

**CAES**  
**TERMS AND CONDITIONS OF SALE**  
**Firm Fixed Price**  
**2022**

**1. ACCEPTANCE OF ORDER/TERMS**

(a) Except as otherwise mutually agreed to in writing by both the party purchasing goods hereunder ("Buyer") and the CAES legal entity from which Buyer is purchasing goods ("Seller"), these terms and conditions (these "Terms and Conditions") shall apply to and form a part of all purchase orders ("Order(s)") for the acquisition of products and/or other deliverables agreed upon between the parties ("Products"), between Seller and Buyer (the "Contract"). All Orders shall be governed by these Terms and Conditions in lieu of all other terms and conditions and provisions printed on or attached to the Order. These Terms and Conditions may not be varied except as specifically set forth in a written agreement with legal consideration subsequently signed by Seller.

(b) Buyer shall place an Order in compliance with these Terms and Conditions incorporating quantity, delivery schedule, place of delivery, price, and the description of the specifications or requirements.

**2. AFFILIATES**

(a) "Affiliate" shall mean an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Seller. For the purpose of the foregoing, "control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.

(b) Seller reserves the right to perform work under the Contract through any of its Affiliates. In such event, such work shall be treated as a separate Contract between Buyer and Affiliate, governed by these Terms and Conditions, with Affiliate taking the place of Seller for all purposes herein. Seller may direct Buyer to make payment directly to the Affiliate for such work, or may include the amounts due in respect of such work in its own invoices.

**3. ASSIGNMENT**

The Contract shall not be assigned, in whole or in part, by either party without the written consent of the other party, which shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, Seller may assign the Contract, without consent, in whole or in part, for the purposes of corporate reconstruction, reorganization or analogous proceeding, or to: (a) any Affiliate; or (b) a third party in the event of a merger, recapitalization, conversion, consolidation, other business combination or sale of all or substantially all of the assets of Seller connected with the Contract to such third party.

**4. CANCELLATION**

(a) Except as specifically set forth otherwise in these Terms and Conditions, in the event that either party materially breaches any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such breach. If the breaching party does not diligently commence to remedy such breach within thirty (30) days following receipt of written notice thereof, the party giving notice may cancel the Contract by providing the breaching party with a written notice of cancellation. Failure to pay any sums when due is a material breach of these terms and conditions.

(b) Either party may cancel the Contract by providing written notice to the other party in the event the other party becomes insolvent, unable to meet its debts as they become due, files a petition for bankruptcy under any chapter of the bankruptcy laws in the country of Buyer or Seller as applicable or goes or is put into liquidation.

(c) The Contract may be canceled for Buyer's convenience only if Buyer is obtaining the Products to fulfill a prime contract with a U.S. Government customer, and such customer has terminated all or the portion of such prime contract that corresponds to the Products being sold pursuant to this Contract for its convenience. In such an event:

(i) Buyer may cancel the portion of the Contract that corresponds to the portion of its prime contract that has been terminated by providing written notice thereof. For Products, such notice shall be provided at least thirty (30) days prior to the acknowledged ship date.

(ii) With regard to the terminated portion of the Contract, Buyer shall be liable for the sales price of all finished Products and the total cost of all work in process, all raw materials purchased for the Products, including long lead time and/or bulk material, and any other commitment made by, or cost incurred by, Seller for the specific purpose of performing the Contract, plus a reasonable profit. The terms provided to Seller by Buyer for any cancellation of the Contract for Buyer's convenience shall be at least as favorable to Seller as the terms upon which the corresponding portion of Buyer's prime contract was terminated.

(d) Cancellation of the Contract shall not relieve either party from any obligations under the Contract or these Terms and Conditions that have accrued prior to such cancellation. Buyer agrees that for any cancellation or termination of the Contract, it will provide payments to Seller for all Products already supplied and not paid for, for any non-recurring engineering already performed, and for other costs incurred by Seller for the performance of the Contract (including, without limitation, raw materials for the Products) that cannot be mitigated. Cancellation by Buyer of the Contract pursuant to this section 4 shall be Buyer's sole and exclusive remedy for any breach by Seller.

## **5. CHANGES**

In the event Buyer requires a change to the Products or any terms or conditions of this Contract, the parties shall mutually agree to the requirements, cost, schedule, and delivery impacts, if any, prior to implementation of such changes.

## **6. CONFIDENTIAL INFORMATION**

(a) The provisions of this section 6 regarding Confidential Information (as defined herein) shall supersede the terms of any separate, written confidentiality agreement between the parties.

(b) As used herein, "Confidential Information" means all information disclosed by or on behalf of Seller to Buyer in connection with the Contract in any manner (including, without limitation, electronically, in writing, orally, or by inspection) such that a reasonable person would understand its confidential or proprietary nature, without any requirement that such information be marked or otherwise designated as such, including, without limitation, any ideas; business methods; prices; business, financial, marketing, development, or manpower plans; customer lists or details; computer systems and software; know-how; or any other information connected with the products or services manufactured, marketed, provided or obtained by Seller or concerning Seller's relationships with actual or potential clients, customers or suppliers which, if disclosed, will be liable to cause harm to Seller. Notwithstanding the above, the restrictions of this section shall not apply to information that:

(i) was independently developed by Buyer without any use of Confidential Information;

- (ii) becomes known to Buyer, without restriction, from a third party without breach of these Terms and Conditions and who had a right to disclose it;
  - (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of Buyer; or
  - (iv) was rightfully known to Buyer, without restriction, at the time of disclosure.
- (c) Except as otherwise specifically authorized herein, Buyer shall:
- (i) Retain in strict confidence all Confidential Information;
  - (ii) Use Confidential Information solely in furtherance of Buyer's rights and obligations under the Contract and these Terms and Conditions; and
  - (iii) Not disclose any Confidential Information to any third party other than those of Buyer's Affiliates, employees, agents, or consultants that have a bona fide need to know such Confidential Information in order to facilitate Buyer's performance hereunder.
- (d) If any Confidential Information in Buyer's possession is required to be disclosed by law, whether pursuant to any statute, rule, or regulation of any federal, state, or local governmental agency or any order of any federal, state, or local administrative body or court, Buyer shall:
- (i) immediately notify Seller of such required disclosure; and
  - (ii) provide Seller with the opportunity to contest or seek to limit such required disclosure, including, without limitation, using commercially reasonable efforts to aid Seller in achieving same.
- (e) All Confidential Information disclosed hereunder shall remain the property of Seller.
- (f) Buyer shall protect Confidential Information from disclosure to third parties with at least the same degree of care with which Buyer guards its own confidential information, but in no event with less than reasonable care.
- (g) Upon thirty (30) days' written notice or the cancellation of the Contract for any reason, and at Seller's option, all Confidential Information and any copies thereof, in whatever form and wherever stored, then in the possession or control of Buyer shall be destroyed or promptly returned to Seller, and Buyer shall certify such return or destruction.

## **7. CORRUPT PRACTICES**

- (a) Buyer represents, warrants and covenants that Buyer, its affiliates, and their respective directors, officers, employees, agents, and any other persons associated with or acting on behalf of the Buyer directly or indirectly, shall not, with regard to any aspect of Buyer's performance under the Contract or these Terms and Conditions or the use or re-sale of the Products:
- (i) violate any provisions of the Foreign Corrupt Practices Acts of the United States or similar statute in the United Kingdom (the "Principal ABAC Statutes");
  - (ii) violate any applicable anti-bribery or anti-corruption law or regulation enacted in any jurisdiction, whether in connection with or arising from the OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions or otherwise; or
  - (iii) make, or offer to make, promise to make or authorize the payment of or giving of, directly or indirectly, any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money, or anything of value prohibited under any applicable law or regulation (any such payment, a "Prohibited Payment"). Buyer further agrees not to make or authorize the making of any gift or payment to any third person if Buyer knows or has

reason to suspect that all or any portions of such gift or payment will be used for any Prohibited Payment.

(b) Unless Buyer is a government entity, Buyer further represents and warrants that neither Buyer or any of its owners or any of its affiliates nor any of its or their directors, officers, employees, agents or representatives:

(i) is a government official; or

(ii) has been subject to any investigation by any governmental agency with regard to any Prohibited Payment.

(c) Buyer understands the provisions of any relevant laws in the jurisdiction in which it will be receiving the Products and in the place of incorporation of Seller relating to the prevention of corruption, and agrees to comply with them. Buyer hereby represents and warrants that it is familiar with the terms and provisions of the Principal ABAC Statutes and the purposes of them, and particularly that it is familiar with the Principal ABAC Statutes' prohibition on the payment or giving of anything of value, either directly or indirectly, to any foreign government, any official of a foreign government, any foreign political party, or any candidate for political office for the purpose of influencing any act or decision of such foreign government, influencing any act or decision of such a person in his or her official capacity, or inducing such person to use his or her influence with a foreign government to assist in obtaining or retaining business for or with, or directing business to, any person.

(d) Buyer agrees to report promptly any breach or possible breach of the law of which it may become aware (including any Prohibited Payment), whether enacted pursuant to the OECD Convention on Combating Bribery of Foreign Public officials in International Business Transactions or otherwise concerning bribery and corrupt practices (including, but not limited to, where relevant, the Principal ABAC Statutes), with regard to any aspect of Buyer's performance under the Contract or these Terms and Conditions or Buyer's use or re-sale of the Products, to the Seller.

(e) Buyer acknowledges and agrees that no employee or officer of Seller shall have any authority to give any direction, written or oral, with respect to the making of any commitment by Buyer to any third party in contravention of the above representations, warranties, and covenants.

## **8. COUNTERFEIT PARTS**

(a) Seller shall only purchase material to be incorporated into its Products to be delivered to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller shall maintain documentation until completion of the Contract that authenticates traceability of the affected parts to the applicable OCM/OEM. Seller shall promptly notify Buyer with the pertinent facts if Seller becomes aware or suspects that Products it delivered contain counterfeit parts.

(b) In the event that Products delivered under the Contract contain materials which were not procured in accordance with section 8(a) and which constitute or include counterfeit parts, Seller shall, during the Product Warranty Period (as defined in section 28(a)(i)) (Warranty), at its expense, promptly replace such counterfeit parts with genuine parts conforming to the requirements of the Contract. Replacement of any counterfeit parts shall be handled in accordance with the Product warranty terms set forth at section 28(a) (Warranty), and shall be Buyer's sole and exclusive remedy regarding such parts.

## **9. DATA AND INTELLECTUAL PROPERTY RIGHTS**

(a) Any technical data or information which Seller discloses to Buyer is and shall remain proprietary to Seller and shall be Confidential Information hereunder (as defined in section 6(b) (Confidential Information)).

(b) Except as specifically set forth otherwise herein, neither the performance of the Contract nor anything in these Terms and Conditions shall grant either party any right, title, or license of any kind in any of the other party's existing or future Intellectual Property Rights (as defined below) or any developments or modifications thereto. Any developments or modifications made to Seller's Intellectual Property Rights, whether by Seller in the performance of the Contract or by Buyer or its customer, shall vest exclusively in Seller. As used herein, "Intellectual Property Rights" means all intellectual and industrial property rights, including, without limitation, patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, and any other rights in any invention, discovery or process, in each case in the United States of America and all other countries in the world and together with all renewals and extensions thereof.

(c) Buyer shall use Seller's Intellectual Property Rights solely for the purposes of using the products purchased under this Contract and only in accordance with this Contract and the instruction of Seller. Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Products or any tangible objects or software that embody Seller's Intellectual Property Rights, nor develop second sources to manufacture any component or product embodying or based on Seller's Intellectual Property Rights. Buyer shall not allow any trademarks of Seller or other words or marks applied to the Products to be obliterated, obscured, or omitted nor add any additional marks or words thereto.

(d) Unless otherwise expressly set forth in writing by Seller, non-recurring engineering charges and all charges of a similar nature which may be billed to Buyer for work performed by Seller in connection with the Contract (including, but not limited to, tooling charges, partial preparation charges, drawing or design charges, set-up or fit-up charges, and the like) represent only part of the cost thereof incurred by Seller. Buyer shall not acquire any right, title or interest in, or license (either express or implied) to, any drawings, designs, or Intellectual Property Rights, or any tooling or other tangible property, by virtue of any such charges.

## **10. DELIVERY**

(a) Unless otherwise explicitly agreed upon in writing, Seller's delivery terms are EXW-Origin per the latest revision of Incoterms, at which time transfer of title and risk of loss to Buyer shall occur. Buyer hereby grants Seller a purchase money security interest in the Products and any proceeds thereof to secure Buyer's obligation to pay all sums due with respect to the Products. Such security interest shall terminate upon receipt of payment in full, in readily available funds, of such sums by Seller. Buyer shall execute such further documents, financing statements and other instruments as may be requested by Seller to perfect such security interest.

(b) Seller will use reasonable efforts to deliver the Products within the time(s) agreed in the Order or, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those efforts, Seller is unable to achieve delivery on the specified date, Seller shall not be deemed to be in breach of the Contract unless and until Buyer has given Seller one hundred and twenty (120) days' written notice requiring the delivery to be made and Seller has not completed the delivery in that period, at which time Buyer may cancel the Contract immediately, in accordance with section 4 (Cancellation).

(c) If shipment of any Products is delayed at Buyer's request, delivery shall still be deemed to have occurred in accordance with section 10(a), and Seller may invoice Buyer for such Products at such time. Seller may, at its election, store or arrange for storage of such Products until shipment to Buyer and charge Buyer for all related costs and expenses (including, without limitation, storage and insurance), and acting in such capacity shall have all rights as are available to parties offering commercial storage services under applicable law.

(d) Rescheduling of shipments shall be by mutual agreement. Notwithstanding the foregoing, Buyer acknowledges that Seller's extensive line of products requires close coordination of Buyer's requirements with Seller's production schedules to avoid possible delays in shipment. Accordingly, Seller reserves the right to ship in advance of the Seller-acknowledged delivery date unless Buyer is established as a "Just in Time" (JIT) account.

(e) Unless otherwise agreed in writing, Seller may ship all Products to be furnished to be provided, at one time, or in separate installments, from time to time, within the specified shipment or delivery period. Seller may invoice Buyer for each installment separately.

## **11. EXPORT CONTROL**

(a) Buyer acknowledges and agrees that the Products may be subject to the export or import laws and regulations of:

- (i) the United States of America, including, without limitation, the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774), and the economic and trade sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control;
- (ii) the European Union and its member states, including, without limitation, Council Regulation (EC) No. 1334/2000; and
- (iii) other countries (collectively, "Export/Import Laws").

(b) Buyer agrees to comply strictly with all Export/Import Laws applicable to the Products. Buyer shall promptly notify Seller of any authorization requirements under Export/Import Laws that may apply to delivery of the Products to Buyer. Buyer acknowledges and agrees that the Products shall not be exported, re-exported, trans-shipped or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, Crimea region of Ukraine, or any other countries for which the United States of America or the European Union maintains an embargo (collectively, "Embargoed Countries"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "Denied or Restricted Parties"). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of its customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. Government (or EU Government, as applicable) before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively) to any Foreign Person (as defined in 22 C.F.R. § 120.16).

(c) Acceptance of these Terms and Conditions certifies to Seller that Buyer is in compliance with 22 C.F.R. Part 120 as required and Buyer's registration will remain valid during the terms of this agreement.

(d) Buyer further certifies that:

(i) Buyer understands its obligation to protect EAR- or ITAR-controlled Products as necessary from unauthorized disclosure or access to foreign person employees or visitors.

(ii) In the performance of the Contract, Buyer understands its obligation to determine whether it will require the use of third-party subcontractors to access any technical data regarding the Products. If required, Buyer is responsible for identifying and licensing any activity that requires export authorization from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.

## **12. FORCE MAJEURE**

In the event of the occurrence of any strikes, labor disputes, embargos, epidemics, quarantine restrictions, natural disasters, unusually severe weather, floods, earthquakes, fire, explosions, power surges, acts of God or of the public enemy, war, civil unrest, acts or threats of terrorism, delays caused by Government priorities or by regulations, delays in transportation or delivery, defaults of suppliers or sub-contractors (where such default itself is caused by a circumstances beyond its reasonable control), or other events outside the reasonable control of Seller, as well as other force majeure cases commonly recognized under applicable law ("Force Majeure"), Seller shall be released from performing its contractual duties under the Contract to the extent that such Force Majeure is partially or wholly preventing Seller from performing its contractual duties as performed prior to the Force Majeure incident or as performed in the normal course of business. In such an event, Seller shall inform Buyer about the nature of the Force Majeure incident and the expected duration of the incident. In no event shall Seller be responsible or liable for any default, procurement costs, or any claim in connection with the non-performance or late performance of its contractual duties as a result of the Force Majeure event. In the event the Force Majeure event lasts longer than one hundred eighty (180) days, Seller shall have the right to cancel the Contract and recover costs in accordance with section 4(d) (Cancellation).

## **13. FOREIGN OFFSETS**

No foreign offsets shall be provided by Seller under the Contract. All offset credits shall be solely for the account of Seller.

## **14. GOVERNING LAW; DISPUTES**

(a) Buyer and Seller shall attempt in good faith to resolve any dispute or disagreement ("Dispute") arising from the Contract promptly by negotiation between executive management of each party who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Contract. If any Dispute is not settled to the mutual satisfaction of Buyer and Seller, then it shall be settled at the option of either party as set forth in section 14(b).

(b) The Contract and these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York, United States without regard to the principles of conflict of law thereof, nor the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The Parties consent to the jurisdiction of the state and federal courts situated in New York, New York. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY**

**CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT**

(c) Nothing in this section 14 (Governing Law; Disputes) shall prevent Seller from seeking and obtaining injunctive and other equitable remedies to prevent or restrain any breach or threatened breach of sections 6 (Confidential Information), 9 (Data and Intellectual Property Rights), or 17 (Insurance; Indemnity) of these Terms and Conditions. Buyer agrees and acknowledges that in the event of any such breach or threatened breach, Seller will suffer irreparable damage for which there is no adequate remedy at law, and thus Seller shall be entitled to the injunctive and other equitable remedies set forth above, without the necessity of posting any bond.

## **15. INDEPENDENT CONTRACTOR**

The parties have entered into the Contract solely as independent contractors and nothing contained herein shall be construed as giving rise to a joint venture, partnership or other form of business organization. Neither party shall bind or commit the other party, contractually or otherwise.

## **16. INSPECTION AND ACCEPTANCE OF PRODUCTS**

(a) Buyer may, on a non-interference basis and upon mutual agreement with Seller, inspect all Products at reasonable times and places at Seller's facility, including, when practicable, during manufacture and before shipment. Seller may require Buyer or Buyer's representative to execute confidentiality agreements prior to performing such inspections. Buyer shall pay all costs arising from or relating to such inspections.

(b) Final acceptance of Products shall not be delayed or refused for minor errors or omissions that do not materially affect the use of the Products. If final inspection and acceptance does not occur at the time of shipment, it shall be conclusively presumed to have occurred within thirty (30) days of such shipment or upon Buyer's use of the Products, whichever occurs first.

(c) During the period between delivery and acceptance, if Seller delivers defective or non-conforming Products, the Buyer has the right to reject the Product. Seller shall rectify or replace such Product as soon as reasonably possible.

## **17. INSURANCE; INDEMNITY**

(a) Buyer shall maintain for the performance of the Contract workers' compensation, commercial general liability (CGL), automobile liability (AL), third party bodily injury and property damage liability (including product liability) insurance with minimum limits equal to the greater of: (i) Five Million Dollars (US\$5,000,000.00) or: (ii) the full value of any property at risk. Buyer shall provide Seller thirty (30) days' advance written notice prior to the effective date of any cancellation or change in the term or coverage of required insurance, provided however such notice shall not relieve Buyer of its obligations to maintain the required insurance. If requested, Buyer shall provide Seller with a "Certificate of Insurance" evidencing Buyer's compliance with these requirements.

(b) Buyer agrees to indemnify, defend, and hold Seller harmless from and against all losses, damages, claims, costs, and expenses (including attorneys' fees) arising from or relating to:

- (i) any claims by Buyer's customers, end users or other third parties;
- (ii) death, personal injury, or property damage resulting from Buyer's acts or omissions or those of its employees, agents, or contractors;
- (iii) Seller's compliance with Buyer's instructions; or
- (iv) any act or omission of Buyer or its employees, agents, or contractors resulting in death, personal injury, or property damage while such Buyer parties are present at Seller's facility.

(c) Buyer is solely responsible for the use of the Products after delivery, and compliance with all laws applicable thereto.



## **18. INTELLECTUAL PROPERTY INDEMNIFICATION**

(a) Seller shall defend a claim made against Buyer by reason of an infringement or alleged infringement of an Intellectual Property Right of a third party arising solely from Buyer's use or sale of the Products, and shall pay any settlement or the reasonable costs and damages awarded against Buyer resulting therefrom, provided that:

- (i) Buyer shall promptly notify Seller in writing of such claim;
- (ii) Seller shall have the exclusive conduct of the defense of such claim and all negotiations for its settlement or compromise;
- (iii) The liability claimed shall have arisen solely because of Seller's selection as to the design, composition or manufacture of the Products;
- (iv) Buyer (at the reasonable expense of Seller) shall give Seller all reasonable assistance requested by Seller in the defense or settlement of such claim;
- (iv) Buyer shall not make any statements prejudicial against Seller's interests; and
- (vi) Buyer shall mitigate its damages, if any.

(b) In the event the use of the Products is enjoined, and in conjunction with the provisos above, Seller shall, at its option, either obtain for Buyer the right to continue using such Products, replace or modify such Products so that they are non-infringing, or grant Buyer a credit for the purchase price of such Products.

(c) Seller shall not be liable to Buyer for an infringement or alleged infringement of an Intellectual Property Right of a third party to the extent that such infringement arises from or relates to:

- (i) Use of the Products in combination with other goods or items not supplied by Seller;
- (ii) Information, data or programs furnished by Buyer in the course of the design, manufacture, sale, or repair of the Products;
- (iii) Actions taken by Seller at the request of Buyer;
- (iv) Alteration of the Products other than by Seller or as authorized in writing by Seller;
- (iv) Failure of Buyer to use or otherwise implement solutions provided by Seller in order to avoid such infringement, including, without limitation, replaced or modified parts of the Products;
- (v) Use of the Products in a manner for which they were not intended; or
- (vii) Any Intellectual Property Right in which Buyer, its Affiliate(s), or the user of the Products has a direct or indirect controlling interest or where Buyer, its Affiliate(s), or the end user is an existing licensee of that Intellectual Property Right for the same use.

(d) Seller shall not be liable to Buyer:

- (i) With respect to any infringement or alleged infringement of an Intellectual Property Right of a third party that results from the use of the Products in a country other than the country in which the Products are manufactured or delivered by Seller; or
- (ii) To the extent that Federal Acquisition Regulation clause 52.227-1 "Authorization and Consent" applies to Buyer's prime contract with a U.S. Government customer for infringement of a U.S. patent, such that Buyer and its customers are not subject to actions for claims, damages, losses, costs, or expenses, including reasonable attorneys' fees.

(e) This section 18 sets forth Seller's entire liability to Buyer, and Buyer's exclusive remedy, with respect to the infringement or alleged infringement of an Intellectual Property Right of a third party.

## **19. LIMITATION OF LIABILITY**

(A) NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY ANYWHERE CONTAINED OR REFERENCED IN THE CONTRACT, IT IS THE INTENTION OF BOTH PARTIES TO ESTABLISH AN OVERALL CUMULATIVE AGGREGATE LIMITATION OF LIABILITY CAP LIMITING SELLER'S LIABILITY FOR ALL COSTS, EXPENSES, FINES, PENALTIES, DAMAGES, INDEMNIFICATIONS AND THE LIKE, HOWEVER ARISING AND RELATED TO THE CONTRACT OR THESE TERMS AND CONDITIONS, AND SUCH OVERALL CAP SHALL BE AS STATED WITHIN THIS LIMITATION OF LIABILITY CLAUSE.

(B) EXCEPT AS SET FORTH IN SECTION 19(C), SELLER'S AGGREGATE CUMULATIVE TOTAL LIABILITY TO BUYER UNDER THE CONTRACT AND THESE TERMS AND CONDITIONS, WHICH IS BUYER'S EXCLUSIVE REMEDY AND IS IN FULL SATISFACTION OF ALL LIABILITY, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, INDEMNIFICATION, TORT (INCLUDING NEGLIGENCE), COUNTERFEIT PARTS, REPROCUREMENT, STRICT LIABILITY, OR OTHERWISE, WHETHER ARISING AT LAW, IN EQUITY, OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID BY BUYER FOR THE GOOD(S) GIVING RISE TO THE LIABILITY. SELLER'S LIABILITY SHALL BE FURTHER RESTRICTED TO ITS ACTS OR OMISSIONS WHICH ARE BOTH ITS FAULT AND WHICH DIRECTLY CAUSED THE LOSS. BUYER SHALL HAVE THE OBLIGATION TO MITIGATE ALL DAMAGES. FURTHER, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF DIRECT OR INDIRECT PROFITS OR REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE, INTERRUPTIONS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF BUSINESS, ECONOMIC LOSS, DOWNTIME, OR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, LIQUIDATED, OR CONSEQUENTIAL DAMAGES, EVEN IF BUYER WAS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION SHALL BE BROUGHT FOR ANY BREACH BY SELLER MORE THAN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION HAS ACCRUED.

(C) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, SELLER DOES NOT EXCLUDE OR LIMIT ITS LIABILITY (IF ANY) TO BUYER FOR:

(I) DEATH OR PERSONAL INJURY RESULTING FROM SELLER'S NEGLIGENCE;

(II) ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR SELLER TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY; OR

(III) FRAUD.

(D) FOR ANY PRODUCTS THAT WILL BE LAUNCHED INTO SPACE, SELLER SHALL HAVE NO LIABILITY FOR DAMAGES ARISING FROM OR RELATING TO EVENTS THAT OCCUR AFTER THE COMMENCEMENT OF THE LAUNCH PROCEDURE OF THE VEHICLE CARRYING SUCH PRODUCTS INTO SPACE.

(E) THE PARTIES SPECIFICALLY AGREE THAT THE ARRANGEMENT SET FORTH HEREIN:

(I) IS AN INTENTIONAL ALLOCATION OF RISK;

(II) IS INTENDED TO OVERRIDE ANY IMPLIED WARRANTIES, CONDITIONS, OR LIABILITIES, TO THE FULLEST EXTENT ALLOWABLE BY LAW; AND

(III) IS A MATERIAL PART OF SELLER'S AGREEMENT TO THE CONTRACT, WITHOUT WHICH THE PRICES AND FEES PAID BY BUYER WOULD BE SIGNIFICANTLY GREATER.

## **20. OBSOLESCENCE**

In the event it becomes necessary to replace obsolete or unobtainable materials necessary to manufacture or repair the Products, a mutually agreed upon equitable price and schedule adjustment will be made to the Contract. Such adjustment will include non-recurring and recurring costs, and any associated impact.

## **21. PAYMENT**

(a) Payment shall be due and payable thirty (30) days from date of invoice. No discounts are allowed. Payment shall not be withheld on account of any claim by Buyer against Seller. If Buyer disputes any portion of an invoice, Buyer shall pay the undisputed portion when due, and the parties shall resolve the disputed portion in accordance with section 14 (Governing Law; Disputes). Non-payment or delay in payment by Buyer shall be considered a breach of the Contract. Seller, among other remedies, shall have the legal right, without being in breach, either to cancel the Contract or to stop or suspend deliveries in the event that Buyer fails to pay for any invoice or shipment when payment becomes due, or is otherwise in breach of the Contract. Late payments shall bear interest at three percent (3%) per annum over the then-current Prime Rate, as published by the Wall Street Journal.

(b) Unless specifically otherwise agreed in writing by Buyer and Seller, all payments are to be made in United States Dollars (USD\$). If made by check, the check must be drawn on a U.S. Bank. All banking charges, if any, are to be pre-paid by Buyer. No payment shall be deemed to have been received until Seller receives readily available funds.

(c) Buyer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing ) to Seller or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or its affiliates, whether relating to Seller's or its affiliates' breach or non-performance of this Agreement or any other agreement between Buyer or any of its affiliates, and Seller or any of its affiliates, or otherwise.

## **22. PUBLICITY**

Notwithstanding any clauses to the contrary, Seller reserves the right to publish, distribute, or use any information about the existence of this Contract, its value, the products supplied, the platform, or program, or use the Buyer company name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a website content or for goods or service endorsement without the need of obtaining Buyer's approval. Buyer agrees that should Seller choose to submit a draft release of such information, Buyer will provide any comments it would like to have incorporated into the release no later than 10 business days of receipt of the draft. However, Seller in its sole discretion will determine the contents and the timing of the final release.

## **23. RESALE**

Buyer shall not, without the express prior written approval of Seller, resell the Products in exactly the same condition in which they were supplied by Seller at the delivery point. Seller may make approval subject to such conditions as Seller, in its discretion, deems appropriate, including, but not limited to, informing Seller of each occasion on which Buyer resells the Products. For the purposes of this section 22 (Resale) the term "resell" shall not include where Buyer integrates the Products as part of a larger Buyer system or product for onward sale.

## **24. SEVERABILITY; WAIVER; OTHER MATTERS**

(a) If any term or provision of these Terms and Conditions should be found invalid or unenforceable as written, then such term or provision shall be given force and effect to the fullest extent that it is valid and enforceable, and the remainder of these Terms and Conditions shall be construed as if the invalid or unenforceable portion of such term or provision was not contained herein (but only to the extent that the result of such construal is in accordance with the parties' intent).

(b) Failure by Seller to enforce any of the provisions of the Contract, these Terms and Conditions, or any applicable laws shall not constitute a waiver of the requirements of such provisions or laws, or as a waiver of the right of Seller thereafter to enforce such provisions or laws. A waiver by Seller of any provision of the Contract, these Terms and Conditions, or applicable law shall not be deemed to be a continuing waiver, but shall apply solely to the instance to which the waiver is directed.

(c) Any notice or demand in connection with the Contract shall be in writing and may be delivered by hand, registered mail, facsimile (provided a transmission receipt is retained), or legally binding registered e-mail, addressed to the recipient at its registered office and marked for the attention of the General Counsel (or such other address or person as specified on the Contract or which the recipient has designated in writing to the sender in accordance with this clause). The notice, demand or communication will be deemed to have been duly served:

(i) if delivered by hand, at the time of delivery;

(ii) if delivered by registered mail or e-mail, forty-eight (48) hours after being posted (or in the case of registered airmail ten (10) days after being posted); or

(iii) if delivered by facsimile, at the time received by the other party; provided, that, in the case of delivery by hand or by facsimile, if such delivery occurs either after 4:00 pm on a business day or on a day other than a business day, service will be deemed to have occurred at 9:00 am on the next following business day (such times being local time at the address of the recipient).

(d) The headings contained in these Terms and Conditions are for convenience only and shall not affect the interpretation of these Terms and Conditions. References to sections are, unless the context requires otherwise, references to sections of these Terms and Conditions.

## **25. SURVIVABILITY**

If the Contract expires, is completed, or is terminated, the parties shall not be relieved of those obligations contained in the following clauses:

Section 6 (Confidential Information), section 7 (Corrupt Practices), section 9 (Data and Intellectual Property Rights), section 11 (Export Control), section 12 (Force Majeure), section 14 (Governing Law; Disputes), section 17 (Insurance; Indemnity), section 19 (Limitation of Liability), section 21 (Payment), section 24 (Severability; Waiver; Other Matters), section 26 (Taxes and Import Duties), section 28 (Warranty), and section 29 (Government Contracts).

## **26. TAXES AND IMPORT DUTIES**

(a) Prices do not include any Federal, state and local taxes, fees, or duties, and Buyer assumes all liabilities for same, other than taxes based upon Seller's net income, unless Buyer has furnished Seller with an exempt purchase or resale certificate.

(b) Any and all customs, duties, taxes or other fees of any nature which may be imposed, charged or assessed with respect to the Contract for the importation into any foreign country of any Product, documentation or information furnished or sold are not included in the prices and shall be for the account of and paid for by Buyer. Buyer shall immediately reimburse Seller for any such tax, duty, custom or other fees that Seller is required to prepay.

## **27. TEST DATA**

Unless specifically noted hereon, qualification tests and any test data are not included in the selling price. Qualification tests may be performed by Seller and test data supplied at the specific request and expense of Buyer at a price mutually agreed to by the parties.

## **28. WARRANTY**

### **(a) For Products:**

(i) The warranty period for Products (the "Products Warranty Period") shall begin on the date of shipment and end on the earlier of: (1) the date that is twelve (12) months after the date of shipment; or (2) for Products that will be launched into space, the commencement of the launch procedure of the vehicle carrying such Products into space.

(ii) Seller warrants that, during the Product Warranty Period, the Products will be free from defects in materials or workmanship that would cause them not to be in material conformity with Seller's specifications therefor (the "Specifications"); provided, however, that this warranty shall not apply to any Product: (1) that has been improperly altered, installed, or connected in any way, or abused or misused physically or electrically; (2) on which Seller's trademark or other markings shall have been defaced or obliterated; (3) that has been reworked or repaired by any party other than Seller without Seller's prior written authorization; or (4) that has not been maintained or stored in full compliance with Seller's instructions.

(iii) In the event that Buyer believes that the preceding warranty has been breached, Buyer shall request written return material authorization ("RMA") from Seller prior to the return of the allegedly nonconforming Product. In order for the warranty to apply, Buyer must request the RMA within the Product Warranty Period, and Seller must receive the allegedly nonconforming Product by the later of: (1) the end of the Product Warranty Period; or (2) the date that is thirty (30) days after the date of the RMA. The RMA shall not commit Seller to the making of any repair or replacement hereunder. Each request for an RMA shall list the types and quantities of Products involved, the reasons for the request, information concerning operating conditions involved, and the period of use. In addition, the Contract number and, where possible, the original invoice number covering the original purchase of the Products involved must be shown. Returned Products must be shipped, transportation prepaid, by the most practical method of shipment. Shipping costs will be credited to Buyer for all Products found to be subject to warranty adjustment. Excessive transportation costs will not be allowed. Seller can accept no billing for packing, inspection, labor charges or other incidental costs in connection with any Products returned.

(iv) If Seller determines that any returned Product is not in conformity with this warranty, the remedy will take the form, at Seller's option, of a replacement or repair of the defective or nonconforming Product. In the event that it is uneconomical to replace or repair a warranted Product, Seller may, at its sole option, remit the dollar equivalent based upon the original Product sales price and said remittance will be calculated by applying the pro rata percentage of the unexpired warranty to the original Product sales price. Unless otherwise requested by Buyer, returned Products found not subject to this warranty will be sent back to Buyer, transportation collect. In all cases, Seller's determination will be final.

(v) In the event of repair or replacement pursuant to the foregoing warranty, such warranty shall apply to the repaired or replaced Product for the remaining balance of the Product Warranty Period.

(vi) Products manufactured by a third party ("Third Party Product") may contain, be contained in, incorporated into, attached to or packaged together with the Products. Third Party Products are not covered by the warranty in this section. For the avoidance of doubt, Seller makes no representations or warranties with respect to any Third Party Product.

(b) THE WARRANTIES SET FORTH IN THIS SECTION 28 ARE THE SOLE WARRANTIES MADE BY SELLER WITH REGARD TO THE PRODUCTS. SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, THAT MIGHT OTHERWISE SUBSIST IN FAVOR OF BUYER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, DESIGN, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. THIS SECTION 28 CONSTITUTES BUYER'S SOLE REMEDY AND SELLER'S SOLE LIABILITY FOR BREACH OF WARRANTY.

## **29. GOVERNMENT CONTRACTS**

In the event that the Products provided by Seller hereunder are for ultimate sale to the United States Government and purchased as "Commercial Items" (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation ("FAR"), then Seller agrees to comply with FAR 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items" as applicable. All other Government flow downs shall be negotiated by the Parties and agreed to in writing.