

**GENERAL TERMS AND CONDITIONS OF SALE FOR FIRM FIXED PRICE CONTRACTS
(DOMESTIC AND INTERNATIONAL/COMMERCIAL AND NON-COMMERCIAL ITEMS)**

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1 Definitions

The following terms shall have the meanings set forth below:

- a) "SELLER" means the SELLER legal entity as identified on the face of this Contract.
- b) "BUYER" means the BUYER legal entity as identified on the face of this Contract.
- c) "SELLER Representative" means the person authorized by SELLER cognizant organization to execute to administer and/or execute this Contract.
- d) "BUYER Representative" means the person authorized by BUYER' cognizant organization to administer and/or execute this Contract.
- e) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- f) "Customer" means the entity with whom BUYER has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of the "BUYER PROPERTY" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions of this Contract, "Customer" shall include both any higher tier contractor(s) and government entities.
- g) "FAR" means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- h) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract.
- i) "Work" means all products, services, and deliverables constituting the subject matter of this Contract.
- j) "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "suspect counterfeit electronic part" if visual inspection, testing, or other information provide reason to believe that the part may be a counterfeit part.
- k) "Proprietary Information" means any rights in inventions, patents, registered and unregistered trademarks and service marks, registered designs, design rights, utility models, copyright (including all such rights in computer software and any databases), moral rights (subject to applicable laws), topography rights (in each case for the full period thereof and all extensions and all renewals thereof), know how, manufacturing processes and technical information (including all such as drawings, blueprints and reports, test data, test results, results of analyses and all similar property and any related improvements or enhancements), financial information, applications for any of the foregoing and the rights to apply for or claim priority in respect of any of the foregoing in any part of the world and any similar rights situated in any country generated.

2 Acceptance of Contract/Terms and Conditions

- a) All quotations and sales by SELLER are subject to these terms and conditions. This Contract supersedes any oral or written agreements, contemporaneous and prior offers, understandings, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. BUYER will be deemed to have assented to all terms and conditions contained herein by accepting any Work, making any payments, or ordering any

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Work having previously received these Terms and Conditions.

- b) Only BUYER's and SELLER's written acceptance together with receipt of payment to initiate Contract by SELLER shall constitute BUYER's and SELLER's acceptance of this Contract.
- c) ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY BUYER OR INCLUDED IN BUYER'S PURCHASE ORDER HEREOF ARE HEREBY OBJECTED TO BY SELLER AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY A SELLER REPRESENTATIVE.

3 Precedence

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) bilaterally executed Terms and Conditions of Sale; (2) bilaterally executed Non-disclosure Agreements; (3) bilaterally executed Purchase Order and Notes therein; (4) sale quote, representations and certifications; (5) any bilaterally executed supplemental terms and conditions; (6) specifications or drawings; (7) Statement of Work (SOW); and (8) other documents, exhibits, and attachments to this Contract.

4 Payments, Taxes and Duties

- a) Unless otherwise provided, terms of payment shall be net thirty (30) days from shipment date of the Work; prices are EXW Simi Valley, CA (Incoterms 2010); and prices do not include any federal, state, and local taxes, freight, handling, duties, tariffs, similar fees imposed by any government, or other similar charges, payment of which will be the sole responsibility of BUYER.
- b) Prices are conditioned upon timely payment and any past due balance will accrue interest at the monthly rate of five percentage points over the official LIBOR rate on the day the balance becomes due. Freight changes may be construed on the basis on standard carrier tariffs and may not reflect actual transportation costs. ESI reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of BUYER's creditworthiness or should BUYER fail to fulfill any obligation when due.
- c) Prices are subject to change per agreement by SELLER upon change requests sent by BUYER Representative to SELLER Representative and agreed to by SELLER Representative, including though not limited to, schedule changes and quantity changes, under provision "Contract Direction/Changes".
- d) SELLER retains a purchase money security interest in all Work sold to BUYER, and in the proceeds of any resales of such Work, until the purchase price and any other charges due have been paid in full. SELLER shall have the right to offset any sum owed by SELLER against any sum owed by BUYER to SELLER. BUYER waives any right to asset any counterclaim, set-off, or recoupment claims in any action brought to SELLER.

5 Contract Direction/Changes

- a) Only the BUYER Representative has authority to request changes in, to amend, or to modify this Contract in writing on behalf of BUYER. Only the Seller Representative has authority to review changes, present potential impact of changes to BUYER, and to accept a Contract modification.
- b) Contract modifications will not be considered executed unless approved by both SELLER Representative and BUYER Representative in writing.
- c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the BUYER

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Representative, and all notices to be furnished by BUYER shall be sent in writing to the SELLER Representative.

- d) BUYER may, exclusively by a written order signed by BUYER Representative, and without notice to sureties, if any, only request changes in the form of a mutually acceptable Change Order document within the general scope of this contract in any one or more of the following:
 - i. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for BUYER in accordance with the drawings, designs, or specifications;
 - ii. Method of shipment or packing;
 - iii. payment schedules;
 - iv. Delivery schedules;
 - v. and/or any other matters affecting this contract.
- e) BUYER' Representative may attach BUYER' own internal released documents to the Change Order for clarification purposes. When issued, these forms will be in conjunction with, not in lieu of, a Change Order.
- f) The SELLER shall review all changes to the part and/or service as specified in the Change Order and any Attachments, if any, and notify BUYER of any effect that the change may have on the performance of the contract within forty-five (45) calendar days and with equitable reimbursement of such review.
- g) If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and, if accepted in writing by SELLER, the contract shall be modified in writing accordingly. NOTE: Only SELLER Representative shall have the authority to direct or authorize changes or modifications to this contract on behalf of SELLER. Only BUYER' Representative shall have the authority to direct or authorize changes or modifications to this contract on behalf of BUYER. BUYER and SELLER PROGRAM MANAGEMENT AND ENGINEERING PERSONNEL HAVE NO AUTHORITY TO MODIFY OR OTHERWISE TO DIRECT OR AUTHORIZE CHANGES TO THIS CONTRACT.
- h) SELLER SHALL NOT BE LIABLE FOR ANY IMPACT TO BUYER THAT RESULTS FROM SELLER'S LACK OF IMPLEMENTATION OF CHANGES OR MODIFICATIONS THAT SELLER REPRESENTATIVE DID NOT FIRST APPROVE IN WRITING.
- i) BUYER SHALL NOT BE LIABLE FOR ANY IMPACT TO SELLER THAT RESULT FROM SELLER'S IMPLEMENTATION OF CHANGES OR MODIFICATIONS THAT BUYER REPRESENTATIVE DID NOT FIRST APPROVE IN WRITING.

6 Proprietary Information

- a) Proprietary Information provided by SELLER to BUYER remains the property of SELLER. Proprietary Information provided by BUYER to SELLER remains the property of BUYER. BUYER and SELLER shall comply with all proprietary information markings and restrictive legends applied to anything provided to the other hereunder.
- b) Except as required by law, no public release of any Proprietary Information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by BUYER or SELLER without the prior written approval of SELLER OR BUYER Representatives.

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7 Survivability

- a) If this Contract expires, is completed or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions: Definitions, Maintenance of Records, and Warranty.
- b) Government flowdown provisions that by their nature should survive.

8 Severability

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid by a court of competent jurisdiction, the remaining provisions of this Contract will remain in full force and effect.

9 Maintenance of Records

Unless a longer period is specified in this Contract, or by law, or regulation, SELLER shall retain key records related to this Contract for seven (7) years from the date of final payment received by SELLER. Key records related to this Contract include inspection, test, shipping, export, and certification records.

10 Buyer Property

- a) SELLER agrees to care for any BUYER or Customer property, including equipment, test assets, components, products, subsystems, and systems which may reside at SELLER facility temporarily from time with same care afforded to SELLER's own assets. SELLER will not be liable for any maintenance, modifications, upgrades, shipping fees, or other related costs or services related to BUYER or Customer property.

SELLER shall promptly notify BUYER and provide a report of any damage to BUYER or Customer's property, while on SELLER premises.

11 Intellectual Property

- a) All intellectual property encompassing or subsisting in inventions (whether patented or not), information, data, documents, drawings, software, software documentation, designs, specifications, processes, facilities and tooling, jigs, fixtures, molds, patterns, taps, gages, test equipment, manufacturing aids and replacement items, produced by or for SELLER, now existing or hereafter created, either alone or with others, unless otherwise expressly written in this Order, shall remain exclusive property of SELLER.
- b) SELLER grants and agrees that BUYER shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, for the purpose of enabling BUYER to satisfy its contractual obligations to its Customer, to sell, offer for sale, use, display, each with respect to the BUYER and not the public.

12 Licensed Software

In the absence of a separate written agreement between BUYER and SELLER, the following terms and conditions apply to any software in all forms, including any associated documentation ("Licensed Software"), provided by SELLER:

- a) SELLER to provide executable code only. SELLER shall not be required to provide source code of Licensed Software, to

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BUYER or its Customers.

- b) License Grant. SELLER grants to BUYER a worldwide, non-transferable, non-exclusive license to use, reproduce, and distribute the Licensed Software solely in conjunction with Work. BUYER may grant end-user sublicenses to the Customer as necessary for end customers to use such Work so long as such licenses contain the Use Restrictions and Copyright Notice Requirement and is in compliance with Export Control provision.
- c) Software Not Sold. The Licensed Software is licensed to BUYER, not sold. Title to any Licensed Software delivered hereunder and any derivative works remains vested in SELLER or SELLER's licensor and cannot be assigned or transferred. BUYER is expressly forbidden from selling or otherwise distributing the Licensed Software, or any portion thereof, except as expressly permitted herein. This document does not grant to Licensee any implied rights under any SELLER or third-party intellectual property.
- d) Use Restrictions. BUYER shall not translate, reverse engineer, disassemble, decompile, or modify any Licensed Software or any portion thereof, provided that if BUYER violates this restriction, BUYER hereby irrevocably assigns and will assign to SELLER all right, title and interest to any modifications to the Licensed Software ("Use Restrictions").
- e) Copyright Notices. BUYER will reproduce all of SELLER's (or its licensor's) copyright notices and other proprietary legends in the Licensed Software and on copies thereof ("Copyright Notice Requirement").
- f) Commercial Item. The Licensed Software shall be deemed a "Commercial Item" as defined in 48 C.F.R. §2.101, consisting of "Commercial Computer Software", and/or "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 (or 48 C.F.R. §227.7202, as applicable) and may only be licensed to or shared with the U.S. Government end users in object code form under restricted use rights designation.
- g) Default. If BUYER is in default of any of the terms and conditions of this document, the rights granted by SELLER may be terminated with thirty (30) days prior written notice. Within thirty (30) days after termination, BUYER will certify to SELLER in writing that the original and all copies of the Licensed Software and derivative versions thereof, in whole or in part and in any form, have been destroyed.

Open Source Software ("OSS"). Any OSS included in the Licensed Software is licensed under the terms of applicable OSS license(s), such as the BSD License or BSD modified Licenses, Apache License or the Lesser GNU General Public License. In no event will BUYER subject the Licensed Software to an Excluded License. An Excluded License means any license that requires, as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge. BUYER shall obtain any necessary third-party approvals and any licenses for any necessary essential patents for their use in connection with technology that BUYER incorporates into BUYER's system or software (whether as part of the Licensed Software or not).

13 Access to Seller Facility/Personnel

- a) BUYER shall ensure that personnel assigned to visit SELLER premises comply with any on-premises guidelines. BUYER shall while at SELLER's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; (v) not solicit SELLER employees, subcontractors, vendors or other affiliates for employment in person, by telephone or any other communication medium; (vi) not harass, intimidate or otherwise create a harassing or threatening work environment through verbal, physical or other methods, either in person, by telephone, or any other communication medium; (vii) not require SELLER to purchase or extend insurance for BUYER or its Customer's assets or personnel while temporarily residing at SELLER facility; and/or (viii) not reveal any user identifiers, passwords, cipher keys, or computer dial port telephone numbers, monitor any SELLER communications made or data stored in SELLER computer networks and equipment of communication resources.

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- b) All personnel, property, and vehicles entering or leaving SELLER premises are subject to search.
- c) SELLER personnel: (i) will not accept BUYER or its Customer's assets at SELLER facility without written authorization by BUYER and SELLER representatives.
- d) SELLER may, at its sole discretion, remove or require removal of any specified person from SELLER's premises. Any costs arising from or related to removal of a BUYER employee shall be borne solely by BUYER and not charged against this Contract.
- e) SELLER shall not accept any persons access at SELLER facilities who are not a "U.S. Person" per 22 C.F.R. 120.15 {lawful permanent resident as defined by 8 U.S.C. 1101(a)(20)} with the possible exception of specifically designated facility areas.

14 Independent Contractor Relationship

SELLER's relationship to BUYER shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BUYER and SELLER or BUYER and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of BUYER.

15 Applicable Laws

- a) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of California, United States of America, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); and/or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; and/or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the U.S. federal common law of government contracts as enunciated and applied by U.S. federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the U.S. federal Government.
- b) Any claims arising hereunder or relating hereto shall be prosecuted only in the appropriate court of the State of California within the county of Ventura. The parties hereby consent to venue and to the exercise of personal jurisdiction over them in such courts and agree not to make any claim or demand in any other jurisdiction or forum.
- c) The parties expressly agree that the United Nations Convention on Contracts for the International Sales of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods shall not apply to this agreement or to any transactions contemplated by this BUYER Purchase Order.
- d) In the case where BUYER and SELLER may mutually agree to address any dispute, controversy or claim arising out of or relating to this Contract, including the validity, invalidity, breach, or termination thereof, by arbitration, any resolution shall be finally settled by binding arbitration administered by the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration shall be conducted in English in Los Angeles, California, United States in accordance with the United States Arbitration Act, and the substantive laws of the State of California. There shall be one arbitrator, named in accordance with such rules.
- e) SELLER and BUYER shall comply with all applicable laws, orders, rules, regulations, and ordinances. BUYER shall procure all non-U.S. government licenses and permits and pay all fees and other required charges necessary to conduct its business, all at BUYERs expense.

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- f) SELLER and BUYER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.
- g) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act: SELLER represents that in accordance with 22 C.F.R. 130, SELLER has not paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which are to be provided to BUYER under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

16 Priority Rating

- a) If so identified, this Contract is a "rated order" certified for U.S. national defense use, emergency preparedness, and energy program use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).
- b) Levels of priority: There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX". All DX rated orders take preference over DO rated orders and unrated orders. Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance, requested updates or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

17 Gratuities/Kickbacks/Ethical Conduct

- a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of BUYER with a view toward securing favorable treatment as a supplier.
- b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), incorporated herein by this specific reference if this Contract exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

18 Export Control

- a) SELLER and BUYER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2799aa-2, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, the Export Administration Regulations, 15 C.F.R. 730-774, and the regulations of the Office of Foreign Assets Control (31 C.F.R. Parts 500-595), as applicable. SELLER shall obtain U.S. export licenses and agreements necessary to perform Work, only as specifically agreed to by SELLER Representative.
- b) SELLER and BUYER shall comply with all applicable United States anti-boycott laws and regulations, including but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government, as applicable.

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SELLER shall provide to BUYER within 30 days of submittal a copy of any anti-boycott report made to the U.S. Government that involves this Contract.

- c) Without limiting the foregoing, neither SELLER nor BUYER shall transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement, or other authority. The restrictions on the transfer of export-controlled data apply equally to data furnished by SELLER and to any such data incorporated in documents generated by BUYER. Additionally, no disclosure of data furnished by SELLER can be made unless and until SELLER has considered the request and provided its written approval through contractually authorized channels. SELLER and BUYER will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.
- d) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by SELLER or BUYER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.
- e) SELLER shall notify in writing the BUYER Representative if any use, sale, import or export by BUYER of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.
- f) Each party shall immediately notify in writing the other party if the affected party is listed in any Denied Parties List or if such party's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- g) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- h) Where SELLER is a signatory under a BUYER export license or export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement), SELLER shall provide immediate written notification to the BUYER Representative in the event of changed circumstances affecting said license or agreement.
- i) Provided that SELLER or BUYER has diligently pursued obtaining such license and, through no fault of either party, such license has been denied, withdrawn, or terminated, SELLER shall be relieved of its obligation under this Contract.
- j) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), SELLER shall comply with all export licenses, and the following:
 - i. The technical data shall be used only in performance of Work required by this Contract; and
 - ii. The data shall not be disclosed to any Non-U.S. Person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by SELLER and to any such data incorporated in documents generated by BUYER; and any rights in the data may not be acquired by BUYER or any other Non-U.S. Person; and BUYER shall return or destroy all of the technical data received by SELLER pursuant to this Contract upon fulfillment of its terms.
 - iii. In compliance with ITAR, SELLER is registered with the United States Office of Defense Trade Controls (applicable to companies operating in the U.S. only).

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19 Disputes

All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph (b) of this provision.

BUYER and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, BUYER AND SELLER AGREE THAT ANY LAWSUIT OR COURSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED; AND BUYER AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR COURSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.

20 Quote Validity

Unless otherwise noted on the face of a quotation, a quotation for products or service provided by SELLER is valid for sixty (60) calendar days. Availability of products or service is subject to prior sales and lead times are subject to change.

21 Quality Control System

- a) SELLER agrees to provide and maintain a reasonable quality control system and may allow access to SELLER's facilities at reasonable times, with seven (7) calendar days advance written notice to SELLER Representative by BUYER Representative and/or Regulatory Authorities, in accordance with provision Access to Seller Facility/Personnel.
- b) SELLER shall use reasonable efforts to ensure that only new and authentic materials are used in products required to be delivered to BUYER and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the BUYER Procurement Representative.
- c) SELLER shall maintain a Foreign Object Debris/Damage (FOD) prevention program.
- d) SELLER shall retain Material Review Board (MRB) authority.

22 Acceptance of Work

BUYER shall have thirty (30) calendar days from Work delivery date, to inspect, and send written rejection of such Work with specific explanation of basis for rejection in accordance with Warranty provision; otherwise the Work will be deemed to be accepted.

23 Product Returns

- a) BUYER shall request a Return Merchandise Authorization (RMA) number from SELLER and complete the accompanying RMA form for any and all returned products. BUYER's written request must include the basis for rejection or return and supporting evidence.
- b) Regardless of warranty or fault, all returned merchandise will be assessed starting at a \$1,500 evaluation fee, which

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does not include the cost for repair, formal reports, shipment fees, taxes or any other items. This evaluation fee may be waived by SELLER Representative. BUYER shall issue Purchase Order to accommodate such evaluation fee prior to issuance of RMA number.

- c) Merchandise shall be returned to Seller at BUYER's sole risk and expense and title shall remain with BUYER.
- d) If BUYER deems Work to be unacceptable, BUYER will allow: (i) Seller reasonable opportunity to repair, modify or make replacements necessary to enable such Work to comply with Contract requirements.

24 Government Contracts

- a) SELLER makes no representations, certifications, or warranties whatsoever and hereby disclaims the same regarding compliance with government or public entity acquisition statutes or regulations, including, without limitation, statutes or regulations that may relate to pricing, quality, origin or content, for sales of Works to government or public entities, including U.S., state local, foreign or international governments or public entities, or indirectly via a prime contractor or subcontractor of such governments or entities.
- b) Work provided under this Contract shall be deemed "Commercial Items" as defined in 48 C.F.R. §2.101. Work include commercial "Technical Data," "Computer Software," and/or "Computer Software Documentation," as such terms are used in 48 C.F.R. §§ 12.211 and 12.212 (or 48 C.F.R. §§ 227.7102 and 227.7202, as applicable).
- c) In no event will United States Government Cost Accounting Standards apply.
- d) No provision of BUYER's contract with various governments will be binding on SELLER, its vendors, contractors or affiliates as except as expressly set forth in this Contract.

25 Warranty

- a) SELLER warrants the Work sold hereunder shall be free from defects in materials and workmanship at the time of shipment and shall conform to SELLER's published specifications or other specifications accepted in writing by SELLER for a period of one (1) year from the date of shipment. The foregoing warranty does not apply to any Work which has been subject to misuse, neglect, accident, improper testing or modification or which has been altered such that they are not capable of being tested under normal test conditions or to use of the Work in conditions, environments or modes other than those described in SELLER's published specifications or datasheets. SELLER shall make the final determination as to whether its Work is defective.
- b) BUYER's exclusive remedy, if any, under these warranties is limited, at SELLER's selection, to any one of (a) refund of BUYER's purchase price of the specific Work in question, or (b) replacement of any such Work.
- c) Prototype and pre-production samples are provided "AS IS" and are not covered by any warranties in this Article unless otherwise agreed in writing.
- d) BUYER acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY SELLER OR ANY OTHER PERSON, INCLUDING SELLER'S AGENTS, EMPLOYEES AND REPRESENTATIVES, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. SELLER ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO SELLER BY OR ON BEHALF OF BUYER. Use of the BUYER's part number on this document or on any Work is for convenience only and does not constitute any representation by SELLER with respect to the performance, specifications, or fitness

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of any part for any purpose.

26 Prohibited Applications

Unless specifically otherwise agreed in writing by SELLER, BUYER acknowledges and agrees that Work sold by SELLER are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where Work failure could lead to loss of life or catastrophic property damage. BUYER will defend, indemnify and hold SELLER, and its officers, directors, employees, agents and advisors, harmless from and against any and all claims, suits, obligations, judgments, losses, damages and costs, including without limitation reasonable attorneys' fees and expenses arising out of or in connection with BUYER's breach of the provisions of this paragraph.

27 Force Majeure

SELLER will not be liable for any failure or delay in its performance or in the delivery or shipment of Works, or for any damages suffered by BUYER by reason of such failure or delay, when such failure or delay is caused by, or arises in connection with, any Act of God, fire, flood, accident, riot, earthquake, severe weather, war, governmental interference or embargo, strike, shortage of labor, fuel, power, materials or supplies, delay in delivery by SELLER's suppliers or any other cause or causes beyond SELLER's reasonable control. SELLER reserves the right to cancel without liability any BUYER Purchase Order, the shipment of which is or may be delayed for more than thirty (30) days by reason of any such cause. SELLER reserves the right to allocate in its sole discretion among BUYERS or potential BUYERS, or defer or delay the shipment of, any Work that is in short supply.

28 Limitation of Liability

Notwithstanding any other provision of this Agreement, the total cumulative liability of Seller, for any and all claims, including but not limited to claims of negligence of any degree, strict liability, breach of contract, warranty, intellectual property, or otherwise, shall in no event exceed the amounts paid to SELLER by BUYER under this Contract giving rise to the claim (or claims) of liability, and any such liability shall terminate upon the expiration of the warranty period. The obligations and liabilities under Seller's Warranty under this Contract are expressly limited to the replacement or the repair by Seller of Products, and shall not include any removal or reinstallation costs, or the costs of any recall program incident to such correction or replacement.

29 Indemnification

- a) SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT BUYER' ELECTION, DEFEND BUYER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO ANY ACT OR OMISSION OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, DIRECTLY RELATED TO OR AS PART OF A CLAIM THAT SELLER WORK DIRECTLY INFRINGES ON A VALID U.S. PATENT, COPYRIGHT, OR TRADE SECRET.
- b) UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF IT HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE TO THE OTHER PARTY FROM DAMAGES ARISING UNDER THIS CONTRACT.

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- c) SELLER HAS NO OBLIGATION TO DEFEND OR INDEMNIFY BUYER IF BUYER IS IN MATERIAL BREACH CONTRACT AND UNLESS BUYER: (I) PROMPTLY NOTIFIES SELLER AFTER BUYER FIRST BECOMES AWARE OF THE INFRINGEMENT, BUT NO LATER THAN THIRTY (30) CALENDAR DAYS AFTER BUYER FIRST RECEIVES NOTICE OF INFRINGEMENT; AND (II) ALLOWS SELLER SOLE CONTROL OF THE RELATED COURT ACTIVITY AND ALL REQUESTED ASSISTANCE IN SUPPORT OF DEFENDING THE LAWSUIT. UPON REQUEST BY SELLER, BUYER SHALL EXECUTE A JOINT REPRESENTATION AGREEMENT AND WAIVER CONFLICTS OF INTERESTS TO ALLOW COUNSEL RETAINED AND DIRECTED BY SELLER TO REPRESENT SELLER AND BE ADVERSE TO BUYER IN THE FUTURE. SELLER IS NOT LIABLE FOR ANY SETTLEMENT MADE WITHOUT SELLER'S PRIOR CONSENT. BUYER WILL BE LIABLE FOR COUNSEL EXPENSES OBTAINED EITHER WITHOUT SELLER'S CONSENT OR FOR DEFENSE OF NON- RELATED ITEMS. SELLER MAY DECLINE TO COMPLETE WORK IF A NOTICE OF INFRINGEMENT IS PROVIDED TO SELLER BY BUYER PRIOR TO THE COMPLETION OF WORK.
- d) IN NO EVENT SHALL THE AGGREGATE LIABILITY THAT SELLER MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE AMOUNTS PAID TO SELLER BY BUYER UNDER THIS CONTRACT. DESPITE THIS EXCLUSION AND LIMITATION, THIS SECTION 32(b) WILL NOT APPLY, ONLY WHEN, AND ONLY TO THE EXTENT THAT, APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY.
- e) THIS ARTICLE CONTAINS (I) SELLER'S ENTIRE LIABILITY AND ALL OBLIGATIONS RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION, AND

BUYER'S EXCLUSIVE REMEDIES AGAINST SELLER FOR INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION. THESE REMEDIES ARE PROVIDED IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTY AGAINST INFRINGEMENT SPECIFIED IN THE UNIFORM COMMERCIAL CODE.

30 Termination

- a) Termination for Convenience
 - i. BUYER may terminate this contract for its convenience in whole or, from time to time, in part if BUYER Representatives determines that a termination is in their best interest with sixty (60) calendar day's written notice to SELLER Representative. BUYER Representative shall affect such termination by delivering to SELLER a notice of termination specifying the extent of termination and the effective date.
 - ii. BUYER shall reimburse SELLER (i) for any Work accomplished and not yet invoiced; (ii) outstanding payments due regardless of invoice due date; (iii) for any reasonable costs related to conducting the termination; and (iv) impact to SELLER business including costs for employee termination and other related impacts at the time of the termination. SELLER may withhold any completed goods until the claim for equitable adjustment is mutually agreed and executed.
 - iii. BUYER may require SELLER to deliver to BUYER in the manner and to the extent directed by BUYER any completed goods. Payment for completed goods delivered to and accepted by BUYER shall be at the contract price.
- b) Termination for Default
 - i. BUYER or SELLER may, by written notice, terminate the whole or any part of this contract in any of the following circumstances:
 - 1. If BUYER or SELLER fails to perform any material provision of this contract or so fails to make progress as to endanger performance of this contract including by lack of timely payment to SELLER, and if in either of these two circumstances, BUYER or SELLER does not cure such failure, or offer a

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- path to cure such failure, within a period of sixty (60) days after receipt of written notice from SELLER or BUYER specifying such failure;
2. BUYER or SELLER files or declares bankruptcy; or
 3. in the event of suspension of BUYER's or SELLER'S business, insolvency, liquidation proceedings by or against BUYER or SELLER, appointment of a trustee or receiver for BUYER's or SELLER's property or business, or any assignment, reorganization or arrangement by BUYER or SELLER for the benefit of creditors.
- ii. BUYER may require SELLER to deliver to BUYER in the manner and to the extent directed by BUYER any completed goods. Payment for completed goods delivered to and accepted by BUYER shall be at the contract price.
 - iii. SELLER shall not be liable for any failure under provision Force Majeure.
 - iv. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both SELLER and the subcontractor, and without or negligence of either, SELLER shall not be liable for costs for failure to perform.
 - v. If after notice of termination for default, it is determined for any reason that SELLER was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for convenience pursuant to the Termination for Convenience subparagraph hereof.

31 Stop Work Order

- a) SELLER shall stop Work for up to thirty (30) calendar days in accordance, or for such longer period of time as BUYER and SELLER may agree, with written notice of stop work request received by SELLER Representative sixty (60) calendar days in advance from BUYER. In the event of a work stoppage, BUYER shall reimburse SELLER (i) for any Work accomplished and not yet invoiced (ii) outstanding payments due regardless of invoice due date (iii) for any costs related to conducting the work stoppage, (iv) impact to SELLER business including costs for employee termination and other related impacts at the time of Work stoppage.
- b) Within such period, BUYER shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with provision "Contract Direction/Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within sixty (60) days after such continuation.

32 General Provisions

- a) All reports, correspondence, drawings, notices, marking, documentation, and other communications shall be in the English language. SELLER does not accept liability for any translations of SELLER documents conducted by parties other than the SELLER.
- b) Unless otherwise provided in writing, all documentation and Work shall employ the units of United States standard weights and measures as published by the United States National Institute of Standards and Technology.
- c) SELLER may assign accounts receivable to a SELLER affiliate. Any credit balance or other sum owed to BUYER which remains unclaimed by BUYER for a period of eighteen (18) months from written notice of the same to the BUYER will become the property of SELLER.

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Neither BUYER nor SELLER may assign any rights nor delegate any obligations under these Terms or any portion hereof unless expressly provided in these terms unless receiving the written consent of the other party, which consent will not be unreasonable withheld. Any attempt to assign or delegate in violation of this clause shall be void. Notwithstanding the foregoing, SELLER may assign its rights under these Terms in the event of a merger, consolidation or reorganization, or in connection with a sale of all or substantially all of the asset of the business of Seller to which Terms related.