



## TERMS AND CONDITIONS OF PURCHASE (TOOLING AND EQUIPMENT)

### 1 Relationship.

1.1 The Materials. Subject exclusively to the terms and conditions of these Terms and Conditions of Purchase (“T&C”) and Miniature Precision Component, Inc.’s or its subsidiary(ies)’ or affiliate’s (“Buyer”) Purchase Order, Seller agrees to sell to Buyer the goods, services, or material identified in the Purchase Order (“the Material”).

1.2 Acceptance of the Agreement. The T&C, together with the Purchase Order, shall be deemed an offer by Buyer. Seller accepts the T&C and Purchase Order upon either its written acceptance or upon commencement of any required work or service, under the Purchase Order (the “Agreement”). Seller’s acceptance and the Agreement shall be limited to the express written terms stated on the Purchase Order and in this T&C. Any new or additional terms contained in Seller’s acceptance documents, or otherwise proposed by Seller, shall be considered nonconforming terms and are unacceptable and expressly rejected by Buyer and shall not become a part of the Agreement. Seller acknowledges that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. The Agreement may be modified or amended only as specified in the T&C.

### 2 Quality.

2.1 Verification. Prior to Seller delivering the Material, if requested by Buyer, Seller will make the Material available at its facility to allow Buyer and Buyer’s customer to inspect the Material and view its operation.

#### 2.2 Compliance with Quality Procedures, Statements of Work and Timelines.

2.2.1 Seller shall comply with all quality requirements stated in any guideline furnished by Buyer or agreed upon in any Statement of Work (“SOW”) or other document.

2.2.2 Seller must ensure that its quality assurance system is registered to ISO 9001:2008 or ISO/TS 16949:2009 or AS9100 Rev C, as modified from time to time, or similar standards applicable to the Materials as specified by Buyer. Seller acknowledges that Buyer is ISO/TS 16949:2009 and AS9100 Rev C registered and agrees to take actions reasonably requested by Buyer to assist Buyer in maintaining its registration. Buyer and its customers shall have the right during reasonable business hours and upon at least two (2) days prior written notice to inspect the Seller’s facilities and to perform quality audits with respect to the Materials provided. A positive outcome of Buyer’s verification under Section 2.1 above or a compliance audit or implementation of any quality recommendations shall not relieve Seller of any liability under this part.

2.3 Inspection and Rejection. Buyer shall have the right to inspect any Material after delivery and before acceptance and reject any Material which are non-conforming. Seller shall not replace Material rejected by Buyer as non-conforming unless directed by Buyer to do so. Non-conforming Material will be held by Buyer for disposition in accordance with Seller’ instructions, and at its cost, for three (3) days after notification of rejection, or such shorter period as may be commercially reasonable under the circumstances. If Seller fails to provide timely disposition instructions, Buyer may, at its option, charge Seller for storage and handling or dispose of such Material without liability. Payment for non-conforming Material shall not constitute an acceptance, or impair, limit or otherwise restrict Buyer’s right to claim any legal or equitable right, nor shall it relieve Seller of any responsibility or liability for defects or breach of warranty that are discovered after delivery, payment or acceptance.

### **3 Specifications, Confidential Information, Intellectual Property.**

3.1 Confidential Information. The following shall be considered Confidential Information of Buyer: (i) any written specifications for the Material and processing of the Material covered under the Agreement which Buyer has or provides to Seller with regard to the Materials covered under the Agreement ("Purchase Specifications"); (ii) any other business or technical information, including without limitation, all oral or written information relating to the Materials, or information relating to Buyer's customers, suppliers, business practices, products, designs, trade secrets, inventions, or research and development; and (iii) the terms and conditions of the T&C. However, "Confidential Information" shall not include any information that Seller can establish by written documentation was (i) in the public domain at the time of disclosure or thereafter through no fault of Seller, (ii) independently developed by Seller, or (iii) obtained by Seller without restriction from a third party. Seller agrees to safeguard the Confidential Information by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors," officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Materials. Seller acknowledges that the Buyer's business is extremely competitive, and promises to closely safeguard all Confidential Information.

3.2 Buyer Intellectual Property. Buyer remains the owner of Confidential Information and any drawings, models, patterns, tools, dies, jigs, specifications or other documents (collectively "Buyer's Intellectual Property") that Buyer provides to Seller. Without Buyer's written consent, such Buyer's Intellectual Property may not be used for the Seller's own purposes or for any other purpose or made available to third parties and may be used only for the purpose of the delivery of Material to Buyer. Buyer may request at any time that such Buyer's Intellectual Property be returned. Seller shall not, without first obtaining the written consent of Buyer, in any manner publish Buyer's name or otherwise indicate that Seller has furnished, or contracted to supply, Materials to Buyer.

#### 3.3 Seller Intellectual Property.

3.3.1 Seller remains the owner of all inventions, trademarks, copyrights and other proprietary rights that it owned prior to entering into this Agreement with respect to the Material ("Seller's Background Intellectual Property"). However, at a minimum, Seller grants to Buyer an irrevocable, perpetual, non-exclusive, transferrable, worldwide license to use Seller's Background Intellectual Property to repair, have repaired, sell and operate the Material and use the Material to manufacture any goods for, or provide any services to, third parties.

3.3.2 All inventions and intellectual property created in the course of performing any Order (separately or as part of any Material) are owned by Buyer and not by Seller. Seller agrees that all works of original authorship created by Seller in connection with the Agreement are works made for hire as the term is used under the U.S. Copyright Law.

### **4 Delivery**

4.1 Delivery Date. The delivery date shall be the date stated in the Purchase Order, SOW or any other document issued by Buyer to Seller. The parties agree that in the event that Seller fails to deliver any Material on the delivery date, Buyer, in addition to other rights or remedies it may have, shall be entitled, at its option, to cancel the order for the Material which was not timely delivered without any obligation or liability to Seller and to purchase such Material from a third party.

4.2 Performance Obligation. As time is of the essence, Seller shall deliver all orders for Material 100% "on time." The term "on time" shall mean on, or no sooner than two (2) days prior to, the delivery date.

4.3 Corrective Action. Should at any time Seller fail to deliver required Materials per the delivery date, Seller shall incur all costs of expedited delivery and any other reasonable and verifiable cost that may be made necessary to make such a delivery to Buyer and Buyer's customer.

## **5 Price.**

The price shall be the price set forth in the Purchase Order. Unless otherwise stated, the purchase price: (i) is a firm fixed price and, without Buyer's written consent, is not subject to increase for any reason, including for increased raw material costs, increased labor or other manufacturing costs, or increased development costs; (ii) is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Materials; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller.

## **6 Shipment and Payment Terms**

6.1 Premium Charges. Seller shall be responsible for any premium freight charges required in order for Seller to deliver an order by the applicable delivery date or remedy a past due situation found to be the responsibility of Seller.

6.2 Invoices. Unless instructed otherwise by Buyer, Seller shall invoice Buyer upon shipment of an order. Invoices and packing lists must be sent to locations identified by Buyer. For shipments that will cross national borders (exports), the required documentation must be provided to parties identified by the Buyer no later than the time of shipment.

6.3 Payment. Buyer shall make payment for conforming Materials at the price stated in the Order at the time agreed to by the parties. The price of the Material shall be the limit of the liability of Buyer for the Materials. Any agreed upon cash discount or payment privilege to Buyer shall be extended until such invoice and compliance certification are received. Unless otherwise stated, all payments are in U.S. Dollars and include all storage, handling, packing, freight, insurance, taxes, duties and any other charge of any nature. In addition to any other remedy which may be available, Buyer shall have the right of set off with respect to any sums due Seller by Buyer with any sums payable by Seller to Buyer under any agreement between the parties

## **7 Warranty**

7.1 Warranty. The Seller warrants that the Materials:

- 7.1.1 will conform to drawings, materials, descriptions and specifications designated by Buyer;
- 7.1.2 will be of merchantable quality and fit and sufficient for the particular purposes intended, new, best available technology, safe, of first-class materials and workmanship and free from defects, contamination and rust;
- 7.1.3 will be packaged and marked correctly in accordance with Buyer's instructions;
- 7.1.4 if designed by Seller, free from defects in design;
- 7.1.5 will comply with all Laws, in accordance with Section 13.1;
- 7.1.6 will not infringe any patents, copyrights or other proprietary rights of Seller or others; and
- 7.1.7 will be free from all liens and encumbrances.

7.2 Warranty Period. All warranties of Seller extend to future performance of the Materials and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Buyer's approval

of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranty period is four (4) years from the date Buyer accepts the Materials.

7.3 Non-conformity. In the event that Buyer determines that any Material is defective, damaged or otherwise not in conformity, Buyer may reject the Material and in such case, Buyer shall not be obligated for payment of the purchase price and may cancel the order without obligation or liability. Should Seller not make whole on promised Material, or goods and services or, if Buyer has already paid for the Material in question, Seller shall, at Buyer's option, either: (i) replace or reprocess the Material, or (ii) reimburse Buyer for the purchase price of the Material. In either case, in addition to all other damages that Buyer is entitled to under the law, Seller shall pay for incidental and verifiable costs including but not limited to, Buyer's cost of repackaging, manufacturing and transporting the defective Material and/or replacement Material to and from Buyer's or Buyer's customer's facility.

7.4 Damages. The Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from Seller's failure to timely deliver conforming and non-defective Materials or to comply with the shipping and delivery or other requirements of the Buyer or any term contained in this T&C, even if the Seller has cured the failure.

## **8 Insurance**

Without limiting Seller's liability, Seller and its subcontractors agree to furnish certificates from their insurance carriers showing that they carry Worker's Compensation, Commercial General Liability, including Products Liability (at a minimum of \$5,000,000 per occurrence), Completed Operations and Contractual Liability, "All Risks" Property (including, but not limited to, coverage for tooling and material maintained by Seller and owned by Buyer), and Comprehensive Automobile insurance coverage within 10 days of Buyer's written request. Certificates must show the amount of coverage, number of policy, and date of expiration, and in respect to Product Liability coverage, must name Buyer as an additional named insured. Seller may not terminate or modify insurance coverage without informing Buyer in advance and showing new equivalent coverage.

## **9 Bailed Property**

9.1 Property Damage. Seller bears all responsibility for loss of and damage to any property owned by Buyer and in Seller's possession or control for use in performing under the Agreement, including responsibility for loss and damage which occur despite Seller's exercise of reasonable care. Seller will: (i) Properly house and maintain such property on Seller's premises; (ii) Prominently mark it property of Buyer; (iii) Adequately insure such property against loss or damage; and (iv) Refrain from commingling it with the property of Seller or with that of a third party.

9.2 Liens. Seller affirmatively waives any lien, whether based in statute or common law, that Seller might otherwise have on any Materials or Buyer's property for work done thereon or otherwise. Seller will assign to Buyer any claims against third parties with respect to Buyer's property. Upon request, Seller will immediately deliver such property at Buyer's option F.O.B. Buyer's premises (CIF Buyer Plant/Delivered Buyer Plant), properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the property from Seller's premises. Seller's cooperation with delivery and removal of Buyer's property is not contingent on final payment unless final payment is both undisputed and overdue.

## **10 Indemnification and Products Liability**

10.1 General. Seller shall indemnify and hold Buyer and Buyer's customers harmless from and against any and all claims, damages, recall and other costs, liabilities and expenses (including without limitation, actual attorneys' fees) incurred by reason of any breach of warranty made by Seller or other obligation by Seller under the Agreement or other defect or unsafe condition with respect to any Material. If Seller is

obligated to indemnify under this Section, then Buyer may at its option participate in the defense of any claim with its own counsel, at Seller's expense.

10.2 Infringement. The Seller shall defend, indemnify and hold Buyer and Buyer's customers harmless against any and all liabilities, damages or expenses (including actual attorney fees) which may be incurred in connection with any suit, claim, judgment or demand asserting that any Material purchased by Buyer infringes upon any patent or other intellectual property rights, whether such infringement is caused by the manufacture, purchase, use or disposition of the Material alone or in combination with use of the Material with other items except to the extent that such infringement or alleged infringement arises from a design furnished completely by Buyer. Tolerance modifications to Seller's design shall be considered Seller's design for purposes of the Agreement. Buyer shall notify the Seller promptly upon receipt of any written claim or notice of any infringement of third party intellectual property rights in connection with the Materials. The Seller shall immediately take all steps to prevent or settle such dispute on its own authority and shall hold the Buyer harmless against all effects whatsoever in respect thereof. Buyer may retain counsel of its choice at Seller's expense to participate in any suit, claim, or proceeding. Seller shall have the right to settle or compromise any suit, claim or proceeding at its discretion, provided that the terms of the settlement or compromise provide for the unconditional release of Buyer, and the settlement or compromise requires the payment of monetary damages only. Seller shall not settle, without Buyer's prior written consent, any suit, claim or proceeding which imposes upon Buyer any obligation, or in any way prejudices the rights of Buyer, other than as set forth herein. Any other settlement or compromise requires prior written approval from Buyer.

## 11 Termination

11.1 Termination by Buyer. In addition to any other termination right which Buyer has, it may terminate the Agreement, T&C, or any Purchase Order:

11.1.1 for convenience, with thirty days advance notice, except that advance notice is not required if Buyer's customer terminates its order with Buyer for any reason, or if Buyer exits the business and/or closes a plant which is the recipient of the Material.

11.1.2 for breach by Seller, including if a) Seller repudiates or defaults on any material term, including Seller's warranty or b) Seller fails to perform services or deliver goods or Material as specified by Buyer or fails to make progress so as to endanger timely and proper completion of services or delivery of goods or Material. Seller's default shall constitute a breach if, after receipt of notice from Buyer specifying the nature of the default, it does not correct such default to Buyer's satisfaction within ten (10) days, or such shorter period of time that is commercially reasonable under the circumstances. Declaring a default or breach under this Paragraph 11 shall be in addition to any other remedy available to Buyer and shall not relieve Seller of its obligations under the Agreement or imposed by law.

11.2 Termination by Seller. The Seller may terminate the Agreement only for non-payment of the purchase price for Materials which are thirty or more days past due and material in amount, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due and Seller's intent to terminate if the past due amount is not paid; and (ii) Buyer, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section by delivering a Termination Notice to Buyer. Seller may not terminate or cancel for any reason except as permitted under this Section. Seller may not suspend performance for any reason.

11.3 Obligations on Termination. In the event of any termination under 11.1.1 by Buyer, unless otherwise agreed by Buyer and Seller, Buyer shall pay to Seller the following amounts, without duplication: a) the Agreement price for all goods, services or Material that have been completed and delivered in conformance with the Agreement and not previously paid for, and b) the actual and reasonable costs of work-in-process and raw materials incurred by Seller to perform under the Order and

that cannot be canceled, less the sum of the reasonable value or costs (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or materials. Buyer will make no payment for finished goods, work-in-process or raw materials that are in Seller's standard stock or that are readily marketable. Buyer's maximum liability for payments pursuant to this paragraph shall not exceed the total of the purchase price stated in the Order minus those actually made. Seller shall submit its claim for payments under this paragraph, with supporting documentation, within sixty (60) days of the effective termination date. Buyer shall have the right to audit the relevant books and records, facilities, work, material, Material, inventories and other items relating to Seller's claim.

11.4 Limitation on Liability. IN NO EVENT SHALL BUYER BE LIABLE FOR PAYMENTS OWED TO SELLER'S SUBCONTRACTORS OR FOR LOSS OF ANTICIPATED PROFITS, UNABSORBED OVERHEAD, INTEREST, PRODUCT DEVELOPMENT OR ENGINEERING COSTS, FACILITIES AND EQUIPMENT COSTS OR RENTAL, UNRECOVERED DEPRECIATION COSTS, OR GENERAL AND ADMINISTRATIVE BURDEN CHARGES.

## **12 Remedies**

12.1 The rights and remedies reserved to Buyer will be cumulative with and in addition to all other legal or equitable remedies.

12.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Materials or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).

12.3 Seller shall reimburse Buyer for all actual attorneys' fees (including the cost of in-house counsel) in any action arising out of this Agreement, unless Seller is the prevailing party.

## **13 Other Provisions**

13.1 Compliance with Laws. Seller and its subcontractors shall comply with all applicable laws, regulations, directives, guidelines, rules, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Material, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety (collectively, "Laws"). Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive worker treatment or corrupt business practices in the supply of Material under the Agreement. At Buyer's request, Seller shall certify in writing its and its subcontractors compliance with the foregoing. Seller shall indemnify and hold the Buyer harmless from and against any liability claims, demands or expenses (including actual attorney's or other professional fees) arising from or relating to Seller or Seller's subcontractor's non-compliance. Seller shall comply with all applicable laws and regulations, including but not limited to conflict mineral standards, the Fair Labor Standards Act and Occupational Safety and Health Act of 1970. Where this Agreement covers materials and/or services to be used in the fulfillment of a government contract, Seller shall comply with Executive Order 11246, the Vocational Rehabilitation act of 1973, the Vietnam Era Veteran's Readjustment Act of 1974, the National Women's Business Enterprises Program established by Executive Order 12138, the Labor Surplus Area Program mandated by P.L. 95-89, Small Business Concerns and Small Disadvantaged Business Concerns Programs established by P.O. 95-507, and all rules and regulations thereunder, unless exempt from such compliance. Seller shall hold Buyer harmless from and reimburse it for any and all costs, damages, and expenses (including actual attorney's fees) suffered by it directly or indirectly through the failure of Seller to comply with any such laws, regulations, or orders. Seller must supply a Material Safety Data Sheet (MSDS) that complies with OSHA 29 CFR 1910.1200 to Buyer, to be on file at Buyer's facility,

including the DOT Hazard Class UN, NFPA Rating numbers, and EPA Reportable Quantity, and technical data sheets on usage of material.

13.2 Notice. Whenever written notice is required or permitted to be given hereunder, it shall be deemed given on the date the same is delivered, personally or by Federal Express or comparable commercial service, or sent by facsimile or email with confirmation, or three (3) working days after the mailing thereof, to the party to whom the notice is to be given at its last known address.

13.3 No Agency. Nothing in the T&C shall constitute or be deemed to constitute an agency relationship between the parties. No party hereto is authorized or empowered to act as an agent for the other.

13.4 Force Majeure. Except as set forth herein, neither party shall be liable for failure to perform or delay in performance hereunder if such failure or delay is due to fire, storm, flood, war, embargo, or any act of God or other cause or contingency beyond such party's reasonable control; provided that, if any act or event described in this Section prevents or will prevent Seller from performing its obligations under the Agreement, Buyer shall have the right, without obligation or liability to Seller, to purchase Material from another supplier until Seller is able to resume performance of its obligations hereunder. Under such circumstances, Seller shall reimburse Buyer for any premium reasonably and verifiably paid by Buyer for such Material.

13.5 No Assignment. Seller may not assign its rights or obligations under the Agreement to any other party without the prior written consent of Buyer.

13.6 Governing Law; Arbitration; Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law, are excluded. Any action hereunder shall be subject to the exclusive jurisdiction of the state courts sitting in Walworth County, Wisconsin and the United States District Court for the Eastern District of Wisconsin, as applicable, without giving effect to the principles thereof relating to conflicts of law. The arbitration provisions of this Section will be governed by the United States Federal Arbitration Act. At Buyer's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Material, the Purchase Order, the Agreement, the validity of the Order, any of the terms of the T&C or any other matter between the parties (other than requests for equitable or injunctive relief or specific performance) will be resolved by binding arbitration, conducted in the English language using a single arbitrator. The arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure, in a location agreed by the parties. If the parties cannot agree on a location within 30 days of Buyer's written request for arbitration, the arbitration will be conducted in Walworth County, Wisconsin, USA and the arbitrator will be selected from an AAA list using the AAA-recommended selection method. The arbitrator will issue written findings of fact and conclusions of law. Each party will bear equally the costs and expenses of AAA and of the arbitrator, and each party will bear its own costs and expenses – provided, however, (1) that the failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages or any other damages not measured by the prevailing party's actual damages. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. The award of the arbitrator will be enforceable in any court of competent jurisdiction, provided that either party may appeal to an appropriate court for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs). In all other cases, including any request for equitable or injunctive relief, the parties agree and consent to the exclusive jurisdiction of the state courts sitting in Walworth County, Wisconsin and the United States District Court for the Eastern District of Wisconsin, as applicable, provided that Buyer may elect to bring an action against Seller in any court having jurisdiction over Seller.

13.7 Survival. The provisions of all (including subsections) of Sections 2, 3, 7, 9, 10, 11, 12, 13 and 14 contained in the T&C shall survive the termination of the Agreement for any reason. The termination of the Agreement shall not affect in any manner the rights and obligations of the parties accruing prior to the date of such termination nor any rights or remedies existing at law or in equity by reason of any breach of any term of the Agreement which occurred prior to such termination.

13.8 No Waiver. NO WAIVER OF ANY BREACH OF ANY PROVISION OF THESE TERMS WILL CONSTITUTE A WAIVER OF ANY OTHER BREACH OR OF SUCH PROVISION. THESE TERMS MAY BE MODIFIED ONLY IN WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF BUYER AND SELLER. HOWEVER, BUYER MAY, AT ANY TIME, BY WRITTEN CHANGE ORDER, MAKE CHANGES IN (A) THE DRAWINGS, DESIGNS OR SPECIFICATIONS APPLICABLE TO THE GOODS OR SERVICES COVERED BY THIS ORDER, (C) THE METHOD OF SHIPMENT AND PACKING, AND/OR (D) THE PLACE OF AND TIME FOR DELIVERY. IF SUCH CHANGES MATERIALLY AFFECT THE TIME FOR PERFORMANCE, THE COST OF MANUFACTURING THE MATERIALS, OR THE COST OF FURNISHING SERVICES, BUYER WILL MAKE AN EQUITABLE ADJUSTMENT IN THE PURCHASE PRICE OR THE DELIVERY SCHEDULE OR BOTH. ANY DISPUTE WITH RESPECT TO AN EQUITABLE ADJUSTMENT SHALL NOT RELIEVE SELLER OF ITS OBLIGATION TO PERFORM IN ACCORDANCE WITH A WRITTEN CHANGE ORDER.

13.9 Entire Agreement. The T&C and Purchase Order is intended as a final expression and a complete and exclusive statement of the Agreement between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No amendment to or modification of the Agreement shall be valid or binding upon either party unless it is made in writing and signed by a duly authorized representative of both parties unless otherwise required by law.

13.10 Severability. In the event that any provision of the Agreement is held illegal or invalid for any reason, such illegality or invalidity shall at the option of the party against whom the same is asserted not affect the remaining parts of the Agreement but the Agreement shall be construed and enforced as if that illegal and invalid provision had never been inserted herein.

13.11 Communication and Technology. When notified of availability by Buyer, the Seller shall be required to connect to Buyer's EDI systems to provide two-way electronic communication for items that include, but are not limited to ASNs, invoices, schedules, etc. All costs associated with the connection and use of the systems will be borne by the Seller.

13.12 No License. Nothing in the Agreement will be construed as granting any right or license to the Seller, either express or implied, to any intellectual property right of the Buyer or any right to use Buyer's Confidential Information except for the purposes of the Agreement. Upon expiration or termination of the Agreement, Seller shall immediately cease all use of Buyer's Intellectual Property and Confidential Information. All copies of Buyer's Confidential Information shall be immediately returned to Seller or destroyed at Buyer's discretion.

13.13 Trade Remedy Proceedings. Seller understands that the Materials it produces may be, either now or in the future, subject to one or more trade remedy proceedings (e.g., anti-dumping, countervailing duty, safeguard) in the United States or another country, which may result in the imposition of additional duties or other charges on the Materials. If such proceedings are initiated, Seller agrees that, at Buyer's request, it will cooperate fully with Buyer and with requests for information from the competent government authorities in the importing country. Seller further understands and agrees that such cooperation may require it to provide confidential sales and cost information to the competent authorities so that they can calculate the amount of the duty or other charge on the Materials.

At all times before, during, or after the initiation of a trade remedy proceeding in the United States or another country, Seller agrees to take all available steps necessary to minimize the risk that additional



duties or other charges may be imposed on the Materials sold to Buyer. Seller also provides Buyer with a warranty of non-applicability of any future additional duties or other charges (e.g., anti-dumping duties) covering the Materials sold to Buyer, so long as the Materials are: (1) sold before the date of publication of the official government notice that establishes the authority of the competent authorities to impose additional duties or other charges (i.e., the "order"); and (2) exported before the date of publication of the official government notice concluding the investigation phase of the trade remedy proceeding. The purpose of this provision is to comply with U.S. regulation 19 C.F.R. 351.402(f) (2006). Buyer retains the right to terminate the Agreement if additional duties or other charges are imposed on the Materials produced by Seller.

#### **14 Import Laws**

For Seller's Materials to be imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customer-Trade Partnership Against Terrorism ("C-TPAT") initiative (for information go to <http://www.cbp.gov/> and find the link to the C-TPAT section). At the Buyer's or the Bureau of Customs and Border Protection's request, Seller shall certify in writing its compliance with the forgoing. Seller shall indemnify and hold the Buyer harmless from and against any liability, claims, demands or expenses (including actual attorney's or other professional fees) arising from or relating to Seller's noncompliance.