

GENERAL TERMS AND CONDITIONS OF PURCHASE

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1 Definitions

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

- 1.1 **"Agreement"** means the Order and these Terms and Conditions of Purchase.
- 1.2 **"Buyer"** means ESI MOTION.
- 1.3 **"Order"** means the purchase order issued by Buyer to Seller and referencing these Terms and Conditions of Purchase.
- 1.4 **"Seller"** means the person, firm, or corporation executing the Order with the Buyer and who will furnish the supplies or services provided for herein.
- 1.5 **"Buyer Representative"** means the person authorized by Buyer's cognizant organization to execute to administer and/or execute this Contract.
- 1.6 Except as otherwise provided in these terms and conditions, the term "subcontract" includes purchase orders issued by Seller under the Order, but does not include Seller's employment relationships.
- 1.7 All references to "works," "supplies," "articles," "products," or "items" shall include "services," if the Order, wholly or in part, provides for the furnishing of services.

2 Acceptance

2.1 Any of the following acts by Seller shall constitute unqualified acceptance and shall create a binding Agreement between Seller and Buyer, as defined below: Buyer objects to, and is not bound by, any additional or differing terms or conditions stated in Seller's acceptance or acknowledgement of the Agreement or in any Seller-prepared document, and such terms and conditions shall have no effect unless expressly accepted in writing by Buyer's Subcontract Manager.:

- 2.1.1 signing and returning a copy of the Order;
- 2.1.2 beginning performance of the Agreement; or
- 2.1.3 accepting payment.

2.2 Buyer objects to, and is not bound by, any additional or differing terms or conditions stated in Seller's acceptance or acknowledgement of the Agreement or in any Seller-prepared document, and such terms and conditions shall have no effect unless expressly accepted in writing by Buyer's Representative. The rights and obligations described in the Agreement shall survive completion of and final payment of the Order. Seller's acceptance of the Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of the Agreement.

3 Precedence

All documents and provisions in this Contract shall be read so as to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Contract, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

Document Title/Description:

- a. Contract Flow Downs for Subcontracts
- b. Seller system generated purchase order document
- c. Terms and Conditions of Purchase (this Article)
- d. Specifications

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- e. Statements of Work
- f. All other attachments, exhibits, appendices, documents or terms incorporated by reference in or attached to this purchase order

4 Independent Contractor

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

5 Packing and Shipment

Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

6 Inspection

6.1 Buyer shall be permitted to inspect Seller's manufacture, fabrication and testing. For these purposes, and upon reasonable advance notice, Seller shall provide access to Seller's facilities to enable Buyer and its representatives to perform inspections and to determine Seller's orderly, timely and satisfactory compliance with the requirements of the Order.

6.2 Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of the Order.

6.3 Any work, or item, which fails to meet the Order requirements may be rejected. If delivered to Buyer's destination, rejected work or items shall be removed promptly by Seller at Seller's expense.

7 Quality Control

7.1 Inspection. Seller shall provide and maintain, without additional charge to Buyer, an inspection system that complies with all specifications stated in this Order. In the absence of such specifications, the Seller shall be required to provide and maintain, without additional charge to Buyer, an inspection system which is acceptable to Buyer and, if applicable, Buyer's customer.

7.2 Special Processes.

7.2.1 For Special Processes such as contract manufacturing, conformal coating, testing and calibration, etc. the Supplier shall possess and maintain AS9100 and/or ISO9001 certification(s). If the Seller does not have either certification, the Seller shall have and maintain, without additional charge to Buyer, a quality management and inspection system that complies with all specifications stated in this Order and is consistent with AS9100 and/or ISO9001 requirements.

7.2.2 Operators responsible for solder, conformal coat, and product assembly shall maintain current certifications to J-STD-001. For Space Applications, J-STD-001 SPACE ADDENDUM shall apply.

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7.2.3 Measuring and testing equipment used in the performance of this order shall be calibrated in accordance with ISO 10012-1 or equivalent. Calibration 17025 shall apply to tooling used for final product verification.

7.2.4 Suppliers using special processes (heat treating, welding, painting, plating, and non-destructive testing) must maintain records verifying that special processes and personnel are certified and require that their suppliers do the same. Certification of personnel for special processes shall be implemented formally and shall include demonstration of proficiency.

7.3 Inspection Records. As part of the inspection system, Seller shall prepare records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during performance of this Order and for as long afterward as required by this Order or applicable laws and regulations, but in no event shall such period expire prior to: (i) ten (10) years after final payment; or (ii) final resolution of any dispute involving the Goods delivered hereunder, whichever is later. For Space Application, all inspection records must be stored for ten (10) years and then shipped back to Buyer. This includes coupons for PC boards and hardware. Buyer is to then ship items to Space Clients.

7.4 Notification of Potential Escape. The Seller shall notify Buyer of any nonconformances discovered after delivery, within three (3) working days of detection.

7.5 Material Review. Buyer shall retain material review board (MRB) authority on dispositions for any discrepancies affecting product performance and/or drawing requirements other than scrap or rework-to-print. Non-conforming material is to be identified, segregated, and controlled to prevent its unauthorized use for shipment. The cause of such non-conformances is to be identified and corrected.

7.6 First Article Inspection.

7.6.1 First Article Inspection (FAI) shall be performed and documented in accordance with the criteria below:

7.6.1.1 Upon initial production

7.6.1.2 Upon resuming production following a lapse of two calendar years

7.6.1.3 Following any design change.

7.6.2 The Seller shall perform and document a comprehensive lay-out, inspection and test of that article to assure its conformance with all drawing and specification requirements. The Seller's report shall provide as a minimum: purchase order number, part number, revision letter, part name, supplier's name, method used to obtain results and actual results of each measurement or test.

7.11 Material Authenticity/Counterfeit Parts Prevention

7.11.1 The supplier shall maintain a material authenticity/counterfeit parts prevention program that is compliant with the AS5553 Rev. B standard.

7.11.2 If suspect/counterfeit parts are furnished under this order and are found in any of the goods delivered hereunder, such items will be impounded by Buyer.

7.11.3 Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer no later than (30) days from discovery, shall notify Buyer and replace, at Seller's expense. The Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. For confirmed Counterfeit Goods, GIDEP notification shall also be made no later than sixty (60) days after discovery.

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7.11.4 Seller shall be fully liable for all such costs, even if such cost might be considered indirect, special, or consequential damages. Seller's liability for suspect/counterfeit parts shall not expire until intentional ignition of a launch vehicle if found in product for space application and for sixty (60) months after delivery if product for non-space application (e.g., ground or airborne).

7.11.5 At ESI Motion's request, Seller shall return any removed counterfeit parts to ESI Motion in order that ESI Motion may turn such parts over to its Government Customer for further investigation. Seller agrees that any Government or Quasi-Government directive, such as a GIDEP alert or a directive from the Aerospace Corporation indicating that such parts are counterfeit shall be deemed definitive evidence that Seller's parts contain counterfeit parts.

7.11.6 Seller bears responsibility for procuring authentic Goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article 7 in full.

8 Delivery

8.1 Time is of the Essence. Time is of the essence in the performance of the Order. Deliveries shall be strictly in accordance with the quantities and schedule specified in the Order. If at any time appears Seller may not meet such schedule, Seller shall immediately by verbal means (to be confirmed in writing) notify Buyer of the reasons for and estimated duration of the delay and if requested by Buyer, make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and shipping via air or other means of fast transportation. Any additional cost caused by these requirements shall be borne by Seller unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller or its subcontractors. This in no way affects any other rights and remedies available to Buyer related to such delivery.

8.2 Date of Delivery. Unless otherwise noted on the Order, the date of delivery shall mean the date the item is to be delivered at Buyer's facility, or if the Order is for services, the date the services are to be completed.

8.2 Quantity. Items delivered in excess of the quantities ordered result in substantial incidental and other administrative expense to Buyer. Therefore, articles delivered under the Order in excess of the quantity specified may be retained by Buyer at no additional cost unless Seller requests their return in writing within sixty (60) days of delivery, such return to be made at Seller's sole expense. Buyer is under no obligation to notify Seller of any over shipments.

8.3 Certificate of Conformance - The Seller shall submit with each shipment a Certification of Conformance, signed (this may be an electronic signature) by an authorized Seller's representative. The Certification of Conformance shall provide the Purchase Order Number, Applicable drawing (s) and/or specifications, including revision levels, amount of material or quantity of items in the shipment Manufactures Name, Lot, Batch and Serial Number (s) as applicable.

8.4 Raw Material Certification/Test Reports - Documentation indicating chemical composition and/or actual physical properties identifiable to each lot, batch or heat treat lot shall be kept on file and submitted with shipment. Documentation shall be validated by an authorized Seller's representative.

9 Title and Risk of Loss

9.1 Unless otherwise specified herein, delivery shall be FCA (Incoterms 2010) Buyer's facility. Passing of title upon such delivery shall not constitute acceptance of the Products by Buyer or relieve Seller of any of its obligations hereunder.

9.2 Seller shall bear all risks as to rejected items after notice of rejection.

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10 Warranty

10.1 Notwithstanding inspection and acceptance by the Buyer of supplies furnished under the Order, Seller warrants that all Products delivered under this Order shall conform to the requirements of this Order (including all applicable descriptions, performance criteria, specifications and drawings); shall be free from defects in material and workmanship and shall, to the extent not manufactured pursuant to detailed designs furnished by Buyer, be free from all defects in design and fit for the intended purposes for a period of two (2) years from Buyer's acceptance. Buyer's approval of designs furnished by Seller or any approval of Seller's "First Article" shall not relieve Seller of its Obligations under this Warranty.

10.2 Seller further warrants that it will have good title to the Products, free and clear of all liens and encumbrances and will transfer such title to Buyer. This warranty shall survive any inspection, delivery, acceptance or payment by Buyer.

10.3 All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers.

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11 Special Tools

If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling the Order (each a "Special Tool"), such Special Tools shall be properly identified by Seller as such. Title shall pass to Buyer upon payment for the Special Tool. If a Special Tool is needed for the manufacture by Seller of the Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, and hand over to Buyer, as applicable, at the completion of the Order unless Buyer directs Seller in writing to dispose of such Special Tool.

12 Buyer-Furnished Property and Material

12.1 Property and material furnished by Buyer to Seller for use in performance of the Order is to be held by Seller for mutual benefit and if the materials are damaged or not satisfactorily accounted for, Seller will pay for all such property and materials.

12.2 Seller shall properly mark and account for all Buyer property.

13 Payment

13.1 Unless otherwise specified, a separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of Products. No payment will be made prior to receipt of Products and correct invoice and Buyer reserves the right to delay payment until the Products have been accepted. Payment terms are net forty-five (45) days.

13.2 Payment due dates, including discount periods, will be computed from date of receipt of Products and correct invoice (whichever is later). Unless freight and other charges are itemized, any discount taken will be taken on the full amount of invoice. Buyer has the right without loss of discount privileges, to pay invoices covering Products shipped in advance of the schedule on the normal maturity after the date specified for delivery. Any payment shall not constitute acceptance of the Products.

13.3 To assure timely payment, invoices shall (1) be sent to billing address displayed on PO (2) show PO # and PO Line number, (3) match PO description (4) not exceed PO quantity (5) not exceed PO amount and (6) where possible, avoid partial billing.

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14 Changes

14.1 Buyer Representative may, at any time, by written order to Seller and without notice to the sureties, if any, make changes within the general scope of this Agreement to any one or more of the following ("Change Order"):

- 14.1.1 specifications;
- 14.1.2 method of shipment or packing;
- 14.1.3 description of services to be performed;
- 14.1.4 time of performance;
- 14.1.5 place of performance; and/or
- 14.1.6 delivery schedule.

or directing the omission of or variation in work covered by the Order or any amendment thereto. If any such Change Order results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this Article must be asserted in writing to Buyer Representative within fifteen (15) days from the date of receipt by Seller of the notification of change.

14.2 Whether made pursuant to this Article or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing by Buyer Representative. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in a writing which is signed by Buyer Representative and which expressly states that it constitutes a modification or change to the Order.

14.3 Seller shall proceed with prosecution of the work in accordance with any written direction issued under the Order.

15 Books and Records

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

15.2 Such books and records shall be maintained by Seller for a period of ten (10) years after final payment is made under the Order.

16 Stop Work Order

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

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

16.1.2 terminate the work and the Order or part thereof.

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17 Termination for Convenience

17.1 Buyer may terminate the Order for its convenience, in whole or in part, immediately upon written notice to Seller. Upon termination hereunder, Seller shall:

17.1.1 promptly stop work under the Order on the terminated portion thereof and place no further orders or lower-tier subcontracts hereunder,

17.1.2 terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and

17.1.3 take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same.

17.2 Within ninety (90) days after receipt of such notice of termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:

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

17.2.2 The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose price is paid under subsection 17.2.1, except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this subsection 17.2.2, if the Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of the Order.

17.2.3 Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

17.2.4 Such allowance for profit on the work performed as may be reasonable and allocable under the circumstances; provided, however, that if it appears that Seller would have incurred a loss if the Order had not been terminated, no profit shall be allowed and Buyer's payments pursuant to subparagraph (ii) above will be reduced by the proportionate amount of such loss as the terminated portion of the Order relates to the entire Order.

17.3 Payments under this Article 17, including all payments made under the Order prior to the termination, shall in no event exceed the aggregate price specified in the Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under subsection 17.2 above or, with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this Article 17.

17.4 In no event will Seller be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by Subsection 17.1.3, above, nor shall Seller be allowed to recover any cost incurred prior to termination unless such cost was allocated to the Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

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18 Termination for Default

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

18.2 In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under the provisions of this Article 18.

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

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

18.4.1 any completed items, and

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

18.5 If, after notice of termination of the Order under the provisions of this Article 18 (TERMINATION FOR DEFAULT), it is determined for any reason that Seller was not in default under the provisions of this Article 18 (TERMINATION FOR DEFAULT), or that the default was excusable under the provisions of Section 18.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Article 17 (TERMINATION FOR CONVENIENCE) and the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly.

18.6 The rights and remedies of Buyer provided in this TERMINATION FOR DEFAULT Article shall not be exclusive and are in addition to any others provided by law or the Order.

19 Data

If the Order is for research, development, or experimental work, all data, notes, drawings, designs, sketches, specifications, records, and memoranda of every description in any physical or electronic form relating to the work hereunder or any part thereof as Seller shall produce, and all copies of the foregoing, shall be the property of Buyer and subject to inspection by Buyer at all reasonable times and shall be delivered to Buyer or otherwise disposed of by Seller as Buyer may direct from time to time.

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20 Proprietary Information

20.1 In the event Buyer and Seller have entered into a form of Non-Disclosure Agreement or similar confidentiality agreement (generally, "NDA") that relates to disclosure of information in connection with the Order and work performed under this Agreement, the NDA shall take precedence over this Clause 21 (PROPRIETARY INFORMATION) for the duration of such NDA. If the term of such NDA (including any survival period therein) purports to expire or terminate prior to the expiration or termination of the Agreement (including the survival period of this clause), this Article 20 (PROPRIETARY INFORMATION) shall be deemed to extend the term of such NDA to the expiration or termination of this Agreement (including the survival period of this clause).

20.2 If Buyer and Seller did not enter into an NDA that relates to disclosure of information in connection with the Order or work performed under this Agreement, then this Clause 20 (PROPRIETARY INFORMATION) shall govern disclosures of confidential and/or proprietary information under the Agreement.

20.3 Seller shall not, during the term of the Order, and for a period of five (5) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of the business, or any other confidential or proprietary information, of Buyer or its affiliates, suppliers, or customers which Seller shall have obtained because of the Order. Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with the Order.

20.4 Notwithstanding the foregoing Section 20.3, Seller shall have no obligation with respect to any confidential or proprietary information which the Seller can demonstrate:

- 20.4.1 was in Seller's rightful possession free of any obligation of confidence prior to its first receipt from Buyer,
- 20.4.2 is publicly known through no fault of the Seller,
- 20.4.3 is obtained from a third person who had a right to disclose it, or
- 20.4.4 was independently developed without access to any confidential or proprietary information of Buyer.

20.5 No private data, proprietary designs, ideas, or information of Seller is to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both parties to the Order, all information which passes from Seller to Buyer shall be treated as nonconfidential, including material provided in written form and marked by the originator as being confidential or private.

21 Patent Rights

If the Order is for, or includes, product or technology development or research work, to be performed in accordance with special requirements of Buyer, Seller hereby assigns and promises to assign to Buyer (a) inventions conceived or first actually reduced to practice and (b) works of authorship, each that are created in performance of the Order.

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22 Advertising, Use of Name

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

23 Indemnity

23.1 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.

23.2 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.

23.3 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 nonrelated items. Seller may decline to complete work if a notice of infringement is provided to Seller by Buyer prior to the completion of work.

23.4 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 44.2 will not apply, only when, and only to the extent that, applicable law specifically requires liability.

24 Intellectual Property

24.1 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.

24.2 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.

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25 License Software

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:

25.1 Seller to provide executable code only. Seller shall not be required to provide source code of Licensed Software, to Buyer or its Customers.

25.2 License Grant. Seller grants to Buyer a worldwide, nontransferable, 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.

25.3 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.

25.4 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”).

25.5 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”).

26.5) 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.

25.6 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.

25.7 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).

GENERAL TERMS AND CONDITIONS OF PURCHASE

26 Insurance

26.1 In addition to Seller's obligations set forth in Article 23 - INDEMNITY, Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance of the Order, or that of its officers, directors, employees or agents.

26.2 Further, Seller shall procure and maintain during the term of the Order and at its expense insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:

26.2.1 Automobile liability insurance protecting the Seller from automobile bodily injury and property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.

26.2.2 Comprehensive general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises- operations, independent contractors and subcontractors and fire legal liability. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$1,000,000 aggregate combined single limit, personal injury, bodily injury and property damage.

26.2.3 If the Order is for engineering or other professional service, professional liability coverage with a limit no less than \$1,000,000.

26.2.4 Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances. For 26.2.1 and 26.2.2, above, such policies shall name Buyer as additional insured when requested by Buyer.

26.3 Upon request from Buyer, Seller shall promptly furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by the Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

26.4 If Seller's work under the Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this Section 27 – PROPERTY INSURANCE.

27 Property Insurance

Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all property in which Buyer has an interest hereunder. Coverage will be provided on an all risk basis and value will be at replacement cost.

28 Taxes

28.1 Domestic (U.S.):

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

28.1.2 Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (26.1.1) of this domestic subclause 26.1, as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.

28.1.3 Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this subclause 26.1, when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

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

29 Subcontracting

Seller will obtain Buyer's written approval before subcontracting the Order or any substantial portion thereof. The purchase of raw materials or standard commercial articles is not a subcontract within the meaning of this article.

30 Force Majeure

Neither party shall be liable for damages for delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, such as acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, shortage of raw material, strikes, or unusually severe weather, and delays of common carriers (each a "Force Majeure event"). Seller will notify Buyer in writing as soon as reasonably possible, but not later than 10 days, after the beginning of any such Force Majeure event, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer Representative of the cessation of such occurrence. This clause shall not affect Buyer's right to terminate this Agreement in accordance with Section 18 - TERMINATION FOR CONVENIENCE.

31 Compliance with Laws

Seller warrants that in the performance of this Order, it will comply with all applicable Federal, State and Local laws. Without acting as a limitation, Seller shall comply with (i) all applicable country laws relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention") or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery

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31.1 Gratuities. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

31.2 Code Of Basic Working Conditions And Human Rights. Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure this commitment is fulfilled. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied by ESI Motion, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Further, any material violation of law by Seller relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, of the country or countries in which Seller is performing work under this Contract may be considered a material breach of this Contract for which Buyer may elect to cancel any open orders between Buyer and the Seller for cause in accordance with the "Cancellation for Default" Article. Seller shall include the substance of this clause, including this flow down requirement, in all subcontracts awarded by Seller for work under this Contract.

31.3 Environmental Health And Safety Performance. Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. Buyer expects that Seller's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver Goods that contain any asbestos mineral fibers.

31.4 Seller Facility. Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the Goods or moving tooling or other equipment utilized in the manufacture of the Goods to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's prior written approval.

31.5 Buyer Policies. Seller agrees that Buyer's internal policies, procedures and codes are intended to guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the Buyer.

32 Trade Control Compliance

32.1 The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").

32.2 Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller agrees that it will not transfer any export-controlled item, data, or services without Government authorization. This includes transfer to a foreign person employed by or associated with Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exception/exemption. Seller is responsible to obtain any required export authorization.

31.3 Seller agrees to notify the Buyer's Representative if any Product or other Work under this Agreement is restricted under export control laws or regulation, if Seller becomes listed in any restricted party list including the Denied Persons List, Unverified List, Entity List, Specially Designated Nationals List, Non-proliferation Sanctions and Denied Parties List, or if Seller is proposed for suspension or debarment or has any export privileges denied, suspended, or revoked by the Government. Seller shall be responsible for all Losses arising from any violation of the above laws and regulations, or breach by Seller or its Seller personnel of the obligations under this clause.

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33 Assignment

Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer a copy of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

34 Disputes

Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

35 Jury/Waiver

Seller and Buyer 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, Seller and Buyer agree that any lawsuit or cause 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 Seller and Buyer 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 cause of action and waive any defense or objection to the exercise of personal jurisdiction and/or venue by any such court.

36 Applicable Law

The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's choice of law provisions shall not apply. The 1980 U.N. Convention on Contracts for the International Sales of Goods shall not apply to any sales transactions governed by these terms and conditions.

37 Attorney Fees

If it is necessary for either party to obtain legal representation to enforce any part of the Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

38 Non-Waiver

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

39 Seller's Obligation for "Not-To-Exceed" Orders

If the Order is a not-to-exceed order, Seller agrees to perform its obligations within the "not-to-exceed" (NTE) price set forth in the Order. If at any time during performance of the Order, Seller's incurred costs plus its estimated costs to complete, are projected to exceed the total Order NTE price, Seller shall immediately notify Buyer in writing giving a revised NTE. Seller shall be under no obligation to continue performance, if in doing so, the NTE price shall be exceeded and Buyer shall not be obligated to pay Seller more than the NTE price, unless specifically authorized in writing by the Buyer Representative. When

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Seller's incurred costs equal seventy-five (75%) of the NTE price, Seller shall promptly provide written notification to the Buyer Representative indicating total incurred costs and projected cost to complete.

40 Payments under Cost Reimbursable Line Items

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

40.2 The Seller shall promptly notify the Buyer's Accounts Payable Department of any overpayment received by the Seller under the Order. Overpayments identified by either the Buyer or the Seller shall be refunded to the Buyer in the manner it directs.

40.3 The Seller shall submit a final invoice to the Buyer within ninety (90) days after completion of the Order. If the Seller fails to submit a final invoice within the time specified, the Buyer may determine the total amount due the Seller under the Order and issue a unilateral modification to the Order. Amounts paid by the Buyer in excess of the total amount due the Seller shall be refunded to the Buyer within forty-five (45) days of the Seller having received the unilateral modification.

40.4 Seller agrees to maintain books, records, documents, and other evidence (hereinafter called "records") to the extent and in such detail as necessary to properly reflect all costs of labor, materials, equipment, supplies and service, and other expenses for which reimbursement is claimed. Seller will make available at the office of Seller at all reasonable times during the duration of the Order and until seven (7) years after final payment, any of the records for inspection, audit, or reproduction by an authorized representative of Buyer. Buyer may also extend or shorten the retention period by amending the Order in writing.

41 Withholding

41.1 If the Order is a Time and Material order, Seller agrees to the withholding of five percent (5%) of the Order price not to exceed \$50,000 in order to ensure the submission of all documents required to close-out of the Order.

41.2 Seller agrees to the withholding of fifteen percent (15%) or \$50,000, whichever is less, of the Order, if the Order is a cost reimbursement order to insure the submission of all documents required to close-out the Order.

41.3 Withholdings shall commence with the first invoice and cease with the earlier of having reached the ceiling amount or the issuance of a completion invoice.

42 Accounting System

By acceptance of the Order, Seller certifies that Seller's accounting system can segregate costs adequately to allow for a sufficient audit of costs incurred by line item detail.

43 Credit

The Seller shall credit to the Buyer, either as a cost reduction or by cash refund, the applicable portion of any income, rebate, allowance, or other credit related to cost for which the Seller has been reimbursed by the Buyer.

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44 Travel Costs

Unless otherwise noted in the Order, travel costs shall be reimbursed at cost, provided airfare cost does not exceed the cost of coach airfare and meals and incidental expenses do not exceed the amounts set forth in the current Federal Travel Regulation prescribed by the General Services Administration.

45 Defense Priorities and Allocations Systems Program (DPAS)

45.1 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.

45.2 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, in writing (hard copy) or electronic format.

46 The Government-Industry Data Exchange Program (GIDEP)

The Supplier shall participate in the GIDEP and review product-related alerts and advisories to determine if they affect the products/services provided to ESI Motion. If affected, the Supplier shall take action to notify ESI Motion and mitigate any negative effect agreed upon by Subcontractor and ESI Motion.

47 General Provisions

47.1 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.

47.2 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.

47.3 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.

48 Entire Agreement

These terms and conditions and those on the face of the Order to which this form is referenced, including other specifications, attachments or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral between the parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by the Buyer Representative.