



## **MOONEY INTERNATIONAL CORP PURCHASE ORDER TERMS AND CONDITIONS**

This document contains the terms and conditions relating to the purchase order (“Purchase Order”) issued by Mooney International Corp and their respective parents, subsidiaries, officers, directors, employees, and agents (“Buyer”) to the supplier/subcontractor (“Seller” and together “Party” or “Parties”) to obtain the requested Goods and/or Services.

All performance requirements stated herein apply to all goods and services purchased by Buyer from Seller, regardless if the Goods and/or Services under this agreement relate to a final sale to the Government or other end users.

To the extent they are applicable, this Purchase Order incorporates the stated Federal Acquisition Regulation (“FAR”) and US Federal Code of Regulations and other federal agency regulations and requirements upon the Seller. Failure to comply with these provisions not only exposes the Seller to typical damages for breach, but it may also expose the entity to civil and criminal penalties imposed by statute. The terms and conditions stated herein are fully incorporated into the Purchase Order. If the Purchase Order contains terms that vary from the terms and conditions stated herein, the terms of the Purchase Order shall control.

**1. Definitions.** The following definitions apply unless otherwise specifically stated:

- (a) “Buyer” or “Mooney” the legal entity issuing this Purchase Order.
- (b) “Purchasing” or “Procurement Representative” - Buyer or the delegated individual authorized to issue this Purchase Order.
- (c) “Seller” or “Contractor” - the legal entity contracting with the Buyer.
- (d) “Purchase Order” or “Contract” - this contractual instrument, including changes, general terms and conditions, special provisions, drawings, technical data, specifications, quality clauses, and all other documents incorporated herein.
- (e) “Goods and/or Services” or “Articles” - the products, supplies, parts, assemblies, technical data, drawings, or other items to be furnished by Seller to Buyer, including raw materials, components, and intermediate assemblies of such items.
- (f) “FAR” - the Federal Acquisition Regulation.
- (g) “Promise Date” or “Schedule Delivery Date” - the date of receipt at destination, not ship date, irrespective of FOB point.
- (h) “Delivery Schedule” – the timing or rate of delivery of Goods and/or Services as agreed upon by Buyer.
- (i) “Bill of Lading” - shall be as defined by § 1.201 of the Tex. Business and Commerce Code.
- (j) “Government” – any legally constituted government body having authority over or which purchases from Buyer or Seller directly or indirectly.



(k) “Quality Process” – Buyer’s Production Part Approval Process.

2. **Delivery/Delays.** Time is of the essence for deliveries to Buyer, and shall be made in accordance with the Delivery Schedule. Delivery dates and quantities shown on the Purchase Order are dates the Goods and/or Services are required at Buyer’s facility, unless otherwise stated. Seller shall promptly notify Buyer of any actual or anticipated delay in shipment or delivery.

- (a) Deliveries are to be made both in quantities and at the time specified in this Contract or modification thereof. Contractor shall strictly adhere to this Contract's promise date(s), Schedule Delivery Date(s), or completion schedule(s). Contractor shall not deliver articles more than five (5) calendar days prior to these dates unless authorized in writing by Buyer through its cognizant Procurement Representative. Articles delivered to Buyer more than five (5) calendar days in advance of schedule may be returned at Contractor's expense and without any obligation to Buyer. Deliveries will be made even in the event of a strike at either the Buyer's or Seller's location, unless prior written consent is obtained from the other party, which shall not be unreasonably withheld.
- (b) In the event of any anticipated or actual delay in the performance of this Contract, Contractor will promptly notify the cognizant Buyer Procurement Representative in writing of the reasons for the actual/anticipated delay and the actions being taken to overcome or minimize the delay and will provide Buyer with a written recovery schedule. If Buyer requests, Contractor shall, at Contractor's expense, ship via air or other expedited routing to avoid the delay or minimize it as much as possible. Contractor agrees to flow this provision down to its Subcontractors, and notify Buyer when there are anticipated or actual delays at its Subcontractors that could affect performance under this Contract. Notification shall not be construed to relieve Contractor of its obligation to comply with Contract delivery requirements.
- (c) Acceptance of delayed deliveries or shipment or inadequate quantities from Seller does not constitute a waiver of Buyer’s right to demand strict compliance with the ordered quantity or Delivery Schedule set forth on the Purchase Order with respect to all other deliveries, and Buyer shall specifically have the right to recover from Seller any damages caused Buyer by Seller’s delay. Buyer shall be entitled to: (1) an equitable price reduction for late or partial deliveries, or (2) termination of the Purchase Order for default. Failure of the Parties to reach an agreement on an equitable price reduction shall be a dispute under the “Disputes and Governing Law”, Section 20, under this Purchase Order. Seller has a duty to continue performance under the Purchase Order pending resolution of the dispute.

3. **Payment.** Payments for Goods and/or Services under the Purchase Order shall be made by Buyer within net sixty (60) days after the Goods and/or Services have been received, inspected and preliminarily approved by Buyer and receipt by Buyer of Seller’s proper



invoice with appropriate Bill of Lading and inspection and conformance certificates attached thereto. Buyer shall pay only for goods inspected and accepted and in the quantity requested. No payment shall be due for non-conforming items. Buyer shall have no liability for payment for materials or items delivered in excess of the quantity specified in the Purchase Order, unless Buyer agrees in writing to pay for such excess amount.

Seller shall certify on all invoices rendered to Buyer that it has complied with all applicable state, federal, county and municipal laws, regulations, and ordinances. In addition, Seller shall certify that the amounts requested for payment are only for the Goods and/or Services supplied to Buyer in accordance with the terms and conditions of this Purchase Order.

In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 10 days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in Sections 3 and 20. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Purchase Order notwithstanding any such dispute.

4. **Setoff.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.
5. **Changes.** Buyer may at any time by a written Purchase Order issued by an authorized Buyer Representative and without notice to sureties, if any, make changes within the general scope of this Purchase Order, in anyone or more of the following: (1) drawings, designs, or specifications; (2) method of shipment or packing; (3) time or place of performance, inspection, delivery, or acceptance; (4) reasonable increases or decreases in quantities; (5) reasonable changes in delivery schedules; and (6) issue additional instructions or require modification in the work or services. Seller shall proceed immediately to perform this Purchase Order as changed. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, or otherwise affects any other provisions of this Contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the purchase price, delivery schedule, or in such other provision of the Contract as may be so affected, and the Contract modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted in writing within twenty (20) days from the date of receipt by the Seller of the notification of change; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the Purchase Order.

Contractor shall provide advanced notification in writing to Buyer of any changes to tooling, facilities, materials or processes at the contracting supplier or their sub-tier suppliers that could affect Buyer's product. This includes but is not limited to fabrication, assembly,



handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify Buyer of any pending or contemplated future action to discontinue articles purchased pursuant to a Purchase Order and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the articles. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve months prior to the actual discontinuance. Seller shall extend opportunities to Buyer to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

Nothing in this Section shall excuse Seller from proceeding immediately with the performance of the Purchase Order as changed.

6. **Superseding Specifications.** All references in any Buyer or Government specification incorporated herein shall be deemed to include all specifications supplementary to or superseding the specifications so referenced, to the extent that such supplementary or superseding specifications are in effect at the date of Seller's latest quotation, if the Seller was furnished or otherwise notified of the existence of such supplementary or superseding specifications at the time of said quotation.

Nothing in this Paragraph shall excuse Seller from proceeding immediately with the performance of the Purchase Order as changed.

7. **Warranties.** Seller represents and warrants that the Goods and/or Services furnished in response to this Purchase Order shall:
  - (a) Be merchantable and free from defects in design, workmanship and materials, and fit for the particular purpose intended and shall be of the kind and quality described;
  - (b) Conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by Buyer;
  - (c) To the extent the Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects;
  - (d) Be free and clear of all liens, security interests or other encumbrances and not infringe or misappropriate any third party's patent or other intellectual property rights.

Seller further represents and warrants that packing and method of shipment of such supplies shall conform to the requirements of this Purchase Order.

These warranties survive any delivery, inspection, acceptance or payment of or for the Goods and/or Services by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date



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of Buyer's discovery of the noncompliance of the Goods and/or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and/or Services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods and/or Services to Buyer.

- 8. Title and Risk of Loss.** SELLER AGREES TO INDEMNIFY BUYER, AND/OR THE GOVERNMENT FOR ANY DEFECTS OR ENCUMBRANCES UPON TITLE TO THE GOODS AND/OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER. Title and risk of loss or damage to goods covered by this Purchase Order shall pass to Buyer upon receipt and acceptance by Buyer at Buyer's designated destination. Notwithstanding the above, the risk of loss or damage to goods which failed to conform to the Purchase Order, are rejected by Buyer and title shall remain with Seller until cure and formal acceptance by Buyer.

The provisions of this Section 8 shall survive the termination of this Contract.

- 9. Indemnification, Defense and Hold Harmless.**

- (a) General Indemnification. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER AND ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, CONSULTANTS, AGENTS, AND EMPLOYEES (COLLECTIVELY ALSO CALLED "THE INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DEMANDS, LOSSES, AND LIABILITIES OF ANY NATURE WHATSOEVER WHICH ARISE FROM BODILY INJURY OR DEATH TO ANY PERSON OR FROM LOSSES OF OR DAMAGES TO ANY TANGIBLE OR INTANGIBLE PROPERTY OF ANY NATURE WHATSOEVER WHICH ALLEGEDLY RESULT FROM THE SEPARATE OR CONCURRENT CONDUCT OF ANY AND ALL PERSONS (WHETHER THE CONDUCT IS TORTIOUS OR NOT TORTIOUS) AND/OR FROM THE SEPARATE OR CONCURRENT USE OF ANY GOODS, SERVICES, OR ANY PROPERTIES RELATED IN ANY MANNER TO SELLER'S PERFORMANCE INCLUDING BUT NOT LIMITED TO PRODUCT DEFECTS, CORROSION OR PRODUCT FAILURE OR BUYER'S PRODUCTION OF GOODS INCORPORATING GOODS PROVIDED BY SELLER, AND SELLER SHALL REIMBURSE TO THE INDEMNITIES ALL EXPENSES OR COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION, HANDLING, SETTLEMENT, OFFSET, DEFENSE AND/OR ENFORCEMENT OF ANY RIGHTS RELATED IN ANY MANNER TO THIS AGREEMENT AND/OR TO ANY AND ALL SUCH CLAIMS, ACTIONS AND DEMANDS AND SHALL PAY ANY AND ALL



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JUDGMENTS, AWARDS, OFFSETS, AND/OR SETTLEMENTS, RESULTING FROM SUCH CLAIMS, ACTIONS AND DEMANDS, EXCEPT FOR ONLY SUCH CLAIMS, ACTIONS OR DEMANDS CAUSED SOLELY BY THE TORTIOUS CONDUCT OF THE INDEMNITEES. SELLER EXPRESSLY WARRANTS THAT THE GOODS AND SERVICES SUBJECT OF THIS PURCHASE ORDER ARE FREE FROM ANY DEFECTS OR CONDITIONS THAT MIGHT GIVE RISE TO CLAIMS, ACTIONS OR DEMANDS AGAINST WHICH SELLER HEREBY AGREES TO INDEMNIFY. UNDER NO CIRCUMSTANCES SHALL SELLER OR ITS INSURERS PARTICIPATE OR ENTER INTO ANY SUBROGATION AGAINST THE INDEMNITIES. FURTHERMORE, SELLER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM ANY AND ALL SUCH DEMANDS, CLAIMS, SUITS, LIABILITIES, EXPENSES, OFFSETS, FINES, OR DAMAGES WHATSOEVER ARISING OUT OF OR RELATED TO ANY FAILURE OF SELLER OR ITS SUBCONTRACTORS TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, RULES, AND ORDINANCES.

- (b) Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods and/or Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent. Seller shall pay all damages, costs, and expenses arising from such claims. In the case Goods and/or Services furnished hereunder, or any part thereof are held to constitute infringement of intellectual property rights and the use of said Goods and/or Services or part is enjoined; Seller shall, at its own expense, either procure for Buyer the right to continue using said Goods and/or Services or replace them with non-infringing Goods and/or Services. This paragraph shall not apply to any Goods and/or Services or part thereof manufactured or furnished to Buyer's design.

The provisions of this Section 9 shall survive the termination of this Contract.

- 10. Financial Responsibility.** Seller shall maintain for at least five (5) years after final payment all financial records and documents pertaining to the Goods and/or Services. Such records and documents shall date back to the time this Contract was issued and shall include without limitation catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.



If Contract, in the aggregate, exceeds \$500,000 and extends for more than one year, or if requested by Buyer, Seller shall furnish such financial data and related information as may be reasonably required by Buyer to permit a determination of financial capability, financial responsibility to enable performance of the Contract. Seller shall, at no increase in price or other cost to Buyer, promptly submit interim financial data as may be requested by Buyer to determine continuing, financial capability and responsibility during the progress of work under the Contract. If Seller's financial capability and responsibility are determined by Buyer to be such as may jeopardize performance hereunder, Buyer shall have the right to request, and Seller shall promptly deliver at no increase in price or other cost to Buyer, a complete and current manufacturing data package sufficient to enable Buyer to complete or source such product to another supplier to complete the Contract and terminate the Contract for Default. Upon such request by Buyer, Seller thereby grants to Buyer a non-exclusive royalty-free license and rights under such data and patents, if furnished hereunder. Buyer agrees that, so long as Seller is not in default, Buyer will not use the drawings for such manufacture. Upon completion and acceptance by Buyer of the work required to be performed hereunder, Buyer shall redeliver to Seller such manufacturing data package.

In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Seller's property, or for any act or petition in bankruptcy: whether voluntary or involuntary, as defined in the Bankruptcy Reform Act of 1978, Title 11, United States Code, as amended, Buyer may terminate this Contract for Default, Seller shall not proceed with performance of the Contract; in which case Buyer is released from all further obligations, except that Buyer shall be obliged to pay for any article accepted prior to any of the foregoing occurrences at the prices specified in the Contract.

Seller agrees that no liens or property rights of any kind shall lie or attach upon or against the Goods and/or Services or any part thereof, for or on account of any work performed, provided, furnished by Seller pursuant to the Contract. If any lien or encumbrance is asserted against these Goods and/or Services, or any part thereof, Buyer shall have the rights to discharge the same by filing a bond or security, or in its discretion, by paying the amount of the claim, and in such event, Buyer shall have the right to deduct from the Contract price the amount thus paid. Buyer has paid the Contract price, Seller shall reimburse Buyer for all costs to discharge such claim, including all administrative and legal expenses incurred by Buyer related to such action.

Buyer may terminate the Contract, whenever Seller's financial condition may jeopardize performance and Buyer shall be entitled to all remedies under the law and in accordance with Termination and Default, Section 18, herein.

## **11. Insurance and Liability.**

- (a) Seller shall keep and shall require its subcontractors to keep all material, tools and equipment in which Buyer or the Government has any interest insured against risk



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- or loss or damage for their value at Seller's own expense during such time as the remain in Seller's possession.
- (b) Seller shall maintain in full force and effect, at its expense and primary without the right of contribution by any insurance carried by Buyer and Seller shall cause its insurer to acknowledge the indemnification as set forth herein as an insured contractual undertaking, for as long as it shall provide Goods and/or Services to Buyer, and for a period of two (2) years thereafter, insurance policies of:
- i. Commercial General Liability insurance (including products, completed operations and contractual liability coverage) covering the Seller with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate in favor of Buyer and minimum umbrella coverage of \$5,000,000;
  - ii. If Seller's employees enter Buyer's premises, Seller shall obtain and maintain, at its expense and for so long as such employees shall conduct such operations, a policy or policies of Worker's Compensation and Employer's Liability (including Stop Gap coverage in those states where applicable) insurance with minimum limits of \$1,000,000;
  - iii. If Seller uses automobiles on Buyer's premises or on behalf of Buyer, Seller shall obtain and maintain, at its own expense and for long as such exposure exists, Automobile Liability insurance with minimum limits of \$1,000,000 per occurrence, including owned, non-owned and hired vehicles.
  - iv. If Seller uses aircraft on Buyer's premises or on behalf of Buyer, Seller shall obtain and maintain Aviation Liability Insurance inclusive of Aircraft Liability, Premises Liability and Contractual Liability with a combined single limit of no less than \$5,000,000 per occurrence, including owned, non-owned and hired aircraft.
- (c) Seller shall provide to Buyer, or Buyer's designated representative, Certificates of Insurance naming Buyer as Additional Insured for the above-indicated insurance policies, excluding Worker's Compensation and Employer's Liability (with respect to Worker's Compensation, Seller's insurer shall waive their rights of subrogation against Buyer). All policies will be provided by insurers rated "A-" or better by A.M. Best. Seller shall provide Buyer with such Certificates of Insurance upon execution hereof, and shall provide updated Certificates of Insurance to Buyer when coverage is renewed or materially changed and as may be requested from time to time by Buyer. In the event Seller is unable to comply with one or more of the requirements herein, Seller must inform Buyer in writing in which case Buyer will refer Seller to appropriate resources to assist Seller in complying with these requirements.
- (d) Policy limits will not be reduced, terms changed, or policy canceled with less than thirty (30) days prior written notice to Buyer. Seller's insurance will be primary with respect to all obligations assumed by the Seller pursuant to this Agreement. It shall be the responsibility of the Seller to ensure that all of its agents, representatives, and suppliers comply with the above-indicated insurance





requirements. Insurance coverage and limits referred to above will not in any way limit the liability of the Seller.

- (e) Seller shall provide Buyer within five (5) days of the Purchase Order, certificates of insurance and copies of required insurance policies to Buyer for approval.
- (f) When Seller's employees, agents or contractors are on Buyer's premises for any reason, the presence of Seller shall be as an independent contractor.

**12. Inspection, Testing, Acceptance, Reliability Conditions, Quality Assurance.** The Buyer has the right to inspect the Goods and/or Services on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods and/or Services, and may reject all or any portion of the Goods and/or Services if it determines the Goods and/or Services are nonconforming or defective. If Buyer rejects any portion of the Goods and/or Services, Buyer has the right, effective upon written notice to Seller, to: (1) rescind the Purchase Order in its entirety; (2) accept the Goods and/or Services at a reasonably reduced price; or (3) reject the Goods and/or Services and require replacement of the rejected Goods and/or Services. If Buyer requires replacement of the Goods and/or Services, Seller shall, at its expense, promptly replace the nonconforming Goods and/or Services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and/or Services and the delivery of replacement Goods and/or Services. If Seller fails to timely deliver replacement Goods and/or Services, Buyer may replace them with Goods and/or Services from a third party and charge Seller the cost thereof and terminate this Purchase Order for cause pursuant to Section 18. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Purchase Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

Items covered by this Purchase Order shall be subject to inspection and tests by Buyer and/or Government, as required by the FAR or applicable agency regulations. Buyer may require that Seller's products meet the requirements of the Quality Process. If required, the Purchase Order will state such Quality Process requirement and such requirements are further described in the Quality Process Manual Submission Requirement ("QOP") and the SQM Supplier Quality Manual ("SQM"). These documents may be obtained from Buyer's Supplier sourcing information system and Buyer's website at [mooney.com/service](http://mooney.com/service). To the extent practicable such inspections and test will occur at any time or place prior to final acceptance and as specifically provided herein. Buyer and/or Government may either reject or require correction of all defective items and at the expense of the Seller. If Seller fails to replace or correct promptly, Buyer may otherwise replace or correct such goods or lot of goods at the Seller's risk and expense or terminate this Purchase Order for Default as hereinafter provided.

Seller shall provide at its expense all reasonable facilities for inspection and tests. Seller shall provide and maintain an inspection system acceptable to Buyer and the Government.



Records of all inspection work and test data performed by Seller shall be kept complete and available to Buyer and the Government upon request.

Final acceptance or rejection shall be made as promptly and as practicable after delivery, but failure to inspect and accept shall not relieve Seller from responsibility for defective items, nor impose liability on Buyer therefore. Inspection and test by Buyer and or the Government shall not relieve Seller from responsibility for defects or other failures to meet Purchase Order requirements. Payments for, acceptance of, or failure to make any inspection of the Goods and/or Services shall in no way impair Buyer's right to reject or revoke its acceptance of non-conforming goods and/or services or avail itself of any other remedies to conformity, its suitability or the ease of the discovery.

- 13. Quality Process.** Buyer may not accept Seller's products until Seller's products meets all requirements of the (1) Quality Process level as stated in the Purchase Order, (2) the QOP, and (3) the requirements of the SQM.

If Buyer requires Seller's product pass the requirements stated above, Seller shall bear all costs related to meeting those requirements. Buyer is not responsible for payment to Seller for any product prior to passage of all requirements stated above.

- 14. Counterfeit Goods.** Seller shall not furnish Counterfeit Goods to Buyer, defined as goods or separately-identifiable items or components of goods that: (1) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (2) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (3) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (4) have been re-worked, re-marked, relabeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (5) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Services or items that contain modifications, repairs, rework, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.

Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit Goods. Seller's strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (1) the OEM's original certificate of conformance for the item or (2) sufficient records providing unbroken supply chain traceability to the OEM.



If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit Goods with OEM or Buyer-approved goods that conform to the requirements of this Contract. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic goods after Counterfeit Goods have been replaced.

Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Section.

**15. Packing, Marking, Shipping, and Routing.** All products shall be packed, marked, and shipped in accordance with the requirements specified in the Purchase Order. If no specific instructions are provided, Seller shall utilize good commercial practices to ensure protection in shipment and storage and compliance with applicable federal, state, and local laws and regulations. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking, or method of shipment shall be reimbursed by Seller. Further if products, are not packed as required by Buyer, and the products are damaged, Buyer is not obligated to pay for such damaged products. Seller is obligated to pay all costs to replace damaged products, including but not limited to costs to obtain product from another source and expedited shipping. Buyer shall not be responsible for any separate or additional charge for containers, crating, boxing, bundling, dunnage, drayage, or storage unless specifically stated in the Purchase Order. Seller shall forward to Buyer, with invoice, the express receipt of bill of lading signed by the carrier evidencing the fact that shipment was made.

Seller shall strictly comply with the delivery requirements of this Contract. In the event of Seller's failure to so comply with the delivery requirements, Buyer may, in addition to all other remedies, require Seller, at Seller's expense, to ship articles via air freight or expedited routing to avoid or minimize delay.

Seller is to adhere strictly to Buyer routing instructions. Any losses or additional expense incurred by Buyer due to Seller's from deviations from Buyer routing instructions contained in the Purchase Order shall be charged to the Seller. Seller shall contact the Buyer if routing instructions are questionable. Unless otherwise specified, all shipments shall be FOB – Origin.

**16. Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public



enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Purchase Order. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice to Buyer. Nothing in this paragraph shall prevent Buyer from canceling this Purchase Order, without cost to Buyer, for any reason stated above.

- 17. Compliance with Laws and Regulations.** Seller shall observe at all times all federal, state, county and municipal laws, rules, regulations and ordinances that in any manner affects the Goods and/or Services specified in the Purchase Order, including but not limited to environmental, occupational, health and safety protection laws. Seller shall comply with all export and import laws of all countries involved in the sale of Goods and/or Services under this Purchase Order. Seller assumes all responsibility for shipments of Goods and/or Services requiring any government import clearance. Buyer may terminate this Purchase Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods and/or Services. Seller shall also require all of its agents, subcontractors and employees to observe and comply with said laws, rules, regulations and ordinances. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").

Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.

Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.



Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.

Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.

Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.

Seller shall incorporate into any contracts with its sub-tier suppliers, obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.

**18. FAR Clauses.** To the extent the Purchase Order is in support of a U.S. Government Contract, the all applicable FAR clauses are incorporated into this Agreement with the same force and effect as if they were given in full text, and are applicable. When a FAR clause uses a word or term that is defined in the FAR, the word or term shall have the same meaning as in the definition in FAR 2.101 in effect on the date of the Purchase Order unless (1) a different definition is expressly set forth herein; or (2) the part, subpart, or section of the FAR where the clause is prescribed provides a different meaning; or (3) the word or term is defined in FAR Part 21, for use in the cost principles and procedures.

Under the terms of the listed FAR clauses references to the term "Contractor" shall mean Seller and references to the term "Government" shall mean Buyer and or the Government, as applicable.

**19. Termination and Default.** Buyer may terminate this Purchase Order, in whole or in part, at any time with or without cause for undelivered Goods and/or Services on fifteen (15) days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Purchase Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods and/or Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If Seller fails to make progress under this Purchase Order so as to endanger performance of this Purchase Order and does not cure such failure within a period of ten (10) days after written notice from Buyer, Buyer may procure commodities or services similar to those terminated and Seller shall be liable for new procurement costs, including but not limited to the difference in price of the new procured products, transportation or other related expenses including but not



limited to costs to locate and procure the items, consultant and attorney's fees and related costs. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Purchase Order upon written notice to Seller. If Buyer terminates the Purchase Order for any reason, Seller's sole and exclusive remedy is payment for the Goods and/or Services received and accepted by Buyer prior to the termination.

Should Seller default in performance, Seller shall be liable to and shall indemnify Buyer against all claims by the Government or others related to said default, and all losses, expenses, and incidental and consequential damages incurred by Buyer in connection with such default. Additionally, Seller agrees to pay Buyer all costs and expenses including reasonable attorneys' fees which Buyer may incur in seeking enforcement of this Purchase Order or in pursuing any remedy allowed by the law for breach, whether such are incurred by the filing of a suit or otherwise. Further, Seller shall be liable to Buyer for any other remedies prescribed by law or equity.

## **20. Disputes and Governing Law.**

- (a) Governing Law. The Parties expressly agree the provisions of this Section 20 shall be valid and enforceable to the greatest extent possible under the laws of the United States of America or the State of Texas, regardless of any choice of law provisions. Venue of any dispute under this Agreement shall be in Kerr County, Texas with Texas district courts or federal district courts having jurisdiction of any dispute related to or arising out this Purchase Order.
- (b) Payment Dispute. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 10 days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 20. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Purchase Order notwithstanding any such dispute.
- (c) Other Disputes. The Parties agree to use best efforts to resolve any dispute in good faith. If the Parties are unable to resolve such disputes, the Parties agree to be subject to Mediation as outlined below. Seller shall continue performing its obligations under the Purchase Order notwithstanding any such dispute.
  - i. Mediation. The Parties agree to exchange the names of three neutral parties who may hear the dispute ("Neutral").
  - ii. Hearing by Neutral. The Parties agree to conduct the dispute resolution hearing with the Neutral within 10 days of written request by either Party. Such hearing will be conducted in Kerrville, Texas, and shall last no more than six hours. Each Party shall present its side of the case in no more than



two hours. The Parties must present its evidence by submission of documents; no live witnesses shall be permitted during the hearing. The Neutral shall render the decision within 72 hours from the close of the hearing. The decision of the Neutral is non-binding. Use of the Neutral for dispute resolution is a condition precedent to Trial by Special Judge, as described below.

1. Costs of the Hearing by Neutral. Each party shall pay one-half of the costs of the Neutral.
  2. If the parties do not resolve their dispute through mediation as stated above, the method of binding dispute resolution shall be Trial by Special Judge, as described in Subsection 3, below.
  3. Trial by Special Judge. All matters between the Parties which are not resolved by mediation shall be resolved in accordance with the procedures of Texas Civil Practice and Remedies Chapter 151 – Trial by Special Judge in Kerr County, Texas.
- (d) Sponsored Claim. The Seller has no right to direct communication to or decision from the Government, or a direct right of appeal to the Board of Contract Appeals unless Buyer, in its discretion, agrees to sponsor Seller's claim to the Government. In consideration of Buyer's agreement, if any, to sponsor and assist in prosecuting Seller's claim, Seller agrees to release, discharge and hold Buyer harmless from all liability in connection with the subject matter of such claim except Buyer's obligation to pay Seller its proportionate share of all monies received by Buyer from the Government. Seller is responsible for the costs of its attorney fees and other costs of the litigation to prosecute the sponsored claim.
- (e) Continue Performance. Notwithstanding any dispute arising hereunder, Seller shall proceed diligently with performance according to Buyer's decision and instructions.
- (f) No Waiver. No provisions hereof may be waived or modified, and no counteroffer hereto shall be deemed accepted, unless made in writing and signed by a duly authorized representative of Buyer. A waiver of one or more defaults or failure to insist on strict performance of any terms of conditions of the Purchase Order shall not be a waiver of any other or subsequent defaults or performance.

The provisions of this Section 20 shall survive the termination of the Purchase Order.

## **21. Subcontracts/Assignments/Changes in Ownership.**

- (a) Seller shall not subcontract all or substantially all of its performance of the Purchase Order with any other party or assign any of its rights or interest in the Purchase Order without Buyer's prior written authorization after advance written notice by Seller. Any assignment of this Purchase Order or any rights hereunder by operation of law or otherwise, without the prior written consent of Buyer, shall be deemed void.



- (b) Seller shall notify Buyer when Seller becomes aware that a change in its ownership has occurred or is certain to occur. At such time, Buyer may request additional assurances regarding the financial responsibility of the new owners and if not satisfied, Buyer may terminate the Purchase Order for its convenience, as described in Section 10 and 18.

**22. Notice.** Any notice required or permitted by the Purchase Order shall be in writing and shall be deemed given at the time it is received after it is deposited in the United States Mail, postage prepaid certified or registered mail, return receipt requested, addressed to the party to whom it is to be given to Buyer as follows:

**To Buyer:** Debra Beard, Director of Supply Chain  
165 Al Mooney Rd North, Kerrville, TX 78028

**Copy to:** Andrew Barron, General Counsel  
165 Al Mooney Rd North, Kerrville, TX 78028

**To Seller:** At the address stated on the Purchase Order with attention to the Seller's named contact person on the Purchase Order.

The names and addresses of individuals entitled to receive notice may be changed only by written notice from one party to the other signed by the representative previously entitled to give or receive notice.

**23. No Third-Party Beneficiaries.** This Purchase Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**24. Conflicts.**

- (a) To the extent there are conflicts among the provisions of this Purchase Order or any attachments hereto, such conflicting provisions shall prevail in the following order of precedence: (1) typed provisions and specifications on the face of the Purchase Order; (2) terms and conditions of a Master Agreement, if executed between the Parties; (3) Purchase Order attachments, including these terms and conditions.
- (b) Buyer is not bound by any provisions whether printed nor otherwise, at variance with this Purchase Order that may appear on the Seller's acknowledgement, invoice or other document issued by Seller. No change, modification or revision of this Purchase Order shall be valid unless in writing and signed by the authorized representative of Buyer.





- 25. Price.** The price of the Goods and/or Services is the price stated in the Purchase Order (the “Price”). If no price is included in the Purchase Order, the Price shall be the price set out in Seller’s published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.
- 26. Most Favored Customer.** Seller represents and warrants that the price for the Goods and/or Services is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods and/or Services. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods and/or Services under this Purchase Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Purchase Order without liability pursuant to Section 18.
- 27. Use of Specifications.** Any specification, drawings, technical information or data furnished to Seller for performance of the Purchase Order shall remain Buyer’s property, shall be held in confidence and shall be returned immediately at Buyer’s request. Such documents shall be used to complete this Purchase Order and may be used for other purposes with prior written agreement from Buyer.
- 28. Terms and Conditions.**
- (a) Acknowledgement, shipment, or performance of any part of this Purchase Order will constitute acceptance by Seller of all terms and conditions hereof including all documents incorporated herein by reference without reservation and shall constitute the entire agreement between the Parties and supersedes all prior agreements relating to the subject matter thereof. Seller hereby agrees that the terms and provisions of this Purchase Order shall amend and control every other transaction between the Parties involving the sale of Goods and/or Services.
  - (b) The terms and conditions set forth in the Purchase Order, including these terms and conditions and all specifications and attachments which are incorporated herein by this reference for all purposes, contains the entire agreement intended by the Parties to constitute the final, complete and exclusive statement of their agreement with respect to the subject matter of the Purchase Order, and all prior proposals, communications, negotiations, agreements, understandings and representations relating to such subject matter, whether verbal or written are hereby superseded. No modification or amendment of the Purchase Order shall be effective unless the same is in writing and signed by both Parties.



- 29. Cumulative Remedies.** The rights and remedies under this Purchase Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
- 30. Confidential Information.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the Purchase Order is confidential, solely for the use of performing the Purchase Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (1) in the public domain; (2) known to the Seller at the time of disclosure; or (3) rightfully obtained by the Seller on a non-confidential basis from a third party.
- 31. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, then, to the extent that such invalidity or unenforceability shall not deprive either Party of any material benefit intended to be provided by this Agreement, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the Parties hereto.
- 32. Survival.** Provisions of this Purchase Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Purchase Order including, but not limited to, the following provisions: Setoff, Warranties, Title and Risk of Loss, General Indemnification, Intellectual Property Indemnification, Insurance and Liability, Compliance with Laws and Regulations, Confidential Information, Disputes and Governing Law, and Survival.