



## **BENCHMARK SPACE SYSTEMS TERMS AND CONDITIONS**

**1. ENTIRE AGREEMENT; REJECTION OF OTHER TERMS.** *These terms and conditions of purchase, and any supplemental terms and documents expressly referenced herein (collectively, the "Terms") constitute the only contract and understanding between Benchmark Space Systems ("Buyer") and the supplier ("Supplier") for the goods, materials, products, and/or services ordered (collectively, "Product(s)") ordered by Buyer (regardless of whether placed through one or through a series of orders). Supplier acknowledges that no quote, proposal, invoice, click-wrap, other terms or conditions, or agreement provided with any Product shall be binding on Buyer – even if use of such Product requires affirmative acceptance. These Terms incorporate by reference all terms of the Uniform Commercial Code providing any protection for Buyer, including, without limitation, all express and implied warranty protection and all Buyer's remedies under the Uniform Commercial Code.*

**2. MANUFACTURE.** *Supplier shall manufacture the Products in accordance with the specifications agreed to between the Parties, as may be updated by Buyer from time to time (such most current-version specifications, the "Specifications").*

**3. PRICES.** *Product prices shall be the prices indicated in the purchase order (document which references the Terms, "PO"), and such prices shall not be increased without Buyer's prior written consent. Any change in price or additional charges of any kind without Buyer's prior written consent are hereby rejected. The prices include all Federal, state and local taxes imposed upon or on account of such sale, unless otherwise expressly indicated thereon. For the avoidance of doubt, unless otherwise expressly and specifically set forth in the PO, all costs and expenses required for Supplier to provide Products to Buyer shall be the sole responsibility of Supplier.*

**4. INVOICING AND PAYMENT.** *Supplier shall issue an invoice to Buyer in accordance with the terms of the PO. Supplier shall submit invoice(s) to Buyer via email to [ap@benchmark-space.com](mailto:ap@benchmark-space.com). Buyer shall remit payment on the undisputed portions of such invoices in accordance with the terms of the PO. Invoice payment shall not constitute Product acceptance, and shall be subject to adjustment for errors, shortages, and/or defects in Products or other failure of Supplier to meet the requirements of the PO and Terms. If Buyer disputes all or a portion of an invoice, Buyer may withhold such disputed amounts, and will promptly notify Supplier of the amount and reason for the dispute. All invoices must include the PO number and a detailed description of the Products provided.*

**5. SHIPMENT.** *Supplier shall comply with Buyer's written shipping instructions. Supplier shall be responsible for ensuring the proper packaging of Products, and, as applicable, inclusion of proper material data safety sheets and certificates of conformance. Supplier shall mark all containers with necessary handling and shipping information, and Supplier shall be responsible for damage resulting from improper packaging. Supplier agrees that in any case where freight regulations covering goods transported by common carrier establish a maximum limit on the carrier's liability for loss or damages suffered in transit, Supplier shall be liable to Buyer for any excess of such maximum limit up to the full price of the Products.*

**6. DELIVERY, TITLE, RISK OF LOSS.** *Time is and shall remain of the essence for all Product orders, and no acts of Buyer, including, without limitation, acceptance of late deliveries, shall constitute waiver of this provision. Supplier shall notify Buyer in writing immediately of any actual or potential delay to the timely performance of the PO. Title to and the risk of loss of Products purchased under the PO shall remain with Supplier and not transfer to Buyer until the Products are delivered at the F.O.B. Supplier's facilities, or according to the rules of such other International Trade Administration Incoterm as may be specified in the PO. Supplier shall indemnify, defend, and hold Buyer harmless from and against any damages related to the transportation or handling the Products prior to the completion of delivery at Seller's facilities.*

*In the event that delivery of the PO is delayed by more than seven (7) days from the scheduled delivery date, Buyer may, at its sole option, (i) cancel such order; (ii) deduct any costs incurred by Buyer as a result of the delay, which deduction(s) shall constitute liquidated damages. The Parties agree that quantifying losses arising from Supplier's delay is inherently difficult insofar as delay may require Buyer to shift or reduce production capabilities, and further stipulate that the agreed-upon deduction amount is not a penalty, but rather a reasonable measure of damages, based upon the Parties' industry experience and given the nature of the losses that may result from delay.*

**7. INSPECTION.** *Buyer may inspect the Products for visible nonconformities before or within ninety (90) days after receipt and reject any Product(s) for failure to conform to the PO, regardless of whether any payment has been made by Buyer, whether the nonconformity substantially impairs the value of the Products, or whether the nonconformity may be cured by Supplier. If Products tendered pursuant to the PO are nonconforming, Buyer may return the Products to Supplier, at Supplier's expenses, for first-priority repair, replacement, or full refund, with any such remedy to be at Buyer's election. Any costs of repair, rework, replacement, reperformance, inspection, transportation, repacking and/or reinspection by Buyer shall be at Supplier's expense. Buyer's failure to inspect does not relieve Supplier of any responsibility to perform according to these Terms, and nothing in this Section 7 shall limit Supplier's obligations under Section 8.*

**8. WARRANTIES.** (A) *Supplier hereby represents, warrants, and covenants as follows: (i) the Products will be free from any latent or patent defects in materials, workmanship, and (where design is Supplier's responsibility) design, and are supplied to Buyer in accordance with the specifications, drawings, and other written instructions provided with the PO; (ii) the Products shall comply with all applicable legal and regulatory requirements relevant to the manufacturing, production, labeling, packaging, storage, handling, and delivery of such types of products; (iii) the Products will be new, unused, merchantable, and fit for the uses intended by Buyer; (iv) for Products which are or include services, that all such services shall be performed in a good and workmanlike manner, consistent with all applicable industry standards; (v) if work is to be performed in whole or in part on Buyer's premises, Supplier shall strictly comply with all of Buyer's instructions and facility rules and policies; (vi) the Products will be free and clear of any lien, security interest, or other adverse claim against title; (vii) the Products do not infringe upon any third party's intellectual property, including patents, copyrights, trademarks, or trade secrets, and Supplier has all necessary rights to sell the Products; (viii) any software or hardware provided under the PO does not contain any unauthorized code or other device (including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices) that is designed to disrupt, disable, erase, harm, impede, or impair operation of the software or hardware or otherwise cause harm to any software, hardware or data; (ix) neither Supplier, nor any parent, subsidiary, officer, director, employee, sub-supplier, third party agent or affiliate of Supplier (collectively "Entities"), are included on any of the restricted party lists maintained by the U.S. Government or any other governmental or non-governmental entity, including, but not limited to; the SDN List and Foreign Sanctions Evaders list administered by OFAC, Denied Parties List, Unverified List or Entity List maintained by BIS, the Excluded Parties List maintained by the GSA, the List of Excluded Individuals/Entities*



*maintained by the HHS OIG, or the List of Statutorily Debarred Parties maintained by the U.S. State Department's DDTC, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"); (x) Supplier shall immediately notify Buyer if Supplier or any of its Entities becomes listed on any Restricted Party List.*

*(B) The foregoing warranties shall: (i) constitute conditions precedent under which Products must be supplied; (ii) are in addition to all other warranties, whether express or implied; (iii) survive any delivery, inspection, acceptance, or payment; and (iv) run to Buyer and to Buyer's customers. Buyer's approval of material or designs furnished by Supplier shall not relieve Supplier of its obligations hereunder.*

*(C) If any Product fails to meet any of the warranties herein, Buyer may, at its option: (i) require Supplier to correct, at no cost to Buyer, any nonconforming Products via repair or replacement within thirty (30) calendar days of notice to Supplier; or (ii) return the nonconforming Products to Supplier at Supplier's expense and receive a full refund of the price paid; or (iii) correct the nonconforming Products itself and charge Supplier with the cost of such correction; or (iv) accept the nonconforming Products at a reduced price.*

**9. BUYER CHANGES.** *Buyer may at any time direct in writing additions, deletions, or changes to all or any part of the scope of the PO, and Supplier agrees to perform such work as changed. If any such change causes an increase or decrease in the cost of or in the time required to perform such work, Supplier shall submit detailed information substantiating such claims. If required, an equitable adjustment shall be made to the price or time of performance, or both, and the PO shall be modified in writing accordingly. No modifications of the PO shall be valid unless expressly accepted in writing by Buyer.*

**10. CONFIDENTIALITY.** *Unless otherwise expressly agreed in writing: (i) all specifications, information, data, drawings, software, and other items supplied to Buyer by Supplier shall be disclosed to Buyer on a non-confidential basis and may be used by Buyer without restriction in accordance with Section 11 hereof; and (ii) all specifications, information, data, drawings, software, and other items which are supplied to Supplier by Buyer or obtained by Supplier and paid for by Buyer in the performance of the PO, shall be maintained as confidential by Supplier, be used only for the purposes of providing the Products under the PO, and not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer shall be promptly returned to Buyer on request or upon cancellation or completion of the PO. Except as otherwise required by law, Supplier will not disclose the existence of the PO, nor any of its details or the existence of the relationship created by the PO, to any third party without Buyer's prior written consent.*

**11. INTELLECTUAL PROPERTY.** *As between the Parties to the PO, and except as otherwise expressly provided herein, Buyer shall have the sole and exclusive ownership of any and all right, title, and interest in and to all Work Product and Buyer Intellectual Property. As used herein: "Work Product" means any and all deliverables prepared or delivered by or on behalf of Supplier under the PO, including, without limitation, the Products and any data, reports, results, analyses, evaluations, conclusions, and other documents and materials; and "Buyer Intellectual Property" means any and all inventions, discoveries, improvements, developments, ideas, know-how, trade secrets, technical and non-technical data, specifications, formulae, compounds, formulations, assays, methods, processes, practices, procedures, manufacturing techniques, designs, works of authorship, and other intellectual property of any kind, whether or not patentable or protectable by copyright, which are developed, conceived, or first reduced to practice in the course of Supplier's fulfillment of the PO, whether developed, conceived or first reduced to practice by one or more employees, agents, or subcontractors of Supplier and/or of Buyer, separately or jointly, together with any documents and materials containing any of the foregoing, whether in written, electronic, graphic or any other form. For the avoidance of doubt, the Specifications constitute background Buyer Intellectual Property and Buyer Confidential Information.*

*Supplier hereby assigns to Buyer all right, title and interest in and to Work Product and Buyer Intellectual Property. Upon Buyer's request, Supplier shall execute and deliver (and shall cause its personnel to execute and deliver) to Buyer any and all such assignments and other documents, and take such other actions, as Buyer reasonably requests to confirm Buyer's exclusive ownership of the Work Product and Buyer Intellectual Property, to seek and obtain patent or other intellectual property protection for the Work Product and Buyer Intellectual Property, and/or to enforce, maintain and defend Buyer's rights in the Work Product and Buyer Intellectual Property. Supplier shall not do anything to infringe upon or contest the validity of any intellectual property rights or other rights of Buyer.*

*If, notwithstanding the provisions of this Section 11, it is determined by a court of competent jurisdiction that Supplier retains ownership rights in any materials delivered with or as part of the Products, or upon which the Work Product is based, then Supplier hereby grants to Buyer an irrevocable, perpetual, worldwide, non-exclusive, royalty-free, fully paid up, transferrable, sublicensable right and license to make, have made, modify, use, distribute, sell, offer to sell, and otherwise commercialize such materials. Supplier hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the rights and licenses set forth in this Section 11.*

**12. EXCLUSIVITY.** *For any Products that contain Buyer Intellectual Property, Supplier agrees that: (a) no Products manufactured by it hereunder shall be sold, delivered or otherwise disposed of, directly or indirectly, by Supplier to any individual or entity except Buyer or Buyer's authorized designee; and (b) the design, Specifications, and drawings for such Products shall not be sold, delivered, or otherwise disposed of, directly or indirectly, by Supplier to any individual or entity except Buyer or Buyer's authorized designee. Nothing herein shall prevent Buyer from purchasing Products of the kind contemplated herein from persons or entities other than Supplier, whether or not such others shall be in competition with Supplier. Nothing herein shall prevent Supplier from manufacturing products similar in design, material, and use as the Product to persons or entities other than Buyer, provided that Supplier does not use any Buyer Confidential Information or infringe any Buyer intellectual property rights.*

**13. INJUNCTIVE RELIEF.** *Supplier represents and warrants that each of its personnel shall abide by the provisions of Sections 10 through 12 of these Terms, and that all such persons are and shall be obligated in writing to do so. Supplier acknowledges and agrees that any breach by Supplier or any of its personnel of any provision of Sections 10, 11, and/or 12 would result in irreparable harm to Buyer for which money damages would be an inadequate remedy, and therefore agrees that Buyer shall be entitled to injunctive relief to prevent or restrain any breach or threatened breach of such provisions, in addition to any other remedies available at law or in equity.*

**14. DATA PRIVACY AND SECURITY.** *If in performance of the PO Supplier may collect, access, transfer, or use any personally identifiable information of any individual, Supplier agrees to inform Buyer beforehand, and to enter into a data privacy and security agreement with Buyer. Notwithstanding the foregoing and in all instances, Supplier will only collect, access, transfer, and use the minimum information necessary to enable Supplier to perform its obligations under the PO,*



doing so only in accordance with Buyer's written instructions or where disclosure is required by law. If disclosure is required by law Supplier shall report such requirement to Buyer in sufficient time prior to any such disclosure as to allow Buyer to take any protective action if it deems necessary. Supplier agrees to protect such information from loss, misuse, unauthorized access, disclosure, alteration, or destruction, and promptly notify Buyer of any loss, misuse, unauthorized access, disclosure, alteration, or destruction of which Supplier becomes aware.

**15. PROHIBITION OF CORRUPT ACTS.** Supplier represents and warrants that, in the performance of its obligations hereunder, neither it nor its affiliates nor any of its or their respective personnel (including sub-suppliers) will make any payments of money or offer, promise, or pay directly or indirectly, anything of value to any official or employee of a national, state, or local government or any agency or instrumentality thereof, an official of a political party, or a candidate for political office, to induce such official to use their influence with a foreign government or instrumentality for the purpose of influencing any act or decision (including a decision not to act) of such official in their official capacity, inducing the official to do any act in violation of their lawful duty or to secure any improper advantage in order to assist it in obtaining or retaining business for or with either Party or any other person, or in directing business to either Party or any other person. Supplier will report immediately to Buyer any information that may indicate there has been a payment of money or anything of value offered, promised, or paid, directly or indirectly, by or on behalf of Supplier or its affiliates or any of its or their respective personnel (including sub-suppliers) to any official or employee of a national, state, or local government or any agency or instrumentality thereof, an official of a political party, or a candidate for political office, to induce such official to use their influence with a foreign government or instrumentality for purposes of influencing any act or decision (including a decision not to act) of such official in their official capacity, inducing the official to do any act in violation of their lawful duty, or to secure any improper advantage in order to assist it in obtaining or retaining business for or with either Party or any other person, or in directing business to either Party or any other person. Upon Buyer's request Supplier will certify to Buyer that it has no knowledge of any such payments or offers.

**16. INDEMNIFICATION.** Supplier shall defend, indemnify and hold Buyer, its affiliates, and their respective shareholders, officers, directors, employees, agents, successors, and assigns, harmless from and against any and all claims, suits, actions, liabilities, losses, costs, attorneys' fees, expenses, judgments and/or damages, whether ordinary, special, or consequential, arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of Supplier; (ii) Supplier's (or any sub-supplier's) failure to manufacture Products in conformance with Specifications, the terms of the PO, or applicable laws and regulations; (iii) a breach of any of Supplier's warranties or any other term and condition of the PO; (iv) a claim that any Products furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary interest of a nother; or (v) a claim of any lien, security interest, or other encumbrance made by a third party; (vi) a violation of Federal or state law, regulation, statute, or ordinance; (vii) failure to comply with the confidentiality obligations set forth herein; or (viii) any loss or damage to persons (including death) or property, to the extent caused by any act or omission of Supplier or, where applicable, by its employees, agents, representatives, subcontractors or invitees. Without limiting Buyer's rights and remedies hereunder, if Buyer believes that the Products are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, trade secret, or other proprietary right, Buyer may require Supplier to replace such Products with products of equivalent functionality, or to modify such Products to make them non-infringing but possessing of equivalent functionality.

**17. INSURANCE.** Supplier shall maintain adequate insurance coverage, including, at a minimum, Workers Compensation and Employers Liability in statutory compliance with the Compensation Law of the state; General & Products Liability Insurance, indicating on the Certificate of Insurance the following coverages: Premises - Operations, Products & Completed Operations, Broad Form Contractual Liability, and Independent Contractor and Sub-Contractors. On Buyer's request, Supplier shall furnish to Buyer a Certificate of Insurance evidencing the foregoing coverages and limits. Additional insurances may be required in the event of services being performed on Buyer's property, or where otherwise deemed by Buyer to be warranted. Supplier hereby waives subrogation. All insurance specified herein shall: (i) contain a waiver of subrogation in favor of Buyer, its affiliates, and their respective employees for all losses and damages covered by the insurances, including coverage for damage to Buyer's property in Supplier's care, custody, or control; and (ii) where possible list Buyer as an additional insured.

**18. LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUE, LOST BUSINESS OPPORTUNITY, OR COMMERCIAL LOSS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY AVAILABLE UNDER THIS PO. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF BUYER RELATING TO THIS PO MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, OR IT SHALL BE DEEMED IRREVOCABLY WAIVED.

**19. DISPUTES, GOVERNING LAW, VENUE.** Any controversy or claim that may arise out of or in connection with the PO shall be submitted in writing to senior management representatives of the Parties for resolution. If the Parties' senior management representatives are unable after good faith efforts to settle the dispute to the mutual satisfaction of the Parties within ten (10) business days after the dispute is submitted, either Party may submit the dispute to a court of competent jurisdiction. To the extent permitted by applicable law, the Parties waive any right they may have to a trial by jury. Notwithstanding the above, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction at any time. Pending resolution or settlement of any such dispute, Supplier will proceed diligently as directed by Buyer with the performance of its obligations under the PO. The PO, all matters relating to the PO, and the Parties' relationship with one another shall be governed by the laws of the State of Vermont, without reference to conflict of law principles thereof. The Parties hereby submit to the exclusive jurisdiction of, and venue in, the state and federal courts located in Chittenden County, Vermont, for any action or cause of action directly or indirectly related to the PO or the subject matter thereof. Each of the Parties consents to the jurisdiction of such courts and to the making of service of process by certified mail return receipt requested, or by such other means as may be permitted under the rules of such courts. Each Party agrees that it will not object to litigation in such courts on grounds of lack of venue, forum non convenienc e, or the like. The Parties hereby exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

**20. AUDIT RIGHTS.** For a period of three (3) years after fulfillment of the PO, Buyer shall have the right, upon five (5) days' prior written notice, to audit, inspect, and copy the records related to the fulfillment of the PO, sufficient to enable Buyer to verify that Buyer has received the Products for which Buyer has been billed. Under no circumstances does Buyer have the right to audit Supplier's internal costs or accounts. This right may be exercised by any agent authorized by Buyer. Buyer shall bear the expense of any audit or examination unless such audit results in decrease of fees due Supplier by 5% of the total amount subject to the audit



or \$10,000, whichever is greater, in which case Supplier shall pay the full cost of the audit. If any audit discloses a discrepancy in payment in favor of Buyer, Supplier shall promptly refund any overpayment to Buyer.

**21. INDEPENDENT CONTRACTOR.** Supplier is acting in the capacity of independent contractor, selecting, engaging, and discharging its employees and otherwise directing and controlling the fulfillment of the PO. Neither Supplier nor anyone employed by it shall represent, act as, purport to act as, or be deemed to be the agent, representative, or employee of Buyer. Neither Buyer nor anyone employed by it shall represent, act as, purport to act as, or be deemed to be the agent, representative, or employee of Supplier. Neither Buyer nor Supplier have authority to make any statement, representation, or commitment of any kind on behalf of the other Party, or to take any action binding upon the other Party, without the other Party's prior written authorization. Supplier shall be exclusively responsible for the payment of any and all contributions, taxes, and all similar obligations imposed by any Federal, state, or local governmental authority with respect to wages, salaries, or other compensation paid by Supplier. No Supplier personnel are entitled to holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered or provided by Buyer.

**22. RELEASE AGAINST LIENS/CLAIMS.** Supplier shall promptly pay all claims of persons or firms furnishing labor, equipment, or materials used in the fulfillment of the PO. Buyer may require Supplier to submit satisfactory evidence of payment of all such claims. If there is any evidence of any such unpaid claim, Buyer may withhold payment until Supplier has furnished such evidence of payment and release, and Supplier shall indemnify and defend Buyer against any liability or loss arising from any such claim. Supplier agrees that no mechanic's lien shall be filed by it or by any subcontractor against any Buyer property or improvements and, in any event, shall provide for the release thereof. Supplier shall do all things necessary to permit Buyer to file and index, as and to the extent provided and permitted by law, an appropriate waiver of liens before Supplier commences any work under the PO. Where applicable law prohibits or fails to recognize waivers of liens, Supplier shall provide and execute a partial release of liens, and an affidavit of payment for debts and claims, and all other properly executed waivers or releases as typically provided in the state where the Products are delivered.

**23. TERMINATION.** Buyer may at any time terminate the PO (including any partial order, any individual order, or all orders hereunder) without cause immediately upon written notice to Supplier. Immediately upon notice of any such termination Supplier shall stop all work on the PO and cause its suppliers and subcontractors to stop work. Charges for any such termination of the PO shall be limited to actual non-recoverable costs incurred by Supplier that Supplier can demonstrate were properly incurred prior to the date of termination. In no event will Buyer reimburse Supplier for goods, inventory, or services in excess of those required to meet Buyer's delivery schedule and quantities. In no event shall such reimbursement include anticipated profits or revenue or other economic loss for undelivered Products. Buyer may also terminate the PO immediately upon written notice if Supplier: (i) fails to deliver the Products within the time specified in the PO; or (ii) fails to replace or correct defective Product in accordance with the provisions of the PO; or (iii) fails to perform any other provision of the PO or so fails to make progress as to endanger performance in accordance with its terms; or (iv) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. Any such termination shall not relieve Supplier from any other liability hereunder.

**24. LAST-TIME BUY.** Upon expiration or termination of the PO for any reason whatsoever, or if the Product, equipment, material or component critical to the manufacturing of the Product is slated to be discontinued, redesigned, or obsoleted, Buyer shall have the option to place one (1) order for a "Last-Time Buy" of Products, which order shall not exceed (but may be any amount up to) two times (2x) the greater of the following: (i) Buyer's then-current twelve-month production forecast for Product, or (ii) the total Product purchased over the immediately preceding twelve months from all of Buyer's suppliers in aggregate. This Last-Time Buy shall be over and above then-current Buyer business needs. Supplier agrees to accept and fulfill any such purchase order pursuant to the prices then in effect hereunder.

**25. AFTER TERMINATION OR EXPIRATION; SURVIVAL.** Upon expiration or termination of the PO for any reason whatsoever, at Buyer's election, Supplier agrees that it will fulfill all of Buyer's firm orders it has acknowledged for the supply of Products which existed as of the date of termination of the PO in accordance with the terms of the PO. In the event Supplier fails to deliver Product, or fails to cure a breach once notified, Supplier will cooperate, assist, and pay for the transfer of manufacturing to a new supplier selected and specified by Buyer. All defined terms herein; Sections 1 and 2; Sections 4 through 8; Sections 10 through 14; and Sections 16 through 29 hereof shall remain operative and in full force and effect in accordance with the terms of such sections, notwithstanding the expiration or termination hereof.

**26. U.S. GOVERNMENT CONTRACT.** If Buyer is issuing the PO under any one or more contracts between Buyer and any U.S. Government entity, or any subcontracts at any tier under such U.S. Government contracts, Buyer will inform Supplier thereof (which notice may be provided via email) and will provide Supplier with a copy of those U.S. Government contract clauses which flow down to Supplier, and Supplier hereby agrees to abide by such flowdown provisions. In the event of any conflict between the terms of this PO and the applicable terms of any such governing U.S. Government entity contract, the latter shall control.

**27. FORCE MAJEURE.** Buyer shall have the right to suspend any shipment from Supplier without penalty or liability to Buyer in the event of war, riot, flood, acts of God, fire, court order, strike, work stoppage, act of governmental authority, epidemic, or other causes beyond Buyer's control. Buyer shall not be liable to Supplier for its failure to accept delivery of Product purchased hereunder if such failure arises from such above-mentioned causes.

**28. ASSIGNABILITY AND SUBCONTRACTING.** The PO shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, neither the PO nor any interest therein shall be assigned, delegated, or otherwise transferred by Supplier except upon the prior written consent of Buyer, and any assignment or transfer without such consent shall be void and of no effect. Buyer may assign its rights or obligations under the PO without Supplier's consent.

**29. NOTICES, WAIVER, HEADINGS, SEVERABILITY.** All notices, requests, demands, and other communications relating to the PO or these Terms shall be directed to either Party at the address indicated on the PO, or at such other address that either Party may designate by ten (10) days advance written notice to the other Party. All notices shall be in writing, and shall be sent by United States mail, commercial overnight delivery service, or facsimile transmission. Buyer's failure to enforce any rights under the PO shall not be construed as a waiver of such rights, nor shall Buyer's waiver in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances. If any one or more of the provisions of the PO is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in the PO shall not in any way be affected or



impaired by that finding or determination. The headings of the provisions of these terms and conditions are inserted for convenience only and shall not constitute a part hereof.

**QUALITY.** If there is a quality agreement in place between Buyer and Supplier regarding the Products, such quality agreement shall be the primary governing document with respect to the quality-related aspects of the Products; otherwise, the following provisions are hereby expressly incorporated into the PO:

**I. QUALITY MANAGEMENT SYSTEM.** Supplier shall maintain a quality management system ("QMS") that monitors all aspects of the work performed under the PO. The QMS shall include, at a minimum, documented procedures to ensure the effective planning, operation, and control of its processes and regular internal audits to ensure compliance with its QMS and any other applicable requirements.

**II. NO SUPPLIER CHANGES.** Supplier shall not make any change to the Products without Buyer's prior written consent. Upon approval by Buyer of the initial design, any process changes, design changes, or deviations considered by Supplier must be submitted to Buyer in writing for review. If changes are submitted for approval, the information submitted must include a complete description of the change and the effect the change will have on all characteristics of the Products.

**III. RECORDS.** Supplier shall keep complete records that provide evidence of conformity to all requirements of the QMS. Records shall be maintained in a manner that allows them to be readily retrievable and to prevent deterioration, damage, or loss. Unless otherwise agreed with Buyer, Supplier shall maintain records for ten (10) years from the date of manufacture of the relevant Product, or the time period required by applicable law - whichever is greater. Records shall be made available for inspection by Buyer, its representatives, any relevant regulatory authority.

**IV. IDENTIFICATION AND TRACEABILITY.** Supplier shall maintain identification and traceability of materials, components, and Products during all stages of receipt, manufacturing, testing, storing, and shipment.

**V. CONTROL OF NON-CONFORMANCES.** Supplier shall have documented systems in place for the control of non-conforming Products at all stages of Supplier's operations, which systems include identification, documentation, evaluation, segregation, and, as applicable, rework or disposition of the nonconforming Product. In the event Supplier discovers a non-conformance that affects Products already shipped, Supplier shall promptly notify Buyer and shall fully cooperate with all investigation actions. Supplier shall reimburse all costs and expenses incurred by Buyer in connection with use of nonconforming Product.

**VI. PROCESS CONTROL.** Supplier shall have documented systems in place for controlling the processes that affect Product quality and performance. Buyer reserves the right to review and approve Supplier's qualification/validation plans and reports.

**VII. EQUIPMENT CONTROL, MAINTENANCE, CALIBRATION.** Supplier shall have documented systems in place to ensure process and test equipment is controlled, maintained, and calibrated at stated frequencies; suitable for its intended purpose; and capable of producing valid results. Product potentially impacted by use of out-of-calibration equipment shall be treated as nonconforming. Calibration standards shall be traceable to recognized national and/or international standards.

**VIII. CONTROL OF SUB-TIER SUPPLIERS.** Supplier shall maintain controls, commensurate with risk, for the quality of the Products which are the subject of this PO. Controls must include, as applicable, the flowdown of applicable Buyer requirements and assurance of corrective action if sub-tier performance is not acceptable.

**IX. THIRD-PARTY INSPECTIONS.** Supplier agrees that Buyer, as well as any government, notified body, commission, regulatory agency, court, or other instrumentality having any jurisdiction over all aspects of the design, manufacturing, and distribution of the Products ("**Authority**") shall have access to and the right to inspect or audit any pertinent Product manufacturing or quality processes and associated documentation or records. Supplier may be subject to scheduled or unannounced audits. During unannounced audits, Supplier must allow the Authority to witness the testing of Product samples, and/or if requested, provide samples of Product for independent testing. If issues or findings are identified during an audit that potentially impact Product quality, performance, or availability, Supplier shall promptly notify Buyer and shall cooperate regarding communications with any other relevant Authorities.