

## **FORMATION OF CONTRACT AND KEY TERMS**

### **1. Acceptance of Contract**

These Terms and Conditions constitute the Contract, and acceptance is strictly limited to its terms and conditions. Additional or differing terms or conditions proposed by Seller shall have no effect unless accepted in writing by Buyer. This Contract and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of this Contract between Buyer and Seller and supersede all prior representations, understandings, and communications relating hereto. Agreement by Seller to furnish the goods or services subject to these terms and conditions, or Seller's commencement of such performance or acceptance of payment shall constitute acceptance by Seller of this Contract. Such acceptance creates a binding contract.

### **2. Price**

This Contract's price is Firm Fixed Price, unless indicated to the contrary elsewhere in this Contract. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.

### **3. Schedule and Delivery; Notice of Delay**

- (a) Seller shall strictly adhere to all Contract schedules.
- (b) Time is and shall remain a material element of this Contract. No acts of Buyer, including without limitation modifications of this Contract or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return, at Seller's risk and expense, shipments made in excess of this Contracts or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.
- (c) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

### **4. New Materials**

The goods to be delivered hereunder shall consist of new materials, not used or reconditioned, unless authorized in writing elsewhere in this Contract.

## **DELIVERY AND ACCEPTANCE OR REJECTION**

### **5. Packaging and Shipping**

- (a) Seller shall prepare and package the goods to prevent damage or deterioration and shall use best commercial practice for packing and packaging of items to be delivered under this Contract, unless otherwise specified herein.
- (b) Unless otherwise directed, all items shipped in one day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this Contract or any authorized changes thereto.

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(c) Freight shipments are to be routed via Contract instructions or as authorized by Buyer. Seller will request prior routing instructions for delicate equipment, emergency shipments or shipments exceeding 10,000 pounds gross weight.

(d) Seller shall at all times comply with: (i) all applicable DOT, FAA or other transportation regulations; and (ii) Buyer's written shipping instructions. Seller shall submit two (2) copies of each packing sheet with the shipment.

(e) The Contract number(s) must appear on all correspondence, invoice, shipping labels, and shipping documents, including all packing sheets, bills of lading and airbills.

### **6. Inspection and Acceptance**

(a) Buyer's acceptance of goods or services shall be subject to Buyer's final inspection within sixty (60) days after receipt at destination, notwithstanding any payment or prior test or inspection. Final acceptance shall be at Buyer's facility or such other place as may be designated in writing by Buyer's materiel representative. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the Contract.

(b) Seller and its suppliers shall establish and maintain a quality control and inspection program as required by the quality control requirements of this Contract. Any changes, deviations or waivers from the requirements of the Contract shall have the prior written approval of the Buyer.

(c) Subject to applicable national security regulations, Buyer and Buyer's representatives shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supplier's premises where any part of the work is being performed. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer's representatives in the performance of their duties.

(d) In order to ensure that the equipment satisfies the program requirements and to demonstrate compliance with applicable technical specifications, Seller and Seller's suppliers shall perform factory tests as required by the Contract and the Buyer or Buyer's customers may witness such tests and review the test data. Seller shall give Buyer advanced notice as is reasonably necessary to allow Buyer to witness any required test. The work set forth in the Contract is subject to inspections and monitoring in accordance with the requirements of this Contract and the quality program set forth at the Seller's or Seller's supplier's facility and may be performed by the Buyer or Buyer's representative at their sole discretion. Inspection by the Buyer or Buyer's representative shall not relieve the Seller from responsibility for any omission, defect, fault or other failure to meet the requirements of the Contract. If any item is found to be defective in material, workmanship, or otherwise not in conformance with the requirements of this Contract, the Buyer shall have the right to reject such defective item(s) or require its prompt correction at Seller's expense.

(e) Seller shall keep and maintain proper and adequate inspection, test and related records, which shall be available for inspection by the Buyer or Buyer's representative and shall allow copies to be made and extracts to be taken and shall furnish all information which may be required by the Buyer or Buyer's representative.

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(f) Seller agrees that all static-sensitive electrical and electronic parts, assemblies and equipment shall be handled and protected to effectively prevent damage from electrostatic discharge using an Electrostatic Discharge (ESD) control system which encompasses protected areas, handling procedures, protective covering, quality precautions, audit and review, training of employees, and packing and packaging for delivery.

### **7. Rejection**

If Seller delivers nonconforming goods or services, Buyer may, at its option and Seller's expense: (i) return the goods for refund or credit; (ii) require Seller to promptly correct or replace the goods or services; (iii) correct the nonconformance; or (iv) obtain conforming goods or services from another source. Seller shall specify the reason for any return or rejection of nonconforming goods or services and/or shall describe the action taken. Seller shall be liable for any increase in costs, including procurement costs, attributable to Buyer's rejection of the nonconforming goods or services.

## **PRICING AND PAYMENT**

### **8. Furnished Property**

(a) Buyer may furnish Seller property owned by either Buyer or its customer and required by Seller for the performance of work under this Contract, or have Seller acquire property for Buyer on its customer's account (hereafter referred to as "Furnished Property"). This may include, without limitation, tools, equipment or material of every description, and any replacement thereof or any material affixed or attached hereto.

(b) Title to Furnished Property shall not vest in Seller. Seller shall cause all Furnished Property to be clearly marked (if not so marked) to show that it is the property of Buyer or its customer.

(c) Furnished Property shall be used only for the performance of this Contract unless otherwise directed by the Buyer.

(d) Seller shall, in accordance with sound industrial practice and without additional charge to Buyer, maintain in operating condition, repair, protect and preserve Furnished Property until disposed of by Seller in accordance with Buyer's written instructions.

(e) Seller assumes the risk of, and shall be responsible for any loss of or damage to Furnished Property in Seller's possession except for reasonable wear and tear resulting from performance of this Contract.

(f) Buyer, and its customer where the Furnished Property is customer owned or financed, shall at all reasonable times have access to the premises wherein any Furnished Property is located.

(g) Upon completion of this Contract, Seller shall submit, in a form acceptable to Buyer, inventory schedules covering all items of Furnished Property not consumed in the performance of this Contract.

### **9. Taxes**

Seller agrees to pay all local, state, and Federal excise, sales, and use taxes when applicable, unless otherwise agreed in writing. All such taxes shall be listed separately on Seller's invoice. Seller shall accept any and all tax exemption certificates.

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### **10. Invoices**

Invoices shall be mailed to Buyer's Accounts Payable Department identified in the Purchase Order when items are shipped. The time for payment shall not commence before Buyer's actual or scheduled receipt, whichever is later, of items at their destination or before performance by Seller in accordance with the requirements of this Contract.

## **PERFORMANCE, CHANGES AND TERMINATION**

### **11. Changes**

(a) By written order, Buyer may from time to time direct changes within the general scope of this contract, in accordance with any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer-furnished property; (vi) time of performance; and (vii) place of performance.

(b) If any such change causes an increase or decrease in the price of this Contract or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse Seller from proceeding immediately with the Contract as changed. Whether made pursuant to this provision or by mutual agreement, changes shall not be binding upon Buyer except when specifically confirmed in writing by a member of Buyer's Authorized Procurement Personnel. Information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless expressly set forth in a written amendment to this Contract.

### **12. Force Majeure**

The following events, and only the following events, shall constitute force majeure under this Contract: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a *Force Majeure* Condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the *Force Majeure* Condition.

### **13. Termination for Convenience**

(a) Buyer may, by notice in writing, direct Seller to terminate this Contract or work under this Contract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination.

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(b) Seller shall immediately stop work and limit costs incurred on the terminated work.

(c) If such termination is for the convenience of the Buyer and is not caused by the Seller's failure to fulfill the requirements, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by the Buyer being determined by negotiation, but in no event exceeding the total price of this Contract.

### **14. Termination for Default**

(a) Buyer may, by written Notice of Default to Seller, terminate this Contract in whole or in part, or, at Buyer's sole discretion, require the Seller to post such finance assurance as Buyer deems reasonably necessary, if the Seller fails to: (i) deliver the goods or to perform the services within the time specified in this Contract or any extension; (ii) make progress, so as to endanger performance of this Contract; or (iii) perform any of the other provisions of this contract; and in either of these latter two circumstances does not cure such failure within ten (10) days, or longer period as Buyer may authorize in writing, after receipt of the Notice from Buyer specifying the failure.

(b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information and contract rights (Materials) as Seller has produced or acquired for the performance of this Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished goods or services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold for Seller monies otherwise due Seller for completed goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said goods and Materials.

(c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Contract.

## **WARRANTIES**

### **15. Product Warranty**

Seller warrants the materials delivered or services rendered on this Contract conform to all specifications, descriptions, drawings and other requirements of this Contract, will be free from defects in workmanship and materials, will be fit and suitable for their intended purpose and, to the extent not manufactured pursuant to detailed designs furnished by Buyer, to be free from defects in

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design. These rights of Buyer are in addition to and shall not be limited by Seller's standard warranties. For services or for products manufactured or modified by Seller, the warranty shall extend for the manufacturer's standard warranty period or for one (1) year, whichever is longer. For all other goods, the warranty shall extend for the manufacturer's standard warranty period or for six (6) months, whichever is longer. These warranties shall survive final acceptance and payment notwithstanding UCC 2-601 and 2-608.

### **16. Intellectual Property Warranty**

Seller warrants that the sale, use, or incorporation into manufactured goods and Materials of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trade mark, or other proprietary rights.

### **17. Extension to Buyer's Customers**

All warranties furnished pursuant to this Contract extend not only to Buyer but also to Buyer's customers.

## **COMPLIANCE WITH LAW AND BUSINESS ETHICS**

### **18. Compliance with Law**

(a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder; and such compliance shall be a material requirement on this Contract.

(b) Seller shall control the dissemination of and access to technical data, information and other items received under this Contract in accordance with U.S. export control laws and regulations, and shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses (including reasonable attorneys' fees) that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations of Seller.

(c) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the goods and containing such information as required by the Occupational Safety and Health Act and regulations.

### **19. Ethical Standards of Conduct**

Seller shall neither receive nor give any gifts or gratuities in connection with this Contract. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall not participate in any unethical conduct during performance of this Contract. Seller shall not engage in any personal, business, or investment activity that may be defined as a conflict of interest, whether real or perceived. If at any time Buyer determines that Seller is in violation of this requirement, Buyer may cancel this Contract upon written notice to Seller and Buyer shall have no further obligation to Seller.

## **INTELLECTUAL PROPERTY AND PROPRIETARY INFORMATION**

### **20. Release Of Information**

Seller shall not publish any information developed under this Contract, nor disclose, confirm, or deny any details about the existence or subject matter of this Contract, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.

### **21. Proprietary Rights**

(a) All Specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer without any restrictive rights on a non-proprietary basis. Further, Seller warrants that the sale, use, or incorporation of all machines, parts, components, services, devices, material and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any patent, copyright, trade mark or any other proprietary right.

(b) All Specifications, information, data, drawings, software and other items which are: (i) supplied to Seller by Buyer; or (ii) obtained by Seller and paid for by Buyer during the performance of this Contract shall be treated as proprietary to Buyer by Seller and shall not be disclosed to any third party without Buyer's express written consent. Seller agrees not to use any such furnished information except to perform this Contract.

### **22. Intellectual Property**

(a) Any invention or intellectual property first made or conceived by Seller in the performance of this Contract or which is derived from the use of information supplied by Buyer shall be considered to be the property of the Buyer of which Seller shall execute all necessary documents to perfect Buyer's title thereto.

(b) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, in connection with products or work being performed for Buyer, an irrevocable, non-exclusive, paid-up worldwide license under any patents, copyrights, industrial designs or mask works (whether domestic or foreign) owned or controlled by Seller at any time.

(c) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, in connection with products or work being performed for Buyer, a perpetual, non-exclusive, paid-up worldwide license to reproduce, distribute copies of, perform publicly, display publicly, or make derivative works from any software included in or provided with goods or services under this Contract (Software Documentation) as reasonably required by Buyer in connection with Buyer's testing or use of the good or service.

## **INDEMNIFICATION, INSURANCE, DISPUTES AND REMEDIES**

### **23. Indemnification**

(a) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of the warranties contained in this Contract.

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(b) Seller shall defend, indemnify and hold Buyer harmless for any and all violations of United States import/export laws and regulations of the United States resulting either directly or indirectly from Seller's acts or omissions

(c) Seller shall defend, indemnify and hold harmless Buyer and/or its customers from and against any claims, suits, actions, awards, liabilities, costs, damages and attorneys' fees and costs related to actual or alleged infringement of any intellectual property right arising out of the manufacturing, use or sale of Seller's goods or services by Buyer or its customers. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for the Buyer and its customer the right to use and sell said item, or shall substitute an equivalent item acceptable to Buyer and extend this indemnity thereto. The provisions of this paragraph will not apply to the extent that the infringement is due to Seller's compliance with formal specifications or design furnished by Buyer.

(d) Seller shall defend, indemnify, and hold harmless Buyer and Buyer's directors, officers, employees, and agents from any personal injury or property damage claim, suit, action, expense, loss, or damage whatsoever, including but not limited to such claims, etc., under strict liability or products liability, together with attorney's fees, arising out of or in any way connected with Seller's (or Seller's agents, employees, or subcontractors): (i) performance or failure to perform this Contract; or (ii) breach of any of the provisions of this Contract. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Contract.

(e) Seller shall without limitation as to time, defend, indemnify and save Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

### **24. Insurance**

Seller shall maintain the following insurance in at least the minimum amounts stated:

(a) General Liability, Property Damage, Employer's Liability	\$1 million
(b) Worker's Compensation Insurance	Statutory
(c) Motor Vehicle Liability	\$1million

Seller shall arrange a waiver of subrogation, shall name Buyer as an additional insured under each of the above policies and shall provide to Buyer, within fifteen (15) days of Buyer issuance of this Contract, a Certificate of Insurance evidencing compliance with this section.

### **25. Disputes**

All disputes relative to this Contract shall be settled in accordance with the laws of the State of New York without resort to said state's Conflict of Law rules. Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of this Contract and in accordance with all the Terms and Conditions contained herein and with the Buyer's direction thereof. Buyer and Seller shall each bear its own costs of processing any dispute hereunder.



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### **26. Set-off and Additional Remedies**

In the event Seller is liable to Buyer for any amounts pursuant to this Contract, Buyer may, at its election, set-off against any amounts payable to Seller under this Contract. The rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.

## **OTHER PROVISIONS**

### **27. Assignments and Subcontracting**

(a) Neither this Contract nor any interest herein nor claim hereunder may be transferred, novated, assigned or delegated by Seller; nor may all or substantially all of this Contract be further subcontracted by Seller without the prior written consent of Buyer. No consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

(b) Notwithstanding the above, Seller may, without Buyer's consent, assign monies due or to become due hereunder provided Buyer shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the Contract without notice to or consent of the assignee. Buyer shall be given notice of any assignment. Amounts so assigned shall continue to be subject to any of Buyer's rights to setoff or recoupment under this contract or at law.

(c) Buyer may assign this Contract to any affiliated company, any successor in interest, or Buyer's customer.

### **28. Government Contracts**

For Contracts placed in support of and charged to a U.S. Government Contract, the following clauses set forth in the Federal Acquisition Regulation (FAR) or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of the Prime Contract are incorporated therein by reference. In all clauses listed therein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under the Contract, supplement 1 and 2, as applicable.

### **29. Order of Precedence**

Any inconsistencies in this Contract shall be resolved in accordance with the following order of precedence: (1) Any typed provisions of terms of the Purchase Order specifically modifying this Contract; (2) these General Terms and Conditions; (3) the provisions of Supplements 1 and 2; (4) the Purchase Order; and (5) the Statement of Work.

### **30. Independent Contractor Status**

Seller is, and shall remain, an independent contractor during the performance of this Contract, and shall be responsible for all damages and related costs relating to such performance.

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**31. Communication with Buyer's Customer**

Buyer shall be solely responsible for any and all communication with Buyer's customer, and Seller shall not communicate with Buyer's customer regarding this Contract or any related contract without Buyer's express written consent.

**32. Survival**

All of the provisions of this Contract shall survive the termination (whether for convenience or cause), suspension or completion of this Contract unless they are clearly intended to apply only during the term of this Contract.