

## STANDARD GENERAL TERMS AND CONDITIONS FOR GOODS & SERVICES

### **1. DEFINITIONS.** As used in this Purchase AGREEMENT:

- a. "Buyer" - The legal entity issuing this AGREEMENT, which may be Day Zimmermann, Inc., Day & Zimmermann Lone Star LLC (DZLS), Day & Zimmermann Kansas LLC (DZKS), or American Ordnance LLC (AO), who is contracting with the Seller and is expressly identified on the Purchase Order.
- b. "Seller" - The legal entity which contracts with Buyer to provide Products hereunder.
- c. "AGREEMENT" - The Purchase Order, these Standard General Terms and Conditions for Goods & Services, including any referenced special or supplements, specifications, drawings, technical data, statement of work, quality provisions, and other documents incorporated herein (including any changes).
- d. "Products" - All required articles, assemblies, components, data, drawings, goods, items, labor, materials, parts, products, reports, services (incidental or otherwise), software, and supplies.
- e. "Supply Chain Representative" - the individual authorized to issue this AGREEMENT as the Buyer's authorized representative.
- f. "Seller Engaged Personnel" - any of Seller's employees; Seller's contingent, contract, or temporary workers; or Seller's agents or subcontractors engaged, directed, or allowed by Seller to provide work or Products directly or indirectly to Buyer under this AGREEMENT.

### **2. PARTIES.**

- a. This AGREEMENT is by and between Buyer and Seller. This AGREEMENT together with all documents and written provisions expressly incorporated herein by reference shall constitute the entire and exclusive understanding and agreement between the parties, and replaces and supersedes any prior or contemporaneous communications, representations, or AGREEMENTS, whether oral or written, with respect to such subject matter. Only the Buyer's authorized Supply Chain Representative has the authority to amend the AGREEMENT. Such amendments must be in writing except as otherwise provided herein, all notices furnished by the Seller shall be sent to the Buyer's authorized Supply Chain Representative.
- b. Seller shall comply with this AGREEMENT as written. Seller acknowledges that it has thoroughly examined the entire AGREEMENT including any attachments. Seller further acknowledges that it has available to it all required information and data incorporated in this Order, and that this AGREEMENT is complete and adequate to enable Seller to provide the Products in accordance with all requirements hereunder, including specifications and delivery schedule set forth herein.
- c. Seller shall request clarification of any discrepancies and/or inconsistencies with Buyer in a timely manner and before proceeding with providing the Products. If Seller determines during the performance of this AGREEMENT, that any portion of this AGREEMENT is inaccurate, inconsistent or incomplete, the Seller shall promptly notify Buyer in writing specifying full particulars and request resolution before proceeding with the work effort in question. In the event the Seller fails to contact Buyer in a timely manner to resolve said discrepancies and/or inconsistencies or proceeds with any work in question, Seller shall be deemed to have proceeded on its own accord and shall be solely responsible for any errors and associated cost and/or schedule impacts resulting therefrom.
- d. Seller acknowledges it is fully competent in all phases of the work involved in producing and supporting the Products. Seller agrees Buyer and Buyer's customers are entitled to and have relied upon the Seller, and the Seller shall not deny any responsibility or obligation hereunder to Buyer or Buyer's customers on the grounds that Buyer or Buyer's customers provided recommendations and/or assistance in any phase of the work for providing the Products, including the acceptance by Buyer of specifications, data, or the Products.

**3. AGREEMENT and ACCEPTANCE.** Seller's unqualified acceptance of this AGREEMENT is evidenced by either: (i) signing and returning to Buyer a written acknowledgment of this AGREEMENT; (ii) commencing work under such AGREEMENT; or (iii) acceptance of payment. By acceptance of this AGREEMENT as just defined, Seller agrees to be bound by and comply with all terms and conditions of this AGREEMENT, including any supplements thereto, and all specifications and other documents referred to herein. Any and all other terms, conditions, or obligations offered by Seller in its acceptance of this AGREEMENT are hereby expressly rejected by the Buyer.

### **4. PRICE, INVOICE, AND PAYMENT.**

- a. Seller shall submit invoices for payment, itemized and identified with Buyer's Order number, and with specific Order item numbers. Freight, taxes, similar charges, if authorized by the Order, shall be itemized separately.
- b. Payment will be made by Buyer against properly submitted invoices in accordance with the terms of payment set forth in the Order for all Goods received and which meet the requirements of the Order. Payment of Seller's invoice shall not constitute acceptance of the Goods or Services. All Seller invoices shall be subject to adjustment for errors, shortages, defects, or other failure of the Seller to meet the requirements of the Order.

c. Unless otherwise stated on the face of the Purchase Order, Payment terms are Net 45 days after final acceptance by Buyer's Incoming point of Inspection. In addition to any other rights Buyer has, Buyer may, at its sole option, withhold payment of up to ten percent (10%) of the total value of this AGREEMENT until Seller provides all required objective quality evidence, submits required data items, and satisfactorily fulfills all other reporting and documentation requirements.

d. Release of Financial Liability and Claims. All amounts accrued and made payable by the Buyer to the Seller under this Purchase Order shall be invoiced in full no later than ninety (90) days from the contractual end date of performance ("The Limitation Period"). Unless otherwise mutually agreed to by the parties, Seller hereby agrees to release and discharge the Buyer, its officers, agents, and employees, successors and assigns of and from all liabilities, obligations, and claims arising out of or under this Purchase Order, where such are submitted after the stated 90-day "Limitation Period".

e. Payment of Invoices by the Buyer shall not constitute acceptance of the Products delivered under this AGREEMENT. Invoices shall be subject to appropriate adjustment should Seller fail to meet any of the requirements for this AGREEMENT.

f. Buyer may set off any amount owed by Seller or Seller's affiliates to Buyer against any amount owed Seller by Buyer under this AGREEMENT or any other AGREEMENT between Buyer and Seller, provided Buyer gives Seller prompt written notice of the set off.

g. Seller warrants that the prices charged for the Products ordered hereunder will be as low as the lowest prices charged by the Seller to any customers purchasing similar Products in the same or similar quantities and under like circumstances.

#### **5. PACKING, MARKING, AND SHIPPING.**

a. No charge shall be made by Seller for packaging or storage unless specified on the face of this AGREEMENT.

b. Unless otherwise specified, all Products shall be packaged, marked, and otherwise prepared in accordance with the Procurement Specifications, Technical Data Package (TDP), applicable laws and regulations, and good commercial practices.

c. To the extent it may be lawful to do so; Seller shall use commercially reasonable efforts to obtain fair and reasonable shipping rates.

d. Seller shall mark containers or packages with necessary handling, and loading instructions, shipping information, Buyer's Purchase Order number, item and shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment. Bills of Lading shall include Buyer's Purchase Order number.

e. Failure by the Seller to provide any required samples or documentation prior to or with the shipment of Products as stated in this AGREEMENT or in the referenced Quality Assurance Provisions, if any, may result in the assessment by the Buyer of a penalty for each occurrence. Buyer shall have the right to set off any such penalty against any amount owed Seller by Buyer under this AGREEMENT or any other agreements between the parties.

#### **6. DELIVERY, INSPECTIONS, AND TITLE.**

a. Strict adherence to the Buyer's stated delivery schedule is a material condition of any Order. In accordance with the requirements of the Order, Seller shall deliver products in the quantities and on the date(s) specified in Orders(s) as applicable, or as otherwise agreed in writing by the parties. Delivery is not complete until products have been actually received and accepted by Buyer. Except for delays caused by Buyer or a Force Majeure event, TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY OF PRODUCTS. Subject to Article 21, Force Majeure, Buyer may charge Seller for Buyer's commercially reasonable transportation costs if necessary to meet Buyer's contract delivery schedule(s).

b. Unless otherwise stated on the face of the Purchase Order, all Products delivered under this AGREEMENT shall be shipped FOB Destination, and Seller shall prepay all transportation charges.

c. Seller assumes all risk of loss until Products are delivered to the locations specified in this AGREEMENT. Title of the Product shall pass to Buyer upon arrival of such Product at the delivery locations specified herein, subject to acceptance per Article 3, Agreement and Acceptance; Nonconforming Products below. Further, unless pre-approved in writing by Buyer, Buyer shall not be liable for any material commitments or production arrangements made by Seller in excess of the amount of, or in advance of the time reasonably required to meet the due date(s).

d. Buyer may return, or store at Seller's expense, any Products delivered in advance of the delivery date specified for such Products unless early delivery is authorized in writing by the Buyer.

e. Buyer reserves the right to reject or return, at sellers expense, any materials the buyer at its sole discretion any material not conforming to specification, drawing, or other quality deficiency.

f. Buyer shall have no obligation to accept over shipments. In the event of an over shipment, Buyer may, at its options: (i) retain Products shipped in excess of the quantities stated in this AGREEMENT, at the price set forth in this AGREEMENT, (ii) return such items to Seller at Seller's expense, or (iii) place into storage the excess quantities of Products at Seller's risk and expense.

g. Seller agrees to immediately notify Buyer of any delays in meeting the required delivery schedule and the reasons therefore. If Buyer approves a revised delivery date, Seller shall pay any additional transportation charges and Seller shall extend to Buyer an equitable reduction in the AGREEMENT price. The Buyer, in addition to any other remedies provided by this AGREEMENT,

reserves the right to deduct an amount of 1.5% of the invoice amount for any delivery made after the scheduled delivery date. Acceptance of late deliveries or waiver of the above stated deduction does not constitute a waiver of any rights by the Buyer.

h. Buyer may, for convenience, extend any part of or the entire delivery schedule as listed on this AGREEMENT by as much as eight weeks, at no additional cost to the Buyer, by notifying the Seller in writing a minimum of two weeks prior to the scheduled date to be moved out. Seller shall insure that the shipment takes place so that the scheduled quantity arrives at the Buyer's facility on or no more than ten days prior to the new due date.

i. In addition to the rights of Buyer under Article 6h, Buyer may, at any time, by written change order delay or suspend performance of this AGREEMENT, in whole or in part, without liability hereunder, and Seller shall proceed diligently with the performance of this AGREEMENT as so changed. If any such change causes an increase or decrease in the cost of or the time required for performance of this AGREEMENT, subject to Article 21 and subject to Seller making a proper and timely request, Buyer shall make an equitable adjustment in the AGREEMENT price or delivery dates or both, and this AGREEMENT shall be modified in writing accordingly. Any equitable adjustment for suspension or interruption of, or delay in, Seller's performance shall exclude profit. If Seller deems any instruction or direction by or on behalf of Buyer to be a change to this Purchase Order, Seller must so notify Buyer in writing within seven (7) days of the receipt of such instruction or direction. Any claim by Seller for adjustment under this Clause may, at Buyer's option, be deemed to be absolutely and unconditionally waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within twenty (20) days from the date of receipt by Seller of the change order or direction, except where an extension is granted in writing by Buyer. Buyer's engineering and technical personnel are not authorized to change the Products ordered or any other provision of this AGREEMENT. No change order or other modification will be binding on Buyer unless issued by Buyer's Supply Chain Representative.

j. All Products, including raw materials, components, intermediate assemblies, tools, equipment, and end Products, may be inspected and tested by Buyer, its customers and contractors at all reasonable times and places. If the AGREEMENT specifies that any inspection or testing is to be made on Seller's premises, Seller shall provide without additional charge, all reasonable access, facilities and assistance for such inspections and test. In its internal inspection and testing of the Products, Seller shall provide and maintain an inspection system acceptable to the Buyer and Buyer's customers covering the product hereunder. All inspection records relating to the Products shall be available to the Buyer and the Buyer's customer during the performance of this AGREEMENT. Unless specified elsewhere, Seller shall maintain, for a period of seven (7) years after the completion of the last delivery or acceptance of the last lot, whichever is longer, quality and inspection records, purchase order files for supplies, equipment, material, or services including supporting documentation, invoices and supporting memoranda.

k. No Inspection (including source inspection), tests, approval (including design approval) or acceptance of the Products shall relieve Seller from responsibility for any defects in the Products or other failures to meet the requirements of this AGREEMENT, or for latent defects, fraud, such gross mistakes as amount to fraud, and Seller's warranty obligations. Buyer's failure to inspect, accept or reject Products or failure to detect any nonconformity by inspection shall not relieve Seller from its obligations or any liability, nor impose liabilities on Buyer, its agents or customers.

l. Seller shall furnish sufficient labor and management personnel, plant, and equipment and any other resources required in performance of this AGREEMENT and shall work such hours, including overtime, additional shifts, weekend and holiday work, as may be required to ensure compliance with the due date(s) as set forth herein at no change in the AGREEMENT price.

m. If Seller fails to deliver in accordance with the schedule, Buyer will be entitled, at its election and its sole discretion, to (i) a price reduction for late deliveries, (ii) fill such order, or any portion thereof, from sources other than Seller and to reduce Seller's AGREEMENT quantities accordingly at no increase in unit price, and without penalty to the Buyer; and/or (iii) the right to terminate this AGREEMENT for default for late deliveries. Any expenses, costs or damages (including refund of monies paid by Buyer in advance of delivery) incurred by Buyer as a result of such default or any other non-compliance with the terms of this AGREEMENT may, at the discretion of Buyer, and in addition to any other remedies at law or in equity, be offset against any sum owing under this or any other AGREEMENT between Buyer and Seller, or charged back to Seller.

n. In the event of any anticipated or actual delay in the performance of this AGREEMENT, Seller shall immediately notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay along with a proposed written recovery schedule. If Buyer requests, Seller shall, at Seller's expense, ship via air or other expedited routing to avoid or minimize any delay. Seller shall also immediately notify Buyer in writing of any events that may affect this AGREEMENT performance, such as bankruptcy proceedings, strikes, accidents, etc. Seller agrees to flow this Clause down to its suppliers and subcontractors, and promptly notify Buyer in writing when such events exist and/or anticipated or actual delays with its suppliers or subcontractors that may affect performance under this PO. Notification shall not relieve Seller of its obligation to comply with this AGREEMENT's delivery requirements including due date(s).

o. Upon completion or termination of this AGREEMENT and as directed by Buyer, any excess Products, or parts thereof, shall be delivered free of charge to Buyer at the designated delivery point at Seller's risk and expense or destroyed and the destruction certified by Seller. Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use.

## **7. WARRANTY-QUALITY.**

a. In addition to any other warranties provided at law, express or implied, and without limiting any other warranties that may appear in this AGREEMENT, Seller expressly warrants that all Products shall be manufactured, provided and transported in full and complete conformity and in compliance with all the requirements of this AGREEMENT, specifications, drawings, designs, samples and other descriptions or requirements as Buyer may furnish or specify. Seller expressly warrants all Products furnished by it or any of its subcontractors or suppliers at any tier shall be (i) merchantable; (ii) fit and sufficient for the purposes intended; and (iii) free from all deficiencies in materials, workmanship and design, whether or not the Seller has supplied the design for the Products (including services) sold hereunder. The warranty period shall commence upon Buyer's acceptance, use or operation of the Products, whichever is later, and continue for a period of (1) year thereafter.

b. All warranties of Seller or Seller's subcontractors or suppliers at any tier shall flow to Buyer and Buyer's customer(s). Should Seller or Seller's subcontractor's or supplier's warranty run for a longer period, Seller shall extend such longer warranty period to Buyer.

c. This warranty shall survive inspection, test, acceptance, and payment.

d. Buyer may, at its option: (i) return for full refund or credit; (ii) require prompt correction or replacement of defective or nonconforming Products; or (iii) replace the non-conforming Products with similar Products from another source and charge the costs occasioned to the Buyer thereby to the Seller. Correction or replacement shall be made at Seller's expense and no correction or replacements of defective or nonconforming products shall be made unless approved by Buyer. Products required to be corrected or replaced shall be subject to this warranty and a new warranty period and to Article 6, Delivery and Title, above, to the same extent as products originally delivered under this AGREEMENT.

e. Seller warrants all Products sold hereunder shall be free of any claim of any nature by any third person or entity, and that Seller shall convey clear and marketable title to Buyer. Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this AGREEMENT.

f. Counterfeit goods: In addition to all other warranties provided under this Purchase Order, Seller warrants that the Goods delivered hereunder are new and not refurbished or used, are being supplied by the original equipment manufacturer (OEM) or its expressly authorized agent or distributor, and the Seller has documented traceability of the Goods or components to the OEM. Buyer may return the Goods at any time if they are not genuine, new and unused items or they are found to not meet all OEM specifications and requirements as well as all the requirements defined on this Purchase Order. Seller must provide the following with shipment of the items upon request of Buyer:

(1) Certificate of Conformance (C of C), certifying the items are genuine and meet all Purchase Order and original manufacturer requirements.

(2) Traceability information to original manufacturer.

(3) Results from any additional inspections, tests, and examinations as required by this Purchase Order.

Any Goods for which the above requirements are not met shall be considered defective under this Purchase Order and may be rejected by Buyer or returned for full credit. Seller shall be liable to Buyer for any damages, costs, penalties, judgments, or fines against Buyer to the extent caused by Seller's failure to meet all requirements of this section and, at Buyer's election, Seller may also be required to deliver suitable replacement Goods traceable to the OEM, meeting all OEM specifications. Seller shall include the substance of this clause in all of its sub-tier contracts with its suppliers/subcontractors providing components in support of this Purchase Order.

g. With respect to Goods determined not to be as warranted, Seller shall bear the costs, if any, of inspection, disassembly, reassembly, retesting and any other similar costs incurred in connection with, or as a consequence of, correction, repair or replacement of Seller's Goods, including any such costs associated with assemblies into which Goods have been incorporated. Any Goods corrected or furnished in replacement shall, from the date of delivery of such corrected or replacement Goods, be subject to the provisions of this Clause for the same period and to the same extent as Goods initially furnished pursuant to this Purchase Order.

**8. SUBCONTRACTS.** Seller shall not subcontract for complete or substantially complete parts of the work called for by this AGREEMENT without Buyer's prior written approval.

## **9. COMPLIANCE WITH LAWS.**

a. Seller represents, warrants and certifies it shall comply, and that all Products delivered hereunder shall comply, with all applicable international, federal, state, and local laws, statutes, ordinances, rules, regulations, programs, plans, and executive orders (collectively "Laws"). Such compliance is agreed to be a material element of the performance of this AGREEMENT. Seller further certifies it shall comply with all Laws, and any subsequent amendments, including but not limited to the Occupational Safety and Health Act, the Resources Conservation and Recovery Act, Employment of the Disabled, Equal Opportunity, Employment of Veterans, Employment Discrimination due to Age, and Utilization of Disadvantaged Business Enterprises, and all applicable requirements of the Federal Fair Labor Standards Act. Without limitation, Seller certifies that all of its activities in



providing Products under this AGREEMENT conform and comply with the latest applicable environmental, health, and safety laws and regulations, and any other pertinent international, federal, state, or local statutes, laws, rules or regulations with respect to chemical substances, hazardous materials, and environmental matters. In addition, for any goods shipped to European destinations, Seller shall comply with the "European AGREEMENT Concerning the International Carriage of Dangerous Goods."

b. Products supplied under this AGREEMENT may be exported worldwide; including countries that prohibit the importation of goods manufactured with child labor or forced, indentured or convict labor. Seller represents, warrants, and certifies that no goods or services supplied under this AGREEMENT have been or will be produced using forced, indentured or convict labor, or the labor of persons in violation of the minimum working age or minimum wage, hour of service, or overtime laws of the country of manufacture. If Buyer determines Seller has failed to comply with the requirements of this Article 9, Buyer may terminate this AGREEMENT without further compensation to Seller, and Seller shall defend, indemnify and hold harmless Buyer and Buyer's affiliate, agents, and customers in accordance with the provisions of Article 10, Indemnification, below.

c. Seller will defend, indemnify and hold harmless Buyer and Buyer's affiliates, agents, and customers from any loss, damages, or costs arising from or caused in any way by any actual violation of any federal, state, or local law, ordinance, rule, or regulation, or failure by the Seller to (i) have any chemical substances sold hereunder included in the list of approved chemical substances published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act; or (ii) provide a completed Material Safety Data Sheet (OSHA Form 20 or equivalent) for any chemical substances sold hereunder as required by any federal, state or local law, ordinance, rule or regulation.

d. Seller represents, warrants and certifies it is in compliance with all Laws regarding prohibitions on bribery of public officials and kickbacks, including the Foreign Corrupt Practices Act and similar laws of foreign countries. Seller further warrants it is in compliance with all Laws pertaining to firearms, ammunition, and explosive materials, which include but are not limited to the Federal Gun Control Act (18 USC § 921 et. seq.; 27 CFR Part 478), the National Firearms Act (26 USC § 5801 et. seq.; 27 CFR Part 479) and Federal explosives law, as amended by the Safe Explosives Act (18 USC § 841 et. seq.; 27 CFR Part 555). Seller also warrants it will accurately label all deliverables consistent with the requirements of 40 CFR Part 82 "Protection of Stratospheric Ozone; Labeling."

e. Work under this AGREEMENT may be in a hazardous environment. Access to work or Products under this AGREEMENT by persons under the age of 18 will be in compliance with the laws of the state where the work is being performed.

f. Seller and Seller Engaged Personnel are not employees of Buyer and are not entitled to any Buyer employee benefits or privileges. Seller shall comply with all applicable federal, state, and local labor and employment laws, regulations, and executive orders, including those specific to U.S. Government contractors, Form I-9 requirements, and requirements for the use of E-Verify. Seller shall pay all wages due to its employees and all related employment taxes and workers' compensation and unemployment insurance amounts. Seller shall indemnify and hold harmless Buyer against all Damages arising out of any alleged failure to comply with labor and employment laws applicable to any Seller Engaged Personnel. For the purposes of this Article, "Damages" shall be interpreted broadly to include lawsuits, claims, fines, penalties, offsets, liabilities, judgments, losses,, costs, and profit disallowed, or expenses (including reasonable attorneys' fees).

g. Buyer is an equal opportunity and affirmative action employer. Seller represents and warrants it will assign Seller Engaged Personnel without regard to race, color, creed, religion, sex, national origin, disability, age, status as a covered veteran, or any other legally protected characteristic. Seller and its Subcontractors/suppliers may be subject to the provisions of 41 CFR §§ 60-1.40, 60-300.5, and 60-741.5 with respect to affirmative action program requirements.

h. Seller represents and warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest (as defined in FAR Subpart 9.5), or that the Seller has disclosed all such relevant information to the Buyer relevant to a determination concerning same. Seller further represents and warrants that it shall immediately disclose any actual or potential organizational conflict of interest to Buyer in accordance with FAR Part 9.5.

## **10. INDEMNIFICATION AND LIMITATION OF LIABILITY.**

a. Seller shall defend, indemnify, and hold harmless Buyer and Buyer's affiliates, agents, and customers from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of the same, and any costs incurred in connection therewith, including but not limited to, attorney fees and litigation expenses, arising out of or related to Seller's performance of this AGREEMENT or any breach by Seller of this AGREEMENT, or which may result in any way from any accident, injury, libel, or property damage, including but not limited to response or remedial action costs associated with damage to the environment or to natural resources, by reason of any act or omission by Seller, its agents, employees, or subcontractors/suppliers, except to the extent that the accident, injury, libel, or property damage is due solely and directly to Buyer's negligence. Buyer may, at its sole option: (i) tender such claim to Seller to defend using legal counsel acceptable to Buyer; or (ii) defend such claim by legal counsel of Buyer's choosing and Seller shall reimburse Buyer for all costs of such defense as they are incurred. In either case Seller shall indemnify and hold Buyer harmless from and against all damages arising out of or relating to such claim. If Buyer tenders the defense of a claim to Seller and Seller accepts such defense, then Seller shall be conclusively deemed to have agreed that such claim is subject to indemnification hereunder, and that Seller has no claim or counterclaim against Buyer, all of which

Seller shall be deemed to have waived. If Seller assumes the defense of a claim and thereafter fails to vigorously defend such claim, Buyer shall have the right, at its option, to assume the defense of such claim and Seller shall remain obligated to indemnify Buyer hereunder. If Seller assumes the defense of a claim, Seller shall not settle or compromise such claim without Buyer's prior written consent. Seller shall at all times maintain such liability, property damage, and employee liability insurance in a sufficient amount that will protect Buyer from any or all of the foregoing risks, and upon Buyer's request shall supply certificates of insurance.

b. Seller's indemnification obligations under this Article 10.0 shall not be limited in any way by: any statutory immunity or other limitation on the amount or type of damages, compensation or benefits payable by or for the Seller or any sub-vendor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

c. An Indemnified Party shall have the right to select counsel and control any claims, actions or litigation arising hereunder.

d. Notwithstanding any other provisions of this AGREEMENT, under no circumstances shall Buyer be liable or held responsible for consequential, incidental, special, or indirect loss or damage including whether such loss or damage arises from contract, negligence, recklessness, strict liability, or otherwise. In no event, however, shall any liability of Buyer exceed the price allocable to the Product that initially gives rise to the claim. The foregoing shall constitute the sole and exclusive remedy of Seller, and the sole and exclusive liability of Buyer. Seller hereby waives, releases, and renounces all other rights, claims, and remedies against Buyer.

e. In addition to any other remedies provided under this Purchase Order or by law, if Seller or its officers, employees, agents, suppliers, or subcontractors at any tier fails to comply with any applicable laws, orders, rules, regulations, and ordinances of government entities and, as a result Buyer's contract price or fee is reduced, Buyer's costs are determined to be unallowable, Buyer incurs any fines, penalties or interest costs, or Buyer incurs any other costs, losses or damages, then Buyer may reduce the price, or the recoverable costs and fee, of this Purchase Order or of any other contract with Seller by a corresponding amount or amounts, or may demand payment of such amounts, or both, and Seller shall promptly pay any such amount demanded

**11. INTELLECTUAL PROPERTY INDEMNIFICATION.** Seller shall defend, indemnify, and hold harmless Buyer and Buyer's, affiliates, agents, and customers from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of the same, that the manufacture or furnishing of Products under this AGREEMENT, or the sale or use of such Products constitutes an infringement of any patent, trade secret, trademark, service mark, copyright, or related application, or other intellectual property or proprietary information infringement. If any Product is enjoined in any manner due to such infringement, Seller shall, at its own expense and at its option, either: (i) procure for Buyer and its customers the right to continue using said Products; (ii) replace the infringing item with a non-infringing equivalent; (iii) modify the item so that it becomes non-infringing; or (iv) upon showing an inability to do any of the foregoing, remove the Product and refund the purchase price and any related transportation and installation costs. Seller shall at all times maintain such intellectual property insurance in a sufficient amount that will protect Buyer from any or all of the foregoing risks, and upon Buyer's request shall supply certificates of insurance. If any Product is so enjoined, Seller agrees to be liable and to reimburse Buyer for any costs incurred by Buyer caused by such infringement, including for any delays, and to indemnify and hold harmless Buyer for any claims made against it by Buyer's customer caused by such infringement, including for any delays.

**12. ASSIGNMENT.** Seller shall not assign this AGREEMENT or any rights under this AGREEMENT, voluntarily or involuntarily or by operation of law, without the prior written consent of Buyer, and no purported assignments by Seller shall be binding on Buyer without such written consent. This AGREEMENT shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

**13. CHANGES.**

a. Buyer may unilaterally, and at any time by providing written notice, stop work, in whole, or in part, or make other changes in Seller's Products to be provided under this AGREEMENT. Such changes include, but are not limited to: (i) quantities; (ii) drawings, designs, or other specifications; (iii) packing, method of shipment, or time or place of delivery; and (iv) the amount of property furnished by the Buyer or the Buyer's Customer. Seller shall proceed immediately to perform this AGREEMENT as changed.

b. Subject to Article 21, Excusable Delays (Force Majeure), below, if such changes cause an increase or decrease in the cost of performance of this AGREEMENT, the parties shall promptly negotiate in good faith an equitable adjustment, and the AGREEMENT shall be modified in writing accordingly. Except where an extension is granted in writing by Buyer, any claim for adjustment under this Article 13 shall be deemed to be absolutely and unconditionally waived unless asserted in writing within twenty (20) days from the date of receipt by Seller of the change. Seller shall submit to Buyer in writing any claim for an adjustment under this Article 13 as soon as is reasonably possible, along with a specification of the amount claimed with supporting cost figures. Such specification shall be accompanied by a signed statement from Seller that the claim is made in good

faith and Buyer shall have the right to review any analyses performed in determining the amount of such claim and meet to discuss the analyses with any of Buyer's personnel that participated in conducting the analyses.

c. Seller may not make any changes to this AGREEMENT without Buyer's express written consent. Buyer's engineering and technical personnel are not authorized to change the Products ordered under this Agreement or any other provision of this AGREEMENT. No Change Order will be binding on Buyer unless issued by Buyer's Supply Chain Representative in writing. This AGREEMENT is Buyer's offer to Seller to purchase the Products described in this offer. Any additional terms proposed in Seller's acceptance of Buyer's offer including, but not limited to, shrink-wrapped or click-through terms not specifically negotiated and expressly made a part of the Purchase Order, which add to, vary from, or conflict with the terms herein are hereby objected to by Buyer and are void. All communication between Seller and Buyer affecting the work and Products to be furnished hereunder shall be through the Supply Chain Representative. Buyer's technical personnel may provide written technical direction, however, technical or management direction shall not impose tasks and requirements upon the Seller that are additional to or different from the general tasks and requirements established in the AGREEMENT. For the technical direction, to be valid: (i) such direction must be issued in writing consistent with the general scope as set forth in this AGREEMENT; and (ii) such direction shall not commit Buyer to any adjustment of the price, schedule or other AGREEMENT provisions.

d. If any technical direction is interpreted by the Seller to fall within Article 13, Changes, Seller shall not implement such direction, but shall notify Buyer's Supply Chain Representative in writing of such interpretation within ten (10) business days after Seller's receipt of such direction. Such notice shall: (i) include the reason upon which the Seller bases its belief that the technical direction falls within the purview of the Changes clause; and (ii) include the Seller's best estimate as to revision in estimated price, performance time, delivery schedules and any other issues that would result from implementing the technical direction.

e. If, after reviewing the information, the Buyer is of the opinion such direction is within the purview of the Changes clause and considers such changes desirable, Buyer will issue unilateral direction to proceed pursuant to the authority granted under the Changes Article.

f. In the event the Buyer determines it is necessary to avoid a delay in performance of the AGREEMENT while Buyer is reviewing the information submitted by Seller hereunder, Buyer may, in writing, direct the Seller to proceed with the implementation of the technical direction pending review of such information. Should Buyer later determine the change direction is appropriate; the written direction issued hereunder shall constitute the required change direction under the Changes Article.

g. Failure of the Seller and the Buyer to agree on whether direction is technical direction or a change within the purview of the Changes Article shall be a dispute under Article 17, Disputes/Claims. Any action taken by the Seller in response to any direction that falls within the purview of the Changes Article, or that Seller claims to fall within the purview of the Changes Article, given by any person other than the Supply Chain Representative shall be at the Seller's own risk.

h. Further, Seller shall provide written notification to Buyer prior to making any changes to Seller's tooling, facilities, materials, or processes, and/or shall provide written notification to Buyer upon becoming aware of any such changes by Seller's subcontractors at any tier, that could affect the work to provide Products under in this AGREEMENT. This requirement includes changes to fabrication, assembly, handling, inspection, acceptance, testing, manufacturing location, parts, materials, or suppliers. Seller shall notify Buyer of any pending or contemplated future action to discontinue or delay work under this AGREEMENT and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the work or the Products. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to the actual discontinuance of any products, for example. Seller shall extend opportunities to Buyer to place last time buys of Products with deliveries not to exceed one hundred eighty (180) days after the last time buy date. Seller shall flow down to subcontractor(s)/supplier(s) the requirements of this clause and all other applicable flow down provisions.

i. Nothing in this Article 13, including any disagreement with Buyer as to the equitable adjustment to be made, shall excuse Seller from proceeding with performance of this AGREEMENT as changed.

j. No changes in process or qualified design, or substitutions of materials or accessories may be made without Buyer's prior written consent. No charges for extras will be allowed unless Buyer has agreed to such extras in writing and the price agreed upon.

k. If, after acceptance of the AGREEMENT or at any time during the performance of this AGREEMENT, Seller believes any portion of this AGREEMENT is inaccurate, inconsistent or incomplete, Seller shall promptly notify Buyer in writing identifying any discrepancies and requesting resolution before proceeding or continuing with the portion of this AGREEMENT in question. In the event that the Seller fails to contact Buyer in a timely manner to resolve said discrepancies or inconsistencies and Seller proceeds with or continues any work in question, Seller shall on its own accord and shall be solely responsible for any errors or omissions, including all associated cost schedule impacts or both resulting therefrom.

#### **14. TERMINATION.** **For Convenience**

a. The Buyer may terminate this Order in whole, or in part, at any time for any cause and will reimburse the Seller for his reasonable, substantiated, and necessary costs already incurred directly in the performance of this Order prior to the notice of termination, plus a reasonable profit thereon. Buyer shall not be liable for loss of anticipated profits on the Order, or the part thereof, so canceled.

b. All Goods and plans completed by Seller prior to the date of termination shall, upon payment by Buyer, become the property of Buyer.

c. In no event shall Buyer's obligations to Seller, as a consequence of termination under this Article, exceed the costs and reasonable profit described in 14(a), and upon payment thereof, Buyer shall have no further obligation to Seller hereunder or otherwise.

**For Cause**

d. If Seller materially breaches any provision of this agreement or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided by this Order or by law, terminate all or any part of this Order without any liability by Buyer to Seller on account thereof.

e. In the event Buyer terminates this Order for cause, in whole or in part, as provided in this Article 14.0, Buyer may purchase from others, upon such terms and in such manner as Buyer may deem appropriate, similar goods to those so terminated and Seller shall be liable to Buyer for any excess costs incurred by Buyer thereby. Further, if a Buyer request, Seller agrees to assist Buyer in the purchase of goods similar to those terminated due to Seller's default by, among other things, cooperating in the transfer to Buyer of information and/or Work-in-process and equipment or materials which may have been purchased by Seller specifically for Buyer's Order.

f. If Buyer has requested and received the cooperative transfer of goods as set forth above, Buyer will credit the value of such Goods against Buyer's excess cost of re-purchase and if such credit exceeds Buyer's excess costs Buyer shall promptly pay Seller such difference.

**15. NO WAIVER, SEVERABILITY.** The failure of Buyer to insist upon the performance of any provision of this AGREEMENT, or to exercise any right or privilege granted to the Buyer under this AGREEMENT, shall not be construed as waiving such provision or any other provision of this AGREEMENT, and the same shall continue in full force and effect. If any provision of this AGREEMENT is found to be unenforceable by any court or other judicial or administrative body, the other provisions of this AGREEMENT shall not be affected thereby, and shall remain in full force and effect.

**16. GOVERNING LAW, JURISDICTION, AND VENUE.** The UN Convention of Contracts for the International Sale of Goods (CISG) shall *not* govern the rights and obligations of the parties under this AGREEMENT. This Order shall be governed by and construed and interpreted according to the laws of the State of Delaware and the parties agree that Delaware state court shall hear any legal disputes arising under this AGREEMENT, subject to Article 17. Both parties waive any objection to this Article.

**17. DISPUTES/CLAIMS.**

a. Resolution of Other Disputes. Any dispute between Buyer and Seller not resolved pursuant to the foregoing provisions of this AGREEMENT shall upon written notice, be referred to the respective representatives for each party. The parties, through their representatives and/or senior management shall confer in good faith to attempt to resolve the matter. If the parties are unable to fully resolve the dispute, then the matter shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association upon the demand of either party. Arbitration proceedings shall be conducted by a sole arbitrator, who must be an attorney with at least 10 years of experience in the litigation of contract claims. Arbitration proceedings shall be conducted in Delaware. Either party may seek preliminary equitable relief in any court of competent jurisdiction pending the decision of the arbitrator.

b. Seller to Continue Performance. Seller shall proceed diligently with performance of this Purchase Order pending final resolution of any request for relief, claim, dispute, appeal or action arising under or in connection with this AGREEMENT and pending such resolution shall comply with Buyer's written direction, if any, on the matters at issue.

**18. SURVIVORSHIP.** On termination of this AGREEMENT for any reason, all warranty, infringement, confidentiality, dispute, indemnification, and liability obligations and limitations, and those terms, which by their nature are intended to survive, will survive. Termination will not prejudice either party to require performance of any obligation due at the time of termination.

**19. INDEPENDENT CONTRACTOR RELATIONSHIP.**

a. Buyer and Seller are independent contractors of one another. Nothing in this AGREEMENT is intended to or will constitute either party as an agent, legal representative, or partner of the other for any purpose.



b. Seller shall comply with all of Buyer's and/or Buyer's customer's safety and security procedures for all work that Seller, its employees, agents, or subcontractors may perform on either Buyer's or its customer's premises. Seller shall also take all necessary precautions to prevent the occurrence of any injury to person or damage to property during the performance of such work on Buyer's or its customer's premises. Seller shall at all times be responsible for the safety of its employees and operations. Seller shall defend, indemnify, and hold harmless Buyer and/or Buyer's customer against any claim that results from any act or omission by Seller, its employees, agents, and subcontractors/suppliers, which is related to its work on Buyer's or its customer's premises. Seller shall maintain comprehensive general liability, automobile liability, and employers' liability insurance with limits as Buyer may reasonably require, as well as appropriate workers' compensation insurance. Upon Buyer's request, Seller shall provide to Buyer verification the required insurance is in effect during any period while this AGREEMENT or any Purchase Order issued hereunder remains in effect.

c. Insurance. Seller and its subcontractors, at their sole cost and expense, will at all times, prior to commencement and throughout the period of performance of this Agreement, maintain with reputable insurance companies that are authorized to do business under the laws of the state(s) in which the work is being performed, insurance coverage in the minimum amounts as indicated below: 1. Worker's Compensation insurance coverage (or DBA, LS&H, or local equivalent outside the U.S.) as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation against Buyer; 2. Employer Liability insurance in the amount of \$1,000,000; 3. Commercial General Liability (CGL) with a Combined Single Limit (CSL) of \$2,000,000 bodily injury and/or property damage, and coverage shall include, but not necessarily be limited to, premises and operations, Products and completed operations and contracts; 4. If the work to provide Products requires use of an vehicle or automobile, Automobile Liability (AL) with a CSL of \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles; 5. If work involves Foreign Direct Sales, such insurance as mandated by the country involved; 6. Additional insurance types and/or limits will be necessary if the work involves extra hazardous operations, where extra hazardous operations include, but are not limited to: information technology/cyber risk, dispensing of medical care, operations involving the nuclear hazard, providing professional engineering advice, large construction projects (above \$5,000,000) hazardous waste, food service (including liquor liability), crane operation, work above ground, work below ground, and operations involving demolition or explosives; and 7. Such other insurance as Buyer may require as set forth in this Order or an attachment hereto. Seller will name Buyer as an additional insured under all liability policies required under this Order, will provide Buyer certificate(s) of insurance and ten (10) days prior written notice of cancellation or material change of any such coverage. Acceptance of such evidence by Buyer or failure to obtain such evidence shall not be deemed a waiver or release of such liabilities or Seller's duty to indemnify. Further, renewal insurance certificates, if applicable, shall be provided to Buyer at least fifteen (15) days prior to the expiration date of the insurance under each required coverage.

d. Seller shall comply with any and all federal, state, or local drug or alcohol abuse and/or drug testing statutes or regulations for any of its employees who perform work on Buyer's or its customer's premises.

e. Seller shall conduct a criminal background investigation of its employees before assigning such employee to perform work on Buyer's or its customer's premises. Buyer may request, at its discretion, from Seller documentation of the completion of the investigation for any employee assigned to work on Buyer's or its customer's premises. Seller shall not assign any person to perform work on Buyer's or its customer's premises who has been convicted of any felony, or any crime of dishonesty or violence, whether the crime is a felony or a misdemeanor.

f. Absent prior written approval by Buyer, Seller shall ensure all of its employees or contractors working on orders under this AGREEMENT are "U.S. persons" (citizen or green card holders).

g. Seller shall impose the requirements of this Article 19 with its agents and subcontractors who will perform work on Buyer's or its customer's premises pursuant to this AGREEMENT or under a Purchase Order.

h. If Seller fails to comply with any of the provisions of this Article 19, Buyer may immediately expel Seller's employee(s) from Buyer's or its customer's premises and Buyer may also terminate this AGREEMENT or any Purchase Order for default.

i. Whenever performing on-site services, the Seller shall at all times keep its work areas, including its storage areas, free from the accumulations of waste material or rubbish. In addition, prior to completion of the work, the Seller shall remove any rubbish from its work areas and all of its tools, scaffolding, equipment, and materials that are not the property of the Buyer or the Buyer's Customer. Upon completion of the service, the Seller shall leave its work areas in a clean, neat and good condition satisfactory to the Buyer.

j. The Buyer and the Buyer's Customer have the right to conduct surveillance of the Seller's work when such work is being performed on the premises of the Buyer or the Buyer's Customer. Notwithstanding the Seller's responsibility for the safety of its employees and operations under this AGREEMENT, the Buyer or the Buyer's Customer has the authority to stop any work or practice that, if allowed to continue, could reasonably be expected to result in the death or serious physical harm to any person, generate major system damage, or endanger in any way the property or mission of the Buyer or Buyer's Customer. This authority allows for the stoppage of any work or practice until such time that the perceived danger has been eliminated to the satisfaction of the Buyer or the Buyer's Customer. Any such stoppage shall be without liability to the Buyer.

k. The presence of the Buyer or Buyer's Customer and the fact that the Buyer or Buyer's Customer conducts or provides any inspections, investigations, surveys, oversight, concurrence, approvals, advice or recommendations shall not affect the Seller's responsibility for safety under this AGREEMENT.

l. The Buyer or the Buyer's Customer may at any time deny the Seller or Seller's employee's access to the premises of the Buyer or the Buyer's customer if it is deemed to be not in the public interest to allow such access because of the misconduct of the Seller or its employees for reasons of safety or security. Any such denial shall be without liability to the Buyer.

## **20. RIGHTS IN INVENTIONS AND INTELLECTUAL PROPERTY.**

a. This entire Article 20 is subject to any U.S. Government rights.

b. All technical work product, including ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller under this AGREEMENT shall be the exclusive property of Buyer and be delivered to Buyer promptly upon request.

c. All inventions conceived, developed, or first reduced to practice by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller under this AGREEMENT, and any patent application and patents based on or relating to any such inventions (both domestic and foreign), shall be the exclusive property of Buyer. Seller shall promptly disclose all such inventions to Buyer in written detail, and execute all papers, cooperate with Buyer, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of the related intellectual property, patents or patent applications to Buyer.

d. All works of authorship, including documents, drawings, software, software documentation, photographs, video tapes, sound recordings, and images, created by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller under this AGREEMENT, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such works shall be "works made for hire," with the copyrights therein vesting in Buyer. In the event that any said work or portion thereof shall not be legally qualified as a "works made for hire," or shall subsequently be so held to not be a "works made for hire," Seller agrees to assign, and does hereby so assign to Buyer, all right, title and interest in and to said work or portion thereof, including but not limited to the worldwide copyrights, extensions of such copyrights, and renewal copyrights therein, and further including all rights to reproduce the work in any media, to prepare derivative works based on the work, to distribute copies of the work in any media, to perform and or display the work publicly and to register the claim of copyright therein. The copyrights of all other such works, including all of the exclusive rights therein, shall be promptly transferred and formally assigned free of charge to Buyer. Buyer shall have the right, at no additional charge, to use and/or reproduce Seller's and/or its subcontractor(s)/supplier(s)' applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature.

e. Buyer shall have an unlimited, worldwide, irrevocable, perpetual royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivatives of, and authorize others to do any, some or all of the foregoing, any and all technical work product, and works of authorship, conceived, developed, generated, or delivered in performance of or in connection with this AGREEMENT ("AGREEMENT Work Product").

f. If any pre-existing intellectual property of Seller is included or incorporated in any AGREEMENT Work Product, Seller grants to Buyer an irrevocable, nonexclusive, world-wide, perpetual, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

g. Buyer shall have a royalty-free, worldwide, irrevocable, nonexclusive license to use and license others to use Seller's software, patents, designs, processes, know-how, drawings, and technical data relating to the work performed under this AGREEMENT solely for purposes of producing and selling the Products required to be supplied by the Buyer's existing or follow-on orders with its customers if (i) at any time during the performance of this AGREEMENT, Seller suspends business operations or becomes bankrupt or insolvent; or (ii) at any time within five (5) years from the end date of this AGREEMENT, Seller, for any reason, discontinues acceptance of follow-on orders for work ordered hereunder.

h. In the event of any inconsistency between this Article and any U.S. Government clause incorporated by reference into this AGREEMENT, the incorporated U.S. Government clause shall govern.

i. Buyer and/or its customers shall at all times have title to: (i) all drawings and specifications furnished by Buyer to Seller, and (ii) all documents (including all drawings and specifications) and work product, in any form, generated by, for or on behalf of Seller in connection with this AGREEMENT. The Seller shall, upon Buyer's request or upon completion of this AGREEMENT, promptly return or deliver all documents and work product, including all copies, to Buyer.

j. Seller hereby assigns to Buyer all rights, title and interest in computer software, including computer programs, databases and documentation thereof (individually and collectively, "Software"), developed in the performance of this AGREEMENT, including

the right to apply for and register copyrights and patents in the U.S. and any other country, the right to all extensions and renewals thereof, unrestricted and complete rights of publication or reproduction, the right to use and license others to use said Software, and right to exclude others from reproducing the Software. Seller shall obtain from its subcontractors/suppliers all rights necessary to fulfill the Seller's obligation to Buyer under this PO. Seller agrees to execute any and all documents Buyer may require to perfect the above assignment. Buyer shall have an unlimited, irrevocable, paid-up, perpetual royalty-free right and license to make, have made, sell, offer for sale, import, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivatives of, and authorize others to do any, some or all of the foregoing, any and all Software conceived, developed, generated, or delivered in performance of or in connection with this AGREEMENT.

k. Seller represents and warrants that any software delivered hereunder will be in a form suitable for reproduction by the Buyer and will include the full source code language statement, for example, used by the Seller sufficient to allow maintenance and modification by Buyer, including Buyer's third-party agents. For clarity, Buyer has an unlimited right to copy, amend, modify, etc. any software provided hereunder by Seller for use by the Buyer, its affiliates, subcontractors, and third-party agents in Buyer's or its affiliates' businesses. Such right includes the right for Buyer and its affiliates, including their respective employees, subcontractors, and third-party agents, to copy, amend, modify, etc. the source code of the software for the purposes of maintaining and enhancing or supplementing the software for or on behalf of Buyer or its affiliates.

**21. FORCE MAJEURE.** No liability shall result to either party from delay in performance or from nonperformance caused by an Act of God, or event beyond the control of a party, including an act or omission of government, act or omission of civil or military authority, act of a public enemy, war, blockade, insurrection, riot, epidemic, landslide, earthquake, fire, storm, lightning, flood, washout or civil disturbance which could not have been avoided through the exercise of reasonable care, procedure, and diligence

**22. PROHIBITION OF GRATUITIES.**

a. Seller represents and warrants it and its officers, employees, agents and representatives have not offered or given, and agrees it and its officers, employees, agents and representatives will not offer or give, any kickbacks or gratuities in the form of entertainment, gifts, or otherwise to any officer or employee of Buyer or Buyer's customer with a view toward securing this or any other Purchase Order, or the making of any determination with respect to Seller's right or duties.

b. For any breach of Seller's obligations under this Clause, Buyer shall have, in addition to any other rights provided by this AGREEMENT, the right to terminate any or all AGREEMENTS with Seller for cause, and to recover from Seller the amount of any gratuity, plus all reasonable costs (including attorney fees) incurred in seeking such recovery.

**23. INSPECTION AND ACCEPTANCE; NONCONFORMING PRODUCTS.**

a. All Products, including raw materials, components, intermediate assemblies, tools, equipment, and end Products, may be inspected and tested by Buyer, its customers and higher tier contractors at all reasonable times and places. If the AGREEMENT specifies any inspection or testing is to be made on Seller's premises, Seller shall provide without additional charge, all reasonable access, facilities and assistance for such inspections and test. In its internal inspection and testing of the Products, Seller shall provide and maintain an inspection system acceptable to the Buyer and Buyer's customers covering the product hereunder. All inspection records relating to the Products shall be available to the Buyer and the Buyer's customer during the performance of this AGREEMENT. Unless specified elsewhere, Seller shall maintain, for a period of seven (7) years after the completion of the last delivery or acceptance of the last lot whichever is longer, quality and inspection records, purchase order files for supplies, equipment, material, or services including supporting documentation, invoices and supporting memoranda.

b. Final inspection and acceptance by Buyer shall be at destination unless otherwise specified in this AGREEMENT. Such inspection shall be in accordance with the stated requirements of this AGREEMENT. If rejection of a shipment would result from Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct an above-normal level of inspection and charge the seller the reasonable costs thereof. If a lot is rejected, Buyer may screen, rework, repair, and/or test lot at Seller's expense.

c. No Inspection (including source inspection), tests, approval (including design approval) or acceptance of the Products shall relieve Seller from responsibility for any defects in the Products or other failures to meet the requirements of this AGREEMENT, or for latent defects, fraud, such gross mistakes as amount to fraud, and Seller's warranty obligations. Buyer's failure to inspect, accept or reject Products or failure to detect any nonconformity by inspection shall not relieve Seller from its obligations or any liability, nor impose liabilities on Buyer, its agents or customers.

d. If the Buyer determines at its sole discretion that any of the Products are nonconforming or otherwise do not meet the requirements of this AGREEMENT, Buyer, at its option and at Seller's expense, may, without limiting any other remedies available to Buyer, require Seller to: (i) rescind this AGREEMENT as to such Products; (ii) reject such Products and require the delivery of replacements; and/or (iii) retain and correct, any Products that do not conform to the requirements of this

AGREEMENT, even if Buyer does not discover the nonconformity until after Buyer uses such goods or manufactures Products made with such goods. Deliveries of replacements shall be accompanied by a written notice specifying that such Products are replacements. If Seller fails to deliver required replacements promptly, Buyer may terminate this AGREEMENT for cause as provided in Article 14(b) hereof. Buyer's right to reject nonconforming deliveries extends to those which arrive late, in the incorrect quantity, or improperly labeled. The Buyer may charge the Seller for expenses of inspection for Products which do not conform to the AGREEMENT. The risk of loss of nonconforming Products remains with the Seller.

e. Buyer's Remedies - Buyer's remedies are cumulative and in addition to all remedies set forth herein or otherwise legally available. Buyer may exercise its remedies either individually or cumulatively. Buyer's remedies shall include, but not be limited to, incidental and consequential damages and the cost of any recall campaigns or other corrective actions. Buyer's selection of any particular remedy, or its forbearance in exercising any remedy available to it, shall not constitute an election or waiver of any other remedy.

#### **24. CHANGE IN OWNERSHIP OR CIRCUMSTANCE.**

a. As used herein, a "Change in Ownership" shall occur if: (i) a person or group of persons acting in concert directly or indirectly acquire more than 50% of Seller's or Seller's parent's voting power subsequent to the date that the parties enter into this AGREEMENT; (ii) Seller or Seller's parent sells, leases, transfers or otherwise disposes of substantially all of Seller's or Seller's parent's assets, or of the assets relating to the Product Seller produces for Buyer under this AGREEMENT; (iii) Seller or Seller's parent becomes involved in a merger, reorganization, consolidation, share exchange, re-capitalization, business combination, liquidation or dissolution or similar transaction; or (iv) Seller or Seller's parents is the subject of a tender or exchange offer for any of the outstanding shares of its capital stock. Seller shall provide notice to Buyer of any pending or possible Change in Ownership, as soon as Seller becomes aware of the events giving rise to the Change. If Seller is or becomes the subject of a Change in Ownership, Buyer may at its discretion terminate this AGREEMENT or a Purchase Order for default, Seller's Default, at no cost to Buyer, and notwithstanding any termination, Seller shall take all measures reasonably necessary to protect Buyer's Property and any proprietary information. Pending termination or in lieu of termination, Buyer may require that Seller provide adequate assurance of performance.

b. By accepting this AGREEMENT, Seller certifies that all Seller qualification and business information, representations and certifications applicable to this AGREEMENT remain valid. Seller agrees to provide prompt notification to Supply Chain Representative of any event or change in circumstances that could affect Seller's performance under this AGREEMENT such as ineligibility to contract with the United States Government, debarment, assignment of consent agreement, designation under U.S. or foreign sanctions laws and regulations, expiration or cancellation of ITAR registration, potential violation of Export and Sanctions Laws and Regulations (or authorizations issued thereunder), initiation or existence of a United States Government investigation, change in place of performance, decrease in manufacturing capacity, diminishing manufacturing sources or material shortages, increase in production requirements, labor reductions, financial or organizational conflicts of interest, and significant financial conditions requiring any of the preceding changes.

**25. DEFAULT ORDER OF PRECEDENCE.** Any inconsistency in this AGREEMENT shall be resolved by giving precedence in the following order: (i) a separate contract mutually executed between the parties concerning the scope of this AGREEMENT; (ii) a mutually executed Purchase Order provided by the Buyer with mutually agreed upon terms and conditions, but excluding any terms and conditions incorporated by reference by the Seller unless each term and condition is expressly added to the Purchase Order; (iii) these Standard General Terms and Conditions for Goods & Services; (iv) a statement of work attached hereto; (v) any other attachments, exhibits, or annexes to this AGREEMENT, if any. This order of precedence is to be followed except where a different is explicitly called for in either a statement of work or a Purchase Order provided by Buyer that modifies order of precedence, which only applies to those explicit terms. If this AGREEMENT also concerns or references a U.S. Government contract and the AGREEMENT or Purchase Order incorporates by reference, (1) portions of the U.S. Government contract attached to the Purchase Order, and/or (2) Buyer's Special U.S. Government Provisions, Seller agrees to comply with such U.S. Government contract requirements while also complying, to the extent permitted by law or regulation, with the above-noted order of precedence.

#### **26. IMPORT AND EXPORT COMPLIANCE.**

a. Seller shall comply with all Laws, ordinances, rules and regulations governing the import and export of the Seller's Product provided under this AGREEMENT and any components and raw materials used in the manufacture of the Products. This includes, but not limited to, the International Traffic-in-Arms Regulations ("ITAR"), 27 CFR 55, and the Foreign Corrupt Practices Act, with respect to the Products furnished hereunder, Seller certifies it has not and will not pay, offer or agree to pay, for the purpose of soliciting, promoting or otherwise securing the sale of defense Products and services to or for the use of the armed forces of an international organization or non-U.S. country, any: (i) fees or commissions in excess of \$1,000; or (ii) political contribution (including any gift, rebate or payment of expenses) to a non-U.S. person or entity. Seller intends to conduct work for Buyer in a



foreign country, including but not limited to the use of Seller's own facility outside of the U.S., or the use of a foreign affiliate or unrelated subcontractor, Seller shall provide advance written notification to Buyer. Seller is responsible for obtaining all import and export control licenses required by law, regulation or as otherwise requested by the Buyer. Seller shall flow the substance of this clause in any subcontracts. In recognition of Seller's obligations under the U.S. export control laws, Seller agrees that if Seller at any time becomes aware of any potential violations of the U.S. export laws relating to this AGREEMENT, Seller shall immediately notify Buyer in writing. It shall be the responsibility of Seller to notify and properly mark, including jurisdiction and classification of, all Export Controlled Items provided under this AGREEMENT to Buyer. If any Export Controlled Item is received by the Buyer from the Seller and is not properly marked, the Buyer shall request from the Seller, and the Seller shall provide the Buyer with the proper jurisdiction and classification markings. Seller will defend, indemnify and hold harmless Buyer and Buyer's affiliates, agents, and customers from any loss, damages, or costs arising from or caused in any way from the Seller's failure to comply with any law, ordinance, rule, or regulations governing the import or export of the Products provided under this AGREEMENT and any components or raw materials used in the manufacture of the Products.

b. Seller shall immediately notify Buyer in writing if it or any parent, subsidiary or affiliate: (i) is or becomes listed on any excluded or denied party list of an agency of the U.S. Government or on the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom; or (ii) if it has had its export privileges denied, suspended, or revoked in whole or in part by any U.S. Government agency.

c. The Buyer may be required to obtain information concerning nationality or export status of Seller Engaged Personnel. Seller agrees to provide such information as necessary and certifies the information to be true and correct. Seller shall defend, indemnify and hold harmless Buyer for all Damages that may be imposed on or incurred by the Buyer in connection with Seller's violations of export and import laws and regulations. For the purposes of this Article, "Damages" shall be interpreted broadly to include lawsuits, claims, fines, penalties, offsets, liabilities, judgments, losses, costs, and profit disallowed, or expenses (including reasonable attorneys' fees).

d. In carrying out its responsibilities under this AGREEMENT, Seller will not directly or indirectly authorize, promise, offer or make any political contributions as defined in 22 CFR 130.6 or any fees or commissions as defined in 22 CFR 130.5. This Section applies only if this PO involves Defense Articles or Defense Services.

## **27. PROHIBITED GOODS AND SERVICES.**

a. The U.S. Government prohibits the importation of goods or the purchase of services, and certain financial transactions, from certain countries, which list may change from time to time. Seller represents and warrants that it and its officers, employees, agents and representatives have not purchased or otherwise obtained, and agrees that it and its officers, employees, agents and representatives will not purchase or otherwise obtain goods or services, either directly or indirectly, from any prohibited country in providing goods or services to Buyer under this AGREEMENT. Seller may obtain an updated list of such countries by visiting the U.S. Treasury Department's website at <http://www.treas.gov/ofac/>. The Seller agrees that, as a condition of doing business with the Buyer, Seller will provide all goods or perform all Services with integrity and within the law. Seller further agrees to be aware of Buyer's "Standards of Business Conduct" as outlined at Buyer's website [www.dayzim.com/About\\_DZ/Suppliers](http://www.dayzim.com/About_DZ/Suppliers) in the Ethics Standards and guidelines for Supplier Personnel.

b. "Prohibited Software" means any software: (i) Seller does not have full rights to either sell to Buyer or license to Buyer as may be specifically provided for in this AGREEMENT; (ii) may cause harm to the Buyer such as a virus, worm, malicious logic, trap door, software lock, trojan horse, etc.; (iii) may interfere or disable the delivered software/Work from accomplishing its intended purpose or; (iv) incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (A) open source, publicly available, or "free" software, library or documentation; or (B) software that is licensed under a Prohibited License; or (C) software provided under a license that (a) subjects the delivered software to any Prohibited License; or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge; or (c) obligates Buyer to license, sell, loan, distribute, disclose or otherwise make available or accessible to any third party the delivered software, or any portion thereof, in object code and/or source code formats, or any products or Work incorporating the delivered software, or any portion thereof, in object code and/or source code formats. Seller shall not use Prohibited Software in connection with this PO or deliver Prohibited Software or any Work containing Prohibited Software to Buyer unless Seller has the prior written consent of Buyer.

c. Seller represents and warrants that it does not furnish to Buyer any covered telecommunications equipment or services within the meaning of 48 CFR 52.204-25, or furnish to Buyer any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system within the meaning of 48 CFR 52.204-25, as modified by the interim rule at 85 Fed. Reg. 42665, released July 14, 2020.

d. Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and subcontractors/suppliers from and against any damages relating to the use of Prohibited Software in connection with this PO or delivery of Prohibited Software or Work containing Prohibited Software or any violation of the Seller's representations and warranties under Article 27c above. As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL),

the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including licenses referred to as “GPL-Compatible, Free Software License.”

**28. SEC CONFLICT MINERALS RULE.** Seller warrants all Products furnished to Buyer shall be free of any materials deemed to be “conflict minerals” under the SEC’s Conflict Minerals Rule, absent prior written approval from Buyer. Upon request by Buyer, Seller agrees to provide within five (5) business days certification in whatever form is requested by Buyer or Buyer’s customer that the Products are free from conflict minerals. Seller shall include the substance of this clause in all of its sub-tier contracts with its suppliers providing components in support of this Purchase Order.

**29. CONFIDENTIALITY.**

a. Seller shall keep confidential and protect from disclosure all information and property obtained from Buyer in connection with this AGREEMENT and identified orally or in writing as confidential or proprietary, or which reasonably would be considered to be confidential or proprietary, as well as all documents and work, including Product generated by Seller under this AGREEMENT. Unless otherwise expressly authorized herein by Buyer, Seller shall use such information and property, and the features thereof, only in the performance of and for the purpose of this AGREEMENT. Seller shall not, at any time during or after performance of this AGREEMENT, disclose to others (except those Seller Engaged Personnel with a need to know) the terms of this AGREEMENT or any other information, knowledge, or data (including business, technical, financial, or information of a proprietary or trade secret nature) that Seller: (i) receives from Buyer; or (ii) conceives, develops or acquires in the performance of this AGREEMENT. Nothing in the foregoing shall affect compliance with U.S. Government requirements. Upon Buyer’s request, and in any event upon the completion, termination or cancellation of this AGREEMENT, Seller shall return all such information and property to Buyer or make such other disposition thereof as directed by Buyer. Seller shall not sell or dispose of any scrap or any completed, partially completed, or defective proprietary property before receiving written authorization and disposition instructions from Buyer. Seller shall flow down to its subcontractors/suppliers receiving such information or property these requirements to provide to Buyer the same rights and protection as contained in this Clause.

b. Seller shall not, without the prior written consent of Buyer, publicly release any information regarding the subject matter or existence of this AGREEMENT, including advertisements, brochures, news releases (including photographs, films, public announcements, or denial/confirmation of the same, or interviews with news media) and the like. Seller shall not use or allow to be used, Buyer’s name, logo, trademarks, or likeness without the prior written approval of Buyer. The Seller shall include the substance of this Article, including this sentence, in all of its subcontracts.

**30. HAZARDOUS MATERIAL.** Prior to shipment of any hazardous material or chemical (as determined by OSHA regulation at 29 CFR § 1910.1200[d], Federal Standard No. 313, or the Hazardous Materials table under 49 CFR 172.101) onto Buyer property or work sites, Seller shall provide to Buyer one copy of OSHA Form 20 or 174, Safety Data Sheet or equivalent, for each such material or chemical. The form shall include the Buyer stock number or the material specification number as defined in this AGREEMENT and all of the information required by 29 CFR §1910.1200(g). The packaging, labeling, handling, and shipping of all hazardous items must conform to all Laws, including Title 49 of the CFR Hazardous Material Regulations and carrier regulations. In addition to application of proper shipping labels on the outside container, each container of hazardous items shall be marked with the appropriate precautionary label according to the Code of Federal Regulations. Any failure to comply with the above submission requirement shall be grounds for withholding payments due the Seller hereunder.

**31. BUYER AND U.S. GOVERNMENT PROPERTY.**

a. Buyer may provide or make available to Seller certain real or personal property or material owned by either Buyer or its customer, including tooling and raw material inventories (“Buyer Property”). Buyer Property also includes items Buyer or its customer may take title to in accordance with the terms of this AGREEMENT. Buyer Property shall be used only for the performance of this AGREEMENT. Buyer shall at all times retain title to Buyer Property, which title shall not be affected by the incorporation or attachment thereof to any other property; nor shall such Buyer Property or any other part thereof be or become a fixture or lose its identity as Buyer Property by reason or affixation to any realty. Seller shall manage, maintain, and preserve Buyer Property in accordance with good commercial practice.

b. Seller shall dispose of Buyer Property (including scrap) only in accordance with Buyer’s direction. Seller’s property records for equipment shall include a complete, current, auditable record of all Buyer Property transactions and shall include: ownership, description (including identification and serial numbers), quantity, unit cost, accountable contract number/code, location, disposition, inventory date, and traceability to shipping, receiving, storage, and utilization documents. Such records shall be available for Buyer review. Seller shall provide to Buyer an equipment inventory listing on an annual basis by 15 November. Seller shall clearly mark (if not so marked) all Buyer Property (wherever practical each individual item thereof) to show its ownership as “Property of [Insert Seller’s Full Name here]” or as otherwise directed for property of Buyer’s customer. Seller shall not substitute any property for Buyer Property.

c. Unless otherwise provided on the face of this AGREEMENT, all Buyer Property shall be provided “AS IS” and without warranty. Buyer shall have access at all reasonable times to the premises on which Buyer Property is located for the purpose of inspecting or retrieving the Buyer Property when deemed necessary by Buyer. Buyer Property, while in Seller’s custody or control, shall be held at Seller’s risk and Seller shall be responsible for any loss, damage, or destruction thereof except for reasonable wear and tear, and except to the extent that such property is reasonably consumed in the performance of this AGREEMENT. Seller shall immediately notify the Buyer if Buyer Property is lost, damaged, or destroyed. At the completion or termination of this Order, or when instructed by Buyer, Seller shall deliver Buyer Property to Buyer, F.O.B. Seller’s address.

d. In the event that Buyer provides to Seller property or material owned by the U.S. Government, or if Seller otherwise acquires property to which title is held by the U.S. Government (collectively “Government Property”), Seller shall establish and maintain a property system in accordance with FAR Part 45. If Seller acquires Government Property from a source other than the Buyer, Seller promptly shall furnish to Buyer copies of purchase orders, work orders, receiving reports or other pertinent data reasonably needed to facilitate Buyer’s addition of these items to its own Government Property records. If the Seller has a U.S. Government-approved Property Control System (“System”), Seller shall keep Buyer informed of the Government approval status of that System. In the event the U.S. Government determines Seller’s System to be “unsatisfactory,” or that three or more separate categories of the System are “unsatisfactory,” Seller shall notify Buyer immediately and provide a copy of the U.S. Government’s findings and the Seller’s corrective action plan.

### **32. MISCELLANEOUS.**

a. The headings of the Articles herein are used for convenience and ease of reference only and do not limit the scope or intent of the Article, nor shall any priority be implied by the order in which they appear in this AGREEMENT.

b. In the event any clause not already incorporated herein is required to be included in this AGREEMENT by applicable Law, a prime contract, or higher-tier subcontract, or in the event Buyer’s prime contract or higher-tier subcontract is modified subsequent to the date Buyer issues this AGREEMENT so as to modify or add any additional such clause or requirement, Seller agrees to enter into a modification of this AGREEMENT to insert any such clause or requirements.

c. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this AGREEMENT, Seller shall immediately give notice to Buyer’s Supply Chain Representative and provide all relevant information including, but not limited to, nature of dispute, labor organizations involved, contingency plans regarding the protection of Buyer’s AGREEMENT, and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier supply or subcontracts.

d. If any provision in this AGREEMENT is or becomes void or unenforceable by force or operation of law, or is deemed invalid, the void, unenforceable or invalid portion shall be severable, and the remaining terms and conditions shall remain in full force and effect.

e. Seller’s failure at any time to enforce any provision of this AGREEMENT shall not constitute a waiver of the provision or prejudice the Seller’s right to enforce that provision at any subsequent time.

f. Each of the rights and remedies reserved by Buyer in this AGREEMENT shall be cumulative and additional to any other or further remedies provided in law or equity or in this AGREEMENT.

g. Seller will conduct itself and shall cause its employees and agents to conduct themselves in a manner consistent with Buyer’s policies, including the “Defense Industry Initiative Supplier Code of Conduct” as outlined in Buyer’s website <http://www.dayzim.com/about/suppliers>. Accordingly, Seller warrants that this Agreement will be performed in material compliance with all applicable laws and regulations, including, without limitation, laws and regulations related to safety, health, the environment, fair labor practices and unlawful discrimination. Buyer shall have the ability and the right to terminate this Agreement for default immediately if Seller or any of its employees or agents violates any provision of this paragraph.

h. ***Anti-Trafficking.*** Seller is prohibited from engaging in activities that support or promote trafficking in persons, including, but not limited to, any of the following: (i) Trafficking in persons, including, but not limited to the following: a. sex trafficking; or b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery; (ii) The procurement of a commercial sex act; (iii) The use of forced labor in the performance of company business; (iv) The use of misleading or fraudulent recruitment activities; (v) Charging employees recruitment fees; (vi) Failing to pay for the return transportation at the end of employment for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working; (vii) Providing or arranging housing that fails to meet the host country housing and safety standards; or (viii) If required, failing to provide an employment contract, recruitment agreement, or similar work document in writing, in the individual’s native language and prior to the individual departing from his or her country of origin. Seller represents and warrants that it shall abide by and comply with the requirements of this clause. Further, Seller shall require its employees, agents, contract laborers and subcontractors to abide by and comply with the requirements of this clause. Buyer or its authorized representatives may, at any time, audit all pertinent books, records, work sites, offices, and documentation of Seller in order to verify compliance with this clause. Seller agrees to cooperate with and provide Buyer with any information

reasonably requested in support of Buyer's due diligence or other efforts and in order to verify compliance with this clause. Seller will, in all of its lower-tier subcontracts and contracts relating to this or any other Buyer agreement with Seller, include provisions which secure for Buyer all of the rights and protections provided for within this clause. Seller acknowledges that if Seller or any of its employees, agents, contract laborers or subcontractors engages in any of the prohibited activities in this clause, this Order is subject to termination. Whenever Seller has knowledge, whether substantiated or not, that any actual or suspected violation of this clause has occurred, Seller shall immediately give written notice to Buyer's Authorized Representative and provide all relevant information including, but not limited to, the nature of the actual or suspected violation. Seller shall provide its full cooperation during any subsequent investigation of the actual or suspected violation by Buyer, Buyer's representative, or cognizant government agency. Seller's cooperation shall include, but not be limited to, permitting inspection of its work sites, offices, and documentation, as necessary to support any investigation. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.

i. Security Hygiene, Vulnerability Scanning, Penetration Testing and SDLC. Seller will perform system, application, infrastructure and software development vulnerability assessments (including penetration testing, if applicable) on all Seller systems (internet and non-internet facing, if applicable) used to perform Seller's obligations under the Agreement. In addition to meeting the requirements of routine updates to systems, Seller will promptly correct any vulnerabilities or security issues discovered as part of routine assessments and testing remediating based on severity level.

j. Seller will implement and maintain contingency plans to address an emergency or other occurrence (e.g., fire, vandalism, system failure, natural disaster) that damages or destroys Seller systems or Buyer or its Client(s) data, including a data backup plan and a disaster recovery plan, with a minimum of annual testing of such plans and continuous improvement of such plans.