
TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE (THESE “**TERMS AND CONDITIONS**”) SHALL APPLY TO ALL QUOTATIONS, ORDER FORMS, PROPOSALS, PURCHASE ORDERS AND OTHER ORDERS (EACH, AN “**ORDER**”) MADE BY ANY PERSON OR ENTITY (COLLECTIVELY WITH ITS AFFILIATES AND SUBSIDIARIES, “**PURCHASER**”) WITH PROCESS INSIGHTS INTERMEDIATE, INC., A DELAWARE CORPORATION, OR ANY OF ITS DIRECT OR INDIRECT SUBSIDIARIES (COLLECTIVELY, “**SELLER**”). BY PLACING AN ORDER, PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT THESE TERMS AND CONDITIONS SUPERSEDE AND REPLACE ANY TERMS AND CONDITIONS ATTACHED TO PURCHASER’S ORDER AND SELLER’S ACCEPTANCE OF ANY ORDER IS EXPRESSLY CONDITIONED UPON PURCHASER’S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

NO ORDER SHALL BE DEEMED ACCEPTED BY SELLER UNTIL RECEIPT AND ACCEPTANCE BY PURCHASER OF A VALID AND LEGALLY BINDING PURCHASE CONFIRMATION OR ACKNOWLEDGMENT FROM SELLER CONCERNING THE GOOD OR SERVICES IDENTIFIED IN THE ORDER; PROVIDED, HOWEVER, THAT NO TERMS OR CONDITIONS, WHETHER PRIOR TO, CONTEMPORANEOUS WITH OR SUBSEQUENT TO THE ACCEPTANCE OF AN ORDER, THAT ARE IN ADDITION TO OR INCONSISTENT WITH THESE TERMS AND CONDITIONS SHALL BE BINDING ON SELLER UNLESS AGREED IN A WRITTEN INSTRUMENT EXECUTED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER AND SELLER HEREBY EXPRESSLY OBJECTS TO THE INCLUSION OF THE SAME. ONCE ACCEPTED IN ACCORDANCE WITH THE PRECEDING SENTENCE, THE ORDER AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT AMONG PURCHASER AND SELLER REGARDING THE SUBJECT MATTER OF SUCH ORDER AND SHALL SUPERSEDE ALL PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN AGREEMENTS OR UNDERSTANDINGS CONCERNING THE SUBJECT MATTER OF SUCH ORDER AND SHALL BE BINDING UPON PURCHASER AND SELLER AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

SELLER EXPRESSLY RESERVES THE RIGHT TO CHANGE OR REVOKE ANY ORDER NOT ACCEPTED BY PURCHASER AS DESCRIBED ABOVE AT ANY TIME PRIOR TO SELLER’S ACCEPTANCE.

1. Defined Terms. Certain capitalized terms used herein shall have the meanings ascribed thereto in Section 13.

2. Prices; Payment Terms.

2.1 With respect to Goods, all of Seller’s stated prices are FOB Seller’s plant.

2.2 With respect to Services, all of Seller’s stated prices are based performance during Seller’s normal business hours (8 a.m. to 5 p.m. local time, Monday through Friday, excluding Seller-recognized holidays). Unless otherwise agreed in writing by Seller, (a) overtime and Saturday hours will be billed at two (2) times Seller’s otherwise applicable hourly rate, (b) Sunday hours will be billed at two (2) times Seller’s otherwise applicable hourly rate and (c) holiday hours will be billed at three (3) times Seller’s otherwise applicable hourly rate. Should these Terms and Conditions be used as a

quotation form, the prices, as above described, will be open for acceptance for sixty (60) days or such other period as may be specified herein.

2.3 Prices quoted by Seller for the items described in an Order are firm and not subject to price revision or redetermination. Unless specifically agreed upon by Seller, (a) United States domestic payment terms are net cash, payable without offset, in United States Dollars by wire transfer of immediately available funds to an account or accounts designated in writing by Seller, by credit card payment or by check; and (b) non-U.S. payment terms are (i) payment received, without offset, in advance of shipment in United States Dollars by wire transfer of immediately available funds to an account or accounts designated in writing by Seller, by credit card payment or by check; or (ii) irrevocable letter of credit, payable without offset in United States Dollars, on sight and issued by a United States bank or other reputable financial institution in a form acceptable to Seller (in its sole discretion). Invoices are due and payable on a strict net thirty (30) days from the date of invoice. Prorated payments shall be due for partial shipments. The making of payments at the times they respectfully fall due shall be considered as of the essence of this agreement, and failure or substantial delays in making such payments shall constitute a material breach of contract entitling Seller, at its option, to any or all of a Seller's remedies for breach, including rescission. Until the purchase price is paid in full to Seller, Purchaser merely grants Seller's security interest in all products covered by each Order.

2.4 Unless agreed in writing by Seller, Seller's stated prices for Goods or Services do not include any charges for freight, delivery, shipping or handling, applicable taxes (including sales tax or VAT), governmental charges, duties, importation or exportation fees or similar additions or deductions of any kind ("**Charges**"), and will be paid by Purchaser to Seller without deduction of Charges. Any and all Charges relating to the Goods and Services purchased herein (other than United States federal or state income taxes assessed on the income of Seller or Seller's state franchise taxes), which Charges will include all foreign, federal, state, local, governmental, republic, or provincial sales (including harmonized sales), use, goods and services, excise and withholding taxes, will be added to the prices quoted and will be payable by Purchaser unless Purchaser provides Seller with a valid and applicable certificate of tax exemption with respect to such taxes within the time frame permitted under applicable law for Seller to be able to rely on Purchaser's claimed exemption in good faith. In the event by operation of law or otherwise, any Charges are required to be deducted from any amounts paid by Purchaser to Seller hereunder, the amounts due hereunder will be increased to such amounts as may be necessary to yield Seller the amount it would otherwise have received had such payments been made without any Charges.

2.5 If Purchaser fails to pay any amount when due as required hereunder, Purchaser will pay, in addition to the overdue payment, a late charge equal to the lesser of 1.5% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amount. Seller reserves the right to immediately withhold Goods or Services under any Order if any amounts due to Seller from Purchaser are past due or if Purchaser is in breach of any other agreement with Seller. Seller has the right to terminate any Order immediately in the event Purchaser fails to cure any such payment default or agreement breach within five (5) days of notice from Seller. Seller has the right to set-off or off-set any amounts due from Seller to Purchaser against any such past due amounts or other amounts due from Purchaser under any Order.

2.6 Seller completes all transactions and provides all documents in the English language. Any translation requested by or on behalf of Purchaser is at the sole cost and responsibility of Purchaser.

2.7 Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. If shipments are delayed by Purchaser, payments shall become due on the date when Seller is prepared to make shipment. If the work covered by an Order is delayed by Purchaser, payment shall be made based on the purchase price and the percentage of completion. Products held for Purchaser shall be at the risk and expense of Purchaser. Seller reserves the right to ship to its order and make collection by sight draft with bill of lading attached. Delays in delivery or nonconformities in any installments delivered will not relieve Purchaser of its obligation to accept and pay for remaining Goods or Services under an Order.

2.8 If, in the discretion of Seller, the financial condition of Purchaser at any time does not justify continuation of production or shipment on the terms of payment originally specified, Seller may, in addition to any other remedies available to it, (a) declare all amounts owed under an Order immediately due and payable together with all of Seller's Charges, attorneys' fees and other costs and expense without notice to Purchaser, (b) require payment or posting of a bond, letter of credit or other security satisfactory to Seller (in its sole discretion), (c) suspend performance, (d) cancel any Order then outstanding and receive reimbursement for its cancellation charges and/or (e) to take possession of any or all Goods delivered hereunder without demand or notice wherever same may be located without any court order or process of law. Upon retaking possession of any such Goods, Seller may, at its option, sell such Goods or any part thereof to the highest bidder at public auction or private sale, and Purchaser agrees that ten (10) calendar days' notice to Purchaser of any public or private sale constitutes reasonable notice. In the event that Seller sells such Goods, then Seller will credit the value received from sale, less fees, costs and expenses incurred in connection with such disposition, to the unpaid balance of amounts due and to become due and Purchaser hereby waives any and all Losses occasioned by such taking of possession. Any such taking of possession will not relieve Purchaser of its obligations hereunder. If any proceedings are instituted by Seller to recover any monies due and/or for the possession of any Goods, Purchaser will pay Seller's reasonable fees, costs and expenses with respect thereto.

2.9 By submitting any Order, Purchaser represents that it is solvent for the purposes of U.C.C. Section 2-702 and that it is not insolvent as defined by U.C.C. Section 1-201 (23). In the absence of written notification of insolvency, the transmission of any writing by Purchaser to Seller during the course of performance of the contract will be understood to constitute a written representation of continued solvency for the purposes of U.C.C. Section 2-702(2).

3. Delivery; Order Cancellation and Returns; Changes; Risk of Loss.

3.1 The delivery date(s) specified by Seller are approximate and are based on Seller's reasonable estimate of a realistic time when delivery to the carrier will be made based upon current and expected manufacturing capabilities, and are contingent upon timely receipt of necessary Purchaser-supplied information, Purchaser's timely approval and delivery by Purchaser of any items or documentation required for Seller's performance. Unless otherwise agreed to in writing, Seller reserves the right to make partial shipments. In the event Seller shall fail to make delivery within the time specified including all extensions thereof, Purchaser may terminate or cancel an Order for cause or default only by a notice in writing by registered, certified mail, or electronic mail effective five (5) days after receipt. Claims for shortages in quantity or for damage in shipment due to negligence shall be deemed waived unless made in writing to Seller within five (5) business days after delivery.

3.2 Any Order (other than an Order for spare parts) may be cancelled by Purchaser only prior to shipment upon prior written notice and payment of Seller's termination charges, including (a)

all costs and expenses identified in such Order incurred prior to the effective date of notice of termination (including materials, labor, and Seller's overhead allocations) and all expenses incurred by Seller attributable to the termination, and (b) a fixed sum of ten percent (10%) of the final total price to compensate for disruption in scheduling, planned production and other indirect costs (the "**Cancellation Fee**"). Subject to the Cancellation Fee, in the event that ordered Services are not completed within eighteen (18) months of order acceptance, Seller may, at its sole option, cancel such Services and refund prepaid monies, if any, for such Services; provided that training Services are not refundable.

3.3 Any Order for spare parts and/or instruments may be returned by Purchase only for credit and only in the event that (a) written approval for such return is obtained in advance from Seller and (b) such return completed within ten (10) days of original shipment in compliance with return terms specified. All spare parts and/or instruments that are returned in accordance with these Terms and Conditions may be returned only for a credit; provided, that (i) any unopened (in original packaging) spare parts and/or instruments shall be subject to a 25% restocking fee and (ii) opened spare parts and/or instruments shall be subject to an evaluation and testing minimum fee equal to two (2) hours in-house labor, plus repair costs if required (per Seller's list), plus a 25% restocking fee.

3.4 No "final sale" Good may be returned.

3.5 Seller reserves the right to make any changes deemed by Seller (in its sole discretion) to be necessary or desirable to improve the performance of any Good or Service, including with respect to Software or hardware to substitute a more recent version, at any time and without notice.

3.6 Notwithstanding anything to the contrary (including any agreement with respect to delivery terms or payment of transportation charges), except with respect to Software (for which title does not pass), risk of loss or damage shall pass to Purchaser and delivery shall be deemed to be complete upon delivery by Seller to the carrier.

4. Limited Warranty; NO ADDITIONAL REPRESENTATIONS OR WARRANTIES; LIMIT OF LIABILITY.

4.1 Seller warrants to Purchaser that (a) the Goods (excluding Software) delivered and Services provided shall be substantially free from defects in material and workmanship at the time of delivery to the FOB point or the time of provision (as applicable); provided, that Seller's Liability under this warranty is limited to repairing or replacing, at Seller's option, items which are returned to it prepaid within the warranty period specified in Section 4.2 and found, to Seller's satisfaction, to have been so defective; and (b) Software will, when properly installed and used, substantially perform in accordance with Seller's published specifications at normal workload volumes; provided, that Seller's Liability under this warranty is limited to, at Seller's sole discretion, modifying (or making available to Purchaser instructions for modifying) the Software, making available at Seller's facility necessary corrections or replacements of the Software or a refund of the portion of the price associated with the non-conforming Software. Notwithstanding anything to the contrary contained herein or otherwise, (i) in no event shall Purchase have any Liability to Purchaser, and the limited warranties contained in this Section 4.1 shall not apply, (A) if any items are not used under the operating conditions and manner recommended by Seller in any instructions, specifications or other literature; (B) if any items have been improperly installed, operated, maintained, stored, repaired, modified or altered by a person or entity other than Seller; (C) if any misuse, negligence or accident by a person or entity other than Seller has occurred; (D) with respect to any materials provided or designed by or on behalf of Purchaser; or (E) if written notice of the failure is not provided to

Seller within the warranty period stipulated in Section 4.2 of if the directions provided by Seller for properly identifying items returned under warranty are not strictly followed; and (ii) Goods supplied by Seller but manufactured by another person or entity are warranted only to the extent of the manufacturer's warranty, and the remedies, if any, provided by the manufacturer relating thereto are Purchaser's sole and exclusive remedies with respect thereto. The limited warranties stated in this Section 4.1 are exclusive.

4.2 The limited warranties contained in Section 4.1 shall terminate (a) with respect to Goods (excluding Software, spare parts, refurbished parts or repaired parts), twelve (12) months after installation or eighteen (18) months after date of shipment, (b) with respect to spare parts, refurbished parts or repaired parts, on the date which is ninety (90) days after the date of shipment, (c) with respect to Software, on the date which is twelve (12) months after the date of shipment or (d) with respect to Services, on the date which is ninety (90) days after the date of completion of the Services.

4.3 Purchaser acknowledges and agrees that, notwithstanding anything to the contrary contained herein or otherwise, except for the specific representations and warranties expressly set forth in Section 4.1, (a) none of Seller, any of its affiliates or any of their respective directors (or the functional equivalent thereof), officers, employees, service providers, representatives or other agents has made, is making or will make, or will have any liability with respect to, and none of Purchaser, its affiliates or any of their respective directors (or the functional equivalent thereof), officers, employees, service providers, representatives or other agents has relied, is relying or will rely on, or will have any remedy, recourse or entitlement whatsoever with respect to, any representation or warranty, express or implied, at law or in equity, with respect to any Order, any Goods, any Services or any other matter whatsoever; and (b) ALL GOODS AND SERVICES ARE PROVIDED ON AN AS-IS, WHERE-IS BASIS. Without limiting the foregoing, SELLER DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES (i) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, (ii) ARISING FROM COURSE OF DEALING OR TRADE USAGE, (iii) THAT THE FUNCTIONS CONTAINED IN ANY SOFTWARE WILL OPERATE IN COMBINATIONS WHICH MAY BE SELECTED FOR USE BY PURCHASER, OR THAT ANY SOFTWARE IS FREE FROM ERRORS, (iv) THAT WETTED PARTS ARE WARRANTED AGAINST FAILURES CAUSED BY CORROSION OR CHEMICAL ATTACK OR (v) THAT ANY GOODS OR SERVICES CONFORM WITH ANY LAWS.

4.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY ORDER, THESE TERMS AND CONDITIONS OR OTHERWISE, (a) IN NO EVENT SHALL SELLER, ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO ANY ORDER OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING THE PERFORMANCE OR NON-PERFORMANCE OF ANY GOODS OR SERVICES, WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS OR DELAYS, OR CLAIMS OF CUSTOMERS OF PURCHASER OR OTHER THIRD PARTIES FOR ANY DAMAGES AND (b) SELLER'S MAXIMUM LIABILITY FOR ANY REASON WHATSOEVER, WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR RELATING TO ANY ORDER OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR

USE OF ANY EQUIPMENT COVERED BY OR FURNISHED UNDER ANY ORDER, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE EXCEED THE PURCHASE PRICE ALLOCABLE TO THE GOODS OR PART THEREOF OR SERVICES WHICH GIVES RISE TO THE RELATED CLAIM.

4.5 Purchaser acknowledges and agrees that the agreements contained in Sections 4.2 through 4.4 are an integral part of any Order, the transactions contemplated thereby and that without such agreements, Seller would not enter into any Order or otherwise agree to consummate the transactions contemplated thereby.

5. Intellectual Property Protection; Data.

5.1 If an Order calls for delivery of Seller's standard Goods, without modification, Seller agrees (a) to assume the defense of any suit, action or other proceeding brought against Purchaser for infringement of any patents or other intellectual property (an "**IP Claim**") arising solely from use and/or sale of such standard Good; (b) to bear the cost and expense of such defense; and (c) to indemnify and hold harmless Purchaser and its successors and assigns from and against any monetary damages actually awarded in such suite and/or reasonable out-of-pocket fees, costs and expenses actually incurred in connection with such suit, action or other proceeding; provided, that: (i) Purchaser promptly informs Seller in writing of any claim with respect to which Seller assumes responsibility hereunder, (ii) Seller is given exclusive control of the defense of such suit and all negotiations relative to the settlement thereof and (iii) Purchaser reasonably cooperates with Seller when requested for documents and witnesses necessary to such defense. If any Good becomes, or in the opinion of Seller is likely to become, the subject of any IP Claim, Seller may, at its option and its own expense: (x) procure for Purchaser the right to continue using said Goods; (y) modify or replace the Goods with non-infringing Goods; or, (z) remove the Goods and refund the portion of the price allocable thereto. Notwithstanding anything to the contrary contained herein, in no event shall Seller have any Liability with respect to (A) any other products, equipment or processes, including Goods, which have been modified or combined with other equipment not supplied by Seller; (B) any Goods supplied according to a design (other than Seller's design) provided or required by Purchaser; (C) any products manufactured by any Goods; (D) use of Goods in violation of these Terms or Conditions or applicable law; or (E) any claim settled or otherwise compromised without the prior written consent of Seller. This Section 5.1 states the sole and exclusive remedies of Purchaser, and the sole and exclusive Liability of Seller, with respect to any IP Claim or other matters involving intellectual property.

5.2 If an Order calls for a Good made to Purchaser's design or specifications or with any modification, Purchaser shall indemnify and hold harmless Seller and its successors and assigns from and against any and all Losses directly or indirectly arising out of, relating to or otherwise by virtue of any claim of patent or other intellectual property infringement by or in any way related to the items or parts thereof furnished hereunder or any litigation based thereon. In addition, Seller shall procure at Seller's expense for Purchaser and its customer the right to continue using the items or parts found to have been infringing. Alternatively, Seller may modify, supplement or replace such items and parts so as to eliminate such infringement, provided however, that there shall be no performance degradation due to such actions.

5.3 Unless otherwise agreed in writing by Seller, all right, title, and interest in any inventions, developments, trade secrets, confidential or proprietary information, improvements or modifications of or for Goods and/or Services shall remain with and be exclusively owned by Seller. Any design, manufacturing drawings or other information provided to Purchaser shall remain the exclusive property of Seller. Purchaser shall not, without Seller's prior written consent (which may be withheld in its

sole discretion), copy such information, in whole or in part, or disclose such information, in whole or in part, to any third party. Such information shall be used solely for the operation or maintenance of the Goods and not for any other purpose.

5.4 Data supplied by Seller to Purchaser shall be conclusively presumed to pertain to items, components and/or processes developed at Seller's private expense, and no rights in such data or in any inventions, discoveries, patents, trademarks, or copyrights shall pass to Purchaser. Correspondingly, if data is furnished by Purchaser, no rights therein will pass to Seller; provided, however, that Seller may copy and use such data to the extent necessary to furnish the items or services called for in any Order.

6. Limited Software License.

6.1 With respect to any Software provided by Seller to Purchaser, Seller grants Purchaser a limited, non-exclusive, non-assignable, non-sublicensable, non-transferrable license and right to use such Software solely in conjunction with equipment specified by Seller. Purchaser may make a single copy of the Software solely for backup or archival purposes. Except as otherwise expressly permitted by these Terms and Conditions, Purchaser may not: (a) copy, disclose, decompile, disassemble, modify, reverse engineer, or otherwise attempt to derive the source code for the Software, except the extent that applicable Laws specifically prohibit such restriction; (b) modify or create derivative works from the Software, or any part thereof; (c) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer any rights to the Software; (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software; or (e) permit, assist, or encourage any third party to do any of the foregoing. Purchaser's right and license to use the Software shall terminate immediately when the specified equipment is no longer used by Purchaser or upon breach of these Terms and Conditions by Purchaser.

6.2 Nothing in these Terms and Conditions shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the United States Copyright Act (17 U.S.C., et seq.), nor to confer upon any person or entity other than Purchaser any right or remedy under or by reason of any Order or these Terms and Conditions. In the event of termination of the license granted pursuant to Section 6.1, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Seller the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage.

6.3 Any Software which is licensed directly or indirectly by Seller for or on behalf of the United States, its agencies and/or instrumentalities ("**U.S. Government**"), is provided with Restricted Rights (as defined in the FAR and/or DFARS as applicable) and may not be used, reproduced, or disclosed by the U.S. Government except as provided therein or as otherwise set forth under these Terms and Conditions.

6.4 Purchaser agrees that any enhancements, bug fixes, modifications, functional changes or upgrades hereinafter made to the Software or by Seller and provided to Purchaser hereunder or otherwise will be deemed to be part of the Software and use thereof by Purchaser will be governed by these Terms and Conditions.

7. Provisions with respect to the Resale of Goods or Services. In the event that Purchaser resells the Goods and/or Services in any manner (referred to herein as “**Reseller**”), the following additional provisions shall also apply:

7.1 Reseller shall, at its sole expense, comply with all Laws with respect to the resale of the Goods and/or Services and the performance of its responsibilities hereunder. Without limiting the generality of the foregoing, Reseller and its employees, contractors, agents and representatives shall not, directly or indirectly, divert or pay any amounts or other consideration to any person (including any government official) or entity (including any governmental body) relating to or in connection with solicitation of business, contracts, or orders for and/or the sale of Goods and/or Services to Reseller’s customers in a manner which may constitute an unlawful or improper bribe, kickback, or illegal or improper payment under any applicable

7.2 Reseller shall maintain liability insurance at Reseller’s sole cost and expense covering Reseller’s acts and operations, including products-completed operations exposure, with bodily injury limits of at least \$300,000 per person, \$1,000,000 per occurrence and \$1,000,000 aggregate and property damage limits of \$300,000 per occurrence and \$500,000 aggregate. Prior to commencing resale activities, Reseller shall provide to Seller an insurance certificate issued by an insurance carrier reasonably satisfactory to Seller evidencing such coverage, naming Seller as an additional insured under such coverage and confirming that no such coverage may be reduced, canceled or otherwise modified adverse to Seller’s interests without thirty (30) days’ prior written notice given to Seller.

7.3 Reseller agrees that these Terms and Conditions shall limit Seller’s Liability to the buyer to the same extent that Seller’s Liability to Purchaser is limited in these Terms and Conditions. In no event, regardless of cause, will Seller be subject to insurance requirements or indemnification, waiver and/or release agreements of Purchaser, or third-party safety auditing such as ISNetworld or PICS, and Seller shall not be Liable for penalties or penalty clauses of any description or for indemnification of Reseller or others for Losses arising out of or related to the Goods and/or Services.

7.4 Reseller agrees that during the term of any Order and for a period of twelve (12)-months following termination of such Order for any reason, it will not, directly or indirectly, stock, distribute, market, sell and/or deal in products competitive with the Goods and/or Services as manufactured and/or sold by Seller and/or any of its affiliates in the region for its own account, nor will it cause any other person or entity to do or assist other person or entity in doing any of the above.

7.5 Reseller shall defend, indemnify and hold Seller, and its officers, members, managers, employees, agents, and representatives, harmless from and against any and all Losses directly or indirectly arising out of, relating to or otherwise by virtue of: (a) any breach of this Section 7; (b) any act or omission of Reseller in connection with the performance of its obligations under any Order and/or the resale of the Goods and/or Services; and/or (c) any contract terms between the Reseller and its customer(s) that differ from the terms of these Terms and Conditions.

8. Confidentiality. From and after the effective date of any Order, Purchaser will not, and will cause its affiliates not to, use in any manner detrimental to Seller or disclose or convey to any third party, any Confidential Information, except as expressly permitted in writing by Seller; provided, however, that Purchaser or its affiliates may furnish such portion (and only such portion) of the Confidential Information as Purchaser or such affiliate reasonably determines it is legally obligated to disclose pursuant to applicable law.

9. Non-Solicitation of Restricted Persons. During period beginning on the date an Order is accepted and ending on the twelve (12)-month anniversary of the completion of such Order, Purchaser will not, and will cause their affiliates not to, directly or indirectly: (a) solicit, induce or recruit, or attempt to solicit, induce or recruit, for employment or engagement, any individual who (i) is an employee or individual independent contractor of Seller or (ii) was at any time during the twelve (12)-month period immediately preceding any such action an employee or individual independent contractor of Seller (each individual covered by clause (i) or (ii), a “**Restricted Person**”), or otherwise seek to adversely influence or alter any Restricted Person’s relationship with Seller, or (b) hire, employ or engage any Restricted Person.

10. Compliance with Laws; Trade Controls.

10.1 Purchaser shall be solely responsible for compliance with any and all Laws relating to the operation or use of the Goods or Software and obtaining any permits, licenses or approvals from any governmental authority required in connection with the supply, erection or operation of the Goods.

10.2 Purchaser represents and warrants to Seller that the Goods and Services provided hereunder and the “direct product” thereof are intended for civil use only and will not be used, directly or indirectly, for: (a) production of chemical or biological weapons or of precursor chemicals for such weapons; (b) any direct or indirect nuclear end use; or (c) any other use prohibited by law, including regulations of the United States Department of Commerce and other governmental authorities concerning the export or re-export of U.S. origin goods or services, and the products thereof. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any goods or services, software, technical data or other information provided by or on behalf of Seller, or the “direct product” thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with all applicable Laws.

10.3 Where applicable, Seller shall file for a U.S. export license or other U.S. export-related authorization, but only after appropriate documentation for the license or other authorization has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license or other authorization will suspend performance of any Order by Seller. If an export license or other authorization is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, an Order may be canceled by Seller without Liability for Loss of any kind resulting therefrom. At Seller’s request, Purchaser will provide to Seller a letter of assurance, end-user statement and/or all such other documents reasonably requested by Seller in form(s) reasonably satisfactory to Seller to comply with all applicable Laws.

11. Nuclear Insurance; Indemnity. For any applications in nuclear projects, Purchaser and/or its end user customer shall have complete insurance protection against Liability and Loss, and shall indemnify and hold harmless Seller, its subcontractors and suppliers from and against any and all Losses, directly or indirectly arising out of, relating to or otherwise by virtue of any nuclear incident.

12. Indemnification by Purchaser. Purchaser hereby agrees to indemnify and hold harmless Seller and its agents and employees from and against any and all Losses asserted against or suffered, sustained or incurred by any such person or entity directly or indirectly arising out of, relating to or otherwise by virtue of any injury, disease or death of persons or damage to or loss of any property or the environment, or violation of any applicable Laws resulting from or in connection with the sale, transportation, installation, use, or repair of the Goods by Purchaser or of the information, designs, services or other work supplied to

Purchaser, whether caused by the concurrent and/or contributory negligence of Purchaser, Seller, or any of their agents, employees or suppliers.

13. Definitions. When used in these Terms and Conditions, the following terms shall have the meanings assigned to them in this Section 13:

“Confidential Information” means all information (whether or not specifically labeled or identified as “confidential”), in any form or medium, of Seller or its customers, suppliers, distributors or other business relations, including all information concerning finances, customer information, supplier information, products, services, prices, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies, unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property, designs, specifications, documentation, components, source code, object code, schematics, drawings, protocols and processes. Confidential Information shall not include any information that is or becomes generally known to and available for use by the public other than as a result of any acts or omissions of Purchaser or any of its affiliates.

“Goods” means all of the equipment, instruments, products, parts or accessories sold, and all software and software documentation (**“Software”**), if any, licensed to, Purchaser by or on behalf of Seller under any Order.

“Law” means the common law of any state or other jurisdiction, or any provision of any foreign, federal, state, provincial or local law, statute, code, act, ordinance, rule, regulation, order, certification standard, accreditation standard, permit, license, judgment, injunction, decree or other action, requirement or decision of any court or other tribunal or governmental authority.

“Liabilities” means any indebtedness, liabilities or obligations of any nature whatsoever, whether accrued or unaccrued, absolute or contingent, direct or indirect, asserted or unasserted, fixed or unfixed, known or unknown, choate or inchoate, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, and whether due or to become due.

“Losses” means any and all Liabilities, losses, damages, awards, judgments, royalties, deficiencies, penalties, fines, taxes, demands, claims, costs and expenses (including reasonable fees and expenses of attorneys, accountants and other advisors and experts paid in connection with the investigation, prosecution or defense of, and all amounts paid in settlement with respect to, any of the foregoing or any suit, action or other proceeding relating to any of the foregoing, including in respect of enforcement of any indemnity rights hereunder).

“Services” means all labor, supervisory, technical and engineering, installation, repair, consulting, training or other services provided by Seller under any Order.

“U.S.” or “United States” means the United States of America.

14. Miscellaneous.

14.1 Entire Agreement. Any Order and these Terms and Conditions constitute the entire agreement of the Purchaser and Seller relating to the subject matter hereof and thereof and supersede all

prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of Purchaser and Seller, oral or written, respecting such subject matter. For the avoidance of doubt, the non-solicitation, confidentiality and other restrictive covenants contained in these Terms and Conditions shall be in addition to, and not in lieu of, and shall not in any way limit or be limited by, any restrictive covenant covering similar subject matter contained in any other agreement to which Purchaser is a party.

14.2 Third Parties. Any Order and these Terms and Conditions shall inure exclusively to the benefit of and be binding upon Purchaser and Seller, any person or entity entitled to indemnification hereunder, and their respective successors and permitted assigns. Nothing in any Order or these Terms and Conditions, express or implied, is intended to confer on any person or entity (other than Purchaser and Seller and their respective successors and permitted assigns and any person or entity entitled to indemnification hereunder) any rights, remedies, obligations or liabilities under or by reason of any Order or these Terms and Conditions.

14.4 Assignments. Each Order and these Terms and Conditions will be binding upon, inure to the benefit of and be enforceable by Purchaser and Seller and their respective successors and permitted assigns, but will not be assignable or delegable by Purchaser or Seller, by operation of Law or otherwise, without the prior written consent of the other; provided, however, that nothing in any Order or these Terms or Conditions shall or is intended to limit the ability of Seller to assign its rights or delegate its responsibilities, liabilities and obligations under any Order or these Terms and Conditions, in whole or in part, without the consent of any Purchaser or any other person or entity to (a) any affiliate of Seller or (b) any direct or indirect purchaser of all or substantially all of the assets of Seller. Any attempted assignment in violation of this Section 14.4 shall be void *ab initio*.

14.5 Amendment; Waiver. An Order or these Terms and Conditions shall not be amended, modified or waived in any manner except by an agreement in writing duly executed and delivered by each of Purchaser and Seller. No failure or delay of Purchaser or Seller to exercise any right or remedy given to such entity under an Order or these Terms and Conditions or otherwise available to such entity, or to insist upon strict compliance with its obligations hereunder, no single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, and no custom or practice of Purchaser or Seller in variance with the terms hereof, shall constitute a waiver of any person's or entity's right to demand exact compliance with the terms of such Order or these Terms and Conditions. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

14.6 Severability. If any term or provision of any Order or these Terms and Conditions is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of such Order or these Terms and Conditions will not in any way be affected or impaired. If the final judgment of a court of competent jurisdiction or other governmental authority declares that any term or provision hereof is invalid, illegal or unenforceable, Purchaser and Seller agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

14.7 Governing Law. Any Order (including these Terms and Conditions) shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of such Order (including these Terms and

Conditions) (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Texas (including Uniform Commercial Code, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods), without giving effect to any law that would cause the laws of any jurisdiction other than the State of Texas to be applied

14.8 Consent to Jurisdiction; Arbitration; MUTUAL WAIVER OF JURY TRIAL.

(a) Each of Purchaser and Seller hereby irrevocably and unconditionally submits, for itself and its property: (i) to the state and federal courts located in the State of Texas (collectively, the “**Specified Courts**”), and hereby irrevocably submits to the exclusive jurisdiction of the Specified Courts for itself and with respect to its property, generally and unconditionally, for the purpose of any suit, action or other proceeding for interim, injunctive, provisional or conservatory relief or specific performance of any Order or these Terms and Conditions prior to the constitution of the arbitral tribunal (collectively, “**Provisional Relief**”) or the enforcement of any arbitration agreement; and (ii) to the nonexclusive jurisdiction of the Specified Courts for the confirmation, vacatur, recognition and/or enforcement of any arbitral award. Each of Purchaser and Seller agrees not to commence any suit, action or other proceeding arising out of or relating to any Order or these Terms and Conditions or the transactions contemplated hereby or thereby except in the Specified Courts (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any Specified Court described above). Each of Purchaser and Seller irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding arising out of or relating to any Order or these Terms and Conditions or the transactions contemplated hereby or thereby in the Specified Courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any court that any such suit, action or other proceeding brought in any Specified Court has been brought in an inconvenient forum or does not have jurisdiction over such entity. The aforementioned choice of venue is intended by Purchaser and Seller to be mandatory and not permissive in nature, thereby precluding the possibility of litigation with respect to or arising out of any Order or these Terms and Conditions or the transactions contemplated hereby or thereby in any jurisdiction other than those specified in this Section 14.8(a). A final judgment in any such suit, action or other proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Notwithstanding anything herein to the contrary, except as provided in Section 14.8(a), any suit, action or other proceeding (whether in contract, tort or otherwise) based upon, arising out of, or relating to any Order, these Terms and Conditions, or the negotiation, execution or performance of any Order or these Terms and Conditions (including any claim, cause of action or dispute based upon, this Agreement or as an inducement to enter into any Order or these Terms and Conditions), shall be finally resolved by arbitration before a single neutral arbitrator pursuant to the JAMS Comprehensive Arbitration Rules & Procedures (including Rule 17 thereof). The seat of the arbitration shall be Houston, Texas. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(c) The award shall be made within six (6) months from JAMS issuance of a “Commencement Letter,” in accordance with the JAMS Comprehensive Arbitration Rules & Procedures, and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by stipulation of the parties hereto or by the arbitrator based upon a finding that such an extension is necessary to prevent a party from benefiting from its own delay, inaction or refusal to meet deadlines imposed by the arbitrator.

(d) Each of Purchaser and Seller shall keep any arbitration confidential and shall not disclose to any person or entity other than those necessary to the conduct of those proceedings (i) the existence of the arbitration, (ii) any document, testimony, transcripts or other information submitted, exchanged or created for the arbitration or (iii) any decisions, orders, or awards of the arbitrator, unless such disclosure is (A) required by Law or a governmental authority, (B) necessary for a party to seek legal, accounting or other professional services, or (C) for the purpose of making an application to any competent court relating to any aspect of an arbitration, including motions to recognize, enforce or challenge an award or interim measure; provided, that in all of the circumstances (A) through (C) above, the producing party takes reasonable measures to ensure that the recipient preserves the confidentiality of the information provided.

(e) To the extent that any suit in a state or federal court shall be necessary under SECTION 14.8(a), EACH OF PURCHASER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY ORDER, THESE TERMS AND CONDITIONS, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF OR THEREOF. EACH OF PURCHASER AND SELLER FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED.

14.9 Specific Performance. Each of Purchaser and Seller agrees that irreparable damage would occur in the event that any of the provisions of any Order or these Terms and Conditions were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of Purchaser and Seller shall be entitled to enforce specifically the provisions of any Order or these Terms and Conditions, including obtaining an injunction or injunctions to prevent breaches or threatened breaches of such Order or these Terms and Conditions, in any court designated to resolve disputes concerning any Order or these Terms and Conditions (or, if such court lacks subject matter jurisdiction, in any appropriate state or federal court), this being in addition to any other remedy to which such person or entity is entitled at Law or in equity. Each of Purchaser and Seller further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at Law would be adequate and (b) any requirement under any Law to post security or provide indemnity as a prerequisite to obtaining equitable relief.

14.10 Other Remedies. Except as otherwise provided herein, all remedies under any Order or these Terms and Conditions expressly conferred upon a person or entity will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or at Law or in equity upon such person or entity, and the exercise by a person or entity of any one remedy will not preclude the exercise of any other remedy.

14.11 Rules of Construction and Interpretation. For purposes of any Order and these Terms and Conditions: (i) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (ii) the terms “hereof,” “herein,” “hereby” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to such Order and these Terms and Conditions as a whole and not to any particular provision of such Order or these Terms and Conditions; (iii) the terms “includes” and the word “including” and words of similar import shall be deemed to be followed by the words “but not limited to”; (iv) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean “if”; (v) the term “any” means “any and all”; (vi) the term “or” shall not be exclusive

and shall mean “and/or”; (vii) section references are to the Sections of these Terms and Conditions unless otherwise specified and the subject headings of Sections of these Terms and Conditions are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions; and (viii) if there is a need to convert U.S. dollars into any foreign currency, or vice versa, the exchange rate shall be that published by the *Wall Street Journal* three business days before the date on which the obligation is paid (or if the *Wall Street Journal* is not published on such date, the first date thereafter on which the *Wall Street Journal* is published), except as otherwise required by applicable Law (in which case, the exchange rate shall be determined in accordance with such Law).

14.12 Counterparts; Deliveries. Any Order and these Terms and Conditions may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Any Order and these Terms and Conditions and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of electronic transmission (including DocuSign or .pdf files or other image files via e-mail, cloud-based transfer or file transfer protocol), shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

14.14 Survival. The obligations of Purchaser and Seller under these Terms and Conditions shall survive the acceptance of any Order, any inspection, delivery, acceptance or payment of and for any Goods or Services.

14.15 Force Majeure. Seller shall not be liable for any Losses suffered, any delays in delivery or failure to manufacture, deliver or perform, and shall not be deemed to be in breach or default hereunder, due to (a) causes beyond Seller’s reasonable control or acts of Purchaser or its agents, (b) local, regional, national or international political, social or health conditions, including any (i) pandemic, epidemic, disease outbreak or other public health emergency (including any commercially reasonable action or omission of Seller in response thereto) or (ii) economic or financial sanctions, trade embargoes or other trade restrictions, (c) any military deployment or the engagement (whether new or continuing) by the United States or any other country in hostilities (whether or not pursuant to the declaration of a national emergency or war), espionage or proxy war, (d) any natural or man-made disaster or acts of God, (e) social unrest, or (f) any inability to obtain necessary labor (including as a result of labor shortages or strikes), materials shortages or defects (including defects or delays in the performance by Seller’s suppliers or subcontractors) or transportation shortages. In the event of delay due to any of the foregoing, Seller shall incur no Liability whatsoever for the delay, and Seller shall have the option, at its sole discretion, of extending the date of delivery by period equal to the delay plus a reasonable time to resume production or to cancel any Order without Liability. In the event that Seller determines, in its sole discretion, that a location for Services presents a health, safety or security risk, Seller may elect, in its sole discretion, without Liability, to cancel, modify, or provide substitute Services at any time.