



**CLEAN ENERGY**  
**STANDARD TERMS AND CONDITIONS**  
**OF PURCHASE**

**DEFINITIONS:**

**Affiliate:** shall mean, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

**Buyer:** shall mean Clean Energy, a California corporation, or the Clean Energy affiliated company issuing the Order referencing these Terms and Conditions, and any successor or assignee of Buyer.

**Deliverables:** shall mean Goods and/or Services depending on the context.

**Goods:** shall mean goods, supplies, software, drawings, data, reports, manuals, other specified documentation, or items that are required to be delivered pursuant to, or in connection with, an Order. Where the context permits, the use of the term Goods shall include Services.

**Intellectual Property:** shall mean all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

**Lead Time:** shall mean the mutually agreed upon time required for Seller to deliver the Deliverables.

**Master Agreement:** shall mean any master terms agreement, long term agreement, master purchase agreement, subcontract, or other agreement that references these terms and conditions, and pursuant to which Orders are issued to Seller.

**Order:** shall mean a paper or electronic document, sent by Buyer to Seller, to initiate the ordering of Goods and Services, such as a purchase order, a scheduling agreement, or other authorization or Order, and including change notices, supplements or modifications thereto. The phrase “in connection with the Order” includes performance of the Order,

performance in anticipation of the Order, and preparation of a bid or proposal for the Order.

**Party or Parties:** shall mean the Buyer and/or Seller, individually or collectively, as the context requires.

**Prime Contract:** shall mean the government or commercial sales contract between Buyer and a customer of Buyer.

**Seller:** shall mean the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order, to whom the Order is issued by Buyer.

**Services:** shall mean any effort performed by Seller necessary or incidental to the delivery of Deliverables, including design, engineering, installation, repair and maintenance. The term “Services” shall also include any effort required by an Order.

**Specifications:** shall mean all requirements with which Goods and Services and performance hereunder must comply, including, without limitation, drawings, instructions and standards, on a Buyer web site or elsewhere, as such requirements are specified and/or referenced in Orders, as such requirements are modified from time to time by Buyer.

**Terms and Conditions:** shall mean these Standard Terms and Conditions of Purchase.

**1. SPECIFICATIONS**

1.1 Seller shall comply with all Specifications.

**2. SCOPE**

2.1 If for any reason Seller fails to accept these Terms and Conditions in writing (including by email) or as specified in the Order, the furnishing or commencement of any Services called for hereunder, (including preparation for manufacture), the shipment by Seller of any Deliverables (or lots thereof) ordered hereby, the acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof,

may, at Buyer's election, be treated as an unqualified acceptance by Seller of these Terms and Conditions and all the terms and conditions hereof.

2.2 Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of the Order and these Terms and Conditions shall constitute the complete and exclusive statement of the terms and conditions of the contract between the Parties and shall apply to each Deliverable received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer and an authorized representative of Seller.

2.3 If the Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to all such additional and different terms herein and acknowledge that these Terms and Conditions, the Master Agreement and the Order constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of the relevant Order.

2.4 Seller shall comply with all purchasing notes, drawings and Specifications contained, specified and/or referenced in the Order, and with descriptions and Specifications contained in Seller's literature or proposal, to the extent consistent with the Order and beneficial to Buyer.

### **3. PRICE AND PAYMENT**

3.1 Payment terms will be net thirty (30) days, unless other payment terms are expressly authorized on the face of the Order, following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in these Terms and Conditions.

3.2 Seller warrants that at no time will the agreed price for the Deliverables be less favorable than that extended to any other buyer for the same or like Deliverables in similar quantities.

3.3 All invoices must be sent to Buyer's Accounts Payable Department and, if conveyed by mail, in duplicates including detailed description of each invoice. If the Deliverables of an Order are delivered to multiple receiving locations, each delivery shall be packaged and invoiced separately. Each

invoice must contain the following information: Purchase order number, Buyer's item numbers and Seller's if different, Buyer's description of items and Seller's if different, quantities, unit prices, discounts, if applicable, total prices before and after discounts, and taxes. Any discount will be taken on the total invoiced amount unless taxes, freight, or other charges are itemized. Payments of invoices shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of the Order and these Terms and Conditions. Buyer and its Affiliates may withhold, deduct and/or set off all money due, or which may become due to Seller arising out of Seller's performance under an Order or any other transaction with Buyer and its Affiliates.

3.4 Buyer shall not be obligated to pay for any Deliverable if the invoice for such Deliverable is received more than twelve (12) months after the receipt of the Deliverable or the Delivery Date specified in the Order or Change Order.

### **4. TAXES**

4.1 Unless otherwise stated in the Order, all payments, prices, fixed or otherwise, sums, payments, fees and monetary amounts mentioned in the Order are exclusive of any and all sales and use taxes, value added taxes, goods and services taxes, taxes levied upon importation, such as customs duties, excises, or any other taxes ("Taxes") levied in regard of any of the transactions covered by the Order.

4.2 When invoicing, Seller shall (a) include amounts of Taxes, or specific fees Seller is required by applicable law to add-on to the sales price and collect from Buyer or otherwise is legally due from Buyer and (b) separately state each of the Taxes or specific fees. Seller shall only invoice Buyer for, and Buyer is only responsible for paying to Seller, such Taxes or specific fees Seller is required by applicable law to add-on to the sales price and collect from Buyer or otherwise legally due from Buyer. Seller warrants that invoices issued in relation to Goods and Services supplied under the Order and these Terms and Conditions are in compliance with any and all requirements as to content and format imposed by tax and/or civil statute that has jurisdiction over the transaction or transactions performed by the Seller.

4.3 Seller is solely responsible for the fulfillments of Seller's obligations under law or statute in respect to collecting and remitting Taxes collected from Buyer under the Order and these Terms and Conditions to the proper tax authority. Any penalties, fees or interest charges imposed by a tax authority or other authority as the result of nonpayment of Taxes collected by Seller from Buyer will be borne by Seller. Seller

shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.

4.4 Seller shall not collect Taxes on the supply of Goods and Services under the order and these Terms and Conditions in case and under circumstances where (a) the transaction is not subject to Taxes, (b) the liability for payment of Taxes is shifted or reversed by law or statute or otherwise is the legal responsibility of the Buyer, or (c) Buyer has been authorized to pay Taxes directly to the appropriate Tax authority. Buyer is not responsible for any tax based on Seller's income, payroll or gross receipts. If Seller receives a refund of any Taxes attributable to Buyer, Seller shall pay such amount to Buyer within thirty (30) days of receipt. Seller shall indemnify Buyer against any and all losses, costs, and expenses (including reasonable attorneys' fees) which result from Seller's violation of its obligations under this section.

4.5 Seller shall deliver electronically by way of the Internet all software of any type, including manuals. Seller shall separately itemize the prices of electronically delivered software, licenses, fees and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the internet."

4.6 Buyer shall withhold any portion of the monies from the amount payable under the invoices issued to it to account for any withholding for taxes that is required to be made by the Buyer pursuant to the tax laws in the relevant tax jurisdiction. Any such amount required to be withheld by the Buyer on behalf of the Seller shall be deemed a payment on account of the relevant invoices issued to the Buyer. Buyer shall provide Seller with receipts supporting any taxes withheld.

4.7 Where Seller possesses Buyer-owned property, Seller shall obtain Buyer's written approval prior to any disposal or movement of such property. Seller shall report and remit any property related Taxes relating to property for which Seller retains title pursuant to the Order, accruing prior to and after the commencement of the Order.

4.8 Seller shall, upon receipt from any Tax Authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing directed to: Finance Manager, Clean Energy, 4675 MacArthur Court, Suite 800, Newport Beach, CA 92660. Seller shall cooperate in the equitable resolution of disputes pertaining to any Taxes arising from the Order. If Buyer may directly contest any Taxes in its own name, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Seller shall in good faith, as requested by Buyer, contest the Taxes. Seller shall

supply Buyer with information and documents as Buyer may reasonably request for Buyer to control or participate in any proceeding to the extent permitted herein.

## **5. DELIVERY**

5.1 Seller shall furnish the items called for by the Order, the Master Agreement and these Terms and Conditions in accordance with the delivery terms stated on the Order and if delivery dates are not stated, Seller shall offer Buyer its best delivery dates, subject to written acceptance by Buyer ("Delivery Dates"). Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Buyer may defer payment or return at Seller's expense, any Deliverables delivered in advance of the scheduled Delivery Date, following the Delivery Date or in excess of the quantity specified for such items. Buyer may without liability, at least five (5) days prior to the scheduled Delivery Date appearing on the Order or the Delivery Date subsequently agreed between Buyer and Seller, defer delivery of any or every Deliverable under said Order by giving oral or written notice to Seller.

5.2 Unless otherwise expressly set forth in the Order, the delivery terms for Deliverables shall be: DDP Buyer's facility (Incoterms® 2010). Seller shall be responsible for unloading of the Deliverables in accordance with Buyer's instructions and the risk of unloading will be that of Seller. As consistent with this delivery term, standard delivery instructions of the relevant procurement department apply and may be obtained through the relevant Buyer procurement representative. Title shall pass to Buyer when Deliverables are unloaded at Buyer's facility, as provided in this section. If delivery is required to be made to a third party (drop shipment), title and risk of loss shall pass to Buyer when delivered and unloaded at the consignee's facility.

5.3 Whenever there is an actual delay or threat to delay the timely performance of the Order, Seller shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

5.4 Seller shall give Buyer immediate written notice of any plans for the permanent discontinuance of production of items covered by Orders, provided however that compliance with this provision shall in no way relieve the Seller from its obligations under the Order.

5.5 Seller shall not charge separately for packaging, packing or boxing, unless Buyer has agreed to such charges in writing. Seller shall not combine in the same package, material that is to be delivered to different receiving locations. Seller shall include an itemized packing slip with all shipments that will adequately identify the Deliverables shipped, including Buyer part number, item description, and applicable purchase order number. Packaging and preservation must be adequate to protect parts and materials subjected to normal handling and environmental exposure during shipment. Containers, whether of wood, cardboard, plastic or other material, must be of sufficient rated strength for the weight and type of goods being shipped. Filler material is to be used within containers when shifting of materials within the container could cause damage to materials. Exterior strapping shall be used when parts, products, material or machinery is of such a size or weight that packaging is impractical. Shipments which require special handling because materials are of a fragile nature, require only an upright position, or present hazards to safety shall be so marked. Desiccants and preservatives shall only be used in accordance with material handling procedures accepted by the industry. No pricing information shall be included in any shipping document or on the surface of any item, including but not limited to the Deliverables shipped and any packaging material.

5.6 Unless otherwise agreed in writing, exterior containers shall be marked with the following: (1) Address of Buyer's receiving site and Seller's shipping location; (2) Order number; (3) Buyer's part number; (4) Special markings called for on the Order; (5) Quantity; and (6) (where applicable) Vendor Code or other vendor identification number. If the Deliverables (including component(s)) are marked with some logo or other insignia of Seller (or other party, e.g. supplier of Seller), the placement and size of the marking shall not be such that it will cause confusion or doubt as to Buyer's status as the source of Buyer's products that incorporate the Deliverables. Should Seller be contacted by another party in regards to the Deliverables incorporated in Buyer's products (due to such marking or otherwise), Seller shall immediately refer such party to Buyer. Additionally, the Deliverables provided hereunder shall not include inaccurate or misleading markings or labels.

5.7 Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is

specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.

5.8 On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, Deliverables shall be shipped in accordance with routing instructions furnished by Buyer. If such instructions are not received, Deliverables shall be shipped via least expensive method sufficient to meet delivery requirements, but always through Buyer approved carriers.

## **6. PRIME CONTRACT REQUIREMENTS**

6.1 When Seller's provision of goods and services hereunder will form a part of the work under a contract that Buyer has with others, Buyer will provide Seller with the obligations required of Buyer under such other contract for these Services and Seller agrees, by its acceptance hereof, to be bound in the same manner and to the same extent that Buyer is bound to its customer. Seller represents that it has examined the drawings and Specifications, and other relevant terms and conditions of such contract (as provided by Buyer) and that it will be bound by such drawings, specifications, terms and conditions.

## **7. INSPECTION; ACCEPTANCE; REJECTION**

7.1 Seller shall only tender Deliverables to Buyer that have passed Seller's quality control tests and inspections in accordance with the applicable quality assurance and inspection systems and that otherwise conform to all requirements of an Order

7.2 All Deliverables may be inspected and tested by Buyer or its designee at Seller's premises or Buyer's facility. If deemed necessary by the Buyer, Seller will provide, without charge, reasonable facilities and assistance for any such inspection and test.

7.3 Buyer may provide written notice of acceptance of the Deliverables to Seller. However, in the absence of Buyer's written acceptance and notwithstanding (i) prior inspection of, (ii) payment for, (iii) use of or (iv) delivery of the Deliverables, acceptance shall not be deemed to occur until twelve (12) months following Buyer's receipt of Deliverables ("Inspection Period"). Transfer of title to Buyer shall not constitute acceptance.

7.4 During the Inspection Period, Buyer may, with respect to any Deliverables that do not conform in any respect to the Order: (i) reject all or a portion of such nonconforming Deliverables; (ii) accept all or a portion of such nonconforming Deliverables with a price reduction for the cost of repair or the diminution of value; or (iii) accept any conforming Deliverables and reject the rest.

7.5 With respect to rejected nonconforming Deliverables, Buyer may at its election and at Seller's risk and expense (i) hold nonconforming Deliverables for Seller, or (ii) return Ex Works, facility where Deliverables are rejected (Incoterms® 2010), nonconforming Deliverables to Seller for, at Buyer's option, either (a) full credit or refund or (b) replacement Deliverables to be received within 24 hours of nonconformity notification. Title to such rejected Deliverables returned to Seller shall transfer to Seller upon such delivery and such Deliverables shall not be replaced by Seller except upon written instruction from Buyer. Deliverables returned to Buyer hereunder shall be shipped at Seller's expense and risk of loss. Seller will be responsible for importation of such returned Deliverables and pay for all customs import fees, duties and taxes. Additionally, rejected nonconforming Deliverables shall not be tendered again to Buyer for acceptance unless permitted by Buyer and applicable law, and accompanied by a disclosure of Buyer's prior rejection(s).

7.6 Notwithstanding any other provision, in addition to the foregoing, Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Deliverables, including but not limited to labor and other costs related to transportation of Deliverables, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

7.7 If the performance of work to fulfill the Order requires Seller to (a) design new parts, (b) develop new specifications, or (c) create new work, assembly, or repair instructions, Seller shall submit to Buyer a written report of Materials Data Sheet and Procedure ("MASP") (as defined by Buyer's design requirements, specifications, or similar requirements provided by Buyer) that are used in the production of, or are in, products that are the subject of the design, development or processing efforts. The MASP Report shall be submitted in the format specified by Buyer prior to Buyer's Preliminary Design Review or at an alternative time determined by Buyer, and shall give full details concerning the intended use of any MASP. Seller shall cooperate with Buyer to consider other substituting materials as discussed at design reviews. Any Deliverables corrected or furnished in replacement are subject to all the provisions of this Section to the same extent as Deliverables initially furnished or originally ordered.

## 8. CHANGE ORDERS

8.1 Buyer's authorized procurement representative may, by a paper or electronic document sent to Seller, unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) shipping, waste reduction or

packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer items, facilities, equipment, or materials, (vii) Prime Contract flow down requirements and/or (viii) quality requirements ("Change(s)"). Seller shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.

8.2 If any Changes under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Order accordingly. Seller must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than fifteen (15) days after Seller's receipt of the Change.

8.3 If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Seller shall diligently proceed with the performance of the Order, as directed by Buyer.

8.4 If Seller considers that Buyer's conduct constitutes a Change, Seller shall notify Buyer's authorized procurement representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Seller shall take no action to implement any such Change without written direction from Buyer's authorized procurement representative.

## 9. WARRANTIES

9.1 Seller warrants to Buyer that all Deliverables provided under the Order shall be and continue to be: (i) merchantable and fit for the purpose intended; (ii) new; (iii) free from defects in material and workmanship; (iv) free from defects in design if the design is not provided by Buyer; (v) manufactured in strict accordance with the Specifications; and (vi) free from liens or encumbrances on title (collectively, for this Section "Warranty").

9.2 Buyer may require Seller to promptly repair or replace, at Buyer's option, any Deliverables which breach the Warranty. Buyer may return ship the Deliverables on the fastest available commercial carrier at Seller's expense and risk of loss. Deliverables returned to Buyer hereunder shall be shipped at Seller's expense and risk of loss and shall be accompanied by notice stating whether they are new replacements or repaired originals, and shall continue to be covered under this warranty. Seller shall conduct intake, review, analysis and any other

activity required to evaluate whether the returned Deliverables are covered by the warranty at no expense to Buyer.

9.3 Notwithstanding any other provision, in addition to the foregoing, Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from Deliverables not conforming to the Warranty, including but not limited to labor and other costs related to transportation of Deliverables, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

## **10. PERMITS AND LICENSES**

10.1 Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing national, state, provincial or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

## **11. ENVIRONMENTAL, HEALTH & SAFETY**

11.1 Any Seller test reports or other test results related to the Deliverables shall be provided to Buyer as set forth in the terms of the Order, or if not specified in the Order terms, upon Buyer's request.

11.2 Seller agrees to: (1) Comply with the applicable national, state, provincial or local environmental, occupational health and/or safety legislation or regulations; (2) Supply to employees and require that all employees wear specified safety equipment, including but not limited to eye protection and foot protection; (3) Adhere to all Buyer's safety requirements and instructions as indicated by Buyer or Buyer's representatives including without limitation, if Seller will be performing Services within Buyer's facilities, the compliance requirements and restrictions applicable to Services performed within Buyer's facilities; (4) Immediately prior to commencement of any work or service, contact a responsible Buyer representative; (5) Submit the Workers' Compensation Board Firm Number to Buyer's safety office; (6) Require its suppliers to agree to the requirements of this section and the section of these terms and Conditions entitled "Compliance with Laws".

11.3 Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably

necessary documentation to verify the material composition, on a substance by substance basis including quantity used of each substance, of any Deliverables ordered by Buyer and/or of any process used to make, assemble, use, maintain or repair any Deliverables ordered by Buyer. Separately and/or alternatively, Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify that any Deliverables ordered by Buyer and/or any process used to make, assemble, use, maintain or repair any Deliverables ordered by Buyer, do not contain particular hazardous substances specified by Buyer.

## **12. SECURITY**

12.1 Should any person acting on Seller's behalf require access to Buyer's facilities or systems, such person shall comply with all instructions, procedures and policies of Buyer, including but not limited to those relating to export control and protection of proprietary information.

## **13. INTELLECTUAL PROPERTY**

13.1 Background Intellectual Property shall mean all Intellectual Property other than Foreground Intellectual Property.

13.2 Foreground Intellectual Property shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.

13.3 Each Party retains its existing rights in Background Intellectual Property.

13.4 Buyer shall own all Foreground Intellectual Property. Seller shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Seller shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Seller hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property. Seller agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Seller to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Proprietary Information (defined hereinafter). Seller agrees that, for any works of authorship created by Seller or any employees or any others used by Seller in the course of the

Order, those works that come under one of the categories of “Works Made for Hire” in 17 U.S.C. §101 shall be considered “Works Made for Hire”. For any works of authorship that do not come under such categories, Seller, warranting that it has the right to do so, hereby assigns all right, title and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer’s expense, any documents required to establish Buyer’s ownership of such copyright.

13.5 Seller represents and warrants that Seller has sufficient rights in all Goods, Services, and Intellectual Property and other items that Seller uses or transfers to Buyer in connection with the Order to allow Seller to lawfully comply with the Order.

13.6 Seller hereby grants to Buyer and Buyer’s Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.

13.7 Seller hereby irrevocably waives all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Deliverables provided to Buyer and in all activities in connection with the Order.

13.8 Seller represents and warrants that Seller shall not provide, in the performance of the Order, any software, (including free software, open source software, freeware, General Public License governed software, or the like), in any form that is subject to any obligations or conditions that could reasonably or arguably provide a legal right to any third party to access such software and/or source code, or that could otherwise impose any limitation or condition on Buyer’s use, reproduction, modification, distribution or conveyance of such software.

13.9 Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Seller a license in or any right to use any of Buyer’s Intellectual Property other than in the performance of work under the Order.

13.10 Seller further warrants that software or computer programs supplied by Seller do not and will not contain any harmful code that is intentionally designed to disrupt, disable, harm, or impede operation, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices

#### **14. BUYER-FURNISHED AND BUYER FUNDED ITEMS**

14.1 All material, including information, required to be furnished to Seller under the Order (“Buyer Furnished Items”) shall be delivered as specified in the Order, or, if not specified, in sufficient time to enable Seller’s timely performance. Buyer shall have no liability to Seller for any delays or failures in the delivery of Buyer Furnished Items. If Buyer Furnished Items are not delivered to Seller in sufficient time to enable Seller to meet Delivery Dates, Seller may notify Buyer of the delay and shall be entitled to an extension of such schedule equal to the period of the delay. Such adjustment shall be Seller’s sole remedy.

14.2 Title to all tooling, test equipment, and material identified as a separate line item under this or any previous Orders, or referred to in any agreement between Buyer and Seller, and fabricated or acquired by Seller (“Buyer Funded Items”) shall vest in Buyer.

14.3 Buyer Furnished Items and Buyer Funded Items (collectively, “Buyer Items”) shall be used only for the purposes of the Order. Seller shall not use Buyer Items on any other order without Buyer’s written permission. Seller shall, at its own expense, (i) establish and follow a preventative maintenance calibration and repair program for, (ii) safely store (separated from other material where practicable), and (iii) maintain all Buyer Items in good, workable condition.

14.4 Title to any Buyer Items shall remain with Buyer. Buyer, in order to protect its interests, may require Seller to execute documents that are related to the Buyer Items, including, Uniform Commercial Code financing statements or any similar documents. Seller shall not substitute any property for or modify Buyer-Furnished Items.

14.5 Upon Buyer’s request, Seller shall provide an annual written inventory of Buyer’s Items, including certification of compliance with this provision and proof of adequate insurance covering full replacement cost of Buyer Items.

14.6 Seller shall, upon discovery, provide notification to Buyer if any Buyer Items are lost, damaged or destroyed. Upon completion or termination of the Order, or at any time upon Buyer’s request, Seller shall, at its own expense, replace, repair, or dispose of Buyer Items in accordance with Buyer’s instructions.

#### **15. PROPRIETARY INFORMATION**

15.1 “Proprietary Information” shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer or (ii)

conceived, created, acquired, or first reduced to practice in connection with the Order. If Buyer furnishes sample products, equipment, or other objects or material to Seller, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with the Order.

15.2 Unless the Seller has received the Buyer's express written consent to the contrary, Seller shall (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.

15.3 Seller may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of the Seller who have a need to know such Proprietary Information for the purposes of the Order and who have executed a written agreement with the Seller obligating such entity or person to treat such information in a manner consistent with the terms of this Section. In any event, Seller shall remain liable for the action or negligence of such entity or person in the use of any Proprietary Information obtained from Seller.

15.4 The Order shall not restrict the Seller from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of the Seller or a third party; (ii) is received by the Seller without restriction as to disclosure by the Seller from a third party having a right to disclose it; (iii) was known to Seller on a non-commercial basis prior to the disclosure by the Buyer; or (iv) was independently developed by employees of the Seller who did not have access to any of Buyer's Proprietary Information.

15.5 If Proprietary Information is required to be disclosed pursuant to judicial process, Seller shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this Section are fulfilled by Seller.

15.6 Buyer shall have the right to audit all pertinent documentation of the Seller, and to make reasonable inspection of the Seller's premises, in order to verify compliance with this Section.

15.7 Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known or generally available through no improper act or omission of the Seller or any third party.

15.8 Unless required otherwise by law or the Order, the Seller shall promptly return, or otherwise dispose of Proprietary Information as the Buyer may direct. Absent contrary instructions, Seller shall destroy all Proprietary Information one (1) year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.

15.9 Notwithstanding any proprietary or confidential labels or markings, all information of Seller disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any of its Affiliates.

15.10 For proprietary information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreement between the Parties.

## **16. GENERAL INDEMNIFICATION**

16.1 Seller shall indemnify and save harmless Buyer, Buyer's insurers and Buyer's affiliates and their employees, agents, officers, and directors for and from all suits, claims, judgments, awards, losses, damages, costs or expenses (including attorneys' fees) relating to or arising out of (a) any act or omission of Seller, or (b) any Goods or Services. Seller's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Seller's employees.

## **17. INFRINGEMENT INDEMNIFICATION**

17.1 Seller shall indemnify and hold harmless Buyer, its Affiliates, subsidiaries, agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, including, but not limited to, improper, false, and/or invalid patent, copyright, and/or trademark markings due to or arising out of or resulting from the manufacture, use, sale or other disposition of any



Goods or Services delivered or performed in connection with the Order (“Claim”).

17.2 Seller shall not be liable for any Claim based on Seller’s compliance with any Specifications created by the Buyer, unless the Specification was derived from, or provided by, Seller.

17.3 Seller shall, upon written notice from Buyer of a Claim, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as the Buyer’s interests are affected, the Buyer shall have the right, at its own expense and without releasing any obligation of the Seller, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Seller. Seller shall not enter into any settlement without Buyer’s prior written consent, which shall not be unreasonably withheld.

17.4 Buyer may supersede Seller in the defense of any Claim, and assume and conduct the defense at Buyer’s sole discretion. In such an event, Seller shall be released from any obligation to pay for attorneys’ fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Seller’s complete cooperation with Buyer in Buyer’s defense of such Claim at Buyer’s expense. Buyer shall not enter into any settlement without Seller’s prior written consent, which shall not be unreasonably withheld.

17.5 If the manufacture, use or sale of the Deliverables is enjoined by a court, if delivery is precluded by a government entity, or should Seller refuse to supply Deliverables to avoid a potential third party claim, Seller shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to use or sell such Deliverables; (ii) modify or replace such Deliverables with equivalent non-infringing Deliverables; or (iii) provide such other solution acceptable to Buyer. Seller shall reimburse Buyer for Buyer’s costs incurred in obtaining all internal, external and Buyer Customer approvals, qualifications, certifications, and the like, necessary for making, using and selling alternate non-infringing Deliverables. Seller shall refund to Buyer the purchase price of any such Deliverables that Buyer is prohibited from using or selling.

## **18. TERMINATION FOR CONVENIENCE**

18.1 Buyer may, at any time, terminate all or any part of the Order, for its convenience upon written notice to Seller. Verbal termination of an Order, or any part thereof, shall be effective when made, but must be confirmed in writing.

18.2 Upon termination, in accordance with Buyer’s written direction, Seller will immediately: (i) cease work and place no further subcontracts or orders for materials, services, or

facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Deliverables; (iii) deliver to Buyer any and all Deliverables completed up to the date of termination at the pre-termination Order price; and (iv) if request by Buyer, deliver any work in-progress.

18.3 In the event Buyer terminates for its convenience after performance has commenced, Buyer will compensate Seller only for the actual and reasonable work-in-progress costs incurred by Seller on Deliverables required to be delivered within the Lead Time period, calculated from the Buyer’s issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average lead time for the Deliverables in accordance with Buyer data. Seller shall use reasonable efforts to mitigate its own and Buyer’s liability under this Section. In order to receive compensation, Seller’s termination claim must be submitted within ninety (90) days from the effective date of the termination.

18.4 Buyer shall not be liable to Seller for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.

## **19. TERMINATION FOR DEFAULT**

19.1 Buyer may, by written notice, terminate the Order or any portion thereof, for default without any liability or obligation whatsoever to Seller for the portion terminated, in the following circumstances: (i) Seller fails to perform any obligation hereunder, including a delivery obligation; (ii) when Buyer has reasonable grounds for insecurity, and Seller fails to provide adequate assurances of performance within ten (10) days following Buyer’s demand therefore; or, (iii) should Seller (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition.

19.2 Buyer shall have no liability in relation to those Deliverables terminated for Seller’s default. Seller shall be liable to Buyer for any and all expenses, costs, and damages including increased procurement costs, requalification costs, and other non-recurring costs, except in the circumstances of any failure or delay constituting an “Excusable Delay” as set forth in the Section herein entitled “Force Majeure”.

19.3 If the Order is entirely or partially terminated under this Section, Buyer, in addition to any other rights Buyer may

have, may require Seller, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Seller in performing the Order; (ii) deliver the tooling and test equipment necessary to make or have made the Deliverables and provide technical and transition assistance; and (iii) provide to Buyer a worldwide, non-exclusive, paid-up, irrevocable, license, with the right to grant sublicenses, to Seller's information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary, to enable Buyer to make, have made, use, sell and license the Deliverables.

19.4 If, after notice of termination under this Section, it is determined that Seller was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience Section. In such case, Seller shall not be entitled to any remedy other than as provided for in the Termination for Convenience Section.

## **20. ADDITIONAL TERMINATION PROVISIONS**

20.1 To avoid excessive stocks of fabricated parts in the event of a reduction or termination of the Order, Seller shall manufacture only sufficiently in advance of the schedule associated with the Order to meet the deliveries required by such schedule, unless expressly permitted to exceed that schedule by Buyer.

20.2 Seller agrees it is responsible for its own raw material supplies and Buyer shall not be billed for such supplies upon the cancellation of this Order or any other reasons.

20.3 Any settlement claim by Seller in connection with Buyer's termination for convenience shall be subject to the Master Agreement and these Terms and Conditions.

## **21. ASSIGNMENT**

21.1 Any assignment by Seller of the Order, in whole or in part, without Buyer's prior written consent shall be null and void, and shall constitute a material breach of the Order.

## **22. COMPLIANCE WITH LAWS**

22.1 Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations applicable to the Order, including (i) the manufacture or provisioning of Deliverables, (ii) the shipping of Deliverables and (iii) the configuration or content of Deliverables for the use intended by Buyer.

22.2 Without limiting the generality of the foregoing, Seller shall comply with all applicable national, state, provincial and local laws, ordinances, rules and regulations relating to providing, or attempting to provide, or offering to provide any kickback (as defined in the Anti-Kickback Act of 1986, the Foreign Corrupt Practices Act or any other applicable national, state or local laws regarding kickbacks or commercial bribery).

22.3 Seller has not and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer by influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

## **23. PUBLICITY**

23.1 Seller shall not make or authorize any news release, advertisement, or other disclosure, including any release of photographs, which shall deny or confirm the existence of an Order or which shall make use of Buyer's name, products or logo without the prior written consent of Buyer, except as may be reasonably required to perform the Order.

## **24. INSURANCE**

24.1 These insurance provisions shall apply unless otherwise expressly stated on the face of the Order. Without limiting Seller's duty to defend, hold harmless and indemnify hereunder, Seller agrees to secure and carry as a minimum during the entire term of any Order, the following insurance: (a) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; (b) Commercial General Liability Insurance including Premises and Products and Completed Operations, and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence, unless some other amount is agreed to in writing; (c) If Seller vehicles are used on Buyer's premises and/or used to accomplish work under an Order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence; (d) If Seller or its subcontractors have Buyer's materials or equipment in its care, custody or control, Seller shall maintain

All Risk Property Insurance in an amount sufficient to meet or exceed the value of such material; and (e) If Seller is performing professional services on behalf of Buyer, Seller shall maintain Professional Liability Insurance with a limit of not less than \$5,000,000, unless some other amount is agreed to in writing.

24.2 All such insurance shall be issued by companies authorized to do business under the laws of the State or jurisdiction in which all or part of the Services are to be performed and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.

24.3 The insurance coverage described above shall be in a form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least ten (10) days' prior notice to Buyer. All such insurance policies will be primary and noncontributory in the event of a loss arising out of Seller's performance of work and shall provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carrier by Buyer. Certificates evidencing such insurance and endorsements naming Buyer as an additional insured or, in the case of All Risk Property Insurance, naming Buyer as loss payees, shall be filed with Buyer before commencement of any work hereunder, and within thirty (30) days after any renewals or changes to such policies are issued. To the extent permitted by law, Seller and its insurer(s) agree that subrogation rights against Buyer are hereby waived; such waiver shall be reflected on the insurance certificate. Seller shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention.

24.4 The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Seller, its employees, invitees or agents under any Order and that such insurance shall not be invalidated by any act or neglect of Seller whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.

24.5 Seller agrees to insert the applicable substance of this provision in all major subcontracts entered into by Seller to support work performed under the Order.

## **25. AUDIT RIGHTS**

25.1 Seller shall maintain complete inspection records for all Deliverables which shall be available to Buyer during

performance of an Order and until the later of: (i) four (4) years following the end of life of the product, (ii) final resolution of any dispute involving the Deliverables delivered hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable laws and regulations, or (v) as otherwise directed by Buyer.

## **26. FORCE MAJEURE**

26.1 Seller shall be liable for any failure or delay in performance in connection with the Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Seller gives Buyer, within three (3) days of Seller's learning of such cause, written notice to the effect that a failure or delay by Seller will occur or has occurred (an "Excusable Delay"). If a failure or delay in performance is caused by an event affecting any of Seller's suppliers, such failure or delay shall not be excusable unless such event is an Excusable Delay as defined above and the good or service to be provided by such supplier is not obtainable by Seller from other sources in time for timely delivery of the Deliverables to Buyer. If requested by Buyer, the Parties shall jointly prepare a contingency plan to address the potential impact of any such event.

## **27. DISPUTE RESOLUTION; GOVERNING LAW**

27.1 Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under an Order, that Party must provide the other with a written request for dispute resolution. Each Party shall, within ten (10) calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within thirty (30) calendar days of receipt of the request, vice presidents of each Party shall attempt to resolve the issue within sixty (60) calendar days of receipt of such written request. Either party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors. Each party shall continue performing its obligations under the Order pending resolution of the dispute. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in these Terms and Conditions.

27.2 These Terms and Conditions shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the State of Delaware, USA without regard to conflicts of law

principles. Services shall be deemed to be Goods for the purposes of this paragraph (i.e., the application of governing law). Buyer may, but is not obligated to, bring any action or claim relating to or arising out of these Terms and Conditions in the appropriate court in the State of California, and Seller hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. Notwithstanding the foregoing, if Buyer in good faith determines that enforcement of a judgment granted by a California court would not be given full faith and credit by a court in a jurisdiction where enforcement may be sought, Buyer may bring the action in that jurisdiction under Delaware law.

27.3 Any action or claim by Seller with respect hereto shall also be brought in the appropriate court in the jurisdiction described above, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. If Buyer and Seller mutually agree to participate in alternative dispute resolution, Seller agrees that all alternative dispute resolution proceedings shall take place in California.

## **28. ORDER OF PRECEDENCE**

28.1 If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following descending order: (i) the face sheets of the Order including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to these Terms and Conditions that specifically reference the Section being modified; (ii) the Master Agreement, and (iii) these Terms and Conditions.

## **29. SUBCONTRACTING**

29.1 Any subcontracting by Seller of all or substantially all of its responsibilities or obligations hereunder, without Buyer's prior written consent, shall be wholly void, invalid and totally ineffective for all purposes. In the case of any subcontracting or approved delegation of any of its responsibilities or obligations hereunder, Seller shall perform all supply management activities that are necessary for the on-time delivery of Deliverables conforming to the requirements set forth herein. Seller shall be solely and fully responsible for monitoring said suppliers under all provisions of the applicable subcontracts, and for ensuring that each of its suppliers comply with the requirements set forth herein. Seller shall remain fully liable to Buyer for, and shall be

Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any subcontracting, (ii) Buyer approval of the subcontractors, or (iii) Seller's failure to provide for provisions in the relevant subcontracts that comply in substance with the requirements set forth herein. If Seller fails to pay any subcontractor in a timely manner, Buyer may elect to pay such subcontractor and offset any amount due from Buyer to Seller by the amount paid to such subcontractor.

## **30. MISCELLANEOUS**

30.1 Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to the Order shall excuse the Seller from proceeding.

30.2 Seller shall perform the services required under an Order, the Master Agreement and these Terms and Conditions as an independent contractor and shall have exclusive control and direction of the persons engaged by Seller to perform such services, including, but not limited to, employees of Seller working at Buyer facilities. Seller assumes full responsibility for the acts and omissions of such persons. Seller shall have exclusive liability for the payment of and compliance with regulations pertaining to local, state, and federal or other governmental entity payroll taxes or contributions, and taxes for unemployment insurance, workers' compensation, social security and/or similar or related protection for such persons, as required by applicable law.

30.3 All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Order, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information) and product support obligations shall survive the expiration or termination of this Order.

30.4 No failure of any Party to exercise any right under, or to require compliance with, the Order, or knowledge of past performance at variance with the Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances. Acceptance of any Deliverables or payment therefor shall not waive any breach.

30.5 The rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

30.6 If in any instance any provision of and Order, the Master Agreement or these Terms and Conditions shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable.

30.7 These Terms and Conditions shall be construed as if drafted jointly by the Parties and no provision in these Terms and Conditions shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

30.8 The captions, headings, section numbers, and table of contents appearing in these Terms and Conditions have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of these Terms and Conditions or any provision hereof.

30.9 Seller shall maintain the ability to, and shall, provide product support for the Deliverables, which shall include, without limitation, assuring that subcomponents, spare parts and any other required materials are available, maintenance tooling and other production capability and reengineering components or systems to address obsolescence throughout the life cycle of the Product or until the later of twenty five (25) years after the last Order is placed by Buyer for the Deliverables or less than five (5) end products or software releases incorporating Deliverables are in operation.

[End of Standard Terms and Conditions]