



ANY SALE OF GOODS, PARTS, AND/OR SERVICES BY DURA-LINE LLC ("SELLER") TO THE PURCHASING PARTY ("BUYER") (EACH OF THEM A "PARTY", AND COLLECTIVELY, "PARTIES") IS SUBJECT TO THESE TERMS AND CONDITIONS ("TERMS") AND THESE TERMS SHALL GOVERN ANY AND ALL PURCHASE ORDERS ENTERED INTO BY THE PARTIES FOR SUCH GOODS, PARTS AND/OR SERVICES. A PURCHASE ORDER SHALL NOT BE BINDING ON SELLER UNLESS AND UNTIL EXPRESSLY ACCEPTED IN WRITING BY SELLER. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE EXPRESSLY OBJECTED TO AND SHALL NOT BE BINDING UPON SELLER UNLESS EXPRESSLY ACCEPTED IN WRITING BY SELLER'S AUTHORIZED REPRESENTATIVE. THESE TERMS CONTAIN A LIMITATION OF LIABILITY CLAUSE AND AN ARBITRATION AGREEMENT.

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**1. Payment Terms**

Unless otherwise agreed to by Seller in a purchase order, payment for goods, parts and/or services will be due no later than 30 (thirty) calendar days from the date of invoice. Partial shipments will be invoiced as they are shipped. Unless otherwise required by local laws, Seller may submit invoices electronically and is not required to provide a hard copy of the invoice.

Unless otherwise agreed to by Seller in a purchase order, payments must be in the currency of the country in which the Seller is based and must be made via electronic fund transfer. Unless otherwise agreed to by Seller, payment by credit card is not permitted. If Seller establishes a payment portal, Buyer shall pay Seller through such portal. Disputes as to invoices must be accompanied by detailed supporting information and are deemed waived 15 (fifteen) calendar days following the invoice date. Seller reserves the right to correct any inaccurate invoices. Any corrected invoice must be paid by the original invoice payment due date or the issuance date of the corrected invoice, whichever is later. Buyer must pay the undisputed amount of the invoice within the original invoice payment due date.

If Buyer is delinquent in its payment obligations to Seller or any of Seller's affiliates for any undisputed amount regardless of whether under a purchase order or any other contract with Seller or any of Seller's affiliates, Seller may, at Seller's sole option and until all delinquent amounts and late charges, if any, are paid: (1) be relieved of its obligations with respect to guarantees, including without limitation, turnaround times, spares support and lead-times under any contract; (2) refuse to process any credit to which Buyer may be entitled under any contract; (3) set off any credit or sum owed by Seller or any of Seller's affiliates to Buyer against any undisputed amount owed by Buyer to Seller or any of Seller's affiliates including but not limited to amounts owed under any contract or order between the Parties; (4) withhold performance and future shipments to Buyer to which Seller or any of Seller's affiliates is obliged under any contract; (5) declare Buyer's performance in breach and terminate any purchase order under these terms or any order under any mutually concluded contract with Seller or any of Seller's affiliates; (6) repossess goods for which payment has not been made; (7) deliver future shipments under any contract on a cash-with-order or cash-in-advance basis; (8) assess late charges on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof; (9) charge storage or inventory carrying fees on goods; (10) recover all costs of collection including, without limitation, reasonable attorneys' fees; (11) if Buyer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or (12) combine any of the above rights and remedies as may be permitted by applicable law. The above remedies are in addition to all other remedies available to the Seller at law or in equity.

**2. Delivery**

Unless otherwise agreed to by Seller in a purchase order, delivery terms are FCA (Incoterms 2020) at Seller's designated facility with the exception that Seller is responsible for obtaining the export license and completing all export clearance documents. Buyer is responsible for all carriage, duties, taxes, and other charges to enable import clearance. Unless otherwise agreed to by Seller in a purchase order, Seller will schedule delivery in accordance with its published lead-time. Seller



reserves the right to assess an expedite fee for purchase orders requested to be shipped prior to agreed lead-times. Buyer will pay all transportation costs (including insurance, taxes, and customs duties) and for any claims to be filed with the carrier. Title to goods will pass to Buyer alongside risk of loss or damage in accordance with the applicable Incoterm agreed between the Parties.

Unless expressly specified to the contrary, stock goods will be shipped promptly, and goods not in stock will be shipped as soon as commercially reasonable. However, all shipping dates are approximate and time shall not be of the essence. Shipping dates are based upon the current availability of material, existing production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of its obligations caused by force majeure, act of God, or any other cause or condition beyond Seller's reasonable control and foreseeability. In the event of any such delay or nonperformance, Seller may, at its preference, and without liability, cancel all or any portion of a purchase order and/or extend any date upon which any performance thereunder is due. Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered goods. Orders will be considered complete upon shipment of a quantity up to 5% over or under the amount specified in the purchase order when it is impracticable to produce the exact quantity ordered.

If the time between the submission of a Purchase Order by Buyer and the delivery of the Products exceeds 4 weeks, Seller reserves the right to update the pricing of the Product to align with the pricing terms at the time of delivery.

All orders and delivery shall be subject to Buyer's credit approval by the Seller. Seller may decline Purchase Orders or delivery requirements if there is doubt as to the Buyer's financial responsibility. In such event, Seller shall not be liable for breach or nonperformance of contract, in whole or in part.

### 3. Storage

If Buyer fails to accept delivery of the goods, then, except where such failure or delay is caused by a force majeure event or Seller's failure to comply with its obligations under these terms or the purchase order, Seller may store the goods until delivery takes place and charge Buyer for all related costs and expenses (including insurance).

### 4. Warranty

Unless otherwise agreed to by Seller in a purchase order, Seller warrants that all goods shall be free from defects in material and workmanship for the period of 12 (twelve) months from the date of shipment.

If Buyer identifies a defect in goods during the relevant warranty period, it shall inform Seller of that defect (in writing) no later than 14 calendar days from the date on which Buyer became aware of such defect and shall provide Seller with a reasonable opportunity to inspect such goods. If such goods are found by Seller to be defective then (as Buyer's sole remedy in relation to such defect), Seller shall promptly either (at Seller's sole option) repair or replace the defective goods.

Seller provides no warranty in respect of goods which may be sold by Seller but which are not manufactured by Seller. Such goods are sold only with the warranties, if any, of the manufacturers thereof.

This warranty shall not apply to any defect which the Seller (acting reasonably) determines results from:

- i. loss or damage in transit;
- ii. external causes such as accident, abuse, misuse, problems with electrical power, or damage from animals;
- iii. unreasonable or inadequate storage, handling, installation, usage or maintenance (including a failure to follow Seller's instructions in relation to the same) or exposure of the goods to any unsuitable environment or conditions;
- iv. any alterations or repairs (or attempts to make alterations or repairs) made by a party not authorized by Seller.

Unless otherwise required by law, Seller disclaims any and all other warranties, express or implied, in relation to the goods (including warranties of merchantability and fitness for a particular purpose and/or warranty of non-infringement). Seller will not be liable to any party in strict liability, tort, contract, or any other manner for damages caused or claimed to be caused as a result of any design or defect in the goods.

Buyer warrants and represents that (i) it has the right and legal authority to enter into this agreement; (ii) it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or formation; (iii) it is not a party to or bound by any agreement or instrument or subject to any corporate restrictions or any judgment, order, writ, injunction, decree, law, rule or regulation that now or in the future may materially and adversely affect the ability of the Buyer to perform its obligations under this agreement; (iv) there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board, or body pending or, to the best of the Buyer's knowledge, threatened against or affecting the Buyer in which an unfavorable decision, ruling, or finding would have a material adverse effect on the Buyer's ability to perform its obligations under this agreement; (v) neither the Buyer nor any of its principals, including but not limited to: officers, directors, owners, or partners, are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded by any state or federal agency; and (vi) in the last ten (10) years, neither the Buyer nor any of its principals have been convicted (including by way of a guilty plea), been investigated, or received a grant of immunity in connection with any business or truthfulness-related act or omission, which constitutes or was alleged to constitute a crime or a felony.

### 5. Taxes

Unless otherwise agreed to by Seller in a purchase order, Seller's pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), tariffs, duties and charges in relation to the sale of the goods to Buyer (collectively, "Taxes"). Buyer will pay all Taxes resulting from the sale and purchase of the goods, whether imposed, levied, collected, withheld, or assessed now or later. If Seller is required to impose, levy, collect, withhold, or assess any Taxes on any sale of the goods, then in addition to the purchase price, Seller will invoice Buyer for such Taxes unless at the time of order placement, Buyer furnishes Seller with an exemption certificate or other documentation sufficient to verify exemption from the Taxes.

If any Taxes are required to be withheld from amounts paid or payable to Seller, (a) such withholding amount will not be deducted from the amounts due Seller as originally priced, (b) Buyer will pay the Taxes on behalf of Seller to the relevant taxing authority in accordance with applicable law, and (c) Buyer will forward to Seller, within 60 (sixty) days of payment, proof of Taxes paid sufficient to establish the withholding amount and the recipient.



In no event will Seller be liable for Taxes paid or payable by Buyer. This clause will survive expiration or any termination of the relationship between the Parties.

#### **6. Export Control**

Buyer agrees to comply with all applicable export laws and regulations, including (without limitation) those of the United States and the European Union, to ensure goods, parts, and technology provided by Seller under these terms are not used, sold, disclosed, released, transferred, or re-exported in violation of such laws and regulations. Buyer shall not directly or indirectly export, reexport, or transfer any items or technology provided by Seller under these terms to: (a) any country designated by the U.S. Department of State as a "State Sponsor of Terrorism", including for the purposes of these terms, North Korea, or to a resident or national of any such country; (b) any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce, the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury, or any other applicable prohibited party list of the U.S. government; or (c) an end-user engaged in any nuclear, chemical, or biological weapons activities. If goods or parts to be exported outside the U.S. and/or EU are considered or likely to be considered as "dual use", Buyer shall (or shall cause the end user of the goods/parts to) provide to Seller, promptly upon its request, an "End User Statement" in accordance with the applicable legal requirements. Seller shall not be liable to Buyer for any delay and shall not be in breach of its obligations in the event of Buyer's failure or delay in providing such statement.

#### **7. Termination**

Either Party may immediately terminate any or all unperformed purchase orders (or any part of them) by giving written notice to the other Party upon the occurrence of any of the following events:

- i. the other Party defaults on a material obligation under these terms and does not cure, or begin taking reasonable steps to cure, such default within 30 (thirty) calendar days of written notice from the non-defaulting Party;
- ii. the other Party fails to make any payment required to be made under these terms when due, and fails to remedy the breach within 3 calendar days after receipt of written notice of non-payment; or
- iii. any insolvency or suspension of the other Party's operations or any petition being filed or proceeding being made by or against the other Party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of creditors or other similar proceedings.

Termination does not affect any debt, claim, or cause of action accruing to any Party against the other before the termination. The rights of termination provided above in this clause may be combined with any other rights and remedies as may be permitted by applicable law or in equity.

Upon termination hereunder, regardless of the reason, in addition to any other obligations under these terms, Buyer shall return to Seller all Seller's confidential information or provide a certification by an officer of Buyer as to the destruction of all Seller's confidential information within 14 calendar days, and Buyer shall have no further rights to use any Seller's confidential information.

Following any termination: (a) Buyer will remain liable for any outstanding payments to Seller accrued prior to termination and (b) the choice of law, Seller's IP rights, confidentiality, liability limitations, and exclusions from liability contained in these terms will remain in effect along with any other provisions expressly stated to survive termination.

#### **8. Force Majeure/Excusable Delay and No Hardship**

Neither Party shall be liable to the other, nor considered in breach or default of its obligations, to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the impacted Party's reasonable control, including but not limited to: (a) natural or man-made disasters, acts of God, acts or omissions of governmental authorities, fire, severe weather conditions, earthquake, strikes or other labor disturbances, flood, serious risk of kidnapping, war (declared or undeclared), armed conflict, acts or threats of terrorism, pandemics, epidemics, quarantines, regional, national or international calamities, civil unrest, riot, severe delay in transportation, severe car shortage, or inability to obtain necessary materials, components or services; (b) in the case of Seller, acts or omissions of Buyer, including failure to timely provide Seller with any access, information, tools, material, and approvals necessary to permit Seller to timely perform the required activities. The impacted Party shall promptly notify the other Party in the event of a delay under this Section 8. The delivery or performance dates shall be extended for a period equal to the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of such delay. If Seller is delayed by acts or omissions of Buyer, or by the prerequisite work of Buyer's other contractors, Seller shall also be entitled to an equitable price adjustment. Under no circumstances shall Buyer's payment obligation be deemed excusable under this Section 8. Buyer also represents and acknowledges that its experience and/or abilities are such, that it will meet its obligations even in cases of hardship to the largest extent allowed under the applicable law.

If a delay excused by this Section 8 extends for more than 90 (ninety) days and the parties have not agreed upon a revised basis for resuming work, which may include an equitable price adjustment, then either Party (except where such delay is caused by Buyer, in which event only Seller), upon 30 (thirty) days' written notice may terminate the relevant purchase orders (or any part of them). In such event of a delay, Buyer shall pay Seller the pro-rated price for all goods manufactured and work and undertakings performed before the effective date of termination.

#### **9. Environmental Health and Safety (EHS)**

This clause shall apply if Seller's personnel are required to attend a site operated by or under the control of Buyer.

Buyer shall take all actions necessary to provide a safe, healthy, and secure work environment, including transportation and accommodation, if applicable, for Seller's personnel. Buyer shall inform Seller of any known risks, hazards, or changed conditions impacting worker health, safety, or the environment, including the presence or potential presence of hazardous materials, and provide relevant information, including safety data sheets, site security plans, risk assessments, and job hazard analyses.

To evaluate risks associated with the rendering of services and performance under a purchase order, Buyer shall provide Seller with reasonable access to review the site and related equipment. If Seller's work at the site is subject to local, state, or national EHS legal requirements that are not reasonably available, Buyer shall notify and provide copies of the same to Seller.



#### 10. Additional EHS Provisions Applicable to Services

This clause shall apply if Seller's personnel are required to provide services on-site to Buyer.

Seller's personnel shall not be required to work in excess of any time restriction under applicable law. Seller's personnel will have at least one day of rest in any seven consecutive days; provided, the parties may agree upon exceptions consistent with Seller's working time policy.

Buyer shall provide medical care and facilities at the site of work consistent with international industry standards. If Seller's personnel require urgent medical attention, Buyer shall make its medical facilities available to such persons, as necessary. To the extent Buyer cannot supply necessary urgent medical attention at the site, any Buyer group's site, or while working offshore, Buyer shall provide for transport of Seller's personnel and access of such personnel to the nearest suitable urgent care facility. For offshore or remote work, Buyer shall be responsible for medical evacuation of Seller's personnel from the site to the departure point on the mainland or Buyer's designated medical services provider.

Buyer shall transport Seller's personnel, equipment, and materials, including medi-vac, to and from all offshore locations and to such other job sites as agreed, in compliance with applicable law and international industry standards regarding qualified personnel, safe operation, and maintenance. Buyer agrees to make, and shall procure that Buyer group makes, such equipment and information relating to its operation and maintenance available to Seller for review. Buyer shall provide personal protective equipment required during use of Buyer provided transportation to and from the offshore work and such other specialized equipment as agreed between the parties.

Buyer shall provide, at no cost to Seller, accommodation for Seller group's personnel, which offers a reasonable degree of comfort, is consistent with international industry standards, and is at least comparable to that furnished to Buyer's management and technical personnel. Buyer shall provide telephone and computer internet connectivity to Seller Group's personnel at said accommodations.

#### 11. Nuclear/Hazardous Applications

NO NUCLEAR USE – The goods, parts, and/or services provided by Seller are not intended or authorized for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use, or permit others to use such goods, parts, and/or services in connection with or for any such purposes without the advance written consent of Seller. If, in breach of the foregoing, any such use occurs, Seller hereby disclaims any and all liability for any nuclear or other damage, injury, or contamination REGARDLESS OF CAUSE OF ACTION. In addition to any other rights of Seller and to the maximum extent permitted under applicable law, Buyer assumes sole responsibility for, and shall indemnify Seller group from and against, any and all claims asserted by or in favor of any person or party resulting from any nuclear or other damage, injury, or contamination REGARDLESS OF CAUSE OF ACTION. Consent of Seller to any use in connection with any nuclear facility or activity, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

“REGARDLESS OF CAUSE OF ACTION” MEANS (TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW), REGARDLESS OF: CAUSE, FAULT, DEFAULT, NEGLIGENCE IN ANY FORM OR DEGREE, STRICT OR

ABSOLUTE LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PERSON, INCLUDING OF THE INDEMNIFIED PERSON, UNSEAWORTHINESS OF ANY VESSEL, AND/OR ANY DEFECT IN ANY PREMISES/VESSEL; FOR ALL OF THE ABOVE, WHETHER PRE-EXISTING OR NOT AND WHETHER THE DAMAGES, LIABILITIES, OR CLAIMS OF ANY KIND RESULT FROM CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL, OR STRICT LIABILITY, QUASI CONTRACT, LAW, OR OTHERWISE.

#### 12. Limitations of Liability

THE REMEDIES PROVIDED IN THESE TERMS SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER (INCLUDING THIRD PARTY CLAIMS). SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE SUCH AS (BUT NOT LIMITED TO), DELAY DAMAGE, DAMAGE DUE TO BUSINESS INTERRUPTION, LOST PROFITS, LOST SAVINGS, LOST REVENUE, MISSED OPPORTUNITIES, LOSS OF GOODWILL, OR FORFEITED PENALTIES OR FINES, WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT (INCLUDING NEGLIGENCE), WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY.

SELLER'S TOTAL LIABILITY IN CONNECTION WITH OR ARISING OUT OF THE PROVISION OF GOODS, PARTS OR SERVICES TO BUYER FOR CLAIMS OF ANY KIND (INCLUDING THIRD PARTY CLAIMS) WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE FOR THE SPECIFIC GOODS OR SERVICES THAT GIVES RISE TO THE CLAIM.

THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE IN THIS CLAUSE SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE MANDATORY LAW.

#### 13. Indemnity

The Buyer shall release, defend, indemnify and hold harmless Seller, Seller's affiliates, and each of their respective officers, directors, managers, employees, representatives, and advisors from and against any liability, loss, damage, claim, fine, penalty, judgment, settlement, cost and expense (including legal fees and expenses) arising out of or in connection with any act or omission of Buyer in relation to the supply of goods, parts or services under these terms, including without limitation: (a) the handling, storage, marketing, sale, resale, distribution, use, or disposal of the goods (whether used alone or in combination with other substances) by Buyer or by any third party, and (b) the failure of the Buyer to comply with any instructions or regulations relating to (product) safety, applicable laws and regulations.

This clause shall survive the expiration, termination, or cancellation of the relationship between the Parties.

#### 14. Seller's IP Rights

Seller's intellectual property rights include, without limitation, all trademarks, trade names, logos, designs, symbols, emblems, distinguishing marks, slogans, service marks, copyrights, patents, models, drawings, know-how, information, and any other distinguishing material of Seller, whether or not subject to registration or filing (hereinafter "IP rights"). Seller retains all IP rights in the goods, and nothing herein shall be construed to grant Buyer any right or license, express or implied, in the Seller's IP rights. In particular, Buyer shall not use Seller's name, logo or other IP rights without Seller's prior written consent. Further, Buyer will not by act or omission do anything that





could infringe, damage, endanger or impair Seller's IP rights. In particular, Buyer will not: (a) modify, remove or disfigure any markings or other means of identification of goods delivered by Seller; (b) use Seller's IP rights in such a way that their distinctive character or validity may be affected; (c) use trademarks other than Seller's trademarks with regard to goods delivered by Seller without Seller's prior express written consent, or (d) use trademarks or trade names similar to Seller's trademarks or trade names that may cause confusion or deception.

#### **15. Data Privacy**

Each Party shall comply with all applicable data protection laws. Unless otherwise agreed to by Seller in a purchase order, neither Seller nor its subcontractors will process information relating to any identified or identifiable natural persons ("Personal Data") for Buyer or on Buyer's behalf. If Seller agrees in a purchase order to such processing of Personal Data, the Parties shall enter into a separate data processing agreement in respect of Seller's obligations relating thereto. If Seller processes Personal Data as part of its own legitimate business purposes, it will do so in accordance with the Seller's Privacy Policy, available on [www.duraline-europe.com](http://www.duraline-europe.com).

#### **16. Confidentiality**

"Confidential Information" means all non-public information, technical data or know-how in whatever form and materials (including samples) concerning the business, goods, services and/or activities of Seller and/or its affiliates disclosed or made available to Buyer, whether orally or in writing, in electronic or other form, and whether or not marked as proprietary or confidential, and any information derived from the Confidential Information; provided that Confidential Information does not include information (i) known to Buyer at the time of disclosure or rightfully obtained by Buyer on a non-confidential basis from a third party; (ii) that is now, or hereafter becomes, through no act or failure to act on the part of Buyer, generally known in the public; or (iii) that is independently developed by Buyer without reliance on the Confidential Information as shown by contemporaneous documentary evidence. Buyer shall not use the Confidential Information except for the purpose of exercising its rights or performing its obligations in relation to the purchase of goods, parts and/or services from Seller (the "Purpose"). Buyer shall not disclose the Confidential Information to any third party except its employees and agents who have a need to know such information for the Purpose and who are bound by nondisclosure obligations at least as stringent as those contained in these terms. Buyer shall not reverse engineer any Confidential Information, including any samples, without permission of Seller. Buyer shall take reasonable, prudent safeguards to prevent the use or disclosure of Confidential Information in violation hereof. Buyer shall be primarily responsible for the obligations of its employees and agents under these terms. Upon Seller's request, Buyer shall promptly return all copies, whether written, electronic, or other form, of any such Confidential Information, or delete and destroy Confidential Information in a secure manner. Notwithstanding the foregoing, Buyer may retain one copy of the Confidential Information for records management purposes, or copies in enterprise-wide archival back-up systems. Notwithstanding the destruction or retention of the Confidential Information, Buyer shall continue to be bound by its obligations of confidentiality hereunder. In the event Buyer is required to disclose any Confidential Information by order of a court or any government agency, by law, regulation, judicial or administrative process, Buyer shall: (a) give prior written notice of such disclosure to Seller, if legally permitted; (b) reasonably cooperate with Seller, at Seller's request and expense, to resist or limit such

disclosure or to obtain a protective order; and (c) in the absence of a protective order or other remedy, disclose only that portion of the Confidential Information that is legally required to be disclosed in the opinion of counsel and assure that confidential treatment will be accorded the disclosed information. Following termination, the obligations of Buyer under these terms with respect to the Confidential Information will continue in full force and effect as follows: (i) in the case of any Confidential Information which constitutes a trade secret within the meaning of applicable law, for as long as such information remains a trade secret; or (ii) in the case of any other Confidential Information or materials, for a term of five (5) years from the date of disclosure. Seller shall be entitled to injunctive relief for any breach or threatened breach of this provision without the requirement of posting bond or proving damages.

#### **17. Buyer Data**

Seller acknowledges that, as between Seller and Buyer, Buyer owns all right, title, and interest, including all intellectual property rights, in and to all data the Buyer Data (as defined below). Buyer hereby grants to Seller (i) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display the Buyer Data for internal research and development purposes and to provide goods and services to Buyer, and (ii) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display Buyer Data incorporated within Aggregated Statistics (as defined in clause 18). "Buyer Data" means, other than aggregated statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted or made available to Seller by or on behalf of Buyer, or a user of Buyer's product incorporating the Seller's goods, which is generated by the goods or use of the goods; provided that Buyer Data excludes any Personal Data. Nothing in clause 17 shall be deemed to limit any rights granted from Buyer to Seller in any other agreement.

If Buyer or any of its employees or contractors suggests or recommends changes to any of the Seller's goods, including without limitation, new features or functionality relating thereto, or shares any comments, questions, suggestions, or the like ("Feedback"), Seller is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Buyer hereby assigns to Seller on Buyer's behalf, and on behalf of its employees, contractors and/or agents, all rights, title, and interests in and to, the Feedback and Seller is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Seller is not required to use any Feedback.

#### **18. Aggregated Statistics**

Notwithstanding anything to the contrary in these terms or any other non-disclosure agreement between the parties, Seller may monitor Buyer's use of the goods, parts or services and collect and compile Aggregated Statistics. As between Seller and Buyer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Seller. Buyer acknowledges that Seller may compile Aggregated Statistics based on Buyer Data collected from Buyer's (or its customers') use of the goods, parts, or services. Buyer agrees that Seller may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not



expressly identify Buyer. "Aggregated Statistics" means data and information related to Buyer's (or its customers') use of the goods, parts or services which are used by Seller in the aggregate and not directly identifying Buyer, including to compile statistical and performance information related to the provision and operation of the goods, parts, and services of Seller.

#### **19. Compliance with Applicable Law**

Notwithstanding any other provision of these terms, the Parties shall at all times comply with all applicable laws, regulations, industry specifications, codes and standards in the performance of its obligations, including without limitation the U.S. Foreign and Corrupt Practices Act, the UK Bribery Act 2010 and Seller's code of ethics.

#### **20. U.S. Government Contracts**

This Section 20 applies only if the goods, parts and/or services are for the direct or indirect sale to any government entity and/or is funded in whole or in part by any agency of the U.S. government.

Buyer agrees that all goods, parts, and services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable, the country of origin of goods and parts is unknown unless otherwise specifically stated by Seller in the purchase order. Buyer agrees any services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). The version of any applicable FAR clause listed in this section 20 shall be the one in effect on the effective date of the relevant purchase order.

If Buyer is an agency of the U.S. government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these terms. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the price payable.

If Buyer is procuring the goods, parts and/or services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the price payable. If the reasonableness of the price cannot be established through adequate price competition, or if cost or pricing data should be required for any other reason, or if goods, parts, or services cannot be considered a "commercial item", Seller may terminate the purchase order without penalty and be reimbursed for work performed before the effective date of termination.

Seller reserves the right to reject any purchase order from a Buyer listed on any denied party list.

To the extent the Buy American Act, Buy America Act, Trade Agreements Act, or other domestic preference requirements are applicable to the Buyer's Contract, the country of origin of Products supplied under this Agreement is unknown. Unless the Seller provides a statement in writing as an addendum to the specific Purchase Order, Seller makes NO REPRESENTATIONS that the Products supplied in the order comply or do not comply with the standards set forth in the Buy American Act, Buy America Act, Trade Agreements Act, or other domestic preference laws or regulations. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41).

#### **21. Assignment, Novation & Subcontracting**

Buyer may not assign or novate any of its rights or obligations under these terms or a purchase order, in full or in part, including through change of ownership, without the prior written consent of Seller, which consent shall not be unreasonably delayed or withheld. Seller shall be entitled to withhold such consent if the assignee/novatee lacks adequate financial capability, is a competitor or potential competitor of Seller or its affiliates, causes Seller group to be in breach of applicable law, and/or does not meet Seller's code of ethics. Subject to the following sentence, Seller may not assign or novate any of its rights or obligations under these terms or a purchase order, in full or in part, without the prior written consent of Buyer, which consent shall not be unreasonably delayed or withheld. Seller may, without Buyer's consent: (a) assign or novate its rights or obligations, in full or in part, to one or more affiliates of Seller; and (b) assign any receivables due hereunder to one or more affiliates of Seller. The parties agree to execute such documents as may be necessary to effect the permitted assignments or novations. In the event of a novation or assignment by Buyer, Buyer shall cause the novatee/assignee to provide additional payment security at Seller's reasonable request. Any assignment or novation in violation of the above shall be void and without effect for the other Party.

#### **22. Subcontractors**

Seller has the right to subcontract its obligations under these terms. Use of a subcontractor will not release Seller from liability for performance of the subcontracted obligations.

#### **23. Offset**

The Seller's pricing assumes and is contingent upon the understanding that Seller's supply of any goods, parts and/or services to Buyer are not subject to any direct or indirect obligations imposed and/or any other offset mechanism or industrial participation ("Offset Obligations"). In the event that Offset Obligations are imposed, the prices, terms and conditions of sale to Buyer are subject to revision and Seller reserves the right to renegotiate such prices, terms and conditions with the Buyer. Seller has no obligations to supply any goods, parts and/or services to Buyer if the Parties are unable to reach further agreement on revised prices, terms, and conditions due to Offset Obligations imposed.

#### **24. Changes**

Each Party may at any time propose changes in the schedule or scope of goods, parts and/or services in the form of a draft change order. Neither Party is obligated to proceed with the changed schedule or scope until both parties agree to such change in writing. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's then-current time and material rates.

#### **25. Governing Law**

These terms and all purchase orders entered into under them shall be governed by and construed in accordance with the laws of the State of New York excluding in any case conflict of law rules. The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as enacted by any state, will not apply.



## **26. Dispute Resolution**

All disputes arising out of or in connection with the subject matter of these terms or a purchase order shall be referred to dispute resolution proceedings under the International Chamber of Commerce (ICC) Mediation Rules, without prejudice to either Party's right to seek emergency, injunctive, or conservatory measures of protection at any time. If any such dispute has not been settled within 60 calendar days following the filing of a "Request for Mediation" (or such other period of time as may be reasonable under the circumstances or agreed in writing), the dispute shall be finally settled in accordance with the ICC Rules of Arbitration by one or more arbitrators appointed under said Rules. The seat, or legal place, of arbitration shall be London and the language of the arbitration shall be English. The decision or award of the arbitrators shall be in writing and is final and binding on both parties.

## **27. Changes in Applicable Provisions**

The price, delivery and performance dates and any performance guarantees are based upon these terms and applicable laws, standards, and regulations in effect on the date of Seller's proposal or quotation and will be equitably adjusted to reflect additional costs or obligations incurred by Seller, including without limitation those resulting from any change in, or change in interpretation of, these terms, applicable laws, or Buyer's policies and procedures which may take effect after the date of Seller's proposal or quotation. In the event any such change prevents Seller from executing its obligations without breaching applicable law or makes Seller's execution of its obligations unreasonably burdensome or unbalanced, Seller shall also have the right to terminate a purchase order (or any part of it) without any liability. Without limiting the general nature of the foregoing, Seller shall be entitled to adjust its prices for goods, parts and/or services at any time to reflect changes in the cost of raw materials, provided that such adjusted prices shall not apply to purchase orders which Seller has already accepted in writing.

"Applicable law" means any law, statute, order, decree, rule, injunction, license, permit, consent, approval, agreement, regulation, interpretation, treaty, judgment, or legislative or administrative action of a competent governmental authority, which applies to the sale or provision of goods, parts, and/or services.

## **28. General Clauses**

Except as otherwise expressly provided with regard to affiliates of each Party, none of the terms herein are intended to be enforced by third parties under the United Kingdom Contracts (Rights of Third Parties) Act (1999), where applicable, or any other law. Buyer and Seller shall be entitled to modify, vary, amend, and/or extinguish such rights without the consent of any third parties.

At any time during the Term and for a period of five (5) years after the final payment under this Agreement, Seller or its designated agent may examine and audit Buyer's records, upon not less than three (3) days prior notice and during Buyer's normal business hours, with respect to any and all matters that relate to (i) any payments under this Agreement or (ii) Buyer's compliance with its obligations under this Agreement, including, without limitation, to applicable Laws.

These terms and the relevant purchase order represent the entire agreement between the parties and no modification, amendment, rescission, waiver, or other change shall be binding on either Party unless agreed to in writing by their authorized representatives. Each Party agrees that it has not relied on or been induced by any representations of the other Party not contained in these terms or the

relevant purchase order. In the event of any conflict or inconsistency between these terms and a purchase order then, unless a provision of the purchase order is expressly stated to override these terms, these terms shall prevail.

The invalidity in whole or in part of any part of these terms shall not affect the validity of the remainder of these terms. In the event any provision is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause, and provision to the extent not held invalid or unenforceable.