to Buyer, (ii) absolve Seller of the responsibility to provide acceptable and conforming Goods or Services, or (iii) preclude subsequent rejection of Goods or Services



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by Buyer. Notwithstanding any audit by Buyer, Seller remains fully liable for any work subcontracted.

18.2 *Assignment of Rights.* In the event Seller cannot fulfill one or more of its obligations under this Order, Seller will, at Buyer's option and in addition to any other rights or remedies available to Buyer under this Order or otherwise, assign to Buyer all of Seller's rights with respect to any of Seller's subcontractors under this Order.

## 19. Indemnification, Defense, and Hold Harmless.

19.1 *Indemnification, Defense, and Hold Harmless by Seller.* In addition to Seller's other indemnification obligations under this Order, Seller covenants and agrees to indemnify, defend and hold harmless Buyer and its affiliates and subsidiaries, and their respective Customers (including the U.S. Government), members, directors, officers, employees and agents (the "Indemnitees"), from and against any and all claims, liabilities, damages (including actual, special, consequential, punitive and exemplary damages), settlements, judgments, losses, penalties, costs and expenses (including, without limitation, actual attorney's fees, costs of experts and consultants) that are related to or arise out of:

- (A) the Goods or Services;
- (B) Seller's representations;
- (C) Seller's performance of or failure to perform obligations under this Order, including, without limitation, claims based on Seller's breach or alleged breach of warranty (whether or not the Goods have been incorporated into Buyer's products and/or resold by Buyer);
- (D) noncompliance by one of Seller's subcontractors ("Subcontractor") with any requirement imposed on Seller or Subcontractor under this Order;
- (E) any violation of any applicable law, ordinance or regulation or government authorization or order by Seller or Subcontractor in connection with this Order;
- (F) damages to the property of or injuries (including death) to Indemnitees or any other person arising from or in connection with Seller's or Subcontractor's performance of this Order, work on Buyer's premises, or otherwise in connection with the use of Buyer's property; or
- (G) the commercialization or utilization of any of Seller's or Subcontractor's technology applied in connection with this Order, including, but not limited to, the making, using, selling, or exporting of products, processes, or services derived from such technology.



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19.2 *Reserved.*

**20. Recall.** If Buyer, on its own initiative or pursuant to a government mandate, makes a recall or other field-service action or Customer recall campaign (a "Recall"), Seller will be liable to Buyer for all damages related to such Recall to the extent the Recall arises in any way from a defective Good or Seller's breach of any provision set forth in this Order.

**21. Remedies.**

21.1 *Cumulative.* The rights and remedies reserved to Buyer in this Order must be cumulative, and in addition to all other or further remedies provided in law or equity.

21.2 *Remedies for Nonconforming Goods or Services.* Without limiting the foregoing, should any Goods fail to conform to the warranties set forth herein or if the materials contained within the Goods are alleged to or are determined to cause injury to third parties, Buyer must notify Seller and Seller must, if requested by Buyer, reimburse Buyer for any incidental, special and consequential damages caused by such nonconforming Goods or Services, including, but not limited to, costs (including all attorney's or other professional fees), expenses and losses incurred by Buyer (a) in inspecting, sorting, containing, repairing or replacing such nonconforming Goods or Services; (b) resulting from production interruptions, (c) in conducting Recalls, (d) from claims or litigation arising from personal injury (including death) or property damage caused by such nonconforming Goods or Services, and (e) for any amounts for which Buyer is liable to its Customer on account of such nonconforming Goods or Services. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of charge backs for nonconforming Goods or Services. In addition, Seller must reimburse Buyer for all liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's breach or anticipatory repudiation of this Order or any other contract between Seller and Buyer, a request or demand by Seller to modify or change the terms of this Order, or legal proceedings involving Seller that, in the reasonable judgment of Buyer, may impact Seller's continued or future performance under this Order, or if Seller is a party to a court case or proceedings in which Buyer appears, participates, monitors or becomes a party. In the event this Order is issued or renewed after Seller becomes a debtor in bankruptcy, Buyer must be entitled to all of its attorneys' or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

21.3 *Specific Performance.* In the event that Seller fails or refuses to deliver Goods or Services, or otherwise repudiates any provision of this Order, Seller agrees that Buyer may seek specific performance of Seller's obligations under this Order and Buyer reserves all of its remedies as provided under this Order and under applicable law.

21.4 *No Lost Profits or Special, Incidental, or Consequential Damages.* In no event will Buyer be liable to Seller or Seller's subcontractors for anticipated profits or for special, incidental or consequential damages.





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21.5 *Additional Remedies.* In the event of a breach, cancellation or termination of this Order or these Terms and Conditions, Buyer must be entitled to one or more of the following additional remedies:

(A) Require that Seller:

- (1) Immediately stop production of any Goods, performance of any Services, and/or use of any Buyer-furnished property or Seller Property;
- (2) Disassemble and segregate Buyer-furnished property or Seller Property from any other property, including the removal of Buyer-furnished property or Seller Property from presses or other machinery;
- (3) Allow Buyer to immediately take possession of the Seller Property, which includes the right to enter onto Seller's premises or to require Seller to pack and ship the Seller Property, at Seller's expense, to a destination selected by Buyer; and
- (4) Indemnify and hold harmless Buyer from any third party claim, including any claim relating to or arising out of this Order or these Terms and Conditions, or the substance hereof, or arising out of any state mechanic's lien or similar statute.

(B) Seller will provide the Buyer with any engineering, package and installation drawings, specifications, testing protocols and results, documents, data and design aides, bills of materials, manufacturing process information, and other information relating to the Goods or Services ("Technical Information") requested by the Buyer that is required for the relocation, installation, assembly, maintenance, or use of the Buyer-furnished property and Seller Property, without restrictions on disclosure or use by Buyer. Seller agrees not to assert any claim with respect to any Technical Information that Seller has or may disclose to Buyer in connection with its performance of these Terms and Conditions; and

(C) To the extent Buyer may have paid for prototype tooling for the Goods under a separate purchase order or other agreement, then in order to ensure that Buyer could make full beneficial use of the rights provided in these Terms and Conditions and Order, Seller will provide the following for such Goods: (a) any prototype tools (e.g. dies and molds), including without limitation, any computer aided design data for such prototype tools, and (b) in each case as applicable, the specifications, bills of material, Seller information for any purchased components used in such prototype tools, and manufacturing process information regarding such prototype tools.

**22. Insurance.** Seller will maintain insurance coverage with carriers acceptable to Buyer and in the following amounts: Comprehensive General Liability/Product Liability of not less than combined single limits of \$2 million and Professional Liability/Error & Omission of not less than combined single limits of \$2 million.




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All such insurance coverage will name Buyer as an additional insured. Seller will furnish to Buyer certificates of insurance and additional insured endorsements setting forth the amount of coverage, policy number and date(s) of expiration and otherwise showing compliance with the insurance requirements hereunder prior to Seller performing work under this Order. All such certificates of insurance and endorsements must not be subject to cancellation, material alteration, or reduction in the amount or scope of coverage except after thirty (30) days prior written notice by the insurer via certified mail to the additional insured. The limits of liability coverage set forth above are established as minimum coverage required of Seller and will in no way be construed as a limitation of the liability of Seller under any hold-harmless or indemnification provision contained in this Order. The Seller's policies must contain a provision by the respective insurers waiving the right of such insurers to subrogation. The waiver of subrogation must be in favor of Buyer and its members, officers, employees, agents, successors and assigns. Seller's furnishings of certificates of insurance or purchase of insurance will not release Seller of its obligations or liabilities under this Order. If Seller fails to maintain any insurance under this Order, Buyer will have the right to procure such insurance and Seller will reimburse Buyer on demand, for all actual costs and expenses of procuring such insurance.

## 23. Termination for Default.

- 23.1 *Buyer's Right to Terminate for Default.* Buyer has the right to immediately terminate all or any part of this Order, without any liability to Seller, Seller's subcontractors, Seller's suppliers, or otherwise if:
- (A) Seller repudiates, breaches or threatens to repudiate or breach any of the terms of this Order (or any other order issued by Buyer to Seller), including, without limitation, Seller's warranties;
  - (B) Seller fails to deliver the Goods or perform the Services within the time specified in this Order or any extension thereof;
  - (C) Seller fails to perform any of the other provisions or meet any of the requirements of this Order;
  - (D) Seller conditions the continued full performance of its obligations under this Order on Buyer's agreement to modify the terms of this Order; or
  - (E) Seller fails to make progress so as to endanger performance of this Order.
- 23.2 *Cure Period.* Buyer's rights to terminate this Order under Sections 23.1(A), 23.1(C), and 23.1(E) may be exercised if Seller does not cure such default within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the default. No such cure notice or period is required for a termination under Sections 23.1(B) or 23.1(D).
- 23.3 *Replacement Costs.* If Buyer terminates this Order in whole or in part for default, it may acquire, under the terms and in the manner Buyer considers appropriate, goods or services similar to

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those terminated, and Seller will be liable to Buyer for any excess costs of those goods or services. Seller must, however, continue the work not terminated.

- 23.4 *Transfer of Completed Goods/Materials.* If this Order is terminated in whole or in part for default, Buyer may require Seller to transfer the title to and deliver to Buyer, as directed by Buyer, any (1) completed Goods, and (2) raw material procured to satisfy subcontract requirements identified within Schedule Notices issued in support of this Order, partially completed Goods, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "Manufacturing Materials") that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller must also protect and preserve property in its possession in which Buyer has an interest.
- 23.5 *Payment for Completed Goods/Materials.* Buyer must pay the Order price for completed Goods and Services delivered and accepted. Seller and Buyer must agree on the amount of payment for Manufacturing Materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a Dispute (as defined in Section 27 of these Terms and Conditions). Buyer may withhold from the amounts payable under this Section 23.5 any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- 23.6 *Termination Remedies Cumulative.* The rights and remedies of Buyer in this Section 23 are in addition to any other rights and remedies provided by law, including the U.C.C. as adopted by the State of California, in equity, or under this Order. If, after termination, it is determined that the none of the events specified under Section 23.1 occurred and Seller is not otherwise in breach of this Order, the rights and obligations of the parties will be the same as if the termination had been issued pursuant to Section 24.1 of these Terms and Conditions without Buyer having any obligation under Section 24.3.

## 24. Termination for Convenience.

- 24.1 *Buyer's Termination for Convenience.* In addition to any rights of Buyer to terminate this Order for cause, Buyer may, at its option, upon thirty (30) days prior written notice to Seller, terminate all or any part of this Order. Such termination must not constitute a breach or default by Buyer.
- 24.2 *Obligations of Seller.* Thirty (30) days after receipt of notice of termination pursuant to Section 24.1 ("Effective Date of Termination"), Seller, unless otherwise directed in writing by Buyer, will: (i) immediately terminate all work under this Order and immediately inform all subcontractors to cease work pursuant to this Order; (ii) transfer title and deliver to Buyer the usable and merchantable finished Goods that Seller produced or acquired in accordance with this Order, and in each case, which Seller cannot reasonably use in producing goods for itself or for others; (iii) take actions reasonably necessary to protect property in Seller's possession which Buyer has an interest; and (iv) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the Goods covered by this Order to an alternative supplier designated by Buyer.



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24.3 *Termination Charges.* Upon a termination pursuant to Section 24.1, Buyer will pay Seller the following amounts without duplication: (a) the Order price for all Goods or Services that have been completed and delivered in accordance with this Order and for which Buyer did not pay previously; (b) the actual costs incurred by Seller (exclusive of profit) for all work in process, raw materials fabricated or procured by Seller and finished goods inventory, in each case, to the extent such costs and quantities are reasonable in amount and, in the case of quantities, are in amounts not in excess of those amounts called for in the Order prior to the Effective Date of Termination; and (c) the actual out-of-pocket cost incurred by Seller in protecting any Buyer-furnished property. In no event, however, will payments made under this Section 24.3 exceed the aggregate price payable by Buyer for finished Goods or Services which would be produced by Seller under this Order. Buyer is not liable for and must not be required to make any other payments to Seller, directly, indirectly, or otherwise, including on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs and general and administrative burden charges from termination of this Order. Notwithstanding the foregoing, Buyer must have all rights and obligations accruing both at law or equity, including Buyer's rights to title and immediate possession of Goods for which Buyer has made payment.

24.4 *Termination Claim.* Within sixty (60) days from the Effective Date of Termination, Seller must submit to Buyer a comprehensive termination claim setting forth the amounts described in Section 24.3, with sufficient supporting data to permit Buyer's audit, and must thereafter promptly furnish such supplemental and supporting information as Buyer requests. Buyer, or its agents, will have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to Seller's termination claim and Seller will cooperate fully with Buyer in the conduct of such audit. The principles in FAR 31.205-42 shall apply.

**25. Insolvency.**

25.1 *Seller's Solvency.* Seller represents and warrants to Buyer as of the effective date of this Order (which representations and warranties will be deemed repeated as of the date of Seller's acceptance of each Purchase Order under this Order or at the time of each delivery under this Order) that (a) it is not insolvent and is paying all debts as they become due; (b) it is in compliance with all loan covenants and other obligations; (c) that all financial information provided by Seller to Buyer concerning Seller is true and accurate; (d) that such financial information fairly represents Seller's financial condition; and (e) that all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

25.2 *Operational Problems.* Seller agrees that if Seller experiences any delivery or operational problems, (a) Seller will permit Buyer and its representatives to review Seller's books and records concerning compliance with this Order and Seller's overall financial condition and agrees to provide Buyer with full and complete access to all such books and records for such purpose upon Buyer's request and (b) Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Buyer provides to Seller any accommodations (financial or otherwise) that are necessary for Seller to fulfill its obligations under this Order, Seller must reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such



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accommodation and will grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by this Order (and a lien to secure the access right) under an access and security agreement.

25.3 Termination for Insolvency. Buyer may terminate this Order in the event of the happening of any of the following or any other similar or comparable event and such termination must not constitute a breach or default by Buyer:

- (A) insolvency of Seller;
- (B) the filing of a voluntary petition in bankruptcy by Seller;
- (C) the filing of any involuntary petition to have Seller declared bankrupt that is not vacated within thirty (30) days from the date of filing;
- (D) the appointment of a receiver or trustee for Seller, provided such appointment is not vacated within thirty (30) days from the date of such appointment;
- (E) the execution by Seller of an assignment for the benefit of creditors; or
- (F) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under this Order.

25.4 *No Waiver.* The exercise by Buyer of the right of termination under this Section 25 must not impose any liability upon Buyer by reason of the termination nor have the effect of waiving damages to which Buyer might otherwise be entitled.

26. **Setoff and Retention/Withholding.** All amounts due from any of Buyer or its parent companies or their affiliates, subsidiaries or divisions ("Buyer Group") to Seller or its parent companies or their affiliates, subsidiaries or divisions ("Seller Group") will be considered net of indebtedness of any member of Seller Group to any member of Buyer Group whether under this Order or otherwise. In addition to any right of setoff, deduction or recoupment provided or allowed by law, any member of Buyer Group may, without notice to Seller or any other member of Seller Group, set off against, and deduct and/or recoup from, any amounts due or to become due from any member of Buyer Group to any member of Seller Group under this Order or otherwise any amounts due or to become due from any member of Seller Group to any member of Buyer Group under this Order or otherwise, including, without limitation, any damages resulting from breaches by Seller of its obligations under this Order or any agreement between Buyer and Seller. If an obligation of Seller Group is disputed, contingent or unliquidated, any member of Buyer Group may defer payment of all or any portion of an amount due to any member of Seller Group under this Order or otherwise until such dispute or contingency is resolved or the obligation is liquidated. Without limiting the generality of the foregoing, and by way of example only, in the event of Seller's bankruptcy, if all of the orders (including this Order) between Buyer and Seller have not been assumed



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(under applicable bankruptcy law), then Buyer may withhold payment to Seller for Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.

**27. Dispute Resolution.**

- 27.1 *Procedure.* Any claim against Seller for failure to deliver the Goods or for breach or repudiation of this Order, as well as any other claim by either party for the threatened, alleged or actual breach of this Order by either party (a "Dispute"), which cannot otherwise be resolved within thirty (30) days of written notice of the dispute through negotiations by the parties, may be adjudicated in a court of competent jurisdiction in accordance with Section 34.9 of these Terms and Conditions.
  
- 27.2 *Obligation to Perform.* Pending final decision by a court of competent jurisdiction in accordance with Section 34.9 of any dispute concerning this Order, Seller must proceed with performance of this Order. If the dispute arises out of a difference in interpretation between the parties as to any requirement of this Order (including regarding specification, delivery, quality, or pricing), then Seller must continue performance in accordance with Buyer's interpretation of the requirements.
  
- 27.3 *Dispute Under a Government Prime Contract.* If, by a final decision, the Contracting Officer of a U.S. Government Prime Contract interprets any provision or requirement of a U.S. Government Prime Contract (including exhibits, appendices, and attachments thereto and documents referred to therein), and the same or substantially similar provision or requirement is contained in this Order (including exhibits, appendices, and attachments thereto and documents referred to therein), such interpretation shall be binding between Buyer and Seller at Buyer's option. Buyer must afford Seller a reasonable opportunity to appeal such decision in Buyer's name; provided, however, that Buyer must at all times be the sponsor of any appeal and may revoke its sponsorship at any time. Seller agrees to provide to Buyer any and all information requested by Buyer for the purpose of verifying, supporting, or providing any and all certifications required in any claim or appeal by the Contract Disputes Act of 1978, 41 U.S.C. Section 7101 et seq. or otherwise. Any such appeal must be at the sole expense of Seller. (As used in this provision, the term "appeal" must include any and all proceedings under this provision before any board of contract appeals or federal court.) Except as may be expressly set forth herein and with the Government's express consent, Seller must not acquire any direct claim or direct cause of action against the Government. Despite Section 34.9 of these Terms and Conditions, the choice of law for any dispute directly against the Government must be governed by FAR 52.233-4.
  
- 27.4 *Claims Against Buyer's Customers.* If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer's Customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller must pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer's name and at Seller's cost against Buyer's Customer.
  
- 27.5 *Reference to Disputes in FAR and DFARS.* Any reference to the "Disputes" clause in any applicable FAR or DFARS clause incorporated into this Order shall mean this Section 27.



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**28. Compliance with Laws.**

- 28.1 *General.* Seller must comply with all federal, state and local laws, orders, rules, regulations, and ordinances that are applicable to Seller's performance of its obligations under this Order, and such compliance must be a material requirement of this Order.
  
- 28.2 *Indemnification.* Seller will indemnify, defend and hold Buyer and its Customer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with any applicable laws and regulations, including for improper or illegal usage or disposition of hazardous goods and substances.
  
- 28.3 *Child Labor.* By acceptance of this Order, Seller agrees and declares that it has complied with and has not violated in any way the Child Labor provisions of the Fair Labor Standards Act of 1949, as amended.
  
- 28.4 *Discrimination.* **By Acceptance of this Order, Seller certifies that it will comply with all applicable provisions of E.O.11246 and E.O.11375, as amended (41 CFR § 60-1.4); the Vietnam Era Veterans Readjustment Act of 1974 (41 CFR § 60-300.5) and E.O.11701; The Rehabilitation Act of 1973 and E.O. 11758; and the rules, regulations and relevant orders of the Secretary of Labor.**
  
- 28.5 *Health, Safety, and Environmental Regulations.* Seller warrants that the Goods sold pursuant to this Order, and their performance when installed, will conform to the requirements of the Occupational Safety and Health Act of 1970 as amended and all regulations and standards formulated thereunder and any State requirements. Seller further warrants that the Goods will be in compliance with applicable product safety and environmental regulations. Seller warrants that each chemical substance contained in the Goods is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency in conjunction with the Toxic Substances Control Act, as amended. The Goods must be in compliance with the applicable sections of the Federal Consumer Product Safety Act, as amended, and the Federal Hazardous Substances Act, as amended, and are not considered hazardous under any state or federal law, except as clearly stated on the shipping and storage containers. Seller must also comply with the labelling requirements for Class I and Class II Ozone Depleting Substances as required by Section 611 of the Clean Air Act Amendments of 1990 and the final rules (40 C.F.R. Part 82) implementing the same (collectively, the "Act"). Seller must accurately label, consistent with the requirements of the Act, any products containing a controlled substance that it is supplying to Buyer. In the event Seller discovers that it has failed to comply with the labeling requirement of the act, it must immediately notify Buyer of those products supplied to Buyer which failed to comply with the labeling requirements of the Act.


**29. Compliance with U.S. Export Control Laws and Regulations.**



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- 29.1 *Export.* 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.
- 29.2 *Notification.* Seller agrees to notify Buyer of the export classification of any deliverable under this Order under applicable Export Controls.
- 29.3 *Identification.* Buyer must identify to Seller the export classification of all technical information provided to Seller.
- 29.4 *Denied Party.* Seller must 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.
- 29.5 *Registration.* 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. With respect to such Defense Articles and/or Defense Services, Seller represents and warrants that it and its subcontractors have not paid, and will not pay or offer to pay, for solicitation or promotion or otherwise, to secure the conclusion of a sale of Defense Articles or Defense Services to, or for the use of, the armed forces of an international organization or non-U.S. Country any fees, commissions or political contributions as described under Part 130 of the ITAR without prior notice to Buyer. In such event, Seller must provide to Buyer, not later than 20 days after such an event, full disclosure of all information necessary for Buyer to comply fully with Sections 130.9 and 130.10 of the ITAR.
- 29.6 *No Registration.* 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.



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29.7 *Violation.* Seller must 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.

29.8 *Indemnification.* Seller must be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's 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 clause.


**30. Force Majeure.**

30.1 *Force Majeure Events; Occurrence.* Any delay or failure on the part of either party to perform hereunder will be excused if and to the extent that such delay or failure is caused by circumstances beyond the reasonable control and without the fault or negligence of such party, including acts of God or of the public enemy, acts of the Government (including, but not restricted to, any preference, priority or allocation order), fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes. provided that Seller will give Buyer prompt notice of any cause that will result in such delay (and the anticipated duration) within five (5) days of the occurrence of such cause.

30.2 *Seller's Obligations During Delays.* During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods or services similar to the Goods or Services from other sources and reduce the quantities set forth in this Order by such quantities, without liability to Seller, or have Seller provide the Goods from other sources in quantities and at times requested by Buyer and at the price set forth in this Order. If requested by Buyer, Seller will, within five (5) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance (within a commercially reasonable time not to exceed ten (10) days from the date of the request) that the delay will cease within thirty (30) days, Buyer may immediately cancel this Order without liability.

**31. Strike Bank.** Notwithstanding Section 30, Seller agrees that prior to any labor contract expiration at Seller's manufacturing facility and with Buyer's written approval, Seller must build ahead of schedule in order to have available a strike bank of at least a thirty (30) day supply of the Goods stored in a readily accessible controlled location to prevent a delivery delay resulting from a potential work stoppage at Buyer's facility. Seller agrees to pay for all incidental costs associated with providing this strike bank which must include, but not necessarily be limited to, costs associated with accelerated production, storage and any form or premium payment associated with the manufacture of this strike bank inventory.

**32. Additional Attachments.** In addition to the attachments referenced in Section 33.1, any additional attachments identified on this Order are incorporated by reference herein with the same force and effect as if they were given in full text unless modified as set forth in the attachment. All attachments applicable to this Order can be found on Buyer's corporate website located at [www.bankstech.com](http://www.bankstech.com).

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### 33. Incorporated FAR and DFARS Provisions.

33.1 *Applicability.* The FAR and DFARS clauses will apply as follows:

- (A) Commercial Items: If any Good covered by this Order is a "Commercial Item" as that term is defined in FAR 2.101, as determined by Buyer or otherwise set forth in this Order, the FAR and DFARS Clauses in the most recent *Attachment 1 - FAR Part 12 Commercial Item* posted on Buyer's corporate website located at [www.bankstech.com](http://www.bankstech.com), and all updates or changes to that document that hereafter become available on Buyer's website, are incorporated by reference herein with the same force and effect as if they were given in full text as modified by any notes following the clause citation.
- (B) Non-Commercial Items: If any Good covered by this Order is not a "Commercial Item" as that term is defined in FAR 2.101, as determined by Buyer or otherwise set forth in this Order, the FAR and DFARS Clauses in the most recent *Attachment 1 - FAR Part 15 Non-Commercial Item* posted on Buyer's corporate website located at [www.bankstech.com](http://www.bankstech.com), and all updates or changes to that document that hereafter become available on Buyer's website, are incorporated by reference herein with the same force and effect as if they were given in full text as modified by any notes following the clause citation.
- (C) Reserved.
- (D) By entering into this Order and rendering performance under this Order, Seller represents and warrants to Buyer that Seller is fully apprised of and in compliance with the latest version of the FAR and DFARS clause in effect, both at the time of entry into this Order and at any time hereafter when Seller provides Goods or Services pursuant to this Order. Seller is responsible for ensuring at all times that it is in compliance with, and that all Goods and Services received are in compliance with, the latest version of the FAR and DFARS clauses then in effect at the time of performance regardless of whether such FAR and DFARS clauses are posted on Buyer's website or otherwise provided to Seller by Buyer.

33.2 *Reference to "Disputes" Clause.* Except where otherwise specified in these Terms and Conditions, any reference to the "Disputes" clause in any applicable FAR or DFARS clause incorporated into this Order shall mean Section 27 of these Terms and Conditions.

33.3 *Flow Down of Clauses to Lower-Tier Subcontracts.* Seller must insert the FAR and DFARS clauses in the version of Attachment 1 specified in this Order (and any update or change thereto) in lower tier subcontracts to the extent required for each lower tier subcontract by the FAR or DFARS either verbatim, in substance, by incorporation-by-reference or otherwise as appropriate.



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- 33.4 *Meaning of Terms in Incorporated Clauses.* Wherever used in a clause in Attachment 1 (and any change or update thereto), the terms "Contract" and "Contractor" shall mean this Order and Seller (including Seller as Bidder or Offeror), respectively. The terms "Government," "Contracting Officer," and equivalent phrases in the clauses in Attachment 1 (and any update or change thereto) shall mean Buyer, except where further clarified or modified, except that in clauses identified by \* shall have their original meaning as written in the FAR or DFARS, and when identified by \*\* shall not only have their original meaning as written in the FAR or DFARS, but shall also mean "Buyer." "Subcontractor" shall mean "Seller's Subcontractor."
  
- 33.5 *Certification of Compliance with Mandated Clauses.* Seller, by accepting this Order, hereby certifies compliance with the mandated clauses set forth within FAR 52.212-3 (for Commercial Items) and/or FAR 52.204-8 (for Non-Commercial Items), including the "FAR / DFARS Representations and Certifications for U.S. & Non-U.S. Suppliers" form, which can be found at [www.bankstech.com](http://www.bankstech.com). The completed FAR / DFARS Representations and Certifications for U.S. & Non-U.S. Suppliers" form is to be submitted with all offers.

**34. Miscellaneous.**

- 34.1 *No Assignment.* This Order may not be assigned by Seller without the prior written consent of Buyer. Any purported assignment in violation of the foregoing will be null and void and of no force or effect. Any sale, merger (by operation of law or otherwise), or transfer of assets, stock or securities of Seller will be deemed to be a purported assignment of this Order. Any payment to any assignee of this Order or of any claim under this Order, in consequence of such consent, must be subject to set-off, recoupment, or other reduction for any claim that Buyer may have against Seller.
  
- 34.2 *Non-Solicitation.* Buyer will not solicit and Seller must not provide, any gifts or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value, or compensation), of any kind which is provided directly or indirectly to any employee of Buyer for the purpose of improperly obtaining or rewarding favorable treatment in connection with award of a purchase order or subcontract. Seller must report in writing any solicitation or suspected solicitation of gifts or gratuities by Buyer's employees to Buyer's Authorized Representative.
  
- 34.3 *Relationship of Parties.* Seller and Buyer are independent contracting parties and nothing in this Order will make either party the agent, legal representative, partner, or joint venturer of the other for any purpose whatsoever, nor does this Order grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.
  
- 34.4 *No Advertising and Clearance Of Material Intended For Public Release.* Without the prior written consent of Buyer, Seller will not make any disclosure, news release or public announcement in any manner (including, without limitation, in any advertisements, publications or promotional materials) regarding, or refer to, whether by denial or confirmation of same, any of the following: (i) Buyer, (ii) this Order, (iii) any part of the subject matter of this Order, or (iv) the fact that Seller has contracted to furnish Buyer the Goods covered by this Order. Seller will not use any



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trademarks or trade names of Buyer in Seller's advertising, publications or promotional materials without first obtaining the written consent of Buyer.

- 34.5 *Survival.* Sections 1-3, 5.5, 8-12, and 15-34 of these Terms and Conditions (together with any other Section which according to its terms should continue in effect) shall survive and remain valid after the termination, cancellation, or expiration of this Order.
- 34.6 *Third-Party Beneficiary.* Seller agrees that Buyer is an intended third-party beneficiary of any contracts between Seller and its suppliers and/or subcontractors relating to the production or assembly of the Goods covered by this Order and Buyer has the right to enforce such contracts. This Order is intended for the benefit of Buyer and, where applicable, Buyer Group, each of which are express third-party beneficiaries under this Order and will have the right to enforce this Order against Seller. This Order is not intended to benefit any other third party. Seller agrees that it is not a third-party beneficiary of Buyer's contracts with any Customer.
- 34.7 *No Waiver.* The failure of Buyer to require performance by Seller of any provision of this Order will in no way affect Buyer's right to require such performance at any time thereafter, nor will the waiver of Buyer of any breach or default by Seller hereunder constitute a waiver of any succeeding breach of the same provision or any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not. To be effective, any waiver by Buyer of any provision of this Order must be in writing by Buyer.
- 34.8 *Partial Invalidity.* If any provisions of these terms and conditions, or an Order hereunder, is or becomes void or unenforceable, the other provisions shall remain valid and enforceable.
- 34.9 *Governing Law and Exclusive Courts for Dispute Resolution.* This Order is to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another law. Any legal or equitable action or proceeding by Buyer against Seller may be brought by Buyer in any court having jurisdiction over Seller or, at Buyer's option, in any federal or state court located in Los Angeles County, California, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures in such court. Any legal or equitable action or proceeding by Seller against Buyer may be brought by Seller only in the federal or state courts located in Los Angeles County, California. Seller agrees to the sole and exclusive jurisdiction of the foregoing courts for any legal or equitable action or proceeding against Buyer and specifically waives any and all objections to venue in such courts.
- 34.10 *Gifts and Gratuities.* Buyer will not solicit, and Seller must not provide, any gifts (other than advertising items of nominal value) or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value, or compensation) of any kind to any employee of Buyer. Seller must report in writing any solicitation or suspected solicitation of gifts or gratuities by Buyer's employees to the General Counsel, 546 S Duggan Ave., Azusa, California 91702.



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- 34.11 *Certificates.* Seller must furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Article, the word "certificate" must include any plan or course of action or recordkeeping function.
  
- 34.12 *Construction; Interpretation.* The headings in this Order are inserted for convenience and identification purposes only, and are in no way intended to describe, interpret, define or limit the scope, extent, or intent of this Order. Any agreement, instrument, law or rule defined or referred to herein will be deemed to mean such agreement, instrument, law or rule as from time to time amended, modified or supplemented, and includes, in the case of agreements and instruments, references to all attachments thereto and instruments incorporated therein. "Herein," "hereunder," or words of similar import refer to this Order as a whole. "Including" is not limiting and should be followed by the phrase "without limitation." "Or" is not necessarily exclusive. "Will" means mandatory and not permissive and is intended to have the same meaning as "shall" and "must."
  
- 34.13 **NO JURY TRIAL. BUYER AND SELLER 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 THIS ORDER OR ANY DOCUMENT PERTAINING TO THIS ORDER.**

**35. Tooling.**

35.1. *Inspection and Approval of Tooling.*

- 35.1.1. Seller agrees Buyer has the right to inspect and test all Tooling at all reasonable times and places including, when practicable, during manufacture. As part of such inspection or testing, whether or not at Seller's facilities, Seller will provide, if requested by Buyer, the following: (i) all documentation related to the production, construction, or acquisition of Tooling; (ii) a detailed status report of the Tooling, including, without limitation, digital photos of the Tooling that display the current status of the construction or production of the Tooling; and (iii) a sample of Goods manufactured from the Tooling, as the case may be. In addition, Seller will make available the Tooling for completion of a full "run at rate" test by Buyer's Quality Department in a production environment at Seller's facility.
  
- 35.1.2. If any such inspection or test is made on Seller's premises, Seller will furnish all reasonable facilities and assistance required for a safe and convenient inspection or test without additional charge to Buyer.
  
- 35.1.3. Buyer's inspection of the Tooling or documentation related to the construction of the Tooling, no matter how or when occurring, does not constitute acceptance of any work-



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in-process, finished Goods, or finished Tooling. Further, notwithstanding prior inspection, payment, or use of the Tooling, Buyer has the right to reject any Tooling that does not conform to the requirements of the Order.

35.1.4. Notwithstanding anything contained herein, Buyer will not make final payment of funds for Tooling until (i) Buyer accepts the Tooling in accordance with Section 35.2 of these Terms and (2) Seller transfers title to Buyer to the Tooling free and clear of all liens, claims or other encumbrances and completes all related services required under the Order or, at Buyer's option, provides adequate assurance of continued performance in such form as requested by Buyer.

35.1.5. *Reserved.*

35.2. *Acceptance.* For purposes of each Order, acceptance of Tooling means receipt by Seller in writing by Buyer's authorized representative that acknowledges (i) the Tooling's compliance with all manufacturing specifications, (ii) completion of a full "run at rate" in a production environment at Seller's facility, and (iii) completion of the production part approval process ("PPAP") by Seller. Buyer reserves the right to observe Seller's "run at rate" qualification testing.

35.3. *Delivery of Tooling Drawings and Models.* Upon request, Seller will immediately deliver to Buyer all Tooling, drawings, and models via the method and to the destination specified by the Seller.

35.4. *Price and Payment Terms.*

35.4.1. The price for the purchase of Tooling set forth on the Order (the "Purchase Price") must include all charges and costs associated with the design, development, and manufacture of the Tooling. Seller is solely responsible for the payment of any taxes, tariffs and duties and all costs associated with freight, transportation, insurance, shipping, storage, handling and similar charges associated with the Tooling. Subject to the terms and conditions contained herein, the Purchase Price is not subject to increase, including, without limitation, increases in cost based upon raw material, labor, or overhead unless Buyer's authorized representative specifically agrees in writing.

35.4.2. Seller represents and warrants to Buyer the Purchase Price complies with all applicable governmental laws and regulations in effect at the time of, as the case may be, quotation, construction, completion, sale, and delivery.

35.4.3. Subject to the terms and conditions of the Order, Buyer will pay the Purchase Price in the amounts and at the times specified on the face of the Order.

35.5. *Purchasing Price Adjustment and Cost Audits.*



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35.5.1. Tooling is purchased by Buyer on a fixed price basis and the Purchase Price is the maximum amount Buyer will pay (subject to any Change Orders).

35.5.2. *Reserved.*

35.6. *Ownership of Tooling.*

35.6.1. Regardless of when Tooling is accepted by Buyer, title to Tooling will pass to Buyer upon the sooner to occur of (i) when the Tooling is fabricated or completed by Seller or acquired by Buyer or, (ii) in the case of an Order for refurbishment of Tooling to which Buyer does not already hold title, when refurbishment is substantially completed. Title to the Tooling will pass to Buyer even if Buyer has not made full payment; however, the title transfer will not affect Buyer's obligation to pay for the Tooling as provided in and according to the terms of the Order.

35.6.2. Once title to Tooling passes to Buyer, the Tooling and related blueprints, designs, specifications, drawings, photographs, art work, and copy layout provided by Buyer or developed by Seller or its third party suppliers in connection with or related to any Order (collectively, "Bailed Property"), will be held by Seller as a bailee-at-will for the benefit of Buyer. Seller bears the risk of loss of and damage to the Bailed Property and, at its own cost and expense, must keep such Bailed Property insured for the benefit of Buyer, naming Buyer as the loss payee and additional insured. Seller must at all times, and without charge to Buyer, properly house the Bailed Property and protect it against destruction, damage or theft. Subject to the terms contained herein, Buyer's ownership of such Bailed Property will not affect Buyer's obligation to pay for the Tooling.

35.6.3. Seller agrees that the Bailed Property: (i) will not be used by Seller for any purpose other than pursuant to the terms of the Order; (ii) will be deemed personal property of Buyer; (iii) must be conspicuously marked by Seller to identify it as property of Buyer (including indicating Buyer's name and address); (iv) must not be commingled with Seller's property or with that of a third party; and (v) must not be moved from Seller's premises without the prior written approval of Buyer. Seller must also, at its sole cost and expense, maintain, repair and refurbish Bailed Property in first class condition. All replacement parts, additions, improvements and accessories for such Bailed Property automatically become Buyer's property upon their incorporation into or attachment to the Bailed Property.

35.6.4. Seller will maintain Tooling at Seller's own expense such that Seller can ensure the operational readiness of the Tooling in the condition necessary to produce the Goods in the required quality and quantities. Tooling repair, other than regular maintenance, and replacement requires prior approval by Buyer.


35.6.5. Unless Buyer directs an earlier release by Seller, Seller must have the capability to store, and must store, all Bailed Property for a minimum of ten (10) years after termination of serial production of the Goods. Notwithstanding the expiration of the time period in the preceding sentence, Seller will not destroy any Tooling without the prior written consent of Buyer.



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- 35.6.6. Seller must immediately inform Buyer in writing if the total tool cycles reach up to 85% of quoted Tooling life to allow Buyer to plan for further production quantities.
- 35.7. *Use of Tooling.* Seller must use the Tooling exclusively for production of Goods required by Buyer. Seller will not, without the prior written consent of Buyer, use Tooling for the production of (i) larger quantities of Goods than those specified by Buyer or (ii) goods or services for Seller or any other person.
- 35.8. *Claims, Lien, and Other Encumbrances.* Seller represents and warrants that neither Seller nor any other person or entity other than Buyer has any right, title, interest, or liens in the tooling, other than Seller's right, subject to Buyer's unfettered discretion, to utilize the Tooling in the manufacture of the Goods. In the event Seller has, or obtains, any intellectual property rights in the Tooling and/or documentation related to such Tooling, Seller hereby conveys, assigns, and otherwise grants Buyer all of Seller's right, title, and interest in and to such intellectual property and Seller agrees not to transfer, assign, or otherwise grant such intellectual property rights, by operation of law or otherwise, to any other person or entity. For the avoidance of doubt, any intellectual property produced by Seller for the Tooling and/or Goods will be deemed to be "work for hire."
- 35.9. *Return of Tooling.* Upon request, Seller must deliver the Tooling, existing spare parts, and all related documentation in Seller's possession or under its control to Buyer at the location Buyer determines. Seller will be reimbursed for reasonable transportation charges related to this request, including freight and packaging costs. Seller has no right to withhold any Tooling, documentation, or production equipment that has been paid for by Buyer.
- 35.10. *Warranty.*
- 35.10.1. Seller warrants to Buyer, its customers, and its successors and assigns that all Tooling purchased pursuant to each Order will, following the date of acceptance for such Tooling identified in Section 35.2, (i) conform to the applicable drawings, specifications and other descriptions furnished pursuant to each Order, and all applicable laws and regulations, (ii) be free of defects in design (to the extent that Seller furnished the design), materials and workmanship, and (iii) be suitable for the purpose intended by Buyer of which Seller acknowledges it is aware. Seller's responsibility under this warranty includes, without limitation, all parts, labor and transportation costs incurred by Buyer in the event the Tooling must be returned to Seller for repair or replacement.
- 35.10.2. Seller warrants to Buyer, its customers and its successors and assigns that it will, whenever possible, use parts of the highest industry quality, and supply a detailed bill of materials listing all such parts. Seller further agrees that it will comply with all specific product sourcing directions of Buyer.




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35.10.3. The warranties provided in this Section 35.10 must survive the acceptance and delivery of the Tooling and will continue in full force and effect for the production life of the applicable Tooling and any such period of time following thereafter during which Seller utilizes the Tooling for the production of Goods for Buyer.

35.11. *Defective Tooling.* If the Tooling fails to comply with the warranties provided in an Order or otherwise provided by the Seller (“Defective Tooling”), Seller must repair such Defective Tooling as promptly as possible, but in no event later than the time period reasonably determined by Buyer. If Seller is unable to repair the Defective Tooling within such time period or the repair by Seller is not suitable for Buyer’s needs, as determined by Buyer in its sole discretion, Buyer reserves the right to either (i) terminate the Order or (ii), at Seller’s sole cost and expense, repair the Defective Tooling itself or have such repair done by a third party. Notwithstanding anything to the contrary contained in an Order, Seller must indemnify, defend and hold Buyer and its successors and assigns harmless from and against all claims, damages (including incidental, special, and consequential damages), losses, costs, and expenses (including reasonable attorney’s fees), incurred by Buyer in connection with Defective Tooling. For the avoidance of doubt, the indemnification in the preceding sentence extends to all costs Buyer may incur in repairing the Defective Tooling, including, without limitation, transportation, sorting, investigative, and testing costs. Further, all amounts due from Seller for such indemnification are due when incurred by Purchaser and are not subject to any intermediate or final determination of Purchaser’s claim against Seller.

[End of Terms and Conditions - Definitions Appendix on the next page)

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Definitions Appendix

Unless otherwise defined in the Terms and Conditions, the following capitalized terms have the following meanings in the attached Terms and Conditions:

"Buyer's Authorized Representative" – Director of Manufacturing

"Customer" - A Government or Government prime contractor purchasing the Goods or related items under a Prime Contract, or otherwise involved in setting Buyer's requirements for the Goods.

"Days"- Calendar days.

"DFARS"- The Department of Defense FAR Supplement.

"FAR" - The Federal Acquisition Regulation.

"Goods" - Any articles, products, materials, supplies, items, or components identified in this Order (each a "Good" and collectively "Goods"). The term "Goods" includes, without limitation, raw materials, components, intermediate assemblies, tooling, molds, equipment, end products, and all work or effort performed by Seller that is necessary or incidental to the production, sale or delivery of the Goods.

"Government" - The government of the United States and its federal agencies, or the government of a foreign country, or agency thereof, in a direct sale.

"Intellectual Property" - Patented and unpatented inventions, mask works, copyrighted works, trade secrets, technical data, know-how, and Proprietary Information.

"Prime Contract" - Government contract(s) under which an Order may be issued.

"Proprietary Information" - all information owned, developed or possessed by a party or its affiliates, subsidiaries, employees, agents, representatives or subcontractors that relates to the past, present, anticipated, planned, or reasonably foreseeable business activities of the party, including, but not limited to, all of the party's trade secrets, know-how, inventions, blueprints, technical data, engineering data, research data, technologies, designs, specifications, ideas, concepts, plans, formulas, compositions, patterns, devices, software, drawings, sketches, photographs, processes, procedures, methods, applications, costs, prices, discounts, margins, financial information, economic information, business development plans, information about current and potential customers (including identity, needs, and preferences), computer software and programs (including object code and source code), and any compilation or combination of the foregoing. Notwithstanding the foregoing, Proprietary Information does not include information that a party can establish, by written records: (1) is or becomes publicly available other than by a breach of this Agreement, or violation of applicable law, by the party; or (2) was lawfully obtained by the party free from any restrictions on disclosure and use imposed by a



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third party and independent of the parties' relationship and business dealings of any kind. Specific information shall not be deemed to be within these exceptions merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed to be within such exceptions because the individual features are within such exceptions.

"Services" - Any work or effort to be performed by the Seller that is identified in this Order or that is necessary to accomplish such work or effort.



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Change History

Revision	Description of Change(s)	Authored By	Approved By	Release Date
A	Initial release	Kevin McCutcheon	Matt Hill, Chris Bruny	7/20/2023
B	Replaced shall with must throughout, where appropriate, added Sections 4.1 and 35	Kevin McCutcheon	Matt Hill, Chris Bruny	10/31/2023