

## INCORPORATED GENERAL PROVISIONS

THESE GENERAL PROVISIONS ("GENERAL PROVISIONS") ARE INCORPORATED BY REFERENCE INTO THE PURCHASE ORDER OR AGREEMENT IN WHICH REFERENCE IS MADE TO THE TERMS HEREOF. WHEN INCORPORATED INTO A PURCHASE ORDER, THESE PROVISIONS MAY ONLY BE MODIFIED BY WRITTENT INSTRUMENT SIGNED BY BUYER'S PURCHASING REPRESENTATIVE.

### I. DEFINITIONS.

The following terms shall have the meaning set forth below:

- 1.1 "Agreement" means each and every purchase order, acceptance, agreement or contract governing the purchase of Goods or Services in respect of which these General Provisions apply.
- 1.2 "Buyer" means (a) for a Purchase Order, the person or entity identified in the upper, left-hand corner of the first page of such Purchase Order, and (b) for an Agreement, the buyer or purchaser identified therein.
- 1.3 "Buyer's Purchasing Representative" means each of the Joseph G. Mansour, Darla J. Nelson and the current Director of Procurements for Accord Interests, LLC.
- 1.4 "Customers" means purchasers and users of Buyer's products or services which incorporate Goods or Services provided pursuant to an Agreement or Order, and may include the U.S. Government, dealers in Buyer's products and users thereof, including affiliates of Buyer.
- 1.5 "Document" means the Agreement, as modified, supplemented and altered by these Incorporated General Provisions.
- 1.6 "Goods" means chattel, goods, items, materials, equipment, supplies, work and the like supplied by Seller.
- 1.7 "Intellectual Property Rights" means United States and worldwide trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, inventions, mask work rights, moral rights, patents, rights of inventorship, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and defamation, rights under unfair competition and unfair trade practices laws, and all other intellectual and industrial property rights related thereto.
- 1.8 "Purchase Order" means the purchase order form issued by Buyer that has incorporated these General Provisions, and includes all specifications, data, instructions and the like that are incorporated by reference, together with all amendments and modifications thereto made in accordance with the provisions of these General Provisions.
- 1.9 "Seller" means (i) the supplier described in the Document, and (ii) supplier's subcontractors described in the Document, provided that such subcontractors must agree to these General Provisions prior to Buyer's issuance of a Document to supplier containing such subcontractors.
- 1.10 "Services" means any services that are rendered or performed by Seller for Buyer pursuant to the Document.

## 2. ACCEPTANCE AND AUTHORITY.

### 2.1 Acceptance of Purchase Order.

The Purchase Order is an offer to purchase from Buyer to Seller, and shall be deemed an offer irrespective of any quotations, proposals or prior communications between Buyer and Seller. These General Provisions constitute a material and integral part of the Purchase Order. Seller shall be deemed to accept a Purchase Order including these General Provisions and all of its terms and conditions when Seller executes and returns the acknowledgement or when Seller commences work on or delivers to Buyer any of the Goods ordered, or renders for Buyer, any of the Services ordered with a Purchase Order. Upon Seller's acceptance of a Purchase Order, these General Provisions shall become the exclusive and binding agreement between Buyer and Seller with respect to the order and sale of any Goods or performance of any Services between Seller and Buyer under such Purchase Order. Any acceptance of the Purchase Order is limited to the acceptance of the express terms contained in the Purchase Order only. Buyer hereby objects to any proposal for additional or different terms or any attempt by Seller to vary in any respect any of the terms of the Purchase Order in Seller's acceptance or in its quotation or by attachment of Seller's terms and conditions, over stamping or by any other means, and Buyer hereby rejects any such additional or different terms; provided, however, such rejection shall not operate as a rejection of the Purchase Order (unless such variances are in the terms of the description, quantity, quality, specification, price or delivery schedule of the Goods) but shall be deemed a material alteration of the Purchase Order, and the Purchase Order shall be deemed accepted by Seller without said additional or different terms. In the event that the Purchase Order shall be deemed to be an acceptance of a prior offer by Seller, such acceptance is expressly conditional on Seller's assent to any additional or different terms contained in the Purchase Order.

### 2.2 Authority.

All matters pertaining to administration of the Document or requiring Buyer's approval shall be referred to, coordinated with and obtained from Buyer's Purchasing Representative. No contractual direction, determination, modification, notice, order, approval or ratification under the Document shall be of any effect unless authorized in writing by Buyer's Purchasing Representative. No oral statement of any person shall in any manner modify, amend, supplement or otherwise affect the terms of the Document. Correspondence relating to the Document shall be directed to Buyer's Purchasing Representative.

### 2.3 Conflicting Provisions.

If any portion of a Document conflicts with the provisions of these General Provisions, then the terms of these General Provisions shall control, notwithstanding anything contained to the contrary in the Document.

## 3. GENERAL TERMS OF PURCHASE.

### 3.1 Packing, Shipping and Risk of Loss.

Seller shall comply with the following packing and shipping requirements. Communications regarding packing and shipping instructions shall be directed to Buyer's Purchasing Representative.

- (a) Unless otherwise specified, all Goods to be delivered under the Document shall without charge be stored, packed and packaged to: (i) insure safe arrival at their ultimate destination; (ii) secure the lowest transportation costs; (iii) comply with requirements of common carriers; and (iv) be clearly marked if items are specially packed for any reason (e.g. climatic exposure, contamination, expiration or end use date, etc.). All Goods that contain hazardous or toxic materials or require special labeling shall be clearly and properly marked and labeled and include the applicable material safety data sheets. Buyer's Purchase Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Shipping memos or packing lists must accompany the Goods. Seller shall identify items delivered to the Purchase Order number and Purchase Order item number by separate packaging and tagging, or by tagging individual items. Bills of lading or shipping receipts shall be sent to Buyer on the date Goods are shipped. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Goods shall be shipped in accordance with Buyer's instructions.
- (b) Shipments will be released in a valuation which will result in the lowest transportation rate. Transportation insurance for loss and damage will not be purchased unless specifically directed. If a shipment is prepaid with transportation charges invoiced to Buyer, a copy of the prepaid transportation invoice must accompany Seller's invoice. Shipments made on the same day and consigned to one destination via the same carrier must be consolidated on one bill of lading.
- (c) Excess costs, damage or loss resulting from Seller's failure to comply with the above packing and shipping requirements will be deducted from Seller's account or otherwise used at Buyer's option to offset Buyer's obligation to Seller.
- (d) If terms of shipment (e.g., F.O.B.) are designated on the face of the Purchase Order or in the Agreement, such terms shall prevail as to risk of loss. Unless otherwise so specified, Seller shall bear the risk of loss of, or damage to, the Goods and Services covered by the Document until delivered to Buyer's facility or to such other place as may be designated in the Document, regardless of the point of inspection. Seller shall also bear the risk of loss of, or damage to, rejected Goods after Buyer's issuance of Buyer's notice of rejection; provided, however, that while the Goods remain on Buyer's premises, Buyer shall bear such risk as to loss or damage caused by the willful or negligent acts of its officers, agents or employees acting within the scope of their employment.

### 3.2 Invoices.

Unless otherwise specified by Buyer in the Document, upon shipment of the Goods or completion of the Services ordered or as otherwise specified in the Document, Seller shall render an invoice to Buyer, attention: accounts payable, at the address shown on the face of the Document, and may be delivered by email or through physical copy. The invoices shall reference the applicable Purchase Order, and shall identify the amounts invoiced to the Document items shipped or affected along with the item number, release number, quantity and pack shipment number, as applicable.

### 3.3 Payment.

Unless otherwise specified by Buyer in the Document, Buyer shall be obligated, upon the receipt of Seller's proper invoices and receipt of Goods and Services conforming to the Document, to pay the prices set forth in the Document for Goods delivered and accepted or Services rendered and accepted, reduced by adjustments for shortages, rejections, or other provisions of the Document. Such payments shall be

made on Buyer's normal days of payment. Payment, however, shall not constitute acceptance of the Goods or Services. The date for cash discounts shall commence on the date the Goods or Services are received, or the date of the receipt of a proper invoice, whichever is later. Freight and other charges must be separately shown if cash discount is not to be taken on the full amount of invoice.

### 3.4 Price.

Buyer shall not be billed at prices per item higher than stated on the Document unless authorized in writing by Buyer. Seller warrants that the price charged for the Goods and Services covered by the Document do not exceed the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in the Document and that prices comply with applicable government laws and regulations in effect at the time of quotation, sale and delivery. Seller agrees that Buyer will receive the benefit of any price reductions made on Goods or Services covered by the Document subsequent to the placement of the Document but prior to shipment or the rendering of Services.

### 3.5 Delivery.

- (a) TIME IS OF THE ESSENCE AND ALL DELIVERIES OF GOODS AND SERVICES SHALL BE MADE IN STRICT ACCORDANCE WITH THE DELIVERY SCHEDULE SET OUT OR REFERRED TO IN THE DOCUMENT OR IN ANY REVISIONS THERETO ISSUED BY BUYER. If at any time during the performance of the Document, Seller expects that it will not be able to deliver the Goods or Services ordered in accordance with the Document delivery schedule, regardless of cause, Seller shall promptly notify Buyer of the anticipated delay in delivery, the reason therefor and Seller's recommendation for an alternative course of action. If Seller so notifies Buyer or if Seller's deliveries fail to meet delivery schedules or if it reasonably appears to Buyer that Seller is not likely to meet the delivery schedules, Seller will, at no additional cost to Buyer, do one or more of the following as Buyer directs: (i) provide expedited or premium means of shipment or service delivery; (ii) use its best efforts to meet the delivery schedules (including, but not limited to, overtime or multiple shifts, expedited materials and component acquisition and additional subcontracting in accordance herewith); and, (iii) provide a work program satisfactory to Buyer showing all activities related thereto, the duration thereof and the dates of all significant events so as to meet the delivery schedule. Seller is aware that Buyer may have contractual commitments to meet delivery dates with its Customers that are dependent upon Seller meeting the delivery schedule set forth in the Document.
- (b) Seller shall not, without Buyer's prior written consent, manufacture any Goods or purchase any components or raw materials in advance of the time reasonably required to comply with Buyer's delivery schedule, as set forth in the applicable Document, based on the time period required by Seller's normal processing or manufacturing process. Seller shall not, without Buyer's prior written consent, deliver any Goods in advance of Buyer's delivery schedule, as set forth in the Document. In any event, invoices covering such advance Goods will not be paid, unless otherwise agreed in writing, until their normal maturity after the date specified for delivery. Except as otherwise specifically provided in the Document, Buyer shall not be obligated to accept untimely, excess, under or partial delivery of Services or shipments and such shipments may, in whole or in part, at Buyer's option, be returned to Seller shipping charges collect or held for disposition at Seller's risk and expense.

### 3.6 Changes.

- (a) Buyer may at any time, by written order or revision, and without notice to sureties, if any, make changes within the general scope of the Document including but not limited to any one or more of the following: (i) drawings, or specifications when the Goods to be furnished are to be specially manufactured for Buyer in accordance with the drawings, designs or specifications; (ii) method of shipment or packing or delivery of Services; (iii) place of inspection, delivery or acceptance; (iv) reasonable changes in quantity; (v) reasonable changes in delivery schedules; (vi) temporary suspension of work; and (vii) the amount, nature, or condition of Buyer-furnished property. Upon receipt of Buyer's written order or revision, Seller shall immediately comply with the change detailed in such written order or revision.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Document, Buyer shall make an equitable adjustment in the price or delivery schedule or both, and shall revise the Document in writing accordingly. Seller may submit in writing any proposal for adjustment (hereafter referred to as "proposal") resulting from any such changes. Seller's proposal shall be submitted to Buyer within 3 business days after the date of Buyer's written change order or revision. Seller's failure to deliver a proposal within such period shall be deemed to be Seller's approval of such changes without change in price or delivery schedule. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the Document. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of disposition of any such property.
- (c) Failure to agree to any equitable adjustment on a proposal timely made shall be a dispute and Seller may thereupon pursue any remedy which it may have in accordance herewith. Pending the resolution of any negotiation or dispute, Seller shall diligently pursue the performance of the Document as changed. Seller shall not have any rights to terminate performance of the Document. There shall be no adjustment in the price or time for performance under the Document unless Buyer's Purchasing Representative shall have directed a change to the Document by the issuance of a written change order or revision to the Document.

### 3.7 Inspection.

- (a) As used in this clause, "Goods" includes, but is not limited to, Goods, raw materials, components, intermediate assemblies, end products, Services and delivery lots of Goods, at whatever stage of work or manufacture, to be provided by Seller under the Document.
- (b) Notwithstanding any other provisions of this Clause, all Goods purchased under the Document and Services delivered pursuant to the Document are subject to final inspection and approval at the final destination, notwithstanding any prior inspection or approval. Buyer reserves the right to reject and refuse acceptance of Goods and Services not in accordance with the Document or the instructions, specifications, data, drawings and Seller's warranty set forth in Clause 3.9. The method of inspection may be total or by sampling at the sole discretion of Buyer who may return all shipments containing defective Goods, or treat as incomplete the delivery of Services. Goods not accepted will be returned at Seller's expense, and Seller will refund any payments that it may have received from Buyer including original shipment expenses. Payment for any Goods or Services hereunder shall not constitute acceptance thereof. Buyer's failure to inspect and accept or reject the Goods or Services shall

not relieve Seller from responsibility for nonconforming Goods and Services, and shall not constitute or be construed to be a waiver of Buyer's rights or remedies with respect to defective and nonconforming Goods and Services.

- (c) Seller shall provide and maintain an inspection system acceptable to Buyer, but in any event sufficient to detect defects in the Goods and Services, and shall tender to Buyer for acceptance only Goods and Services that have been inspected in accordance with such requirements. Records evidencing such procedures and inspections shall be made available for Buyer's review during performance of the Document and for a minimum of two years thereafter. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with the Document. These reviews and evaluations shall be conducted in a manner that will not unduly delay the work under the Document.
- (d) Buyer and its Customers have the right to inspect and test all Goods and Services to the extent practicable, at the source and at all places and times, including the period of manufacture or the point of Service delivery. If Buyer performs inspections and tests on the premises of Seller or a subcontractor, Seller shall furnish, and shall require subcontractors to furnish, all reasonable facilities and assistance for the safe and convenient performance thereof without additional charge.
- (e) Buyer has the right either to reject or to require correction and proof of correction of nonconforming Goods and Services. Goods and Services are nonconforming when such Goods and Services are defective in material, workmanship, design or are otherwise not in conformity with the applicable specification or Document requirements or do not conform with the level of competent delivery generally accepted in Seller's industry. Buyer may reject nonconforming Goods or Services with or without disposition instructions.
- (f) Inspections and tests by Buyer do not relieve Seller of responsibility for defects, nonconforming Goods or Service, or other failures to meet Document requirements. Buyer shall have no duty to make any inspection or inquiry and shall not incur any liability or obligation by not making any such inspection or inquiry. This clause shall not affect any of the rights or liabilities of the parties under Clauses 3.9 or 3.10.

### 3.8 Specification and Configuration Control.

- (a) Seller agrees to supply to Buyer all Goods and Services in the quantities listed, in conformance with all Document requirements, including applicable Customers', Buyer's or other specifications or drawings incorporated or specified in the Document. The required test and inspection reports and data resulting from Seller's compliance with applicable Document requirements and specifications shall be kept on file at Seller's facility and made available for review by Buyer at any reasonable time. Seller shall not make any changes in the design of any Goods, as set forth in the specifications or drawings incorporated or specified in the applicable Document, or in the delivery of Service as described in the Document, without Buyer's prior written approval.
- (b) Seller agrees that if a part, drawing or specification control document is referenced in the Document, it will immediately upon receipt thereof, advise and obtain the written consent of Buyer's Purchasing Representative to any change in or to: (i) the design, configuration, or performance characteristics of the Goods or Services identified in said document; and (ii) the materials or manufacturing processes utilized in the production of such Goods. Changes to

be reported include those which may have been made subsequent to the date of publication of any descriptive catalogs, bulletins, data sheets, etc., referenced in the control document.

### 3.9 Warranty.

- (a) Seller hereby warrants that all Goods furnished under, and Services rendered pursuant to, the Document, including any results of Services, will (i) be free from defects in material, workmanship, and design, (ii) will fulfill the intended purpose, and operate without error and conform to the applicable Document and specifications, drawings, samples and descriptions, (iii) will be merchantable and be fit for the intended use identified or reasonably inferred from all circumstances, and (iv) be free and clear of all liens, claims, encumbrances and other restrictions (collectively "Goods Warranty").
- (c) Seller warrants that all Services furnished under the Document will (i) be provided in a professional manner, (ii) be performed by appropriately knowledgeable and skilled personnel, (iii) conform to the standards generally observed in the industry for similar services, and (iv) be provided in a manner that does not infringe or misappropriate any third party's Intellectual Property Rights.
- (c) The Goods Warranty shall: (i) extend to Buyer and its Customers, and (ii) remain in effect for twenty-four (24) months from date of receipt by Buyer or twelve (12) months from date of Customer'(s) first commercial use of Buyer's products which incorporate the Goods and Services, whichever period shall last expire ("Warranty Period"). In no event shall the Warranty Period extend beyond that allowed under the Uniform Commercial Code. This warranty shall be considered a condition of the Document as well as a warranty. Seller shall also be responsible to Buyer and its Customers for any additional warranties or guarantees stated or referenced elsewhere in the Document. During the Warranty Period, Seller shall, at its sole cost, immediately take all actions necessary to correct defects, errors or any other failure that cause a breach of the Goods Warranty, including but not limited to replacing any component or part thereof causing such breach.

### 3.10 Indemnification.

Seller shall defend, indemnify and hold harmless Buyer against all damages, claims, liabilities, losses and other expenses, including without limitation reasonable attorneys' fees and costs, whether or not a lawsuit or other proceeding is filed, that arise out of (a) any defect in the Goods or Services purchased under the Document, (b) any negligent act or omission of Seller, its agents, or subcontractors, (c) any defect in the manufacturing of any Goods and/or delivery of Services, (d) Seller's failure to fully conform to all laws, ordinances, rules and regulations which affect the Goods, Services and work to be supplied and performed under the Document, (e) inaccurate, erroneous or incomplete NAFTA Certifications, country of origin information, or export control classification numbers supplied to Buyer for Goods furnished under this Document, or (f) damage to any tools, materials and other Goods furnished by Buyer to Seller pursuant to Section 4.7(a), below or to any dies, tools, equipment and patterns acquired by Seller, pursuant to Section 4.7(b), below. This indemnification shall be in addition to any warranty obligations of Seller. If Seller fails to promptly indemnify and defend such claims and pay Buyer's expenses, as provided above, Buyer shall have the right to defend itself, and in that case, Seller shall reimburse Buyer for all of its reasonable attorneys' fees, costs and damages incurred in settling or defending such claims within thirty (30) days of each of Buyer's written requests.

### 3.11 Laws and Regulations.

Seller's performance shall conform to all laws, ordinances, rules and regulations which affect the Goods, Services and work to be supplied and performed under the Document. Seller hereby certifies its compliance with the Fair Labor Standards Act of 1938, as amended, in the performance of the Document and that the Goods supplied and Services performed comply, to the extent applicable, with the Occupational Safety and Health Act of 1970, all applicable state laws, and all similar or related federal, state or local acts, regulations or codes. Seller agrees to indemnify, defend and hold Buyer harmless from and against all fines, penalties, claims and losses arising from or related to any failure of Seller and the Goods and Services to conform to all such laws, ordinances, rules and regulations. Seller also agrees, at its expense, to replace, repair and correct such nonconforming Goods and Services so that they do so conform.

### 3.12 Hazardous Material Requirement.

Seller shall provide a current Material Safety Data Sheet ("MSDS") for all hazardous materials shipped to Buyer under the Document. The MSDS shall be in such form as required by the OSHA Hazard Communication Standard. Seller shall forward any MSDS directly to Buyer by mail or facsimile to Buyer's Authorized Representative unless another address is provided for this purpose.

### 3.13 NAFTA Certificates and Export Regulations Requirements.

- (a) The Goods covered by this Document may be further shipped to Canada or Mexico. At the commencement of the Document, and on an annual basis thereafter as long as Goods are being delivered to Buyer under this Document, Seller shall supply Buyer with NAFTA Certifications and country of origin information for all Goods furnished under this Document, and shall promptly notify Buyer of any changes in such information. Seller warrants that all NAFTA Certifications and country of origin information for all Goods furnished under this Document shall be accurate and complete in all respects. Such information shall be supplied in such form and in the manner as Buyer may reasonably require. Seller's acceptance of, or performance under, a Document shall constitute Seller's affirmation that no change has occurred since Seller's last notification.
- (b) The Products covered by this Document may be resold or incorporated into Buyer's products to be shipped to a destination outside of the United States. The Commerce Control List of the United States Bureau of Industry and Security designates export control classification numbers ("ECCNs") for certain products, technology and software that may be exported from the United States. Seller shall furnish Buyer with the applicable ECCNs for all Goods and technical data supplied under this Document. Seller warrants that all ECCNs furnished to Buyer shall be accurate and complete in all respects. Seller shall cooperate with Buyer and shall furnish such further information and documentation relating to Seller's Goods and technical data as Buyer may reasonably require, which information and documentation shall be in such form and delivered in such manner as Buyer may reasonably require.

## 4. PROPRIETARY RIGHTS, RESERVATIONS AND BUYER MATERIALS.

### 4.1 Proprietary Information.

In its preparation for or performance of this Document, Seller may receive or become exposed to Buyer's proprietary information, including but not limited to designs, specifications, instructions, forecasts, trade secrets, data or "know how" pertaining to the Goods or Services covered by this Document or Seller's



performance of this Document (collectively "Proprietary Information") Additionally, Seller may develop, solely or jointly with Buyer, written, graphic and machine readable designs, specifications, data or any other information pertaining to the Goods covered by this Document or Seller's performance of this Document, which is deemed commissioned at Buyer's request and direction and shall be considered a "work-made-for-hire" under the copyright laws of the United States and Proprietary Information. Proprietary Information shall not include information that (a) is already known by Seller prior to the disclosure by Buyer; (b) is or becomes available to the general public through no act or fault of Seller; or (c) is rightfully disclosed to Seller by a third party not under a similar obligation to maintain the information in confidence. If Seller wishes to rely on the exceptions contained in clauses (a), (b) or (c) above, then Seller must demonstrate to Seller the facts underlying why the exception applies within thirty (30) days of receipt of the Proprietary Information from Buyer.

#### 4.2 Confidentiality.

Seller agrees to maintain the confidentiality of all Proprietary Information, and specifically agrees (a) to take all actions reasonably necessary under the circumstances to maintain the confidentiality of the Proprietary Information; (b) to use Proprietary Information only in Seller's preparation for or performance of this Document; (c) to limit access to Proprietary Information to only those employees within Seller's company who have a need to know, and inform these employees of the provisions of this clause; (d) to conspicuously mark all documents and electronic files containing Proprietary Information as confidential and the property of Buyer; (e) not to copy documents or electronic files that include Proprietary Information, or allow them to be copied, except as required for Seller's efficient performance of this Document; (f) not to use Proprietary Information for the benefit of any person or entity other than Buyer; and (g) not to transmit or disclose Proprietary Information to others without the prior written consent of Buyer's Purchasing Representative.

#### 4.3 Ownership.

Buyer retains all right, title and interest to all Proprietary Information, and to all modifications and derivative works thereof and to all Intellectual Property Rights related thereto. Seller further acknowledges that (a) such Proprietary Information includes valuable trade secrets of Buyer, (b) inventions reflected in Proprietary Information may be protected under pending or issued patents owned by Buyer, and (c) particular expressions of such Proprietary Information may be protected under copyrights owned by Buyer. Seller's receipt of Proprietary Information in connection with its performance of this Document shall not be deemed an assignment of or license under Buyer's rights in such information, inventions and works of authorship. Any Seller use of Proprietary Information shall inure to Buyer's exclusive benefit.

#### 4.4 Unauthorized Disclosure.

Seller shall notify Buyer immediately upon discovery of any unauthorized use or disclosure of Proprietary Information, and shall fully cooperate with Buyer to help regain possession of Proprietary Information and prevent any future unauthorized use or disclosure of Proprietary Information.

#### 4.5 Return of Proprietary Information.

Upon termination of the Document, or at any earlier time as Buyer may request, Seller shall return **all** documents and electronic files containing Proprietary Information to Buyer, and shall retain no notes on, or copies or abstracts of, Proprietary Information.

#### 4.6 Inventions; Works for Hire.

Unless otherwise specified in the Document,

- (a) Seller shall disclose promptly to Buyer's Purchasing Representative all ideas, conceptions, know-how, inventions, improvements, devices, methods, products, processes and discoveries, whether patentable or not subject to patent, and whether written, graphic and machine readable, that arise out of Seller's performance of the Document or its use of Proprietary Information (any of the foregoing referred to as an "Invention").
- (b) Services, all works of authorship arising therefrom, including Inventions ("Works"), and all written, graphic and machine readable materials, documentation, designs, models, drawings, inventions, know-how, software code and tools, algorithms, libraries, routines, deliverables and other items created or produced by Seller hereunder (collectively "Related Materials") are commissioned at Buyer's request and direction and shall be considered a "work-made-for-hire" under the copyright laws of the United States. To the extent the Services, Works and Related Materials are not considered a "work-made-for-hire," then in exchange for valuable consideration, the receipt and sufficiency are hereby acknowledged by Seller, Seller hereby irrevocably assigns and transfers to Buyer all right, title and interest worldwide in and to the Services, Works and Related Materials, whether or not patentable or copyrighted, made or conceived or reduced to practice, and to **all** modifications and derivative works thereof and to all Intellectual Property Rights related thereto.
- (c) Seller, on behalf of itself and any of its employees who perform any work hereunder, if any, hereby irrevocably waives any right to assert any moral rights against Buyer or any third party with respect to the Services, Work, Related Materials, any modifications or derivative works thereof, and to any Intellectual Property Rights related thereto.
- (d) Buyer shall have the sole and exclusive right to use, for any purpose, all data to be delivered under the Document.
- (e) Seller and its employees shall enter into such further assignments to Buyer of the Services, Work, Related Materials and the Intellectual Property Rights related thereto as is reasonably necessary to protect Buyer's rights therein and agrees to cooperate with Buyer in the enforcement of such rights.

#### 4.7 Materials and Tools.

- (a) Buyer retains title to all tools, materials and other Goods furnished by Buyer to Seller for use in making the Goods or performing the Services under the Document. All such items shall be used solely in the performance of work ordered by Buyer, shall be subject at all times to disposition as Buyer may direct, shall be properly identified as Buyer's property, shall not be commingled with property of Seller or others and, upon demand, termination, or completion of the Document shall be delivered to Buyer in the same condition as when received, reasonable wear and tear excepted. Seller agrees to maintain inventory control, as approved by Buyer, of all such items and to furnish inventories thereof. Buyer does not guarantee the accuracy of any tooling or other quality or suitability of any such item furnished.
- (b) If the Document price includes the cost of any dies, tools, equipment and patterns acquired by Seller for the purpose of fulfilling the Document, such dies, tools, equipment and patterns shall become the property of Buyer and, to the extent feasible, shall be properly identified by

Seller as such. Upon demand or when the Document has been completed or terminated, such tools shall be delivered to Buyer or disposed of as Buyer may direct.

- (d) Seller assumes complete liability for and will keep free and clear of all liens and encumbrances, any Buyer-owned and Customer-owned Goods, equipment, materials, tools, patterns or articles furnished by Buyer to Seller in connection with the Document, and Seller agrees to pay Buyer for such items spoiled, damaged or not otherwise accounted for to Buyer's satisfaction.

#### 4.8 Seller's Design.

- (a) Seller warrants that all Goods, Works, Related Materials and physical manifestations of all Services shall not rely, be based upon, or infringe upon any other material, or will violate or infringe upon any Intellectual Property Right of any third party, including, but not limited to rights relating to patents, trademarks, copyrights and trade secrets.
- (b) Seller hereby indemnifies and will defend and hold Buyer harmless against all damages, claims, liabilities, losses and other expenses, including without limitation reasonable attorneys' fees and costs, whether or not a lawsuit or other proceeding is filed, that arise out of any claim against Buyer alleging that Goods, Works, Related Materials, and manifestations of Services by themselves or as incorporated in Buyer's products infringe or misappropriate any third party's Intellectual Property Rights, except for any claims where the sole basis for the alleged infringement or misappropriation arises from Seller's compliance with a specific Buyer design or technical specification which gives rise to such claim. If Seller fails to promptly indemnify and defend such claims and pay Buyer's expenses, as provided above, Buyer shall have the right to defend itself and shall have the right to withhold any further payments due to Seller under all Documents, and in that case, Seller shall reimburse Buyer for all of its reasonable attorneys' fees, costs and damages incurred in settling or defending such claims within thirty (30) days of each of Buyer's written requests. Should the Goods, Works, Related Materials, or physical manifestation of Services or any part thereof, become or be likely to become the subject of any infringement claim for which Seller is obligated to indemnify Buyer above, then in addition to its indemnity obligations herein, Seller shall also, without additional cost to Buyer, (a) procure for Buyer the right to continue using such Goods, Works, Related Materials and physical manifestations of Service without liability of any kind; (b) modify the Goods, Works, Related Materials and physical manifestations of Service so that they are not infringing without loss of functionality or increased costs of use, operation or maintenance and to otherwise permit Buyer to fully enjoy the rights purchased hereunder at the levels enjoyed by Buyer, including any economic benefit, prior to such injunction or restriction; and (c) replace the infringing portions of the Goods, Works, and Related Materials with non-infringing substitutes without loss of functionality or increased costs of use, operation or maintenance and to otherwise permit Buyer to fully enjoy the rights purchased hereunder at the levels enjoyed by Buyer, including any economic benefit, prior to such injunction or restriction. If a temporary restraining order, preliminary injunction or similar order or judgment is entered in litigation or arbitration, and Seller is unable to promptly effectuate a remedy as provided in the preceding sentence, Buyer shall have the right to modify the Goods, Works, Related Materials and physical manifestations of Service and defend or settle the infringement claims on its own behalf. In such case, Seller shall pay all of Buyer's development and modification costs, attorney's fees, costs and damages within thirty (30) days of each of Buyer's written requests. In addition, upon the commencement of any litigation or other proceeding regarding such infringement or violation of Intellectual Property Rights, Buyer shall be entitled to withhold all further payments due to Seller under

all Documents and such payments will only resume when Buyer's use is restored to the level enjoyed by Buyer prior to the injunction or restriction and following full recoupment from amounts of any Buyer's costs and damages under this Section.

- (c) All technical information disclosed heretofore or hereafter by Seller to Buyer in connection with the Document is on a non-confidential basis. Seller agrees to not (i) disclose to Buyer or any of its employees information in confidence belonging to Seller or a third party; or (ii) knowingly in the performance of the Services for Buyer produce anything that embodies information under confidential restriction, or is covered by a patent, patent application, copyright, trade secret, or other Intellectual Property Right owned by any person or company other than Buyer. Seller hereby grants Buyer and its subsidiaries a paid-up, unrestricted license under any copyright for any work of authorship fixed in any tangible medium of expression (including, without limitation, drawings, prints, manuals and specifications) furnished under the Document

#### 4.9 Enforcement.

Buyer and Seller agree that Buyer will be irreparably harmed and money damages would be inadequate compensation in the event Seller breaches any provision of this Section 4. Accordingly, all of the provisions of this Section 4 shall be specifically enforceable by injunctive and other relief against Seller, in addition to any other remedies available to Buyer.

#### 4.10 Survival.

The obligations arising under this Section 4 shall survive the cancellation, termination or completion of this Document.

### 5. TERMINATION, DEFAULT AND DISPUTES.

#### 5.1 Termination for Convenience.

- (a) Buyer may, at its sole option, terminate the Document in whole or in part, for its convenience, by written notice to Seller. Upon such termination Seller shall immediately stop work under the Document, or the terminated portion thereof, and shall place no further orders or incur no further cost chargeable to Buyer as to the terminated portions thereof except, however, as to necessary action and costs to protect property in Seller's possession in which Buyer has or may acquire an interest. Unless otherwise specified on the face of the Document, to the extent not previously paid, Seller shall be entitled to the following payments, without duplication, in full settlement: (i) the order price for Goods completed and accepted by Buyer and Services rendered and accepted by Buyer; (ii) the actual costs incurred by Seller which are properly allocable or apportioned under standard United States generally accepted accounting practices, to the terminated portion of this order; (iii) reasonable expenses, if any, of Seller in making settlement under Seller's suborders and subcontracts, if any, but not including damages or loss of profit claims in either case; and (iv) such allowance for profit on work performed as may be reasonable under the circumstances; less any amounts obtained as the result of mitigation efforts as described below. Payments under this Clause 5.1 shall in no event exceed the applicable pro rata price of the portion of the Document terminated less payments already made thereon. Seller will transfer title to and deliver on Buyer's instructions any property, materials and Goods and Services, the costs of which are reimbursed hereunder.

- (b) Seller will use its best efforts to mitigate such termination charges as directed or authorized by Buyer, including and without limitation, (i) efforts to sell the Goods or materials and (ii) by using or returning to inventory, at cost, all items of the type carried in inventory by Seller or which are useable by Seller, and so credit Buyer therefor.

## 5.2 Default and Cancellation.

- (a) Each of the following shall constitute a default under the Document and Buyer reserves the right to cancel, at no cost to Buyer, all or any part of this Document if (i) Seller fails to make progress as to endanger performance of the Document and does not cure such failure within a period of ten business days (or such longer period as Buyer may in writing authorize) after receipt of notice from Buyer specifying such failure, or (ii) Seller does not make deliveries as provided in the Document, or (iii) if Seller breaches any of the terms of the Document, or (iv) in the event of the happening of any of the following: insolvency of Seller; filing of a voluntary or involuntary petition in bankruptcy which is not vacated within 30 days from date of filing; the appointment of a receiver or trustee for Seller; the execution of an assignment for the benefit of creditors or the execution of a composition with creditors of any agreement of like import.
- (b) If Buyer cancels the Document in whole or in part, it may acquire, under the terms, delivery schedules and in the manner Buyer considers appropriate, Goods and Services similar to those canceled and in accordance with the delivery schedule in the Document, and Seller will be liable to Buyer for any excess costs for those Goods and Services. However, Seller shall continue to perform any portion of the Document not canceled.
- (c) If the Document is canceled for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods; and (ii) partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the canceled portion of the Document. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customers have an interest. Buyer shall pay the Document price for completed Goods and Services delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted, which under no circumstance shall exceed Seller's direct cost for such manufacturing materials. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders or from excess costs Buyer may incur in completing the Goods or obtaining substitute Goods and Services from others or claims Buyer may have against Seller.
- (d) If, after cancellation, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been made pursuant to Clause 5.1.
- (e) To the extent permitted by, and subject to the mandatory requirements of applicable law, each and every right, power and remedy herein specifically given to Buyer or otherwise in the Document shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such Document as may be

deemed expedient by Buyer, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy.

### 5.3 Disputes and Governing Law.

- (a) In the event there arises between the parties hereto a dispute arising out of or relating to the Document, or the breach thereof, or regarding the application of interpretation of any provision of the Document, including disputes regarded as such by only one of the parties, the aggrieved party shall promptly notify in writing the other party of the dispute within ten (10) calendar days after such dispute arises. If the parties shall have failed to resolve the dispute within fourteen (14) calendar days after delivery of such notice, each party shall, within five (5) days thereafter, nominate a senior officer of its management to meet at Buyer's offices in Austin, Texas, or at any other mutually agreed location, to resolve the dispute. If the parties be unable to resolve the dispute to their mutual satisfaction within sixty (60) calendar days from the date of the original notice, each party shall have the right to enforce any and all rights available to it, pursuant to this Section 5.3.
- (b) Any controversy, dispute or claim arising out of or relating to the Document shall be finally settled by arbitration in Austin, Texas in accordance with the then current Commercial Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any Court having jurisdiction thereof. Arbitrators shall be attorneys who have practiced law for at least fifteen years specializing in either general commercial litigation or general corporate or commercial matters. Each party to the arbitration shall be entitled to discovery as permitted by Texas rules of civil procedure, as such may be amended from time to time. This provision shall not preclude the joining of one of the parties hereto by the other in an action brought by a third party and all matters with respect thereto shall be decided by the court or body deciding that action.
- (c) Notwithstanding clause (b) above, if either party discloses, uses or allows others to use proprietary or trade secret information in breach of the Document, the aggrieved party may take and pursue any and all actions and remedies, including injunctive relief and damages with respect thereto in any court of competent jurisdiction, and not by way of arbitration.
- (d) The Document shall be governed by, take effect, and be construed according to the laws from time to time in force in the jurisdiction where final delivery of the Goods and Services are to be made; provided, however, if the Goods and Services are to be delivered outside the United States, then the Document shall be governed by and construed in accordance with the laws of the State of Texas in the United States, as applicable to agreements among residents made and to be performed entirely within the State of Texas.
- (e) For any matter or claim to be considered by a court hereunder, the parties consent to the exclusive jurisdiction of the courts of the United States and the State of Texas, and any subdivision thereof located within the City of Austin. Any injunctions, orders or judgments entered, issued, granted or resulting from any arbitration hereunder or from any courts having jurisdiction hereunder shall be enforceable within any state or country wherein lie the offices and assets of Seller. The non-prevailing party shall indemnify the prevailing party for any costs, expense and attorneys' fees incurred by the prevailing party in enforcing the Document.

### 6. MISCELLANEOUS.

#### 6.1 Independent Contractor.

Nothing in the Document shall be deemed to cause Seller or any of Seller's employees or agents to be the agent, representative or employee of Buyer or its Customers. Seller is and shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that Seller is in compliance with the terms of the Document. Anything in this Document which may appear to give Buyer the right to direct Seller as to the details of the performance of the work or Services or to exercise a measure of control over Seller shall only mean that Seller shall follow the desires of Buyer in the results of the Services or Goods rendered.

#### 6.2 Advertising.

Seller shall not, without first obtaining the express written consent of Buyer, in any manner advertise or publish the fact that Seller has supplied or contracted to supply to Buyer the Goods or Services mentioned in the Document. The obligations under this clause shall survive the cancellation, termination or completion of this Document.

#### 6.3 Assignment and Subcontracting.

**SELLER MAY NOT ASSIGN OR SUBCONTRACT THE DOCUMENT, OR ANY PORTION THEREOF, WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER.** The term "subcontract" as used in this clause means a contract for the purchase of an item or items to Seller's specifications, designs, or drawings. The term does not include the purchase of standard commercial supplies or raw materials.

#### 6.4 Right to Audit.

Buyer may inspect, copy and shall have access to, at all reasonable times during the performance of the Document and for five (5) years after the final delivery of Goods or Services pursuant to the Document, all of Seller's and its subcontractors, books, records, receipts, vouchers, correspondence, instructions and the like pertaining to the Document and Goods and Services provided, for the purpose of and as are reasonably necessary to audit and to verify that the charges presented and the Goods and Services supplied by Seller are in accordance with the Document and for any other reasonable purpose. To verify price data, upon Buyer's request, Seller shall furnish to Buyer cost breakdowns, invoices, and related support material. Any inspection or audit shall be paid for by Buyer. If the inspection or audit shows that Seller has charged Buyer an amount in excess of the amount provided in the Document by three percent (3%) or more for any given period, then Seller shall pay to Buyer within fifteen (15) calendar days after receipt of the inspection or audit report, the amount equal to the overcharge, plus interest thereon at the rate of seven percent (7%) per annum from the original of Buyer's payment of the over charges to the date of payment, and shall also pay the actual cost of such inspection or audit, including without limitation Buyer's reasonable attorneys' fees, reasonable accountant's fees and other reasonable costs.

#### 6.5 Non-waiver by Buyer.

The failure of Buyer to insist, in any one or more instances, upon strict performance of any of the terms of the Document, or to exercise any rights therein conferred, shall not be construed as a waiver or relinquishment to any extent of Buyer's right to assert or rely upon any such terms or rights on any future occasion.

#### 6.6 Notice.

Any notification which Seller may have to issue to Buyer pursuant to the terms of this Document must be in writing and addressed to Buyer's Authorized Representative at the address that appears on the Document or the email address set forth in the Document. Otherwise, such attempted or purported notice shall be void and of no effect for any purposes whatsoever. Any notification to Seller shall be in writing and addressed to Seller at Seller's address number that appears on the Document or the email address that appears on the Document. All notices shall be sent by U.S. Mail, nationally recognized courier Service requiring a written receipt thereof, or by electronic transmission with verified receipt, and shall be effective upon receipt; provided, however, that notices sent by electronic transmission and received after 4:00 p.m. local time at the point of receipt or on a holiday or weekend shall be deemed received the next working day following the date of actual receipt.

#### 6.7 Survival and Construction.

The terms, provisions, representations and warranties contained in the Document shall survive the delivery and acceptance of the Goods, provision of the Services and any payment made under the Document and shall be binding upon the successors and assigns of each party. Headings and captions herein are merely for convenience and are not part of the Document and shall not in any way affect or modify the provisions of this Document.

#### 6.8 Entire Agreement and Modification.

The Document includes the Purchase Order or Agreement, as the case may be, these General provisions and all documents referred to in the Document. The Document excludes any different terms or conditions proposed by Seller or any attempt by Seller to vary in any respect any of the terms of the Purchase Order, Agreement or these General Provisions, regardless of whether such terms are included in Seller's acceptance of a purchase order or in its quotation provided prior to or after the issuance of a Purchase Order or an Agreement, or by attachment of Seller's terms and conditions. Seller shall be deemed to have accepted the Document without any such excluded terms and conditions if Seller shall fulfill any Goods or Services set forth on the Purchase Order without have first obtained an amendment to the terms and conditions by written instrument signed by Buyers Purchasing Representative. The Document constitutes the entire agreement between Buyer and Seller and supersedes any and all prior and contemporaneous agreements relating to the subject matter of the Document. No other person has the authority to commit Buyer in any way or to authorize changes, additions or deviations to this Document.

#### 6.9 Attorney's Fees.

If a dispute arises regarding any Document, including without limitation these General Provisions, the prevailing party shall be entitled to its reasonable attorney's fees and expenses incurred in addition to any other relief to which it is entitled.

#### 6.10 Severability.

If any provision of these General provisions, or part thereof, is declared by a court of competent jurisdiction to be invalid, void or unenforceable, each and every other provision, or part thereof, shall nevertheless continue in full force and effect.

### 7. WORK ON BUYER'S PREMISES.

If the Document requires that Seller perform any work or Services on Buyer's premises or to render professional services, this clause shall apply.



## 7.1 Insurance Coverage.

- (a) Buyer shall not insure nor be responsible for any loss or damage to property of any kind owned or leased by Seller (including any subcontractor), its employees, servants or agents.
- (b) Seller will indemnify, defend, and hold harmless Buyer, its constituent equity holders, parent, affiliated and subsidiary entities; its officers; employees and agents, from and against any and all claims and demands of any nature whatsoever including costs, litigation expenses, counsel fees, and liabilities incurred in connection therewith, arising out of injury to, or death of, any person whatsoever or damage to property of any kind by whomever owned, caused in whole or in part by the acts or omissions of Seller, any of its members, employees, agents, or other persons directly or indirectly employed by or associated with Seller.
- (c) Seller and its subcontractors, if any, at their sole costs, shall maintain insurance coverage throughout the entire term of this Document as described below with insurance companies acceptable to Buyer. The limits set forth are minimum limits and shall not be construed to limit Seller's liability. All costs and deductible amounts shall be for the sole account of Seller or its subcontractors. All policies required by Buyer pursuant to this Document (or otherwise) shall name Buyer as an additional insured (per ISO Endorsement #CG2026 or its equivalent) and waive subrogation rights in favor of Buyer, except policies providing statutory Worker's Compensation and Professional Liability (if required) coverage. All policies shall also be designated as primary coverage to any similar coverage carried by Buyer.
- (d) Seller shall not commence work or provide supplies or Services under this Document until all insurance as required hereunder has been obtained, and certified copies of such insurance policies or certificates of insurance have been submitted to and accepted by Buyer.
- (e) All policies shall contain provisions that provide at least thirty (30) days written notice of any cancellation, non-renewal, or reduction in coverage to Buyer. Seller shall deliver Certificates of insurance in a form satisfactory to Buyer evidencing the existence of insurance required above.
- (f) Any policy of insurance as respects work to be performed under this Document and submitted by Seller must be acceptable to Buyer. Insurers must have a minimum rating of "A VII" (A 7) as evaluated by the most current A.M. Best Rating Guide. If the insurer has a rating of less than A VII, Seller must receive specific written approval from Buyers Purchasing Representative prior to proceeding.
- (f) Each insurance policy required by this Document shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days written notice by certified mail, return receipt requested, has been given to Buyer.
- (g) The required coverage shall be: (i) Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law; with a minimum limit of \$1,000,000 per occurrence or limits set by applicable law, whichever is greater; (ii) Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, contractual liability coverage of indemnitees contained in the Document (if applicable) and Seller's contingent liability for subcontractors with a combined

- single limit of liability of \$1,000,000 per occurrence for bodily injury or death and property damage; (iii) Business Automobile Liability Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of \$1,000,000 for each occurrence for bodily injury and property damage.
- (h) Umbrella/Excess Liability Insurance (Occurrence Coverage) will be required in excess of items (i) through (iii) above, depending upon the type of work performed or Service provided.
  - (i) If the scope of work under this Document includes design or engineering or other professional Services, Seller shall maintain Errors or Omissions Liability policy limits of not less than \$1,000,000.
  - (j) Seller must provide a minimum limit of \$2,000,000 per occurrence for Commercial General Liability (CGL) and Business Automobile Liability (BAL), or they may provide \$1,000,000 per occurrence coverage for CGL and BAL, with umbrella/excess coverage of \$1,000,000 per occurrence.

## 7.2 Drugs or Alcohol Prohibited.

It is Buyer's policy that: (i) possession, use, purchase, sale, transfer or being under the influence of drugs or alcohol on Buyer's premises is prohibited; (ii) entry on Buyer's property constitutes consent to an inspection of the person and his or her personal effects while entering on or leaving Buyer's property; and (iii) any person who is found to be in violation of this policy or who refuses to permit an inspection may be escorted and barred from Buyer's property at Buyer's discretion. Seller warrants that it and its employees, agents and subcontractors will abide by the said policy at **all** times while on Buyer's premises.

## 7.3 Compliance with Buyer's Rules.

Seller agrees that, while its personnel are on Buyer's premises, they will abide by all of Buyer's rules of conduct, safety standards and practices governing behavior of Buyer's employees. Seller acknowledges its responsibility to obtain and make known as required to its employees all such rules, standards, and practices.