

**P & B METAL COMPONENTS LIMITED.**  
**TERMS AND CONDITIONS OF PURCHASE.**

**REVISION 19/03/10.**

TABLE OF CONTENTS:

01	DEFINITIONS
01B	CONSTRUCTION RULES
02	TERMS AND CONDITIONS
03	PAYMENT TERMS
04	TRANSPORTATION AND DELIVERY
05	TERMINATION
06	DISPUTE RESOLUTION
07	PURCHASER'S PROPERTY
08	INTELLECTUAL PROPERTY OWNERSHIP
09	INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY
10	CHANGES
11	ANTICIPATION OF DELIVERY SCHEDULE
12	ASSIGNMENT AND CHANGE IN OWNERSHIP
13	QUALITY ASSURANCE, INSPECTION AND TEST
14	REMOVALS OR REPLACEMENTS
15	INDEMNIFICATION AND INSURANCE
16	SELLER'S REPRESENTATIONS
17	SELLER'S EMPLOYEES
18	RECORD RETENTION REQUIREMENTS
19	EXPORT AND IMPORT CONTROL
20	WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES
21	ACCESS TO PURCHASER'S COMPUTER SYSTEMS, STORAGE OF PURCHASER DATA
22	ENVIRONMENTAL MATTERS
23	MISCELLANEOUS

\*\*\*\*\*

**ARTICLE 1 - DEFINITIONS.** As used throughout this Agreement:

- (a) "Purchaser" means the P & B Metal Components Limited.
- (b) "Seller" means the party contracting with Purchaser to perform the work hereunder.
- (c) "Agreement" means these terms and conditions, purchase orders or purchase agreements issued to Seller referencing these terms and conditions, and any supply agreements, specifications, statements of work, or other papers referenced in such purchase orders or purchase agreements.
- (d) "Goods" means all products contracted for and supplied by Seller under this Agreement, including all components, raw materials, and intermediate assemblies thereof.
- (e) "Services" means those services contracted for and supplied by Seller under this Agreement and as may further be described in purchase orders, purchase agreements, statements of work, specifications, or other papers included in this Agreement.

**ARTICLE 1B- CONSTRUCTION RULES.**

- (a) Plural. Plurals shall be deemed to include the singular, and singular shall include plural.
- (b) Gender. Masculine shall be deemed to include feminine, feminine shall include masculine, and gender neutral shall include both the masculine and feminine.

- (c) Including. The term including, when used herein, shall be deemed to mean including without limitation.
- (d) Headings. The heading designations are supplied for convenience only, and may not accurately or fully describe all of the requirements of a section. The headings or sub-headings do not limit or modify the scope and applicability of the sections.

**ARTICLE 2 - TERMS AND CONDITIONS.** Either Seller's written acknowledgement or Seller's full or partial performance under this Agreement, whichever occurs first, will constitute acceptance of this Agreement. Any acceptance of this Agreement by Seller is limited to acceptance of the express terms of the offer set forth in this Agreement. Any proposal for additional or different terms is rejected unless accepted in writing by the Purchaser. Additional or differing terms or conditions proposed by seller or included in seller's acknowledgment hereof are hereby objected to by purchaser and have no effect unless expressly accepted in writing by purchaser.

Supplier acknowledges and confirms that: (1) it has had an opportunity to carry out a thorough due diligence exercise in relation to the requirements of this Agreement and has asked the Purchaser all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Goods and Services in accordance with the terms of this Agreement; (2) it has received all information requested by it from the Supplier to enable it to determine whether it is able to provide the Goods and Services in accordance with the terms of this agreement; (3) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Purchaser pursuant to this Article 2; (4) it has raised all relevant due diligence questions with the Purchaser before entering into this agreement; (5) the terms of this agreement have been specifically negotiated; and (6) it has entered into this agreement in reliance on its own due diligence.

**ARTICLE 3 -PAYMENT TERMS.**

- (a) Unless otherwise stated or agreed, the Purchaser will pay the full invoiced amount to Seller within sixty (60) days "end of month" from the Payment Start Date. Payment Start Date shall be the later of (a) the date performance is requested by Purchaser (e.g., in a part schedules report (Goods) or statements of work (Services)), (b) the material received date as identified in Purchaser's computer system, or (c) the invoice date (which shall not be earlier than the date of complete performance). Settlement and invoicing must be in a paper format acceptable to Purchaser. Seller must provide banking information.
- (b) Taxes. All sums payable under this Agreement shall be exclusive of VAT or other sales tax, which shall (if applicable) be payable by the Purchaser.
- (c) Set-off. Purchaser shall be entitled to set off any amount owing from Seller to Purchaser or to any of Purchaser's affiliated companies against any amount payable under this Agreement.

**ARTICLE 4 -TRANSPORTATION AND DELIVERY.**

- (a) Goods covered by this Agreement shall be shipped in accordance with ICC Incoterms, 2000 Edition. Unless otherwise specified on the face of the order, the applicable shipping and delivery Incoterms will be FCA (named place). In any event, title to Goods shall pass to Purchaser on the title passage date (earlier of the Manufacturing Required Date (MRD) or the use date, unless Goods are delinquent to the MRD, in which case title passage shall occur upon arrival of such Goods at the specified delivery location). Purchaser insures all Goods for which it accepts risk of loss while such Goods are in transit. Therefore, Seller shall not declare any insurance value on such Goods shipped via any carrier.
- (b) Seller shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. Purchaser will pay no charges for unauthorized transportation. Any unauthorized shipment, which results in excess transportation charges, must be fully prepaid by the Seller. If Seller does not comply with the stated delivery schedule, Purchaser may, in addition to any other right, which Purchaser may have, require delivery by fastest way. The charges resulting from this mode of transportation must be fully prepaid and the Seller must absorb the full cost of the shipment.

**ARTICLE 5 -TERMINATION.**

- (a) Delay and Default. In the event Seller for any reason anticipates any difficulty in complying with the required delivery date or any of the other requirements of this Agreement, Seller shall promptly notify Purchaser in writing. In the event of a delivery delay, non-delivery or any other default by Seller in meeting its obligations under this Agreement, Purchaser (without prejudice to other rights its may have in law or in equity) may terminate this Agreement without further compensation to Seller, and Purchaser's rights will be (i) for Goods, in accordance with English law including the Sale of Goods Act 1979, Supply of Goods and Services Act 1982, Sale and Supply of Goods Act 1994, and the Sale and Supply of Goods to Consumers Regulations 2002, where applicable (or if Seller is located in the U.S., in accordance the New York Uniform Commercial

Code); (ii) for Services, Purchaser may procure, upon such terms and from any source or service provider as it shall deem appropriate, supplies or services similar to those terminated, in which case Seller shall continue performance of such order to the extent not terminated and shall be liable to Purchaser for any excess costs for Purchaser's procurement of such similar supplies or services. If Purchaser has made any progress payments under this Agreement, Seller shall refund to Purchaser any such payments immediately upon termination.

- (b) Termination for Convenience. Purchaser may terminate all or any part of this Agreement for convenience at any time after notice specifying the extent of termination and the effective date. After receipt of notice of termination, unless otherwise directed by Purchaser, Seller shall immediately: (1) stop work as directed in the notice; (2) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement; and (3) terminate all subcontracts to the extent they relate to work terminated. Seller shall continue any work not terminated. After termination, Seller shall submit a final termination settlement to Purchaser in the form prescribed by Purchaser. In the event that Purchaser wrongfully terminates this Agreement under paragraph (a), in whole or in part, such termination becomes a termination for convenience under this paragraph (b).

In no event shall Purchaser be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Agreement price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

#### **ARTICLE 6 - DISPUTE RESOLUTION.**

- (a) Arbitration. If any dispute arises relating to this Agreement, the parties will endeavor to resolve the dispute amicably, including by designating senior managers who will meet and use commercially reasonable efforts to resolve any such dispute. If the parties' senior managers do not resolve the dispute within sixty (60) days of first written request, either party may request that the dispute be settled and finally determined by binding arbitration. If Purchaser is located in European Union, the arbitration will be conducted in accordance with the rules of the London Court of Arbitration. If the Purchaser is located in the United States, arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In either case, arbitration will be at a mutually agreed location, by one or more arbitrators appointed in accordance with the applicable rules. The arbitrator(s) will have no authority to award punitive damages, attorney's fees and related costs or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement and applicable law. The award of the arbitrator(s) will be final, binding and non-appealable, and judgment may be entered thereon in any court of competent jurisdiction. All statements made or materials produced in connection with this dispute resolution process and arbitration are confidential and will not be disclosed to any third party except as required by law or subpoena. Except as specified in paragraph (c) below, the parties intend that the dispute resolution process set forth in this Article will be their exclusive remedy for any dispute arising under or relating to this Agreement or its subject matter.
- (b) If Seller is located outside of the European Union or United States, the terms set forth in paragraph (a) above apply, except disputes shall be finally settled under the rules of the International Chamber of Commerce, in a mutually agreed location.
- (c) Exception. Either party may at any time, without inconsistency with this provision, seek from a court of competent jurisdiction any equitable, interim, or provisional relief to avoid irreparable harm or injury. This provision will not apply to and will not bar litigation regarding claims related to a party's proprietary or intellectual property rights, nor will this provision be construed to modify or displace the ability of the parties to effectuate any termination contemplated by this Agreement.

#### **ARTICLE 7 - PURCHASER'S PROPERTY.**

- (a) All tangible and intangible property furnished to Seller by Purchaser, or paid for in whole or in part by Purchaser ("Purchaser's Property") shall be and remain the personal property of Purchaser, and, unless otherwise agreed to in writing by Purchaser shall be used by Seller solely to render Services or provide Goods to Purchaser. Such property shall be plainly marked or otherwise adequately identified by Seller as being the property of Purchaser and shall be safely stored apart from Seller's property. Purchaser's Property while in Seller's custody or control shall be held at Seller's risk and shall be insured by Seller for replacement cost with loss payable to Purchaser. Such property shall be subject to removal at Purchaser's written request, and Seller shall deliver it to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted.

- (b) Purchaser hereby grants Seller a license to use Purchaser's Property for the sole purpose of performing its obligations under this Agreement. Purchaser's Property shall not be used, disclosed to others or reproduced for any purpose, including, but not limited to, (1) to provide any part by sale or otherwise, to any person or entity other than Purchaser. Seller may provide Purchaser's Property to Seller's contractors for the sole purpose of assisting Seller in performing its obligations under this Agreement on condition that Seller's contractors agree in writing to the terms of the intellectual property provisions of this Agreement for the Purchaser's benefit. This license is non-assignable and may be terminated with or without cause by Purchaser at any time. All Purchaser's Property shall be deemed proprietary to Purchaser, whether or not marked with any restrictive legend.

#### **ARTICLE 8 - INTELLECTUAL PROPERTY OWNERSHIP.**

- (a) Purchaser shall be entitled to full ownership of all data, information, inventions, or discoveries, whether patented or unpatented ("IP"), conceived or first actually reduced to practice in the performance of this Agreement. Purchaser shall also be entitled to full ownership of all IP, related in any way to the maintenance, repair or overhaul of Goods supplied by Seller, or Services performed by Seller, under this Agreement. Seller will assign and to Purchaser all such IP and all intellectual property rights thereto. Seller further agrees to provide reasonable assistance to Purchaser, at Purchaser's expense, for securing all such intellectual property rights.
- (b) The Seller agrees to promptly disclose any IP to Purchaser and cooperate with Purchaser in obtaining, at Purchaser's expense, any intellectual property rights Purchaser deems necessary. Seller will procure from its employees, at Seller's sole expense, the execution of all patent applications, assignments and other instruments necessary for the procurement of patents and to the vesting of title thereto in Purchaser.
- (c) All copyrightable IP, which is created by Seller pursuant to this Agreement, shall be deemed "Works Made for Hire", as that phrase is defined under the relevant EU legislation and the UK Copyright, Design and Patents Act 1988, c. 48, as amended, on behalf of Buyer, and Buyer shall own all right, title and interest, including the worldwide copyright, in and to such materials. Purchaser shall become the sole owner of any and all notes, reports, memoranda, and any other information (regardless of the media of expression) made or prepared in connection with any order placed by Purchaser. If by operation of law any of the material is not "Work Made for Hire", then Seller agrees to assign, and hereby assigns, to Purchaser the ownership of such material including all copyrights thereto. Seller shall provide any assistance required to perfect Purchaser's rights under this paragraph.
- (d) If Purchaser notifies Seller that Goods or Services ordered under this Agreement are patented, Seller agrees to mark such Goods or Services with any patent numbers or other markings designated by Purchaser, including updates to such numbers or markings.

#### **ARTICLE 9 - INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY.**

- (a) Except as otherwise agreed in writing with Purchaser, Seller warrants that it is not the proprietor of any intellectual property rights (including copyright, trade secret or confidential information, patent, application for patent, industrial design, invention or license right) which would impair or restrict the freedom of Purchaser, or Purchaser's subsidiaries and affiliates, and their respective vendors and customers, to make use of the Goods or Services. In the event that this situation changes, Seller hereby agrees not to assert any such intellectual property rights against Purchaser, Purchaser's subsidiaries and affiliates, and their respective vendors and customers, on account of any use made of such work product (or derivatives or improvements thereof) by any of them. Seller agrees to obtain the same warranty and commitment contained in this article running in favor of Purchaser, Purchaser's subsidiaries and affiliates and their respective vendors and customers from each of Seller's subcontractors.
- (b) Seller shall indemnify, defend, and hold harmless Purchaser, and Purchaser's subsidiaries and affiliates, and their respective vendors and customers, against any actions at law or in equity, and from any claims (including attorneys' fees) arising out of any claim that the manufacture, use, sale, or furnishing of Goods and/or Services constitutes infringement of any intellectual property right. If an injunction should issue, Seller shall procure for Purchaser, and Purchaser's subsidiaries and affiliates, and their respective vendors and customers, the rights to continue using said Goods and/or Services, or modify them in a manner acceptable to Purchaser so they become non-infringing, or with the written approval of Purchaser, remove said Goods and/or Services and refund the purchase price.
- (c) Any compensation which may be claimed by or due to any Seller employee or any Seller's contractor's employee in connection with any information, invention or patent or other intellectual property or intellectual

property right, shall be paid solely by Seller, and Seller shall indemnify, defend, and hold harmless, Purchaser and Purchaser's subsidiaries and affiliates, and their respective vendors and customers, against any actions at law or in equity, and from any claims (including attorneys' fees) arising from such claims. If an injunction should issue, Seller shall procure for Purchaser, and Purchaser's subsidiaries and affiliates, and their respective vendors and customers, the rights to continue using the Goods and/or Services supplied by the Seller.

#### **ARTICLE 10 - CHANGES.**

- (a) Purchaser reserves the right at any time to make changes within the general scope of this Agreement. Such changes may include: (1) drawings, designs or specifications; (2) technical clarifications; (3) artwork; (4) quantity; (5) method of shipment or packing; (6) quality; (7) place or time of delivery; or (8) amount of Purchaser's furnished property.
- (b) If any change causes a significant impact on the cost of, or the time required for, performance of any work under this Agreement, an equitable adjustment shall be made in the price or delivery schedule, or both as applicable, in writing. Any Seller claim for adjustment under this article shall be deemed waived unless asserted in writing within twenty (20) days after receipt by Seller of the notice to make the change and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.
- (c) Seller shall not proceed to implement any change until Purchaser provides for such change in writing.
- (d) Nothing in this section, including any disagreement with Purchaser as to the equitable adjustment to be made, shall excuse Seller from proceeding with the Agreement as changed.

**ARTICLE 11 - ANTICIPATION OF DELIVERY SCHEDULE.** It is Seller's responsibility to comply with its scheduled lead times but not to anticipate Purchaser's requirements. Any material commitments or production arrangements made by Seller in excess of the amount or in advance of the time necessary to meet schedules that are within lead time shall be at Seller's sole risk and expense. Goods shipped to Purchaser in advance of scheduled lead times may be returned to Seller at Seller's expense.

#### **ARTICLE 12 - ASSIGNMENT AND CHANGE IN OWNERSHIP.**

- (a) Assignment. Any assignment or attempt to assign or subcontract Seller's obligations under this Agreement without the advance written consent of Purchaser shall be null and void and shall give Purchaser the right to terminate this Agreement for default.
- (b) Change in Ownership. If a third party submits a solicited or unsolicited offer to Seller that would result in a Change of Ownership or Control of Seller, as defined below, Seller shall give notice of such offer, including the identity of the offeror, to Purchaser as early as commercially practical following Seller's receipt of the offer. Before Seller accepts the offer, it shall give Purchaser an opportunity, within a reasonable time, to advise Seller of its impact on performance of this Agreement. If the Change in Ownership and Control occurs, Purchaser has the right at its discretion to terminate this Agreement. In the event of such termination, Seller agrees to render full cooperation to Purchaser in order to minimize disruption to the Purchaser's program. Pending termination or in lieu of termination, Purchaser may require Seller to provide adequate assurance of performance, including, but not limited to the institution of special controls regarding the protection of Purchaser's proprietary information.

For purposes of this sub-paragraph (b), the terms "Change in Ownership or Control" shall mean any of the following: (1) the sale of equity shares controlling 20% or more of the voting rights in Seller or Seller's parent, (2) the sale, lease, transfer or other disposition of substantially all of the assets of Seller or Seller's parent, (3) a merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation or dissolution or similar transaction, (4) a tender offer or exchange offer for any of the outstanding shares of capital stock of Seller or Seller's parent, (5) a sale by Seller of the assets relating to the product Seller produces or will produce for Purchaser, or (6) any public disclosure of a proposal or plan or intention to do any of the foregoing.

#### **ARTICLE 13 - QUALITY ASSURANCE, INSPECTION AND TEST.**

- (a) Seller shall be responsible for the specific quality, performance, productivity provisions, and documentation requirements, if any, set forth in this Agreement. This shall include, but not be limited to the requirements of the Purchaser's "RMS" listings. In addition, Seller shall be responsible for imposing the applicable quality assurance requirements on its subcontractors. Purchaser shall have the right to conduct quality audits and to perform or witness inspections or tests of the Goods or Services furnished hereunder at Seller's facility (or elsewhere) at any time during manufacture and prior to shipment, at no charge to Purchaser.

- (b) The Seller agrees to use only experienced, trained and qualified employees in the performance of its obligations under this Agreement and all Services performed must be of first class quality and workmanship.
- (c) Notwithstanding Purchaser's right to audit in paragraph (a) above, all Goods and Services supplied under this Agreement shall be received subject to Purchaser's right of inspection, count, testing, acceptance and/or rejection per the technical specifications. Payment for Goods and/or Services delivered hereunder shall not constitute acceptance thereof, and all payments against documents shall be made with a reservation of rights by Purchaser for defects in Goods and/or Services, including, without limitation, defects apparent on the face thereof. The making of, or failure to make, any inspection or acceptance of the Goods or Services shall in no way impair Purchaser's right to reject nonconforming Goods or Services or to avail Purchaser of any other remedies to which it may be entitled.

Seller certifies that it shall provide and maintain quality control, inspection, and process control systems in accordance with Purchaser's then current specification for supplier quality product requirements, as applicable. Seller will maintain Objective Evidence of its conformance with this paragraph. Objective Evidence means any statement of fact pertaining to the quality of a product or service based on observations, measurements or tests that can be fully verified. Evidence must be expressed in terms of specific quality requirements or characteristics. These characteristics are identified in drawings, specifications, and other documents that describe the item, process, or procedure.

#### **ARTICLE 14 - REMOVALS OR REPLACEMENTS.**

- (a) Seller agrees that, notwithstanding the provisions of any warranties, expressed or otherwise, negotiated with respect to Goods purchased from Seller by Purchaser or Purchaser's customer, Seller shall reimburse Purchaser for labor and material cost, including overhead and general and administrative expense reasonably incurred by Purchaser in connection with:
  - i) The unscheduled removal and/or replacement of such Goods or components thereof from a higher level assembly due to failure of such Goods to conform to requirements of this Agreement or defective material, workmanship or design; or
  - ii) Any such removal of said Goods at Seller's request; or
  - iii) Any such removal of said Goods required due to any previously required changes to said Goods that Seller has failed to incorporate.
- (b) This remedy is not exclusive and shall not be in lieu of any other remedy available at law, in equity or under this Agreement.

#### **ARTICLE 15 - INDEMNIFICATION AND INSURANCE.**

- (a) Indemnification. Seller shall defend, indemnify, and hold harmless the Purchaser, its directors, officers, employees, agents representatives, successors and assigns (each an "Indemnified Party"), whether acting in the course of their employment or otherwise, against any actions at law or in equity, and from any claims (including legal fees) arising from any act or omission of Seller, its agents, employees, or subcontractors, or from any conditions of real or personal property of Seller, except to the extent attributable to the gross negligence of Purchaser. An Indemnified Party shall have the right to participate in the selection of counsel and Seller shall not enter into any settlement agreement that contains any admission of liability on the part of Purchaser and/or any other Indemnified Party.
- (b) Insurance. Seller shall obtain and keep in force for the benefit of the Seller and Purchaser the following insurance, with minimum limits as set forth below:
  - i) Comprehensive General Liability in accordance with statutory requirements;
  - ii) Comprehensive Automobile Liability –Bodily injury/property damage covering all vehicles used in connection with the Goods in the amount of \$1,000,000 combined single limit each occurrence;
  - iii) Statutory Workers' Compensation and or Employer's Liability as required by state or country law with a minimum limits of \$5,000,000 each accident / \$5,000,000 each disease / \$5,000,000 policy limit.

If insurance coverage is maintained in Seller's local currency, the amounts stated above shall be applicable based upon the exchange rates set forth in a reputable listing of currency exchange rates, such as the Wall Street Journal.

- (c) Seller shall provide Purchaser with a certificate of insurance evidencing that the required minimum coverage is in effect and that Purchaser is named as an additional insured, provide a waiver of subrogation clause in favor of the Purchaser, and provide that all coverage provided by the Seller shall be primary. Such insurance shall also cover the actions of any subcontractor that Seller may utilize under this Agreement. The insurance provided by Seller hereunder shall have no effect on any obligations imposed upon Seller under this Agreement.

#### **ARTICLE 16 -- SELLER'S REPRESENTATIONS.**

- (a) Compliance with Laws. Seller acknowledges that Goods and Services procured pursuant to this Agreement will be incorporated into Purchaser's global supply chain and as such are subject to the laws and regulations of Purchaser's and Seller's country and other countries around the world. Seller agrees to comply with all terms and conditions in this Agreement, to the extent such terms apply to Seller. Nothing in this Agreement, however, shall be interpreted or construed to obligate Seller to violate the laws of Seller's country or other countries where Seller performs work pursuant to this Agreement. Seller represents and warrants that it shall perform all activities required under this Agreement in compliance with all applicable international, EU, national, state and local laws.
- (b) Child or Forced Labor. Seller represents and warrants that no Goods or Services provided under this Agreement will be produced using forced, indentured or convict labor, or the labor of persons in violation of the minimum working age laws of the country of manufacture, or in violation of minimum wage, hour of service or overtime laws of the country of manufacture.
- (c) Nondiscrimination in Employment. Seller represents and warrants that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, national origin, or any other characteristic protected by law.
- (d) Audit rights. Seller shall permit Purchaser or its representatives to have reasonable access to the site(s) where work under this Agreement is performed to assess Seller's compliance with its representations and warranties.

#### **ARTICLE 17 - SELLER'S EMPLOYEES**

- (a) Seller's personnel performing services under this Agreement shall remain employees of Seller subject to its right of direction, control and discipline and shall neither become employees of Purchaser nor be entitled to any rights, benefits or privileges of Purchaser employees. As appropriate, Purchaser shall give direction as to the ultimate objective of the project to the Seller. The Seller shall ensure that its personnel adhere to this the terms and policies in this Agreement and that they have the requisite knowledge, training and ability to perform work under this Agreement competently and in accordance with applicable laws and regulations.
- (b) Seller's employees are not authorized to enter into any agreements or to make any commitments financial or otherwise on behalf of Purchaser.

#### **ARTICLE 18 - RECORD RETENTION REQUIREMENTS.**

- (a) Record Retention. Seller shall maintain complete and accurate records in connection with its performance under this Agreement, including but not limited to, purchase orders or agreements, memoranda of negotiations showing the principal elements of price negotiations, and inspection and test records. Seller must be able to substantiate charges for labor or services with proper time clock cards, time vouchers, or other similar records. Seller shall retain such records for six (6) years after completion of performance under this Agreement.

#### **ARTICLE 19 - EXPORT AND IMPORT CONTROL.**

- (a) Compliance with Export Laws. Seller agrees to comply with all applicable government export control laws and regulations.
- (b) Intellectual Property and Export Licenses. In connection with the performance of any work under this Agreement, Seller, at its own cost, shall be responsible for: (1) determining whether, and the extent to which, any foreign or U.S. Government-funded intellectual property, including technical data, that was not provided by Purchaser will be used; (2) if any such foreign or U.S. Government-funded intellectual property will be used, obtaining, on behalf of Purchaser, a license under which the foreign or U.S. Government shall grant to Purchaser the unlimited right to use such intellectual property; (3) determining whether, and the extent to which, export licenses are required for export of all deliverables, whether tangible or intangible, under this

Agreement; and (4) obtaining the required export licenses, unless otherwise agreed to by Purchaser. All of Purchaser's obligations under this Agreement are conditional upon the issuance of intellectual property and/or export licenses by the foreign or U.S. Government granting Purchaser the right to use such foreign or U.S. Government-funded intellectual property and/or to export from Seller's country all deliverables, whether tangible or intangible under this Agreement.

(c) Importer of Record.

- i) If Seller is importer of record, Seller agrees that Purchaser will not be a party to the importation of the Goods; that the transaction(s) represented by this Agreement will be consummated subsequent to importation; that Seller will neither cause nor permit Purchaser's name to be shown as "importer of record" on any customs declaration; and that, if the Goods must be returned to Seller, Seller agrees to be exporter and to comply with all applicable export regulations.
- ii) If Purchaser is the importer of record, Seller shall ship the Goods to the port of entry as advised by Purchaser and show proper broker notification on all shipping waybills. Any additional transportation or clearance charges incurred by Purchaser due to non-adherence to this clause will be the responsibility of Seller.
- iii) Regardless of which party is the importer of record, Seller's shipping cartons and documentation must meet all applicable customs country of origin marking and invoicing requirements. Seller will be responsible for any fines or liabilities resulting from insufficient, improper or negligent invoicing or marking of shipments.

(d) U.S. Exporter. Unless otherwise agreed by the Purchaser, if Seller is the U.S. exporter for any U.S. origin bailed or purchased material required by Seller to complete this Agreement, in addition to obtaining export licenses as required by Article 19(b) of this Agreement, Seller shall be responsible for authorizing a U.S. freight forwarder.

(e) Drawback. If Seller is an importer of record, upon request and where applicable, Seller will provide Purchaser customs form 7543 entitled "Certificate of Delivery" properly executed.

(f) Anti-Dumping. Seller warrants that all sales made hereunder are or will be made at not less than fair value under the U.S. Anti-Dumping law (19 U.S.C. sec 1673 et. seq.), and Seller will indemnify, defend and hold Purchaser harmless from and against any costs or expenses (including but not limited to any anti-dumping duties which may be imposed) arising out of or in connection with any breach of this warranty.

**ARTICLE 20 - WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES.** If Seller's work under this Agreement involves operations by Seller on the premises of Purchaser or Purchaser's customer or access to Purchaser's systems or its computers, then:

- (a) Seller shall comply with all of Purchaser's safety and security procedures and shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work.
- (b) Seller represents and warrants that it will conduct a criminal convictions records investigation of any employee before they are assigned to work on any order that requires that employee to enter Purchaser's or its customer's premises. Where Seller is located in the UK, such investigation shall, at a minimum, take the form of a CRB check and be in accordance with the UK Rehabilitation of Offenders Act (1974). Seller further agrees that it shall not assign any person to perform work on Purchaser's or its customer's premises that has been: (i) convicted as an adult of any of the following: domestic violence, theft, assault, drug possession or any sexual offenses; or convicted as an adult of any felony; convicted of more than two misdemeanors in the past 2 years or 5 misdemeanors in the past 7 years
- (c) Seller shall include this provision in any subcontract placed pursuant to this Agreement where the subcontractor will perform work on Purchaser's or its customer's premises.
- (d) Purchaser reserves the right to deny any of Seller's employees, agents or subcontractors access to its or its customer's premises and/or systems for any reason in Purchaser's sole discretion.

**ARTICLE 21 - ACCESS TO PURCHASER'S COMPUTER SYSTEMS AND STORAGE OF PURCHASER DATA.**

- (a) Access to Purchaser's computer systems by Seller, its employees, agents, and subcontractors ("Seller's Personnel") shall be provided only to Seller's Personnel who have been granted a user identification code by Purchaser. Purchaser reserves the right to verify the citizenship status of all Seller's Personnel with such access at any time. Access shall be limited to those systems required for the Seller's Personnel to perform its obligations under this Agreement. Purchaser may revoke access at any time.

- (b) Seller agrees to comply with Purchaser's Information Technology ("IT") Security Guidelines (set forth below) if Seller's Personnel access Purchaser's computer systems and/or maintain Purchaser Data on its computer systems. For purposes of this provision, "Purchaser Data" includes the Data referenced in the Purchaser's Property and Personal Data Protection sections of this Agreement.
- (c) Purchaser's IT Security Guidelines:
  - i) If Seller is given access to Purchaser's computer systems Seller's Personnel shall adhere to the requirements of the Purchaser's IT Rules.
  - ii) If for any reason Seller re-uses or disposes of any Seller equipment containing Purchaser Data, Seller must ensure that all Purchaser Data is physically destroyed or erased (wiped) from Seller's equipment prior to disposal or re-use of the Seller equipment. Seller must render Purchaser Data incapable of being read using standard hardware.
- (d) Purchaser and Seller shall agree in good faith to additional security requirements to render Purchaser/Seller IT environments secure, and Seller shall implement such changes to comply with Purchaser's security guidelines and/or requests.
- (e) Purchaser reserves the right to conduct on-site audits of Seller's facility and practices to determine whether Seller's compliance with this provision.

#### **ARTICLE 22 - ENVIRONMENTAL MATTERS.**

- (a) Seller represents and warrants that it shall perform all obligations under this Agreement in compliance with all applicable national, EU, state/provincial and local environmental, health and safety laws and regulations. From time to time, at Purchaser's request, Seller shall provide certificates to Purchaser in a form and substance acceptable to Purchaser, indicating compliance with the provisions of this article.
- (b) Seller represents and warrants that each chemical substance constituting or contained in Goods is on the list of chemical substances compiled and published by (a) the Administrator of the Environmental Protection Agency pursuant to: the Toxic Substances Control Act (15 USC Section 2601 et seq.) as amended; (b) the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS); or (c) any equivalent lists in any other jurisdictions to which Purchaser informs Seller or Seller knows the Goods likely will be shipped to or through. Seller represents and warrants that each chemical substance constituting or contained in Goods is pre-registered if required, and registered if required, under Regulation (EC) No 1907/2006 ("REACH"), is not restricted under Annex XVII of REACH and if subject to authorization under REACH is authorized for Purchaser's use.
- (c) Seller shall notify Purchaser if it decides not to Preregister or Register substances that will be subject to Preregistration or Registration under REACH and are constituting or contained in Goods at least 12 months before their Registration or Registration deadline. Seller will monitor the publication by the European Chemicals Agency of the list of substances meeting the criteria for Authorization under REACH (the "candidate list") and immediately notify Purchaser if any of the Goods contain a substance officially proposed for listing on the candidate list. Seller shall provide Purchaser with the name of the substance as well as with sufficient information to allow Purchaser to safely use the goods or fulfill its own obligations under REACH.
- (d) Seller represents and warrants that none of the Goods contain any: (1) lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE) or any other hazardous substances the use of which is restricted under EU Directive 2002/95/EC (27 January 2003)(RoHS Directive), as amended; (2) arsenic, asbestos, benzene, polychlorinated biphenyls (PCBs), carbon tetrachloride, or radioactive materials; (3) chemical restricted under the Montreal Protocol on ozone-depleting substances; (4) substance listed on the candidate list of the REACH legislation (Regulation (EC) No 1907/2006) or restricted under Annex XVII of REACH; or (5) other chemical the use of which is restricted in any other jurisdictions to which Purchaser informs Seller the Goods are likely to be shipped or the Seller knows the goods are likely to be shipped to or through; **unless Purchaser expressly agrees otherwise in writing and Seller identifies an applicable exemption from any relevant legal restriction on the inclusion of such chemicals or hazardous materials in the Goods.** Upon request from Purchaser and subject to reasonable confidentiality provisions which enable Purchaser to meet its compliance obligations, Seller will provide Purchaser with the chemical composition, including proportions, of any substance, preparation, mixture, alloy or goods supplied under this Agreement and any other relevant information or data regarding the properties including without limitation test data and hazard information.

- (e) Unless specifically defined as a requirement by Purchaser's engineering drawings or specifications, the use of cadmium plating or nickel cadmium plating is strictly prohibited in the manufacture of Goods. The use of cadmium plating or nickel cadmium plating is strictly prohibited on all tooling, fixtures, and test equipment that is used for manufacturing, assembly, test, or material handling of the Goods unless Seller has notified Purchaser in advance and has obtained its prior written consent to such use. Approval shall not be granted where there is a potential for Seller's Goods to come into contact with titanium containing items.
- (f) Seller represents and warrants that it has established an effective program to ensure that the activities of any suppliers it utilizes to provide any goods or services that will be incorporated into the Goods will be conducted in conformance with this article.
- (g) With respect to the Goods, Seller shall provide all relevant information, including without limitation, safety data sheets and mandated labeling information in the language and the legally required format of the location to which the Goods will be shipped and which the Purchaser informs Seller the Goods are likely to be shipped.

#### **ARTICLE 23 -MISCELLANEOUS.**

- (a) English Language. Except as the parties may otherwise agree, this Agreement, purchase orders, purchase agreements, data, notices, shipping invoices, correspondence and all other writings shall be in the English language. In the event of any inconsistency between any terms of this Agreement and any translation thereof into another language, the English language meaning shall control.
- (b) Governing Law. This Agreement shall be governed by the laws of the jurisdiction in which Purchaser is organized, notwithstanding such jurisdictions conflict of laws rules. For any Purchaser organized in the U.S., New York law shall govern, notwithstanding its conflict of laws rules. The application of the United Nations Convention on the International Sale of Goods is hereby excluded except as expressly referenced herein.
- (c) Waiver. Any failure or delay in the exercise of rights or remedies under this Agreement will not operate to waive or impair such rights or remedies. Any waiver given will not be construed to require future or further waivers.
- (d) Modifications. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding upon either party unless in a subsequent writing signed by the duly authorized representative of the party intended to be bound thereby.
- (e) Severability. If any portion of this Agreement is determined to be contrary to any controlling law, rule or regulation, such portion will be revised or deleted from this Agreement, but the balance of this Agreement will remain in full force and effect.
- (f) Reports. Upon request, Seller shall provide progress reports pertaining to the status of the work being performed under this Agreement. Such reports shall be in a form acceptable to Purchaser.
- (g) Release of Information. Seller shall not release any information concerning this Agreement or its business relationship with Purchaser, to any third party, except as required by applicable law, rule, injunction or administrative order, without Purchaser's prior written consent. Purchaser's written approval, if granted, will be subject to any "Acknowledgement of Sponsorship" clause in Purchaser's Government Prime Contract, if applicable. Seller shall not use Purchaser's name, photographs, logo, trademark, or other identifying characteristics or that of any of its subsidiaries or affiliates without Purchaser's prior written approval.
- (h) Labor Disputes. The Seller shall notify Purchaser of all impending or existing labor complaints, troubles, disputes or controversies that may affect Seller's ability to perform its obligations under this Agreement. Purchaser shall have no liability or bargaining obligations under any collective bargaining agreement between Seller and its employees. Seller agrees to give Purchaser prompt notice of any union organization with respect to its employees.
- (i) Security Interest. If items are bailed to Seller or progress payments made, Seller grants Purchaser a security interest in equipment, machinery, contract rights, inventory, goods, merchandise and raw materials, whether now existing or hereafter arising, and any replacements, improvements, substitutions, attachments, accessories and accessions thereto or thereon provided by Purchaser or purchased by Seller with progress payments or advances made by Purchaser and to be used by Seller in manufacturing products ordered by Purchaser under this Agreement. Seller agrees to execute and deliver all documents requested by Purchaser to protect and maintain Purchaser's security interest.

- (j) Offset Requirements. All offset or countertrade credit value resulting from this Agreement shall accrue solely to the benefit of Purchaser. Seller agrees to cooperate with Purchaser in the fulfillment of any foreign offset/countertrade obligations.
- (k) Non-Profit Institutions. If Seller is a non-profit institution, the foregoing terms shall be modified as follows:
  - i) Any references to indemnification shall be limited to such indemnification permitted by law.
  - ii) Set-off is not applicable to non-profit institutions.
  - iii) Governing law shall be that of the jurisdiction under which the non-profit institution is chartered.

\*\*\*\*\*