**TERMS AND CONDITIONS OF PURCHASE**

(Use for purchase of material and equipment)

# DEFINITIONS

Unless the terms or context of the Order provide otherwise, the following terms shall have meanings set out below:

“**Affiliates**” means, as to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person. For purposes of this definition, “control” means (i) ownership, directly or indirectly, of either the outstanding voting stock of the controlled Person or any other ownership interest in the controlled Person if that interest has, directly or indirectly, the power to direct or cause the direction of the management and policies of the relevant Person or (ii) operational control of the controlled Person pursuant to an operating agreement, management agreement, or other contractual rights.

**“Applicable Law”** means all laws, ordinances, certifications, decrees, orders, regulations, decisions, statutes, rules, directives, codes, permits, authorizations including any conditions thereto, of any Governmental Instrumentality having jurisdiction over any Party, the permitted Subcontractors or performance of all or any portion of the Order or other legislative or administrative action of a Governmental Instrumentality, or a final decree, judgment or order of a court which relates to the terms and conditions of the Order or any activity contemplated or carried out under the Order, including any applicable codes or guidelines set forth therein.

**“Change Order”** means any written change to the Order signed by Purchaser and Supplier in accordance with **Article 9**.

**“Claims”** means all claims, pre-lien notices, liens, judgments, fines, penalties, awards, remedies, debts, liabilities, encumbrances, damages, demands, costs (including legal costs and attorneys’ fees), losses, expenses or causes of action, of whatever nature, including those under any injunction.

“**Confidential Information**” means all information which Supplier, directly or indirectly, acquires from Purchaser or concerning the technical, business, commercial and / or proprietary activities and know-how of Purchaser. Confidential Information shall not include information which:

(a) is lawfully in the public domain through no fault of Supplier or its Subcontractors;

(b) was lawfully in Supplier’s possession prior to its development, receipt or acquisition hereunder; or

(d) was obtained by Supplier from a third party who is lawfully in possession of such information without a contractual or fiduciary relationship with Purchaser with respect to said information.

“**Consequential Loss**” means, any (a) indirect, consequential or special loss or damage, or (b) direct or indirect loss of: (i) revenue or profits; (ii) anticipated savings; (iii) goodwill or injury to reputation; (iv) business interruption or opportunity; (v) loss of use; (vi) financing or bonding capacity; (vii) loss of product or production; (viii) principal office expenses including compensation of personnel stationed there, including as a result of breach of contract, negligence or any other tort, under statute or otherwise, and regardless of whether the defendant person knew or had reason to know of the possibility thereof.

**“Delivery Dates**” means the date or dates specified in the Order on which the Goods are to be delivered by Supplier.

**“Facilities”** means the location(s) from which the Goods are purchased under this Order.

**“Force Majeure”** means any event or circumstance or combination of events and/or circumstances listed in the next sentence to the extent such is beyond the control of the asserting Party and materially and adversely affects the performance by the asserting Party of its obligations (other than payment obligations) under the Order and which the asserting Party could not have prevented or overcome. Force Majeure shall be limited to the events and circumstances in the following list:

1. floods, earthquakes, tidal wave, tornadoes, hurricane, or fires;
2. a disaster resulting in an Emergency Declaration or a Major Disaster Declaration by the President of the United States ;
3. strikes, lockouts, work stoppages, walkouts, labor or employment disputes or difficulties or other concerted acts of workmen, not among Supplier’s personnel, or those of any of its Subcontractors;
4. war, blockade, embargo, acts of terrorism, sabotage; or
5. radioactive contamination.

**“Good Industry Practices”** means the generally accepted practices, methods, skill, care, techniques, and standards employed by experienced and skilled engineers, fabricators, and contractors with respect to the engineering, fabrication, and construction of the Goods described by the Order.

**“Goods”** means any goods, ancillary design and engineering services, warranty-related services, technical assistance, all items, articles, materials, apparatus, equipment, spare parts, labor, or other supplies including manuals, operating instructions, reports, and all other documents to be supplied or performed by Supplier**,** as specified, listed, mentioned, scheduled, or implied in the Order or any revision thereof.

**“Government Instrumentality”** means any national, federal, state, local government, or other political subdivision, or any ministry, department, court, commission, board, agency, institution, or similar entity, of any country having jurisdiction over any of the Goods or the Facility, Purchaser, Supplier or its Subcontractors.

**“Gross Negligence”** means any act or failure to act by a Party’s personnel which seriously and substantially deviates from a reasonable standard of care or conduct which is in reckless disregard of, or indifference to, the harmful consequences of such act or failure to act.

**“Indemnified Parties”** means the Purchaser, the Owner, anyone whom Purchaser is obligated to indemnify pursuant to any agreement with the Owner, and each of their respective parents, partners, Affiliates, subsidiaries and their respective directors, officers, commissioners, personnel, agents, representatives, successors and assignees. Indemnified Parties further includes any Person that Purchaser must contractually indemnify at the Project Site.

"**Intellectual Property Rights**"means any proprietary right or protection of intellectual property rights worldwide existing from time to time, whether registered, pending or not, or capable of registration, under any applicable patent law or other invention or discovery law, copyright law, performance or moral rights law, trade-secret law, confidential information law, industrial design law, trade-mark law, unfair competition law, or other similar laws and includes legislation by competent governmental authorities and judicial decisions under common law or equity.

**“Order”** means the written purchase order between Supplierand Purchaserwhich refers to and incorporates these Terms and Conditions of Purchase together with any exhibits or attachments theretofor the supply of the Goods as may be amended from time to time.

**“Order Price”** means the price set out in or calculated in accordance with theOrderincluding any Change Order**.**

**“Owner**” means the entity or entities that will be the owner of the product that the Goods are incorporated into.

**“Party**”means either Purchaser or Supplier and the expression “**Parties**” shall mean both Purchaser and Supplier.

“**Person**” means any individual, corporation, partnership, limited liability company, association, joint venture, trust, or other organization of any nature or kind.

**“Project Site”** means the plant(s) or site location(s) for which the Goods are purchased under this Order.

**“Purchaser”** means the entity noted on the front of the Order as purchaser.

**“Supplier”** means the firm, company or other corporate entity contracted to supply Goodsto the Purchaser in an Order**.**

**“Subcontract”** means an order, sub-order, or contract directly or indirectly made by the Supplier with a Subcontractor in connection with the manufacture or supply of part of the Goods.

**“Subcontractor”** means any sub-supplier, subcontractor, vendor, representatives and/or agent of any tier on whom the Supplier has directly or indirectly placed a Subcontract**.** If used in the Orderthe term “sub-supplier” shall have the same meaning as Subcontractor**.**

**“Willful Misconduct”** means conduct with an intentional disregard of good and prudent standards of performance, or if not intentional, conduct that demonstrates an indifference or conscious disregard for the safety of others or their property.

# GENERAL

## Supplier will perform and provide all work, materials, labor, services, and equipment required by or reasonably inferable from the Order including the provision of Goods in accordance with (i) these Terms and the applicable Order, (ii) Applicable Law, and (iii) Good Industry Practices.

## These Terms and Conditions of Purchase are binding and supersede and replace any Supplier’s terms and conditions and are an integral part of the Order and/or Change Order(s). All terms and conditions, in or attached to, Supplier's quotation are hereby expressly declared null and void. No other agreement, understanding or Supplier acceptance purporting to modify or change terms, conditions or specifications of the Order shall be binding unless it has been first confirmed in writing by Purchaser.

## The Order shall only be valid if issued on Purchaser's order form and signed by an authorized representative of Purchaser.

## If Supplier commences work before returning the signed Order acceptance, Supplier shall be deemed to have accepted the Order and all terms, conditions or specifications thereof including these Terms and Conditions of Purchase.

## Delivery terms specified in the Order are as described in the latest edition of “Incoterms” issued by the International Chamber of Commerce (unless a different edition of Incoterms is specified in the Order). Unless otherwise stated in the Order, delivery terms shall be Incoterms Delivered Duty Paid (DDP).

## In the event of conflict, ambiguity, or inconsistency between this Order and specifications, drawings, data sheets, or any other documents referenced herein or attached hereto, the following order of precedence shall be used, and any such conflict, ambiguity or inconsistency will be resolved in favor of the document with the higher precedence:

1. Amendments and Change Orders;
2. Purchase Order;
3. Terms and Conditions of Purchase;
4. Data Sheets and Drawings; and
5. Specifications.

Any such conflict shall be raised by Supplier within ten (10) days of Supplier’s awareness of the conflict.

## To the extent Supplier is providing professional services, Supplier shall perform its scope of work with the level of skill reasonably expected of Supplier with the Supplier’s level of experience and expertise, shall perform its roles and responsibilities in accordance with generally recognized practices and professional standards, and exercising the degree of care that would be expected of Supplier engaged in carrying out the same or similar activities under the same or similar circumstances, including specifications, standards, or codes provided by Purchaser, if any.

## Supplier shall be bound by the terms of the Prime Contract to the extent such an agreement exists and such terms are incorporated herein by reference with the necessary adaptations. In the event of a conflict between the terms of the Prime Contract and the Order, the more stringent terms or highest quality or greatest quantity shall control.

# PRICE, INVOICING, AND PAYMENT

## Supplier shall be solely responsible for assessing the scope and content of this Order and the Order Price as referred to in the Order to ensure that it includes everything necessary to manufacture and/or procure the Goods.

## All of Supplier’s work and Goods will conform to the Order, including drawings and specifications.

## All prices included in the Order including the Order Price, unless otherwise expressly stated, are:

(a) Firm, fixed for the term of the Order; and

(b) Include all charges related to the packing of the Goods and transit to the required destination point(s).

## Supplier will submit invoices to Purchaser pursuant to any agreed payment schedule identified on the first page of the Order, or if not specified on the 15th of the month for all Goods delivered in the preceding month. As a condition precedent to payment, each invoice will identify the Order number and will include sufficient line-item detail for Purchaser to reasonably verify the basis of the charges, and be accompanied by any supporting information or documentation required by the Order or otherwise reasonably requested by Purchaser and in any event sufficient to substantiate the invoiced amount. No invoices may be submitted beyond 45 days after all Goods are delivered under the Order, and any invoices submitted after that time will be considered untimely and are not compensable.

## Each invoice shall be subject to retention of ten percent (10%) of the invoice value, which is to be released 31 days after delivery of all Goods and all other Supplier deliverables under the Order. Credit notes will not be accepted.

## Purchaser’s obligation to make payment to Supplier is expressly contingent upon and subject to Owner’s acceptance of the Goods and Purchaser’s receipt of payment from Owner for the Goods. It is expressly understood and agreed to by Supplier that such receipt of payment by Purchaser from the Owner is a condition precedent to Purchaser’s obligation to pay Supplier.

## Unless otherwise stated in this Order, payments will be made forty-five (45) days after (1) the Purchaser’s receipt of correct invoice(s), (2) all conditions to payment stated in the Order are satisfied, and (3) Supplier provides any required backup documents, including lien release forms. No payment of or on account of the Order Price shall constitute any admission by the Purchaser as to the performance by the Supplier of its obligations hereunder or acceptance of the Goods.

## All milestone payments are subject to the completion of the specified milestone and the provision of all documentation listed in the supplier document requirements described in the Order.

## Supplier shall be responsible for ensuring the proper packaging of the GOODS provided hereunder. Any and all costs for packing, crating, special transport, or other related charges are included in Supplier’s pricing in this Order. Any damage or loss to the Goods, delay or extra work due to Supplier’s packaging shall be for the account of Supplier.

## In addition to any other right to withhold payments under Applicable Laws or this Order, Purchaser will have the right to withhold from payments due Supplier all sums necessary to protect Purchaser against any loss or damage that may result from: (i) any act or failure to act by Supplier which gives rise to Claims by Purchaser or by any Person against Purchaser; (ii) previous overpayments on prior invoices; or (iii) Claims filed or threatened against the Project Site or any other Person claiming entitlement to money through Supplier. If there is a good faith dispute regarding any invoice submitted by Supplier, then (a) all amounts not disputed in good faith will be paid by Purchaser as required by this **Article 3**; (b) Purchaser will promptly notify Supplier of the dispute; and (c) payment of any withheld and disputed amount will be made within 30 days following resolution of the dispute.

# TIME OF PERFORMANCE

## Time is of the essence for Supplier’s obligations, and Supplier acknowledges that the Delivery Dates in the Order are fixed and firm and not subject to change except as provided in **Article 9**.

## In the event of any delay or anticipated delay in Supplier’s performance, Supplier shall give Purchaser written notice of such delay within ten (10) days of the beginning of the delay event, including a description of the source or cause of the delay and of the actions Supplier is undertaking to recover from the delay. If Supplier fails to take steps that Purchaser determines are necessary to recover the delay, and/or if at any time in Purchaser’s reasonable opinion the actual progress will not allow for the achievement of the delivery of the Goods in accordance with the Order, Purchaser may direct Supplier to accelerate its work by supplying additional labor, including overtime or additional shifts, supervision and equipment as Purchaser may reasonably require in order to recover and maintain the schedule set forth in the Order. All costs incurred by Supplier to accelerate the work shall be to the account of Supplier.

# EXPEDITING AND INSPECTION OF GOODS

## It is Supplier’s responsibility to expedite delivery and inspect quality of Goods and Subcontracts in support of Supplier’s performance of the Order.

## Purchaser reserves the right to expedite delivery and inspect quality of any Goods and enter the premises of Supplier and Subcontractors at any time for the purpose of expediting, delivery or inspection. At all times during performance of the Order, Supplier shall provide Purchaser and/or its representatives reasonable access to its and Subcontractor’s facilities for purposes of inspections, verification of compliance with quality assurance testing and requirements, and for verification of the progress of the Supplier’s scope of supply, as requested or required by Purchaser.

## Supplier shall carry out, at its sole expense, any tests and inspections required under the Order or necessary to verify that the Goods, including packing, marking and quantity verification, comply with the Order requirements. Any cost for inspection tests as well as any personal expenses for third party inspectors required by Supplier, are for Supplier’s account, unless otherwise specified in the Order. Purchaser has the right to ask for additional testing beyond the testing specified in the Order or required by **Article 5**.

## If Goods appear as a result of testing not to be in compliance with the requirements of the Order, all costs of additional testing, expediting, or inspection, including Purchaser’s costs for attending, witnessing and/or reviewing such tests, are for Supplier’s account. Supplier shall pay all of Purchaser’s costs and expenses associated with any failure by Supplier to comply with quality assurance requirements or programs or failure to comply with the requirements of the Order.

## No Goods shall be shipped before all tests and inspections have been performed in accordance with the Order and the results of such tests or inspections have been accepted and released by Purchaser.

## Purchaser’s expediting, inspection, waiver of inspection, or testing of the Goods, directions, review, authorization, acknowledgment, approval or consent, or election not to test or inspect, shall not discharge Supplier from its obligations, responsibilities, or liabilities under this Order. Purchaser’s failure to discover or reject Goods not in conformance with the Order does not constitute acceptance of such non-conforming Goods.

## If at any time prior to the start of the warranty period, any Goods are found to be defective, or not in conformance with the Order, Purchaser shall have the right, upon giving notice and the basis for its decision to:

1. require correction by repair or replacement of the non-conforming Goods;
2. reject any or all defective or non-conforming Goods, or
3. accept and correct such Goods, at Supplier’s expense.

# GUARANTEES AND WARRANTIES

## Supplier guarantees and warrants that the Goods:

1. will be new and of the highest quality and meet all the requirements of the Order including drawings, and specifications,
2. are in no way counterfeit or misrepresent their origin, source or original manufacturer,
3. are free from all latent or patent defects, in design, engineering, material, title, and workmanship, and conform to the Order;
4. are fit for their intended purpose;
5. conform to Good Industry Practices, and
6. Comply with Applicable Laws.

This guarantee and warranty shall be in full force and effect for a period of twenty-four (24) months after the later to occur of (i) the last actual delivery date and acceptance by Purchaser or (ii) the date the Goods are placed in service.

## The warranty period with respect to replaced or repaired Goods shall be extended by twelve (12) months from the date of acceptance of repairs or replacements by Purchaser, or the initial warranty period, whichever is later.

## Supplier shall promptly repair and/or replace, at Supplier’s sole expense, any discrepancy or defective work or Goods or any Goods not conforming to the warranty above, including defective engineering, designs, workmanship and/or materials furnished by Supplier and/or its Subcontractors. If such discrepancies or defects are not promptly corrected to the satisfaction of Purchaser and in its sole discretion, Purchaser may cause same to be corrected at Supplier’s expense, including all associated site costs and special equipment required to make such corrections to the Goods.

## Supplier shall release, indemnify, defend, and hold harmless the Indemnified Parties from and against any and all Claims, loss and liabilities arising from failure of such Goods to comply with Applicable Laws.

## If Supplier becomes aware of a discrepancy or a defect, then Supplier shall promptly notify Purchaser in writing of the details of the defect and the steps Supplier proposes in order to rectify it.

## In the event that the Goods are not in compliance with **Article 6.1** or are otherwise defective either with respect to workmanship or materials, in any manner not in conformance with the Order, or Supplier defaults with respect to its obligations in the Order, Supplier will promptly correct, through repair or replacement to Purchaser’s reasonable satisfaction (“Correction”), any such deficiency in the Goods when notified by Purchaser. While Purchaser will generally inspect Goods provided under the Order, any such procedures or inspection will in no way relieve Supplier of its responsibility to correct any deficiencies in the Goods in connection with the Order.

## In the event that Purchaser requests that Supplier correct any deficiencies in any Goods procured in connection with the Order and if Supplier does not arrange for the Correction of such Goods immediately or in the event Purchaser deems it necessary in case of emergency, Purchaser may then arrange for Correction of such Goods and charge Supplier for the costs associated with any such Correction.

## Upon completion of any remedial work or replacement necessary for the Correction of any deficient Goods performed by Purchaser, Purchaser will invoice Supplier for the costs incurred (plus 10% markup) or may withhold all amounts from any funds still due and owing to Supplier by Purchaser. Purchaser’s performance of any corrective work will not relieve the Supplier of its responsibilities and obligations under the Order.

## All of Supplier’s and its Subcontractors’ representations, warranties, and guarantees contained in the Order are and shall be deemed material and shall survive the completion or termination of this Order.

## Purchaser may, in its sole discretion, assign any warranty rights it has under this Order.

# TITLE AND RISK OF LOSS

## Supplier shall continuously protect the Goods and property of Purchaser and others from injury, damage, or loss arising in connection with Supplier’s or its Subcontractors’ performance under this Order and shall bear all risk of loss therefore until the Goods are unloaded at the point of delivery and acceptance by Purchaser.

## Supplier warrants and guarantees good and unconditional title to all Goods furnished by it and its Subcontractors hereunder. Title to all the Goods provided under this Order shall pass to Purchaser or its designate at the first to occur of:

* + 1. the date all or such portion of said Goods is placed at the Order delivery point, or as otherwise set forth in the Order, or
    2. the date payment for all or such portion of the Goods is made.

Transfer of title shall in no way affect Purchaser’s rights to refuse the Goods in case of non-conformity with the requirements for the Goods as set forth in other provisions of the Order or any other remedies available to Purchaser.

## Title to all Goods and materials including title to the work-in-progress and Intellectual Property Rights developed for or to the Goods, whether or not the same has been incorporated in the Goods, and title to all completed Goods shall vest in Purchaser at the time set out in **Article 7.2**, and in any case shall not be part of Supplier’s property or estate in the event Supplier or its Subcontractor is adjudged insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of Supplier’s or its Subcontractor’s insolvency, or if the Order is terminated. Notwithstanding the foregoing, Supplier shall be responsible for and shall bear any and all risk for loss or damage to the Goods until delivery and written acceptance thereof in accordance with the delivery provisions of the Order. Upon such delivery and acceptance by Purchaser, Supplier shall cease to bear the risk of loss or damage; provided however, that any loss or damage, whenever occurring, which results from Supplier’s or its Subcontractors’ non-conforming packaging or crating shall be borne solely by Supplier.

## All drawings, documents, engineering, electronic media, and other data prepared or furnished by Supplier or its Subcontractors in supplying Goods shall become the property of Purchaser at the time of preparation, and may be used by Purchaser for any purpose whatsoever without limitation.

## For the purpose of protecting Purchaser’s interest in the Goods with respect to which title has passed to Purchaser, but which remain in the possession of Supplier or its Subcontractors, Supplier shall take or cause to be taken all steps necessary under the Applicable Laws of the appropriate jurisdiction(s) to protect Purchaser’s title and shall indemnify, defend and hold harmless the Indemnified Parties against all Claims by any persons or third parties with respect thereto and hold such Goods in trust for Purchaser until delivery and acceptance thereof by Purchaser.

## Any of the Goods furnished hereunder for which title has passed to Purchaser but which remain in the care and custody of Supplier, or its Subcontractors and any Purchaser provided items, shall be clearly identified as being the property of Purchaser and shall be segregated from Supplier’s or its Subcontractors’ property. In addition, title to materials or partially completed Goods whose full costs are included in any cancellation charges shall pass to Purchaser.

# SUBSTITUTIONS

## Purchaser must approve any deviations, substitutions, or exceptions to this Order, in writing with a Change Order prior to becoming effective.

## Purchaser’s decision as to the suitability of any such equivalent materials, processes and/or products shall be final, but the approval of Purchaser shall not relieve Supplier from its responsibility for complying in all respects with the Order requirements and shall not affect the warranty or any guarantees covering all or any parts of the Goods.

# CHANGES, FORCE MAJEURE, AND EXCUSED DELAYS

## Purchaser has the right to make changes to the quantity and quality of the Goods and to make changes to the specifications and drawings for Goods covered by this Order. If Supplier believes that such changes affect the Order Price or delivery schedule of the Goods, Supplier must notify Purchaser in writing (with complete supporting documentation) within ten (10) calendar days after receipt of Purchaser’s written notice of change or the beginning of the event constituting the change. Unless the Supplier presents to Purchaser such written notice of a change, the Supplier shall be conclusively deemed to have waived all Claims against the Purchaser with respect thereto.

## As a condition precedent to any change to the Order Price or Delivery Dates, Purchaser and Supplier shall mutually agree in writing in a Change Order upon any adjustment pursuant to this **Article 9** to reflect the extent, if any, that a change has resulted in an increase or decrease in the Order Price and/or a delay or acceleration of the Delivery Dates. If released in writing by Purchaser, Supplier shall comply with and perform such change in accordance with the terms and conditions of this Order during the time Supplier and Purchaser are working to mutually agree upon an adjustment in the Order Price or Delivery Dates or both. Agreement to such adjustment shall constitute a waiver of all Claims by Supplier arising out of the change. In the event any such change or alteration results in a reduction in Supplier’s scope of work, no allowance shall be made to Supplier for damages, including loss of anticipated profits. In the event that the Parties cannot agree upon the impact of a change, either Party may refer the matter for resolution in accordance with **Article 20**. In the event the parties are unable to agree upon the cost impact to the Supplier of a change, the Supplier will be entitled to no more than its actual out-of-pocket cost plus 10% markup for overhead and profit. Supplier shall not suspend or delay performance under this Order while Purchaser and Supplier are in the process of making any such change and during the process of resolving any dispute.

## In the event of delay in performance due to a Force Majeure event, the Delivery Dates may be extended by a period of time reasonably necessary to overcome the effect of such delay up to a maximum of the number of calendar days’ delay directly attributable to the Force Majeure event, provided that the Party claiming a Force Majeure event must give written notification to the other Party within seven (7) days of the beginning of a cause entitling it to an extension of time, and any extension of the Delivery Dates must comply with the requirements of **Article 9.2**. Any Force Majeure delay will be considered an excusable delay to the extent the Party claiming Force Majeure complies with this **Article 9**, but neither Party will be entitled to compensation as a result thereof.

## If Purchaser delays the commencement, prosecution, or completion of Supplier’s work or delivery of Goods under the Order, and if the delay is not in any way attributable to Supplier or its Subcontractors, but is caused by Purchaser’s material breach of an express obligation of Purchaser under the Order, or is caused by Purchaser’s ordering a change to the Order as provided in **Article 9.1**, then such delay will be considered an excusable delay and Supplier will be entitled to a Change Order for an adjustment of the Delivery Dates as its sole remedy provided that: (i) the delay affects the performance of Supplier’s work that is on the critical path of Supplier’s schedule to meet the Delivery Dates; (ii) the delay causes Supplier to deliver the Goods beyond the Delivery Dates; (iii) Supplier is unable to proceed with other portions of the Order so as not to cause a delay to the Delivery Dates; and (iv) Supplier complies with the requirements in **Articles 9.1 and 9.2**.

## If Supplier institutes a design change without prior written authorization of Purchaser, which results in a deviation from or non-conformance with the specifications, any additional costs incurred by Purchaser in connection with such deviation or non-conformance shall be for Supplier’s sole account and Supplier indemnifies, defends and holds harmless Indemnified Parties from all costs in relation to such deviation or non-conformance.

## Purchaser may at any time suspend performance of all or any part of the Order by giving written notice to Supplier. Supplier will be entitled to receive as its sole compensation payment of the actual, reasonable and necessary costs that were incurred in suspending the work, provided Supplier complies with the notice and other requirements in **Articles 9.1 and 9.2**. The Delivery Date of the affected Goods will be extended by the period of the suspension. Notwithstanding the foregoing, Supplier shall not be entitled to any time or cost as a result of any suspension which was due to Supplier’s fault.

## Notwithstanding anything to the contrary contained herein, if the work for which Supplier claims additional compensation to be due under this **Article 9** or otherwise is determined by the Owner or otherwise under the Prime Contract to be such that Purchaser is not entitled to additional compensation for such work, then Supplier waives its right to additional compensation from Purchaser for such work and releases Purchaser for any liability of payment therefore.

# TAXES AND DUTIES

## Each Order and Order Price includes all taxes and duties of any kind which either Party is required to pay with respect to the Order and the transactions contemplated therein, including, without limitation, any sales and use taxes, with any such taxes and duties to be paid and borne by Supplier, whether or not any such taxes and duties are separately stated in any Order or Order Price, and Supplier will indemnify, defend and hold harmless Purchaser with respect thereto.  Without limiting the foregoing, Supplier will also be responsible for the payment of its own tax obligations, including sales and use taxes owing on its own equipment and materials, as well as all other taxes based on its income and all payroll, unemployment compensation, social security and other taxes and fees applicable to its employees and self-use consumables, and will assure that each Subcontractor pays its taxes and fees. For all purposes herein, references to taxes includes all associated interest, penalties, and additions to tax with respect thereto.

## Supplier will act as Importer of Record on all shipments of Goods under this Order and pay all associated duties, tariffs, surcharges, or fees due on such Goods and payable to U.S. Customs and Border Protection or any other customs authority.

## Supplier hereby accepts exclusive liability for, and shall release, indemnify, defend and hold harmless the Indemnified Parties for the payment of any and all taxes, duties, contributions for unemployment insurance, old age pensions or annuities, or any other purposes now or hereafter imposed by any Government Instrumentality, in connection with this Order.

## Notwithstanding the foregoing provisions of this **Article 10**, Purchaser will be responsible for the payment of all taxes based on its own income and payroll, unemployment compensation, social security and other taxes and fees applicable to its employees.

# AUDIT

## Supplier, at no cost to Purchaser, shall keep complete and accurate accounts and records of all transactions relating to the Order in accordance with generally accepted accounting principles. Purchaser shall, through its own and/or any authorized third party representatives, have the right to inspect the accounts and records at all reasonable times during the performance of this Order.

## If any audit reveals errors in amounts invoiced and/or paid, Purchaser will notify Supplier and shall be entitled to immediately recover from Supplier any amount paid in excess of that due under the Order.

# LIQUIDATED DAMAGES

## It is acknowledged that the Supplier’s failure to timely achieve the Delivery Dates will cause the Purchaser to incur substantial economic damages and losses of types and in amounts which are difficult to compute and ascertain with certainty, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Supplier agrees that liquidated damages may be assessed and recovered by the Purchaser as against Supplier, if applicable as indicated on the Order, in the event of delayed completion and without the Purchaser being required to present any evidence of the amount or character of actual damages sustained by reason thereof. If applicable as indicated on the Order, Supplier shall be liable to the Purchaser for payment of liquidated damages in the amount specified on the Order and if no amount is specified, then in the amount of one percent (1%) of the Order Price per week for each week that delivery is delayed beyond the Delivery Dates.

## Supplier agrees that all sums payable to Purchaser as liquidated damages pursuant to the Order may be deducted by Purchaser from the sums to be paid to Supplier or payable by Supplier on demand. The payment or deduction of such liquidated damages shall not relieve Supplier from its obligations to carry out and complete the Work and deliver the Goods, or from any other of its obligations and liabilities under this Order or remedies available to Purchaser, and Supplier acknowledges that such payment or deduction does not affect Purchaser’s right to claim specific performance or other available remedies.

# TERMINATION

## Purchaser may terminate this Order immediately in whole or in part for Supplier’s default at any time upon written notice to Supplier without cost to Purchaser and/or claim damages if:

1. Supplier fails to comply with any material provision of this Order;
2. Supplier or its Subcontractor(s) become (or are likely to become) bankrupt or commence any voluntary bankruptcy proceeding, Supplier goes into liquidation, or Supplier or its Subcontractor makes a general assignment for the benefit of creditors, or a receiver is appointed for any property of Supplier, or other similar event; or
3. Supplier or its Subcontractors fail to make prompt payment for labor or materials.

## Should conditions arise which, in Purchaser’s opinion, make it advisable or necessary to terminate this Order for its convenience, Purchaser may terminate this Order in whole or in part without fault of Supplier by giving written notice to Supplier specifying the date and the extent to which this Order is terminated.

## Upon any termination pursuant to **Articles 13.1 or 13.2**, Supplier shall immediately or upon such other date as is specified in the notice: (a) discontinue performance of all terminated work (except as may be necessary to preserve and protect the Goods) and refrain from placing further contracts relating to the terminated work; (b) assign or novate to Purchaser, or its nominee, to the extent required by Purchaser, all contracts which Supplier shall have with Subcontractors relating to the terminated work; (c) terminate all contracts relating to the terminated work which are not assigned or novated pursuant to (b) above; and (d) enable Purchaser or its nominee to take over the work completed as of such date and all of the relevant part of the materials in Supplier’s or its Subcontractor’s care, custody, or control as required by Purchaser. Supplier shall continue performance of this Order to the extent not terminated. Purchaser may complete the performance of this Order by such means as Purchaser selects (including the procurement of alternative Goods upon such terms as Purchaser deems appropriate) and in the event of such cancellation under **Article 13.1**, Supplier shall be solely responsible for any additional costs incurred by Purchaser in so doing.

## In the event of Purchaser’s termination in accordance with **Article 13.2** herein, as Supplier’s sole remedy, Purchaser shall pay Supplier for any Goods completed and delivered to Purchaser in full compliance with the terms and conditions of this Order prior to termination and shall reimburse Supplier for any actual, documented and justifiable costs and expenses incurred by Supplier in good faith in connection with Goods, plus overhead and profit to the date of termination, but in no event shall the total payment under this paragraph exceed the Order Price or include overhead or profit on unperformed work. Supplier shall promptly submit to Purchaser supporting documentation and give Purchaser the right to audit and verify any claimed costs, overhead and profit as a condition precedent to Supplier being eligible for the foregoing amounts.

## If, after notice of termination in accordance with **Article 13.1**, it is determined for any reason that the Supplier was not in default under the provisions of this clause, or such termination is otherwise deemed to be unenforceable, then such termination for default shall be deemed to be a termination for convenience as provided in **Article 13.2**.

# ASSIGNMENT

Supplier shall not assign this Order, or any partial or total interest therein, including any monies due or to become due to Supplier hereunder, without Purchaser’s prior written consent. Purchaser may, without prior written consent of Supplier, assign this Order or any interest herein.

# LIENS

## Supplier shall release, indemnify, defend and hold the Indemnified Parties harmless from any and all Claims or liens filed and/or made in connection with the Goods, including all expenses and attorneys’ fees incurred in discharging any Claim(s), liens or similar encumbrances.

## If Supplier either does not immediately satisfy such lien(s), Claim(s) or encumbrance(s), Purchaser shall have the right, in its sole discretion, to discharge such lien(s), Claim(s) or encumbrance(s), and Supplier shall pay to Purchaser all costs to discharge such lien(s), Claim(s) or encumbrance(s), including administrative costs, attorneys’ fees and any other related expenses.

# INTELLECTUAL PROPERTY

## Supplier represents and warrants that Purchaser’s use or transfer or sale of the Goods and any technical information furnished hereunder by Supplier and its Subcontractors will not infringe any Intellectual Property Rights. Supplier agrees, at its own expense, to defend any Claim, suit, proceeding, or action brought against the Indemnified Parties for alleged infringement of Intellectual Property Rights arising from the provision, license, sale or use of Goods and technical information furnished hereunder and Supplier agrees to defend, hold harmless and indemnify the Indemnified Parties from any loss, liability, cost, damage, and expenses (including legal costs and attorneys’ fees) incurred by such Indemnified Parties in connection with any such Claim, suit, proceeding, or action. The Indemnified Parties have the right to participate in the defense of such suits or actions, or if it elects, it may assume the entire defense of such suits through its own counsel. Supplier shall pay any amount negotiated by Supplier for the settlement of said Claim and all damages and costs awarded against the Indemnified Parties in such suit, action or proceeding. If said Goods or technical information are held to constitute infringement and the use of same is enjoined, Supplier shall, at its expense, either obtain for the Indemnified Parties the right to continue using said Goods or technical information, or replace same with non-infringing Goods or technical information acceptable to the Indemnified Parties or modify said Goods or technical information so it becomes non-infringing; provided, however that no such replacement or modifications shall in any way diminish the rated capacity or performance of the Goods or delay performance of this Order.

## Supplier shall grant to Purchaser a perpetual, non-exclusive, royalty-free, transferable, irrevocable license under Intellectual Property Rights, now or hereafter owned or licensed by Supplier and its Subcontractors, to use, copy, maintain, transfer and/or sell the Goods.

# INDEMNIFICATION

## **Indemnity for Certain Bodily Injury and Death Claims**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE Indemnified Parties FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING ATTORNEYS’ FEES AND EXPENSES, FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OR AGENT OF SUPPLIER OR ITS SUBCONTRACTORS, **EVEN IF THE BODILY INJURY OR DEATH IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT, OR STRICT LIABILITY OF ANY Indemnified PartY**.

## **Indemnity for Infringement**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, LOSSES, DAMAGES (INCLUDING PUNITIVE AND EXEMPLARY) CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL ATTORNEYS’ FEES AND EXPENSES ARISING OUT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE GOODS SUPPLIED BY SUPPLIER OR ANY SUBCONTRACTOR OR ARISING OUT OF THE ORDER.

## **Indemnity for All Other Claims**. FOR ALL CLAIMS NOT ADDRESSED IN **ARTICLES 17.1 OR 17.2** OR TO THE EXTENT THE INDEMNITY OR DEFENSE OBLIGATIONS IN **ARTICLES 17.1 OR 17.2** ARE UNENFORCEABLE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING ATTORNEYS’ FEES AND EXPENSES, OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THIS ORDER OR THE WORK TO BE PERFORMED UNDER THIS ORDER INCLUDING FOR DAMAGE TO PURCHASER OR OWNER’S PROPERTY, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF SUPPLIER OR ITS SUBCONTRACTORS OR THEIR AGENTS OR EMPLOYEES.

## **Enforceability.** If any indemnity provisions in this Order are contrary to the law governing this Order, then the indemnity obligations applicable in this Order will be applied to the maximum extent allowed by Applicable Laws.

# LIMITATIONS AND EXCLUSIONS OF LIABILITY

## Limitations on and exclusions of liability in this Order shall not apply for the benefit of any party if and to the extent that such party caused (or contributed to) any Claim, loss or liability by its own Gross Negligence, Willful Misconduct or fraud.

## NEITHER PARTY TO THE ORDER SHALL BE LIABLE TO THE OTHER AND EACH PARTY TO THE ORDER SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTY FROM ANY CONSEQUENTIAL LOSS, PUNITIVE DAMAGES, OR EXEMPLARY DAMAGES, HOWEVER THE LIABILITY ARISES AND WHETHER PURSUANT TO THIS ORDER, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER LEGAL FAULT OR OTHERWISE AT LAW.

## The following shall not be deemed to be Consequential Loss for purposes of this Order:

(a) any liquidated damages or sums specifically set forth in and payable under the Order; or

(b) liabilities incurred under **Articles 6, 16, 17, 21, 24, 25, and 29**.

# APPLICABLE LAW

This Order shall be governed by, and interpreted in accordance with Texas law unless otherwise stated in the Order, without regard to the principles of conflict of laws in such jurisdiction. The Parties acknowledge that The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Order or Subcontracts.

# DISPUTE RESOLUTION

## Any dispute between the Parties which may arise in connection with this Order, shall be resolved, at Purchaser’s sole option, by litigation or arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (“AAA”). The arbitration will be administered by the AAA. The arbitrator shall be an arbitrator approved by the AAA. The arbitration hearing shall be in Houston, Texas. The award rendered by the arbitration shall be final, and judgment may be entered upon the award in accordance with the Federal Arbitration Act. Any legal action or proceeding arising out of or relating to this Order or the relationship between the Parties instituted in state or federal courts shall be located in Harris County, Texas, and each Party irrevocably submits to the exclusive jurisdiction of those courts. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Laws, any objection to the jurisdiction of any of those courts or to venue in those courts or any claim of inconvenient forum in those courts or of sovereign immunity. **Each Party waives, to the fullest extent permitted by Applicable Laws, any right it may have to a trial by jury in respect of any legal actions or proceedings relating to or arising from this Order.**

## If the dispute is arbitrated or litigated, the prevailing Party (as determined by the arbitrator or court) shall be entitled to reimbursement of its expenses, including reasonable attorney’s and consultant’s fees and costs, incurred in connection with the arbitration or litigation and the enforcement of any judgment, unless the arbitrator or court determines that it would be manifestly unfair to honor this provision and determines a different allocation of fees and costs.

## If a dispute between the Parties is referred for resolution pursuant to this **Article 20**, the Parties shall nevertheless continue to perform their respective obligations under this Order.

# COMPLIANCE WITH LAWS

Supplier shall comply with and shall ensure that all Subcontractors comply with all Applicable Laws in the performance of this Order. Supplier shall immediately contact Purchaser for instructions if Supplier believes any part of this Order does not comply or may not comply with an Applicable Law.

# REMEDIES

The rights and remedies of Purchaser provided in this Order shall not be exclusive and are in addition to any rights and remedies provided by Applicable Law, in equity or otherwise.

# HAZARDOUS MATERIAL

## In the performance of this Order, Supplier shall comply with and shall cause all Subcontractors to comply with all Applicable Laws including for clarification, those relating to environmental law, toxic or hazardous materials, or occupational health and safety. If this Order calls for the transfer to Purchaser by Supplier or its Subcontractors of any chemical substance or mixture, or any material which may generate or release a chemical substance or any hazardous agent, Supplier shall provide Purchaser before said transfer a Safety Data Sheet (SDS) and any associated labels which are current, accurate, and complete.

## A breach of this **Article 23** will constitute a material breach by Supplier subject to immediate termination by Purchaser. Supplier hereby indemnifies, releases and holds harmless the Indemnified Parties against any and all Claims and any and all related costs and expenses (including attorneys’ fees and court costs) arising from or in connection with Supplier’s or any of its Subcontractors’ failure to comply with this **Article 23**.

# EXPORT/IMPORT CONTROLS AND LICENSES

## Supplier agrees to comply and shall ensure its Subcontractors and all its material suppliers comply with all applicable U.S. export control laws and regulations, and to be solely responsible for identifying the need for and obtaining any necessary licenses, including export and import licenses, required for delivery to the final destination (independent of quoted shipping terms of any implied lesser obligation). Supplier shall and shall ensure that its Subcontractors and all its material suppliers adhere to the U.S. Export Administration Regulations and U.S. trade sanctions laws and regulations and any other applicable export regulation and shall not export or re-export any technical information to any proscribed country or end-user listed in the U.S. Export Administration Regulations or other foreign end-user or Prohibited Party Lists unless properly authorized by the U.S. Government or the appropriate foreign government entity, if such authorization is required. Supplier shall immediately notify Purchaser in writing of any item, software, or information with an EAR designation other than EAR99 which Supplier or its Subcontractors provides under this Order. Supplier shall provide Purchaser with copies of all import and export licenses obtained in connection with the Order, and with all other information reasonably requested by Purchaser relating to import or expert licenses.

## Supplier shall control the re-exports, retransfers, disclosure, release, or other transfers of technical data, information and other items received under this Order in accordance with U.S. export control laws and regulations.

## Supplier shall immediately notify Purchaser if it or its Subcontractors becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked. Supplier shall ensure that neither it nor its Subcontractors transfer any information or items received under this Order to any person or entity on any such Excluded or Denied Party List.

# ANTI-CORRUPTION

Supplier shall comply with all applicable anti-corruption laws and shall not cause Purchaser to be in violation of any anti-corruption law, including: (i) the Foreign Corrupt Practices Act; (ii) the UK Bribery Act 2010, and and (iii) any applicable legislation or regulation implementing the Organization for Economic Cooperation and Development Convention Against Bribery of Foreign Public Officials in International Business Transactions.

# WAIVER

Unless expressly provided otherwise, failure or delay on the part of either Party to exercise any right, power or privilege under this Order, or under any other agreement relating hereto, shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege preclude any other future exercise thereof.

# SEVERABILITY

In the event that any provision in this Order is illegal, contrary to public policy, or otherwise unenforceable, then such provision shall be deleted from the Order leaving the remainder of this Order legal, valid and enforceable. The deleted provision shall be replaced by a valid new provision negotiated by the Parties, having as nearly as is legally possible the same economic and business effect as the illegal or unenforceable provision was intended to have.

# ENTIRE AGREEMENT

This Order sets forth the entire agreement between Supplier and Purchaser and all prior negotiations, dealings and understandings are superseded hereby. There are no other oral understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Order. No terms, conditions, understanding or agreement purporting to modify or vary the terms or conditions of this Order shall be binding unless hereafter made in writing in a Change Order and signed by Supplier and Purchaser. Purchaser’s signature on any invoice or other form or document accompanying delivery of the Goods furnished in performance of this Order shall constitute acknowledgment of receipt of said Goods only, and shall not constitute Purchaser’s assent to any terms and conditions contained thereon.

# CONFIDENTIALITY

## Supplier shall and shall ensure that its Subcontractors shall not make or authorize any news release, advertisement, or other disclosure, that relates to the Order or the relationship with Purchaser, without the prior written consent of Purchaser and such information shall be included in the definition of Confidential Information.

## Supplier represents and warrants that it has a policy and procedure designed to protect trade secret rights of its own confidential information including notices to its personnel to prevent unauthorized publication and disclosure of such information and that it shall require such from each of its Subcontractors. Confidential Information shall be subject to such policy and procedure.

## Supplier shall and shall ensure that its Subcontractors shall treat all Confidential Information in accordance with any separate confidentiality agreement in place between the parties, and shall not disclose any Confidential Information to any third party or use Confidential Information other than on Purchaser’s behalf except as Purchaser may otherwise first authorize in writing. If disclosure to a third party is so authorized, Supplier shall enter into a confidentiality agreement with said party containing the same terms and conditions with respect to restrictions on the use or disclosure of Confidential Information as this **Article 29** contains, a copy of which may be requested by Purchaser.

## Supplier shall safeguard and shall ensure that its Subcontractors shall safeguard, all documents containing Confidential Information. Supplier may make copies of such documents only to the extent necessary for its performance of the Order. Supplier shall prevent access to all such documents by third parties except as provided above or as required by law. On completion of the Goods, Supplier shall and shall cause its Subcontractors to return to Purchaser all such documents containing Confidential Information and destroy all copies thereof. However, should Supplier desire to retain certain documents and should it receive Purchaser’s written approval therefore, Supplier shall continue to treat said documents in accordance with the terms and conditions of this **Article 29**.

## Supplier shall also enter into confidentiality agreements with third parties upon request by Purchaser, and shall keep in force confidentiality agreements concerning third parties' proprietary information, which agreements shall permit Supplier to use such third parties' proprietary information in the Goods.

# SUBCONTRACTING

## Supplier shall not Subcontract all or any major part of the Order unless it has been previously agreed in writing with Purchaser, at Purchaser’s sole discretion. Approval by Purchaser of a Subcontract shall not relieve Supplier of any of its obligations under this Order. Supplier shall submit to Purchaser a schedule of all proposed Subcontractors, stating their full name and address as well as the country of origin of Goods that each Subcontractor may supply. Further, a schedule of inquiry and Subcontract issue dates, lead time and required delivery in connection with this Order shall also be submitted.

## Supplier shall be fully liable and responsible for its Subcontractors. Supplier represents and warrants that all Subcontractors shall perform their portion of the work in accordance with their respective Subcontracts. Supplier shall furnish such information relative to its Subcontractors as Purchaser may reasonably request. No Subcontract shall bind or purport to bind Purchaser, but each such Subcontract shall contain a provision permitting assignment of it to Purchaser at no cost upon Purchaser’s written request.

## Supplier shall include in all Subcontracts the right of assignment, novation and unilateral written cancellation, with or without cause, by Supplier of all or any portion of such Subcontract. Each Subcontract shall state that in the event of a total or partial cancellation, Subcontractor may claim only its properly supported and incurred in good faith out-of-pocket costs plus a reasonable amount to compensate Subcontractor for demonstrable related charges for the cancelled portions, all to be determined in accordance with generally accepted accounting principles. In addition, each Subcontract shall state that title to fully or partially completed Goods whose full costs are included in the cancellation charges shall pass to Supplier or Purchaser and that Subcontractor will be advised, in writing what disposition shall be made of such Goods.

# INSURANCE

## Supplier shall provide insurance covering the full replacement cost of the Goods and any and all equipment and materials to be incorporated into the Goods (regardless of who may have title/ownership), which is in Supplier’s care, custody and control. Any deductibles maintained under this insurance shall be for the account of the Supplier. In those instances wherein Purchaser holds title to all or a portion of the Goods before delivery, then Purchaser shall be included as a loss payee as its interests may appear under this policy. In addition, Supplier shall waive on behalf of Purchaser (as applicable) all of its rights of recovery and its insurance carrier’s rights of subrogation.

## Supplier shall maintain, at Supplier’s sole expense, with insurers having an S&P or Best rating of A-, the following types of insurance with limits not less than those specified below:

(a) Workers Compensation Insurance as required by Applicable Laws;

(b) Employer's Liability Insurance – $1,000,000 USD per each accident, $1,000,000 USD disease each employee, and $1,000,000 USD disease policy limit;

(c) Commercial General Liability Insurance - $5,000,000 USD per occurrence and in the aggregate; and $5,000,000 USD Products / Completed Operations aggregate;

(d) Commercial Automobile Liability Insurance, covering all owned, non-owned and hired vehicles – $5,000,000 USD per accident; and

(e) Professional Liability Insurance covering errors and omissions liability appropriate to the Goods and shall be written subject to limits of $2,000,000 USD per claim and in the aggregate. If coverage is written on a claims-made basis, Supplier warrants that any retroactive date applicable to coverage under the policy precedes the effective date of Order; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years from delivery.

(f) Excess Liability or Umbrella Insurance may be used in combination with the coverages required herein to satisfy the required limits.

## Supplier shall (a) cause the Indemnified Parties to be named as additional insureds on Supplier’s policies (except Workers Compensation/Employer’s Liability and Professional Liability), (b) obtain a waiver of subrogation on all policies listed above, in favor of Purchaser, (c) ensure that the insurances constitute primary insurances without any right of contribution from any insurances taken out by Purchaser, and (d) provide Purchaser with certificates of insurance evidencing the required coverage prior to commencing any work under this Order. For Commercial General Liability the Additional Insured Endorsement shall be CG 2010 10 01 and CG 2037 10 01 (or equivalent providing the same scope of coverage) such that the Additional Insured protection provides coverage for both Ongoing Operations and Products/Completed Operations. All insurance carried hereunder shall be endorsed to require the insurer to furnish Purchaser with thirty (30) days' written notice prior to the effective date of any cancellation or adverse change of insurance.

## Approval, disapproval or failure to act by Purchaser regarding any insurance supplied by the Supplier shall not constitute a waiver, release or relieve the Supplier of full responsibility or liability for damages or accidents as set forth in this Order.

# OWNERSHIP

## All drawings, data calculations, plans, specifications and other documents made available, directly or indirectly, to Supplier by Purchaser for use in connection with Goods or this Order shall remain the property of Purchaser and shall not be used, copied, or distributed by Supplier for any purpose other than performance of Goods.

## All documents (whether in paper or electronic form) prepared by Supplier or Subcontractor in connection with this Order, such as drawings, photos (conventional and digital), plans, specifications, calculations (including computer programs specially developed in or for the performance of Goods under this Order), estimates, operating/maintenance procedures, purchase orders and subcontracts, and the other engineering and procurement documents prepared by Supplier or Subcontractors under this Order shall become property of Purchaser or their respective designee(s) when first prepared.

## All Intellectual Property Rights that are made or conceived by Supplier, Subcontractor or the personnel of either in connection with Goods under the Order and all Intellectual Property Rights capable of being transferred or waived for the benefit of Purchaser therein, both domestic and foreign, shall belong to, be waived in favor of, and shall be assigned by such personnel to Purchaser or its respective designee(s) at no cost. Supplier shall cause all personnel of SUPPLIER and its Subcontractors to promptly and fully disclose any Intellectual Property Rights therein to Purchaser and shall cooperate, at no cost to Purchaser, with Purchaser as may be reasonably required in order to obtain patent and/or copyright and any other Intellectual Property Rights protection therefore, including the signing of assignments of inventions and rights therein, and the signing of any proper affidavits, declarations, applications or for registrations and the like.

## Supplier shall ensure that all Sub-Orders with Subcontractors contain respective provisions, which bind Subcontractors at least to the same extent as Supplier is bound, and to secure Purchaser rights as stated in this **Article 32**.

# NOTICES

Notices pursuant to this Order will be given in writing delivered to the mailing or email address set forth on the signature page of this Order.

# PURCHASHER FURNISHED EQUIPMENT OR MATERIALS

If Purchaser furnishes equipment or material to Supplier in connection with this Order, title of said equipment or materials shall remain with Purchaser. Supplier shall have full responsibility for Purchaser equipment or material when at Supplier’s or its Subcontractor’s facility and shall insure it against any loss including fire, theft, and other perils.

# DOCUMENT SUBMISSIONS

## Supplier shall be responsible for correctness and completeness of the documents prepared by or on behalf of Supplier and shall not be absolved from its liability or obligations under this Order by reason of any review, approval, examination, whether expressed or implied by or on behalf of Purchaser.

## Drawings, specifications and any other documents prepared by Supplier shall be submitted to Purchaser for review as required by the provisions of the Order. Purchaser shall promptly after receipt return one copy to Supplier indicating thereon its comments (if any). If the drawings or other documents are not in compliance with the requirements of the Order, they shall be rejected and Supplier is obliged to correct such documentation. Any cost for correction by Supplier shall be to Supplier’s account. The basis of the rejection shall be advised in writing. If review comments or rejection are not received within fourteen (14) calendar days after receipt by Purchaser, Supplier shall proceed with its work, provided, however, that Purchaser reserves the right to advise Supplier on non-conformance of the document with the Order, at any time.

# NO THIRD PARTY BENEFICIARIES

Unless otherwise specifically provided in this Order, no Person other than the Indemnified Parties will be deemed a third-party beneficiary under this Order.

# SUPPLEMENTAL TERMS

If applicable and as indicated in the Order, supplemental terms and conditions will be included in the Order. If any supplement terms and conditions are inconsistent with these Terms and Conditions of Purchase, the supplemental terms and conditions will prevail to the extent of any inconsistency.

# FURTHER ASSURANCES

The Parties will execute and deliver such further instruments, papers and documents, and shall do such further acts and things as may reasonably be necessary or as may reasonably be requested for the purpose of carrying out the provisions of this Order, or as may be reasonably necessary or reasonably requested for the purpose of carrying out the commercial arrangements reflected in this Order.

# RELATIONSHIP OF THE PARTIES

The relationship of the Parties under this Order is limited to the matters specifically identified herein and, except as otherwise provided herein, the Parties hereby expressly disclaim any intention to create a partnership, trust or other fiduciary relationship or to constitute any Party as the agent, fiduciary or trustee of the other Party.

# INTERPRETATION

## In this Order (i) the headings are for convenience of reference only and will be ignored in construing this Order; (ii) where the context requires, the singular includes the plural and vice versa and words in the neuter gender include the masculine and feminine genders and words in the masculine or feminine gender include the other neuter genders; (iii) the words “include,” “includes,” and “including” will be deemed to be followed by the words “without limitation;” (iv) unless the context otherwise indicates, references in this Order to articles, sections or attachments are references, respectively, to articles, sections or attachment of or to this Order; (v) all references in the Order to contracts, agreements, and other documents will be deemed to refer to the contracts, agreements, and other documents as amended, modified, and supplemented from time to time; (vi) no consideration will be given to the fact or presumption that either Party had a greater or lesser hand in drafting this Order; (vii) references to time will be construed as referring to the time prevailing at the Site unless otherwise specified; (viii) the word “or” is disjunctive and inclusive unless the context indicates otherwise; (ix) all references in this Order to monetary amounts or values are references to those amounts or values in United States currency; and (x) the word “will” means “is required.” Prior drafts and redlined versions of this Order that were created during negotiations or for any reason prior to the Parties’ execution of this Order will not be used to construe this Order.

# SURVIVAL

**Articles 6, 10, 11, 12, 13, 15, 16, 17, 18, 20, 24, 25, and 29** will survive termination or expiration of this Order, in addition to any provisions which by their nature should or by their express terms do, survive or extend beyond termination or expiration of this Order.

**SIGNATURE PAGE TO FOLLOW**