

**PROGRESS RAIL SERVICES CORPORATION  
STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

**1. Definitions.** As used herein, the following terms have the meanings indicated:

- a. **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the Buyer. "Control", for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- b. **"Buyer"** means Progress Rail Services Corporation or any of its Subsidiaries or Affiliates, as applicable, including without limitation Electro-Motive Diesel, Inc., entering into a transaction referencing an Order, or these Terms and Conditions
- c. **"Items"** means goods and/or services provided or sold to Buyer from Seller pursuant to an Order.
- d. **"Order"** means a transmission of a purchase order; purchase order release specifying specific quantities, shipping dates or delivery dates; or purchase order revision by Buyer to Seller electronically through a computer network or otherwise, by mail of hard copy, or by such other means as may be agreed by Buyer and Seller in writing, containing information evidencing a commitment by Buyer to purchase Items from Seller.
- e. **"Seller"** means the entity indicated as supplier on the Order.
- f. **"Subsidiary"** means any entity in which Buyer owns 50% or more of the voting interests of the subject entity.
- g. **"Terms and Conditions"** mean these Standard Purchase Order Terms and Conditions.

**2. Acceptance of Purchase Order.** Any Order referencing these Terms and Conditions is an offer by Buyer to Seller to enter into the purchase agreement described by such Order. Seller shall be deemed to have agreed to and accepted the Order (including any specifications or requirements stated therein) and these Terms and Conditions when Seller:

- a. executes and returns a signed writing indicating its intent to be bound by the Order; or
- b. delivers to Buyer any of the Items ordered; or
- c. renders for Buyer any of the services ordered (where Items ordered are, or include, services).

Any Items received by Buyer shall only be purchased upon the terms of the Order (including these Terms and Conditions), notwithstanding any terms contained in any quotation, acknowledgment, invoice, or other document issued by Seller, or Buyer's act of accepting or paying for any shipment or any other act. Seller's acceptance of any Order is unqualified, unconditional, and subject only to these Terms and Conditions and any of Buyer's terms specifically set forth on the Order or any signed documents referenced in Buyer's Order. Buyer expressly rejects any additional or different terms and conditions, including those which appear in any quotation, acceptance, shipping documentation, invoice or acknowledgment of Seller. Seller waives any right to contest the validity of these Terms and Conditions, or assert that they are void for any reason, upon Seller's acceptance of the Order(s) referencing these Terms and Conditions. Buyer reserves the right to update or modify these Terms and Conditions, at its sole discretion, from time to time, without prior notice to Seller. Seller hereby assumes an affirmative obligation to request and review Buyer's then-current terms and conditions. Each Order shall be subject to the terms and conditions in effect on the date of the Order. Time is of the essence in the fulfillment of the Order because the Items are needed for products or services to be marketed by Buyer.

**3. Change Orders.** Buyer may, at any time, by a written order, suspend performance hereunder, increase or decrease the ordered quantities, change the scheduled delivery date, or make changes in applicable drawings, designs, or specifications, method of shipment or packing, and/or place of delivery. If the changes cause an increase in the cost or the time required by Seller for performance of the Order, and Seller so notifies Buyer before incurring any costs associated with the change, then Buyer, upon mutual agreement of the parties, may make an equitable adjustment to reflect such additional costs and/or time, and the Order will be modified accordingly. No claim by Seller for such an adjustment will be valid unless asserted within twenty (20) days from the date of receipt by Seller of the notification of change. Nothing in this paragraph is intended to excuse Seller from proceeding with this Order as changed or amended pending resolution of any equitable adjustment.

**4. Amendment; Governing Law.** No agreement or understanding to modify or supplement any Order or these Terms and Conditions shall be binding upon the Buyer and Seller unless in writing and signed by authorized agents of the Buyer and Seller, which writing must specifically acknowledge that these Terms and Conditions are superseded by such agreement or understanding. These Terms and Conditions and any Order shall be governed by and construed under the laws of the jurisdiction where the office of Buyer issuing such Purchase Order is located, with the exception of its choice of law provisions.

**5. Termination.** Buyer reserves the right to terminate or suspend any Order and/or any agreement governing or relating to an Order, in whole or in part, without cause, for Buyer's convenience. Buyer may return, for any or no reason, at its expense, all or a portion of the Items to Seller at any time within 180 days following delivery, without any penalties or restocking fees. Upon notice by Buyer, Seller shall immediately stop all work and observe any instructions from Buyer as to works-in-process. In the event of a termination for convenience, Buyer will determine an equitable

adjustment for work performed as of the notification date which shall be the sole remedy of the Seller for such termination for convenience. Buyer may, by written notice, cancel any Order and/or any agreement governing or relating to an Order, in whole or in part, for breach or default if, in Buyer's good-faith opinion, Seller has (i) failed to make delivery of the Items within the specified time, or any extension thereof; (ii) failed to replace or correct defective Items as directed by Buyer; (iii) failed to perform any of the provisions of the Order; or (iv) failed to make progress under the Order so as to endanger performance in accordance with its terms. If an Order is canceled for Seller's breach or default, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, substitute Items similar or substantially similar to those canceled, and Buyer shall not be limited to procuring the least expensive substitute. Without limiting Buyer's remedies, Seller shall be liable for, and shall hold Buyer harmless and indemnify Buyer from, any damages occasioned by Seller's breach or default, including any difference in the cost of obtaining substitute Items. Seller agrees to proceed with any portion of this Order not canceled. If it is determined by a court of law or similar judicial body that Buyer has improperly terminated this contract for breach or default, such termination shall be deemed to be for Buyer's convenience.

## **6. Shipping Instructions.**

- a. **Freight.** Shipping will be as directed by Buyer on the Order, or if not specified, shall be DDP Buyer's receiving facility INCOTERMS 2010. Title shall transfer when risk of loss passes to Buyer under the applicable mode of transport described in INCOTERMS 2010. If a carrier or method of shipment is used that is not specified in the Order or in these Terms and Conditions, without the advance written approval of Buyer, Seller shall be debited for any increase in the cost of the shipment.
- b. **Packaging; Classification; Labeling.** Seller shall ensure that all Items are properly described, classified, packaged, marked, and labeled and are in proper condition for transportation according to applicable regulations and industry standards, including, but not limited to, U.S. Department of Transportation, International Air Transport Association, and the International Maritime Dangerous Goods Code regulations. Seller shall include a packing slip/invoice with all shipments, and all packing slips/invoices related to an Order must reflect Buyer's Order number and respective part numbers as shown on the Order.
- c. **Early/Late Shipments; Overshipments.** On shipments made earlier than the period specified on the Order, Buyer, at its option, may return the Items at Seller's expense and/or withhold payment until the otherwise applicable payment date. Buyer may return overshipments to Seller at Seller's expense. In either case, if Buyer so returns Items, Seller's account shall be debited for the total amount of any invoices (including, but not limited to, shipping expenses and taxes) paid thereon. If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements, Seller shall, at Buyer's option, ship the Items as expeditiously as possible, and bear the costs of any shipment by premium methods or expedited shipments.
- d. **Shipments of Hazardous Materials.** "Hazardous Materials" are defined for purposes of these Terms and Conditions as any substances regulated as contaminants, or as threats or potential threats to human health, safety, or the environment, by any Environmental Requirements (as herein defined). In addition to Sections 6(a)-(c), Seller must comply with the following requirements for shipment of Hazardous Materials:
  - i. Unless otherwise stated on Buyer's Order, the shipping term shall be DDP Buyer's receiving facility INCOTERMS 2010, and title shall transfer upon delivery to Buyer's receiving facility.
  - ii. Seller shall ensure that all personnel shall receive hazardous materials training as required by applicable regulations. Seller shall further ensure that a valid 24-hour emergency response number (domestic and international) is supplied on the shipping documents for Hazardous Materials and that the appropriate material safety data sheet has been given to the proper emergency response organization prior to shipment. Seller shall be shown as the "shipper" on all documents relating to the shipment of any Hazardous Materials provided under the Order. Buyer is not to be shown as the "shipper" on any such documents. Seller may use Buyer-designated carriers for the shipment of Hazardous Materials provided that all the conditions in this Section are met.
  - iii. For all Items, Seller shall provide Buyer with the appropriate hazard classifications and warning messages that should appear on product labels as required by Environmental Requirements, and other laws and regulations of the United States and non-United States jurisdictions in which such Items may be transported or distributed. Seller shall develop, revise, update, and transmit an electronic copy of the current (prepared or revised not more than three years prior to the date of the relevant Order) material safety data sheets for all Items purchased, in the appropriate language and format that may be required by the laws of the jurisdictions in which the Items will be distributed. "Environmental Requirements" means all applicable United States and foreign (non-United States) federal, state, provincial, or local laws, regulations, ordinances, orders, or other pronouncements now in effect or as hereafter amended, that have the force or effect of law, relating to human health or safety and the protection, preservation, or remediation of the environment.

**7. Warranty.** Seller, in addition to any express or implied warranties of additional scope given to Buyer by Seller, or implied by law, hereby warrants that Items furnished by Seller will be free of any lien or other encumbrance of title; in full conformity with Buyer's instructions, specifications, drawings, and data, and Seller's samples or representations; and will be free from defects in design (to the extent that Seller furnishes the design), materials, and workmanship (a) for a period not to exceed three (3) years from the date the goods are placed into service by Buyer or delivered to Buyer's customer, unless otherwise stated on the face of the Order or (b) for a period not to exceed three (3) years from the date the services are completed and approved by Buyer, unless otherwise stated on the face of the Order. All Seller warranties shall also apply to, and be transferable in full to, Buyer's customers. Seller may not change any specifications, engineering processes, materials, or design without the prior written consent of Buyer. To the extent that the Items include services to Buyer, Seller warrants that it is properly licensed, certified, and trained (in compliance with the applicable standards set forth by relevant governmental or industry association authorities), and that such services will be provided with a degree of care and competence that, at minimum, accords with customary industry standards and practice. Seller agrees that this warranty shall survive acceptance of the Items. Seller shall be responsible for every claim for compensation in respect of damage or injury that is

based on a breach of the foregoing warranty, and, at Buyer's option, Seller shall handle any such claims or shall provide all reasonable assistance to Buyer in Buyer's handling of such claims. Cost of shipping, rework, re-performance, inspection, repackaging, and any related cost shall be paid by Seller. To the fullest extent permitted by law, Seller agrees to indemnify, defend (with counsel reasonably satisfactory to Buyer), and hold harmless Buyer and its parent company, affiliates, and subsidiaries and their respective shareholders, directors, officers, employees, agents, subcontractors, and representatives and any successor in interest to the Items which are the subject of an Order (each a "Buyer Party," and, collectively, the "Buyer Parties") against damages for breach of this warranty or the terms of this Order including any systemic failure and/or recall of any Items.

**8. Product Regulations.** The term "Product Regulations," as used in these Terms and Conditions, shall mean Environmental Requirements, labeling, marking, license, authorization, certification, country of origin, hazard communication, and other United States, non-United States, and international entity regulatory requirements applicable to the import, export, manufacture, use, sale, packaging, marking, or distribution of Items pursuant to an Order(s). Such Product Regulations specifically include, but are not limited to, California Health & Safety Code Section 25249.5 et seq.; Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; European Union ("EU") European Conformity marking requirements (including the declaration of conformity, Technical Construction File and user's manual, where applicable); and the following EU Directives, which may apply to the Items: Registration, Evaluation and Authorization of Chemicals (REACH); Restriction on Hazardous Substances Directive 2002/95/EC (ROHS); Machinery Directive; General Product Safety Directive; Directive on Noise Emissions; Directive on Classification, Packaging and Labeling of Dangerous Substances; Limitations Directive (applying to carcinogenic lubricating oils); Directive on Waste Electrical and Electronic Equipment; Directive on Classification, Packaging and Labeling of Dangerous Preparations; Construction Products Directive; Battery Directive; and Gas Appliance Directive. Seller is solely responsible for the compliance of the Items with applicable Product Regulations. Seller agrees to provide to Buyer all information and documentation, including, but not limited to, supply chain data, necessary for Buyer to comply with all Product Regulations applicable to Buyer.

**9. Inspection.** Items are subject to Buyer's inspection, testing, and approval at all reasonable times, including work in process at Seller's facility. Buyer, at its option, may reject or refuse acceptance of Items that do not meet the requirements of the Order or any applicable warranty. Items rejected or not accepted by Buyer shall be kept by or returned to Seller, at Seller's expense and with Seller bearing any risk of loss in transit, and Seller agrees to refund to Buyer any payments (including, but not limited to, shipping expenses and taxes) made by Buyer for such Items. Payment by Buyer for any Items shall not be deemed an acceptance thereof. Acceptance of any Item shall not relieve Seller from any of its obligations, representations, or warranties hereunder or pursuant hereto.

**10. Price, Payment Terms, and Invoices.** Seller represents that the price charged to Buyer for Items is at least as low as the price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in the Order, and that prices comply with applicable government laws and regulations in effect at the time of quotation, sale, and delivery. Seller agrees that any price reduction regarding any Item that is implemented prior to shipment or rendering of such Items shall be applied to the Order for all shipments or rendering of Items following such price reduction. Buyer may withhold payment until proof of the absence of any liens or encumbrances on the Items is given to Buyer, upon Buyer's request. Further, in addition to any other rights or remedies available to Buyer, Buyer may withhold any payment for non-delivery of Items, or delivery of nonconforming or poor quality Items by Seller, its subcontractors, or its agents. Unless otherwise stated in the Order, Buyer shall pay Seller all undisputed amounts within the time frame set forth on the face of the Order after Buyer receives a correct invoice.

Unless otherwise specified thereon, prices quoted on any Order include any and all charges for the Items ordered (including, but not limited to, any charges for boxing, packing, crating, cartage, taxes, or other additional charges).

Seller shall invoice in an electronic format specified by Buyer and to the electronic location provided by Buyer to Seller. In the event that any Items supplied by Seller pursuant to an Order are properly subject to VAT, and where Buyer has agreed in writing to pay such VAT, Buyer shall, in addition to the price payable for any Items, pay to Seller the appropriate amount of VAT provided that Seller has first issued to Buyer a compliant invoice in accordance with the provisions of the relevant VAT legislation. Where Buyer has agreed, in writing, to pay any taxes relating to any Order, applicable taxes shall be listed separately on the invoice. "VAT" means value added tax or goods and services tax or any other similar transaction tax, but not sales and use tax.

**11. Property Furnished to Seller by Buyer.** Except as specified below, all patterns, dies, molds, tools, models, jigs, core boxes, piece parts, samples, materials, drawings, specifications, test reports, technical material, advertising material, and any other personal property furnished to Seller by Buyer, or specifically paid for by Buyer for use in performance of an Order (collectively "Materials"), shall be and remain the property of Buyer, shall be subject to disposition according to Buyer's instruction, and shall be used only in filling Orders from Buyer. Seller shall not claim any rights of ownership in any of the Materials and shall not mortgage, encumber, transfer, dispose of, remove, or allow the removal of any of the Materials from Seller's facility to which such Materials are initially delivered, except as permitted or instructed by Buyer in writing. Seller shall take all necessary precautions and actions to preserve and maintain the Materials in good working condition. Seller shall perform any further act and execute, acknowledge, and deliver any further documents that Buyer may reasonably request in order to protect Buyer's title to the Materials. Seller shall at all times clearly identify the Materials as the property of Buyer by labeling the Materials with distinctive markings, and to the extent reasonable, shall keep the same separate and apart from the property of others, including Seller, located in the same facility. Seller shall bear the risk of any damage to or loss of such Materials while in the possession of or under the control of Seller, Seller's agents or in the event of any unauthorized transfer to a third-party. Any waste materials or byproducts generated by or resulting from operations on, use of, or processing of Materials furnished to Seller by Buyer shall be and remain the property of Seller, and Buyer shall have no responsibility in connection therewith.

Any Materials furnished to Seller by Buyer for use in connection with an Order are provided in AS-IS condition, and Buyer makes no representations or warranties of any kind, including warranties relating to the condition of such Materials or their suitability for the purposes required by Seller. BUYER DISCLAIMS ANY AND ALL WARRANTIES ASSOCIATED WITH SUCH MATERIALS, INCLUDING, BUT NOT LIMITED TO, EXPRESS OR IMPLIED WARRANTIES AND WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**12. Confidential Information; Proprietary Rights.** Seller shall take all necessary steps to protect Buyer Confidential Information (as defined below) with at least the same degree of care that Seller uses to protect its own confidential and proprietary information of like kind, but in no event less than reasonable care. "Buyer Confidential Information" means all information relating to Buyer's products or operations that is disclosed to Seller or created during the performance of any Order. Buyer Confidential Information includes all business or technical information that is disclosed to Seller, directly or indirectly, in writing, orally or visually, but does not include information that (a) was already in Seller's possession before its receipt from Buyer without restriction on its use or disclosure, (b) is or becomes available to the general public through no act or fault of Seller, or (c) is rightfully disclosed to Seller by a third party without restriction on its use or disclosure. Except as otherwise expressly agreed to in writing by Buyer, Seller shall not (i) use any Buyer Confidential Information except to conduct business with or on behalf of Buyer or (ii) disclose to any third party any Buyer Confidential Information, except to conduct business with or on behalf of Buyer, in which event Seller shall (A) first ensure that such third party has signed a written confidentiality agreement having terms at least as restrictive as the terms of this Section 12 and (B) Buyer has consented in writing to such disclosure. At any time, upon Buyer's request, Seller shall promptly return or destroy any media containing any Buyer Confidential Information.

Except for Seller's Financial Statements (as defined in this paragraph), Seller shall not disclose any confidential or proprietary information to Buyer, unless Buyer first agrees in writing to the receipt of such confidential or proprietary information. "Financial Statements" means independently audited financial statements (income statement, balance sheet, and cash flow statement) for the previous two (2) fiscal years and interim financial statements through the current fiscal year-to-date period. Upon Buyer's request, Seller will promptly provide its or Seller's ultimate parent company's, as required by Buyer, Financial Statements (collectively, "Seller's Financial Statements") to Buyer. Buyer shall hold and safeguard such Financial Statements by using the same degree of care it uses to protect its own Financial Statements, provided, however, that Buyer may disclose Seller's Financial Statements to a third party contracted to assist Buyer with analyzing Seller's Financial Statements provided such third party is obligated to maintain the confidentiality of Seller's Financial Statements to the same extent as Buyer is so required under this Section 12. Seller acknowledges that, except as otherwise expressly agreed to in writing by Buyer, all technical information previously or hereafter disclosed by Seller to Buyer in connection with any Order has been disclosed on a non-confidential basis.

Buyer may have valuable Intellectual Property Rights (as defined below) in tooling, documents, information, and other materials provided to Seller. Seller shall not acquire any right, title, or interest in any Intellectual Property Rights of Buyer. Seller may use the Intellectual Property Rights of Buyer only in the production and supply of Items to Buyer and any Subsidiary or Affiliate of Buyer as Buyer may approve in writing. Without limiting the foregoing, Seller agrees that Items manufactured based on Buyer's Confidential Information, including drawings or specifications and other Confidential Information, may not be used for Seller's own use or sold to third parties without Buyer's prior express written consent. "Intellectual Property Rights" means patents, copyrights, know-how, trade secrets, trademarks, service marks, and industrial design rights.

If an Order includes development, such as designing a unique product or modifying an existing Seller product, Seller grants to Buyer and its Subsidiaries and Affiliates a perpetual, worldwide, paid-up, royalty-free, non-exclusive license, with the right to sublicense, to make, have made, use, offer to sell, sell, export, and import all inventions or other results of Seller's development work that Seller conceives, develops, acquires, or reduces to practice in the course of performing work under the Order.

Notwithstanding anything contained herein to the contrary, Buyer shall own all Intellectual Property Rights, including any inventions that are derived from, based on, or incorporate any Buyer Confidential Information or Intellectual Property Rights owned by or licensed to Buyer. Seller shall promptly disclose and assign, and hereby does assign, all of Seller's right, title, and interest in such Intellectual Property Rights to Buyer or shall cause the same to be so assigned. Further, Seller shall execute, or cause to be executed, at Buyer's expense, all applications, assignments, or other instruments that Buyer may deem necessary in connection with such Intellectual Property Rights.

Seller grants to Buyer and its Subsidiaries and Affiliates the right to repair and reconstruct any Item (including, for example, the right to rebuild the Item and the right to remanufacture any Item by disassembling its constituent components and reassembling old and new components into a remanufactured Item) and the right to have the same done by others on behalf of Buyer and its affiliates, without prosecution or liability under any claim of infringement.

Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license under each copyright that Seller owns, controls, or has a right to license to reproduce, prepare derivatives of, sublicense, distribute, perform, and display any software that is embedded or loaded in the Items ("Embedded Software") in conjunction with the use or sale of the Items. In addition, Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license under each copyright that Seller owns, controls, or has a right to license in any work of authorship other than Embedded Software fixed in any tangible medium of expression delivered by Seller under an Order (including, without limitation, drawings, prints, manuals, and specifications) to reproduce, prepare derivatives of, distribute, perform, and display such work.

In each subcontract of Seller's work performed pursuant to an Order, Seller shall obtain for Buyer all of the rights and licenses granted to Buyer under this Section 12.

Seller warrants that the Items do not infringe on any Intellectual Property Rights or other proprietary rights of any third party because or on account of the use, offer to sell, sale, or import/export of any such Items alone or in combination with other Items or materials, except and solely to the extent that such Items are specifically constructed in exact accordance with Buyer's designs or technical specifications. If any of the Items furnished to Buyer become the subject of an alleged infringement of any Intellectual Property Right of any third party, Seller shall, at its expense, either (i) procure for Buyer the right to continue using the Items; (ii) replace or modify the Items so that they are non-infringing; provided, however, that such replacement or modified Items must provide equal or greater functionality than the original Items; or (iii) if, after exhausting commercially reasonable efforts, Seller is unable to obtain either of the above two results, refund Buyer's full purchase price.

Seller shall have no right to apply, and further shall not apply, to Items any trademark, logo, or trade dress owned by Buyer, (hereinafter "Buyer's Trademarks") without Buyer's prior written consent. Notwithstanding the foregoing, if Buyer desires for any of Buyer's Trademarks to be applied to an Item, the drawing or print that accompanies the Order shall so state. Alternatively, Seller may be separately authorized to apply any of Buyer's Trademarks to an Item if such authorization is specifically set forth on the Order or otherwise authorized by Buyer in writing. Seller agrees and acknowledges that it shall obtain all design artwork for Buyer's Trademarks from Buyer, that it will not recreate any design aspects of Buyer's Trademarks, and that it will correctly apply Buyer's Trademarks to an Item according to Buyer's specification. If Seller cannot correctly apply Buyer's Trademarks to an Item, it must reject the Order. Further, Seller shall only apply Buyer's Trademarks to those Items specifically referenced in the Order. Seller shall acquire no right whatsoever in Buyer's Trademarks, either express or implied, by estoppel or by implication, through its action in fulfilling an Order.

**13. Indemnification and Limitation of Liability.** To the fullest extent permitted by law, Seller agrees to indemnify, defend (with counsel reasonably satisfactory to Buyer), and hold harmless the Buyer Parties, from and against any and all demands, claims, causes of action, lawsuits, losses, liabilities, judgments, fines, penalties, costs, and expenses, including reasonable attorneys' fees, expert fees, and court costs (individually or collectively "Claims"), arising by reason of the manufacture, sale, import, export, and/or use of the Items sold hereby, or in connection with or resulting from the acts or omissions of Seller in the performance of an Order. Seller's obligation to indemnify, defend, and hold harmless, as required herein, shall include, directly or indirectly, without limitation: (a) Claims related to infringement or violation of any Intellectual Property Rights or similar rights (including, without limitation, unfair competition); (b) Claims relating to injuries or damage to property or persons, including death or injury to employees or agents, or loss or damage to property, of Seller or a Buyer Party; (c) Claims on account of the acts and/or omissions of Seller, or those for whom Seller is legally responsible or who act on Seller's behalf or who are under its control or direction, including, without limitation, any of Seller's shareholders, directors, officers, employees, agents, subcontractors, and representatives; (d) Claims due to the breach of any warranty or defects of any kind in the material or workmanship of the Items, including the presence or incorporation of any Hazardous Materials in the Items, which are not expressly required by Buyer to be included in the Items; (e) Claims relating to, arising from, or connected with attachments, executions, and liens by creditors of Seller or others making claims arising from or related to Seller's furnishing of Items hereunder or performance of an Order; and (f) Claims relating to, or arising from Seller's non-compliance with Seller's obligations under this Order and these Terms and Conditions, including, without limitation, Seller's non-compliance with Laws, Environmental Requirements, Product Regulations, handling and transportation of Hazardous Materials, Health and Safety Requirements, and EU Product Liability Directive 1999/34/EC of the European Parliament and the Council of 10 May 1999, or any other applicable laws. To the fullest extent allowed by applicable law, Seller's agreement and duty to indemnify, defend, and hold harmless, as required herein, also includes the duty to do so from Claims, directly or indirectly, based on or arising from the negligence or fault of a Buyer Party, except Claims caused directly by the sole negligence or willful misconduct of Buyer Parties. This indemnity and the limitation on the Buyer Parties' liability set forth below shall survive any termination or fulfillment of an Order,

NOTWITHSTANDING ANYTHING ELSE IN AN ORDER OR OTHERWISE, THE BUYER PARTIES WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF AN ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOST DATA OR LOST PROFITS, EVEN IF ADVISED OR AWARE SUCH ARE POSSIBLE OR LIKELY (II) ANY AMOUNTS IN EXCESS OF THE AMOUNT PAID BY BUYER HEREUNDER FOR THE ITEMS, OR (III) ANY MATTER BEYOND THE BUYER'S REASONABLE CONTROL.

**14. Safety and Insurance.**

- a. If Seller or its directors, officers, employees, agents, subcontractors, and/or representatives perform any work on Buyer's premises or use Buyer's property either on or away from Buyer's premises, Seller is expressly obligated to:
  - i. Comply with and ensure all of its directors, officers, employees, agents, subcontractors, and representatives comply with all requirements of Buyer's third-party, pre-qualification process, including ongoing requirements.
  - ii. Comply with and ensure all of its directors, officers, employees, agents, subcontractors, and representatives, as well as the employees of its agents, subcontractors and representatives comply with all Health and Safety Requirements (as herein defined). "Health and Safety Requirements" means all United States and foreign (non-United States) federal, state, provincial, or local laws, regulations, ordinances, orders, or other pronouncements now in effect or as hereafter amended, that have the force or effect of law, relating to human health and safety, including, but not limited to, all applicable OSHA regulations.
  - iii. Control the manner and methods of its operations to ensure the safety of its directors, officers, employees, agents, subcontractors, representatives, delegates, invitees, and their respective employees.
  - iv. Designate to Buyer an employee, agent, or representative to ensure ongoing compliance with Buyer's expectations under this section.
  - v. Ensure that its directors, officers, employees, agents, subcontractors, representatives, and their respective employees are adequately trained in all Health and Safety Requirements applicable to the work being performed for Buyer, prior to commencement of that work.
  - vi. Ensure that its directors, officers, employees, agents, subcontractors, representatives, and their respective employees know and are aware of all emergency response procedures and work-site hazards at the premises where work is performed, and use all required personal protective equipment.
  - vii. Arrange for and require its directors, officers, employees, agents, subcontractors, representatives, and their respective employees to submit to pre-hire and post-accident drug and alcohol testing to the fullest extent allowable by applicable law.

- viii. Cooperate with and ensure that its directors, officers, employees, agents, subcontractors, representatives, and their respective employees who are involved cooperate with Buyer in all injury or incident or accident investigations and in responding to requests from OSHA or any other governmental authorities or agencies; complete post-accident investigations; and take all steps necessary to improve workplace safety before work resumes.
- ix. Ensure that all Buyer facility-specific safety and security rules are strictly followed by its directors, officers, employees, agents, subcontractors, representatives, and their respective employees, as set forth in such facility's Contractor Safety Manual, particularly, but not limited to, those rules pertaining to aerial work, operation of motorized work vehicles within the facility, confined space, Hazardous Materials, hot work, and lockout/tagout.

Seller acknowledges that failure to strictly comply with any one or more of the items (i) through (ix), listed immediately above, can result in Buyer requiring Seller to remove one or more of its directors, officers, employees, agents, subcontractors, representatives and/or their respective employees, or Buyer terminating the Order, without any liability of Buyer to Seller for Seller's costs or damages related to such termination.

- b. Seller and its subcontractors and agents, if any, at their sole cost, shall maintain insurance coverage as described below with insurance companies acceptable to Buyer. The limits set forth below are minimum limits and shall not be construed to limit Seller's liability. All cost and deductible amounts shall be for the sole account of Seller and its subcontractors and agents. All policies shall name Buyer as an additional insured per ISO Endorsement CG 2010 (or its equivalent, i.e., a company specific endorsement with the same wording as CG 2010 or a manuscript endorsement with the same wording as CG 2010) (this requirement does not apply to Worker's Compensation and Employers' Liability Insurance) and waive subrogation rights in favor of Buyer. All policies required shall also be designated as primary coverage to any similar coverage carried by Buyer.
  - i. Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law with a minimum limit of \$3,000,000 per occurrence or limits set by applicable law, whichever is greater. Alternatively, Seller may have a minimum limit of \$1,000,000 per occurrence, with umbrella/excess coverage of at least \$2,000,000 per occurrence;
  - ii. Commercial General Liability Insurance (Occurrence Coverage), including products, completed operations, contractual liability coverage for indemnities contained in any Order or these Terms and Conditions, and Seller's contingent liability for subcontractors and agents with a minimum combined single limit of liability of \$3,000,000 per occurrence for bodily injury or death and property damage. Alternatively, Seller may have a minimum limit of \$1,000,000 per occurrence, with umbrella/excess coverage of at least \$2,000,000 per occurrence. This coverage shall contain an endorsement, which shall be indicated on the certificate of insurance, removing any exclusion related to operations performed within fifty (50) feet of any railroad property;
  - iii. Commercial Automobile Liability ("CAL") Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of \$1,000,000 for each occurrence for bodily injury and property damage;
  - iv. If the Items include work by Seller that involves design, engineering and/or other professional services, Seller shall maintain Errors or Omissions Liability and Professional Liability Insurance with a minimum limit of \$1,000,000 each occurrence, and any other specialty policies with appropriate coverage limits as requested by Buyer;
  - v. If the Items include services at or the provision of Hazardous Materials to facilities or premises owned or operated by Buyer, Seller shall obtain Contractor's Pollution Liability ("CPL") or Pollution Legal Liability ("PLL") Insurance (Occurrence Coverage) providing coverage for pollution incidents, bodily injury, property damage (including cleanup of pollution conditions, releases, and natural resource damages), and defense costs, against losses arising from on-site pollution conditions or releases at Buyer's facilities or premises, and pollution conditions or releases that affect areas or environmental media proximate to the relevant facilities or premises, resulting from Seller's acts or omissions, with minimum policy limits of liability of \$5,000,000 per occurrence and \$5,000,000 in the aggregate. Buyer may require Seller to increase the aggregate policy limit on such CPL Insurance, if the Items may impact multiple Buyer facilities or premises. If Occurrence Coverage is not available for such CPL Insurance, Seller shall be required to obtain "Claims-Made" coverage, including an extended reporting period of no less than five (5) years. If such CPL policy does not contain an exclusion for transportation-related events or incidents, Seller's CPL Policy shall not be required to include the coverage described in subsection (6), below. If Seller arranges for or provides transportation, off-site treatment, storage, recycling, or disposal of Hazardous Materials, Seller's CPL Insurance shall also provide coverage for pollution conditions or releases occurring during owned or third-party transportation and pollution conditions or releases at any owned and non-owned disposal sites, naming Buyer as an additional insured and listing the disposal site as an insured location. Such CPL Insurance shall insure and apply exclusively to Items (including services) provided by Seller to Buyer, and Seller shall not make claims that erode or result in a reduction of the amounts of coverage for claims or losses unrelated to Seller's provision of the Items pursuant to the Order(s); and
  - vi. If the Items include services that involve or contemplate Seller's interstate transportation of Hazardous Materials, the CAL Insurance coverage shall have a minimum per-occurrence liability limit of \$5,000,000. The following insurance requirements shall also apply to any CAL Insurance required under this subsection: The CAL Insurance policy must include or incorporate a Supplemental Environmental Automobile Liability (SEAL) policy or endorsement, or provide equivalent coverage for environmental and/or pollution liability arising from spills or releases of Hazardous Materials while in transit. The CAL Insurance policy shall include a standard MCS-90 Endorsement amended to specifically limit the reimbursement provision of the MCS-90 Endorsement to the named insured and additional insured.

- c. Any policy or certificate of insurance evidencing coverage set forth herein, regarding Items contained in an Order, which include services to be performed under any Order or these Terms and Conditions, must be submitted by Seller. Prior to commencing any services under this Order or entering any premises owned or operated by Buyer, Seller shall furnish to Buyer an acceptable certificate(s) of insurance evidencing the required coverage and endorsements (including the waiver of subrogation, naming Buyer as an additional insured, and Seller's coverage being primary in relation to any coverage carried by Buyer) and referencing this Order. If Seller relies on umbrella/excess coverage to meet the above requirements, Seller's certificate of insurance must state that the umbrella/excess coverage follows form with respect to the applicable underlying coverage.
- d. Insurers must have a minimum rating of AVII (A7), as evaluated by the most current A.M. Best Rating Guide. If the insurer has a rating less than AVII (A7), Seller must receive specific written approval from Buyer prior to proceeding.
- e. Each insurance policy required by an Order or these Terms and Conditions shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Buyer. If Seller does not obtain insurance, or such insurance is canceled, Buyer has the right, but not the obligation, to obtain insurance coverage on behalf of Seller, at Seller's sole expense.
- f. Buyer shall not insure nor be responsible for any loss or damage to property of any kind brought onto Buyer's property or owned or leased by Seller or any subcontractors or agents, or its or their respective employees.
- g. Irrespective of these insurance requirements, the insolvency, bankruptcy, or failure of any insurance company, or its failure to pay a claim, does not waive any of these provisions.

## **15. Compliance with Laws.**

- a. **General.** Seller represents that it has read, understands, has complied, and during the performance of any Order for Items shall continue to comply, with the provisions of all applicable laws, rules, regulations, directives, ordinances, orders, or statutes (collectively, the "Laws") from which liability may accrue to Buyer for any violation thereof, including, but not limited to, compliance with all wood packing regulations of the country of destination; Environmental Requirements; Product Regulations; The Davis Bacon Act, 40 U.S.C. 3141, *et seq.*; Fair Labor Standards Act of 1938, 29 U.S.C. 201, *et seq.*; McNamara-O'Hara Service Contract Act of 1965, 41 U.S.C. 351, *et seq.*; Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701, *et seq.*; Walsh-Healey Public Contracts Act, 41 U.S.C. 35, *et seq.*; Copeland Anti-Kickback Act, 40 U.S.C. 3145; the U.S. Foreign Corrupt Practices Act, Anti-Lobbying Act, and any applicable Non-U.S. anti-bribery laws; the U.S. Export Administration Regulations; the International Traffic in Arms Regulations; the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control and the U.S. Department of State; the Sarbanes-Oxley Act; U.S. Buy America(n) legislation and any implementing regulations relating thereto (including those found under the American Recovery and Reinvestment Act of 2009, § 1605; 23 U.S.C. § 313 and 23 C.F.R. § 635.410; 49 U.S.C. Chapters 244 and 246, including § 24405; 49 U.S.C. § 24305; and 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661); and government procurement Laws, all as amended. Seller agrees that it will provide Buyer with U.S. export classification information regarding all Items within 10 (ten) business days of receipt of an Order.
- b. **Government Procurement/Funding.**
  - i. **General.** Items may be used by Buyer in fulfilling a U.S. government prime contract or subcontract, a federally funded contract, or state or other government contract requiring compliance with various procurement or non-procurement regulations and socioeconomic programs. Therefore, Seller is subject to the applicable U.S. and state government procurement Laws in effect at the time of accepting the Order, including, but not limited to, Federal Acquisition Regulation (FAR) 52.222; FAR 52-203; FAR Part 22; FAR 52.211-15; 29 CFR Part 471, Appendix A to Subpart A; 41 CFR Part 60-1.4(a) and Part 60-300.5(a); and all applicable clauses listed in FAR 52.212-5(e) and DFARS 252.212-7001(c). In applicable federal provisions, the term "Contractor" as used therein shall refer to Seller, and the terms "Government" and "Contracting Officer" as used therein shall refer to Buyer, and unless otherwise stated in the Order, the Seller assumes the same obligations toward Buyer, that Buyer has assumed in the contract or subcontract with the government, prime contractor, or the subcontractor ("Primary Contract"). **Seller shall abide by the requirements of 40 U.S.C. 276a and 29 CFR Parts 1, 3, 5, 6, and 7. These regulation require contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works to pay their laborers and mechanics not less than the prevailing wage rate and fringe benefits proscribed by the Secretary of Labor. Seller shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Seller shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.** By submitting a proposal or invoice to Buyer, Seller is representing to Buyer that, at the time of submission: (1) neither Seller nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6); (2) Seller has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); (3) if the Primary Contract requires, all iron and steel end products sold by Seller to Buyer are produced in the United States, except as Seller discloses to Buyer in a writing confirmed by Buyer, (4) if the Primary Contract requires, all manufactured goods sold by Seller to Buyer are produced in the United States, entirely of domestic components and subcomponents, except as Seller discloses to Buyer in a writing confirmed by Buyer and (5) Seller's representations to Buyer about U.S. Small Business Administration or state and local

classifications or status as a minority or disadvantaged business enterprise, including, but not limited to, size standards, ownership, and control, are accurate and complete. Seller recognizes that it has a duty to maintain its status and size requirements for the duration of this Order and must immediately notify Buyer if there is a change in its size standard, ownership, or control. Seller must comply with all applicable requirements of the National Railroad Passenger Corporation and all applicable requirements set forth in grant management guidelines and award terms, pursuant to regulations and publications of the Department of Transportation and component agencies (including the Federal Aviation Administration, the Federal Railroad Administration, the Federal Transit Administration, and the Federal Highway Administration). Where a purchase of Items is for fulfillment of a specific U.S. government prime contract or subcontract, additional information and/or terms and conditions may be included in an attached supplement to the Order, and the Seller agrees to comply with those supplemental terms and conditions. In the event that any Seller hereunder has any questions or needs additional detail as to any of the above government obligations, a copy of such obligations will be provided by Buyer to Seller, upon specific written request.

- ii. **Utilization of Small, Small Disadvantaged, and Women-Owned Businesses by Large Businesses for Purchase Orders over \$650,000.** Sellers classified as “Large Businesses” as established by the North American Industry Classification System (NAICS) are required to comply with FAR 52.219-8 “Utilization of Small Business Concerns” and FAR 52.219-9 “Small Business Subcontracting Plan.” Small business status qualifications are as established by the U.S. Small Business Administration, the Department of Veterans Affairs, and the FAR. Seller’s process of selecting subcontractors and suppliers shall provide all types of small, disadvantaged and women-owned businesses the maximum practical opportunity to compete to become a subcontractor or supplier, consistent with efficient performance (price, quality, delivery, and service) and sound purchasing practices. Seller shall maintain goals and records relating to its subcontracting, as well as a contact person with responsibility for reporting results. Seller shall promptly provide Buyer with reports and records regarding Seller’s subcontracting upon request.

c. **Customs and Import/Export Controls**

- i. **International Trade Reporting and Documentation.** Seller agrees to provide all information necessary for Buyer or Buyer’s agent(s) to comply with all applicable laws, regulations, and any related legal reporting, notification, or other types of approval obligations in the country(ies) of origin and destination, including, without limitation, permits, authorization, licensing, reporting, disclosure, or certification information required under the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, Product Regulations, Hazard Communication information (see Section 6(d)(3) of these Terms and Conditions) and the Importer Security Filing (ISF). Seller agrees to provide all documentation and/or electronic transaction records to allow Buyer to meet all customs or export-related obligations, any local-content/origin/labelling requirements, and to obtain all tariff and trade program duty avoidance(s), deferral and/or refund benefits, where applicable. Seller warrants that all information supplied to the Buyer is true and correct and that all declarations at the border made at no less than fair market value at the country of export.

Seller shall reply promptly to all information and/or documentation requests from the Buyer or Buyer’s agent(s), including without limitation, the merchandise Export Control Classification Number (ECCN); Harmonized Tariff Schedule (commodity) number (HTS); Country of Origin of the Items; description and characteristics of the Items.

Credits or benefits resulting or arising from this Order, including trade credits, export credits or the refund of duties, taxes or fees, shall belong to the Buyer.

Where the merchandise is transported via ocean carrier into the United States, Seller shall follow all instructions from Buyer, comply with all U.S. ISF requirements and timely provide the complete and accurate ISF information to the Buyer and Buyer’s agent(s). Seller shall make all required information available not later than Seventy-Two (72) hours before the freight is loaded onto the ocean carrier or such earlier time as the Buyer or Buyer’s agent(s) may require. Seller shall provide the ISF information in the format as instructed by the Buyer.

U.S. Customs regulations require a Commercial (Customs) Invoice for each shipment imported into the U.S. The Seller agrees to create and provide to the Buyer a Commercial Invoice for each shipment in advance of the merchandise arriving into the US. The Commercial Invoice shall include the following information:

- The Seller’s name, address, current contact name and phone number.
- The Shipper’s name, address, current contact name and phone number.
- The Buyer’s (Sold to party) name, address, current contact name and phone number.
- The Consignee’s (Ship to party) name, address, current contact name and phone number.
- Purchase Order Number
- Invoice Number
- Date the Items are scheduled to ship (when known).
- Date and place of sale (when known).
- Shipping terms (INCOTERMS)
- The US port of entry to which the Items are destined (when available).
- **For each product/item:**
  - Buyer Part Number. If not available - other identification number.
  - Detailed description of each Item.
  - HTS – The Harmonized Tariff Schedule number for each Item.



- The Country of Origin for each Item.
- Unit and total quantities for each Item.
- Net and Gross weight for each Item.
- Unit value for each Item.
- Discounts and additions to the base price i.e.: packing charges, commissions etc.
- Total Invoice Value. Where applicable include the following **statements**:
  - Statement required for transferring of Items where no monetary amount was exchanged:
    - No charge Invoices – All free of charge Items must have a commercial value listed. That is the price that will be paid for the Item if it was actually purchased. Mark the invoice with: “*value for Customs purposes only*”.
    - Reason for the shipment: If the shipment is not a result of a sale, state the reason for the shipment : i.e. “*Failed parts returning to supplier for analysis*”, “*Prototype part for testing purposes only*”, “*Parts returning to supplier after being shipped in error*”, etc.
- Currency code – The type of currency used, i.e. USD; EUR; GBP; CHF.
- All pages on the invoice must be numbered consecutively.
- Name of Responsible Individual with accurate contact information i.e. email, phone number.
- The invoice must be in English

ii. **Supply Chain Shipment Security.** If and to the extent Seller is shipping Items from jurisdictions outside the United States into the United States, Seller accepts responsibility for, and shall implement security measures to ensure, the safe and secure transportation of goods throughout the supply chain and adhere to all applicable security requirements (including, but not limited to, factory and shipping container security) of the country in which it operates, consistent with the security criteria required under the Customs-Trade Partnership Against Terrorism (“C-TPAT”) sponsored by the United States Customs and Border Protection Agency. Seller’s obligations hereunder shall continue until such time as the Item(s) are delivered to Buyer in accordance with the agreed Incoterm or other specified delivery point; provided that, Seller must immediately notify the relevant Buyer facility manager or distribution center manager upon learning of any compromising of a container seal. Seller shall comply with all “U.S. Customs laws,” defined for purposes of these Terms and Conditions as any laws, regulations, or legally-binding rules issued or enforced by the United States. Customs and Border Protection Agency regarding the export or import of goods, materials, equipment, or any tangible Item from or into the United States, any designated United States port or entry zone, or any United States territory, including, specifically, the security measures required by C-TPAT. Seller shall promptly notify Buyer upon its formal acceptance into the C-TPAT program and regarding any changes to its status under or identified non-compliance with C-TPAT or its requirements, or any similar security program sponsored by Sellers’ country. Seller shall take no action that adversely affects Buyer’s status under the C-TPAT program.

iii. **Export Controls.** Export licenses or authorizations necessary for the export of Items shall be the responsibility of Seller unless otherwise indicated in this Contract, in which event Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorizations. Seller shall immediately notify Buyer if Seller is, or becomes listed on a Debarred, Excluded or Denied Party List of an agency of the U.S. Government, or if its export privileges are denied, suspended or revoked in whole or in part by any Government entity or agency. Seller warrants that it will control and maintain the receipt, storage and disposition of all controlled technical data or information received from Buyer, and will officially destroy or return all data to Buyer in the U.S. upon fulfillment of the Order obligations. No controlled technical data, information or other items provided by the Buyer in connection with this Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express prior written authorization of the Buyer and the Seller’s obtaining of the appropriate export license, technical assistance agreement or other required documentation.

iv. **Miscellaneous.** Seller agrees to assume, and to indemnify Buyer against, any and all financial responsibility arising from Seller’s failure to comply with these requirements and/or to supply Buyer with the information required to meet legal reporting or approval obligations, including, without limitation, any fines, penalties, forfeitures, settlement amounts, unnecessary duties or counsel fees incurred or imposed as a result of actions taken by the importing or exporting country’s government.

Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorney’s fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, or subcontractors at any tier, in the performance of any of its obligations under this Section 15(c).

Seller shall be responsible for the full costs of any delay in delivery of the Items caused by its failure to comply with the requirements of this Section 15(c), including without limitation, missing, incomplete, untimely or inaccurate information and or documentation being furnished to Buyer, Buyer’s agent(s) or any governmental authority.

d. **Anti-Bribery.**

- i. For purposes herein: (1) “Non-U.S. Government Official” includes, but is not limited to, the following: all government agency or ministry employees (national, state, municipal, provincial or local), political parties and party officials, employees of state-owned entities or state-controlled entities, employees of certain international organizations, judges or legislators, candidates for office, a

private party acting officially (such as an ambassador-at-large), family members of a government official and royal family members; and (2) any Affiliates or Subsidiaries of Buyer or Caterpillar Inc. (hereinafter collectively referred to as "Company").

- ii. In the event that Seller is requested, in writing, by Buyer or its Subsidiaries and Affiliates, and/or Seller (1) acts on Buyer's behalf in front of a Non-US Government Official, or (2) facilitates, directly or indirectly, a transaction between Buyer and a Non-US Government Official in any way:
  - (a) Seller represents and warrants that it has read, understands, and has been in compliance, and agrees that it shall comply, with all applicable Laws, including, without limitation, those set forth in Section 15(a) above;
  - (b) Seller represents and warrants that it has not acted, will not act, and has not and will not cause, directly or indirectly, any other party to act, in any manner that would cause Company or any of its employees to violate the Laws. Upon Company's request, Seller shall at its expense provide to Company in a timely manner any and all material, documentation, information, data, or certification(s) regarding Seller's compliance with the Laws and this paragraph;
  - (c) Seller agrees that, if Company, in its sole discretion, has reason to believe that Seller is not in compliance with the Laws or this paragraph, Company reserves the right to audit, or to have Company's authorized representatives conduct audits, to ascertain the extent of Seller's non-compliance with the Laws and this paragraph. Seller agrees to cooperate with Company's audit.
  - (d) Seller agrees that a violation of the Laws or this paragraph by Seller or its directors, officers, employees, agents or representatives shall constitute a material breach by Seller and shall relieve Company of any performance obligations that it may hereinafter incur under an Order, including, but not limited to, all payment obligations to Seller.
  - (e) Seller agrees to indemnify, defend, and hold harmless Company and Company's respective directors, officers, employees, agents, representatives, successors, and assigns, against demands, liabilities, fines, penalties, losses, and damages (including costs, investigation and litigation expenses and counsel fees incurred in connection therewith) arising out of or related to Seller's obligations under this Section 15(c).
  - (f) Seller agrees that, in the event of any enforcement action against Seller relating to Seller's non-compliance with the Laws that reasonably relate to Seller's performance under an Order, Seller shall provide to Company written notice of such enforcement action prior to any publication or disclosure of such enforcement action, and in no event later than ten (10) business days following such enforcement action.
- e. **Conflict Minerals.** On an annual basis or more frequently if requested by Buyer, Seller shall disclose to Buyer any Items Seller delivered to Buyer that contain tin, tantalum, tungsten, gold, or other materials that may be designated as a conflict mineral by the U.S. government ("Conflict Minerals"). Seller shall have a supply chain policy for Conflict Minerals and shall undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Items it provides Buyer; (2) due diligence of its supply chain, as necessary, to determine (i) if Conflict Minerals incorporated into Items it provides Buyer are sourced from the Democratic Republic of the Congo or adjoining countries and if so, (ii) whether such Conflict Minerals directly or indirectly support conflict in these countries, and (3) risk assessment and mitigation actions as may be necessary to implement the reasonable country of origin inquiry and due diligence procedures. Seller agrees to provide to Buyer all supporting information and documentation substantially in the format requested by Buyer, including, but not limited to, supply chain data necessary or desirable for Buyer to comply with its obligations under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and its implementing regulations. All such supporting information and documentation shall be retained by Seller for a minimum of five years and be subject to audit by Buyer upon reasonable notice. Seller shall include the substance of this Section 15(e) in all subcontracts awarded by Seller for work under this Purchase Order.

**16. Assignment and Third-Party Beneficiary.** Any Order(s) accepted by Seller shall not be assigned by transfer, disposition, sale, or otherwise, without the written consent of Buyer. It is understood and agreed that these Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective parent(s), subsidiaries, affiliates, representatives, attorneys, agents, successors, and permitted assigns. There are no third-party beneficiaries to this Order. This Order shall not confer any rights or remedies upon any person other than the Buyer and Seller, and to the extent expressly set forth herein, their subsidiaries, affiliates, and their respective successors, and permitted assigns.

**17. Set Off.** In addition to any right of setoff or recoupment provided by law, Buyer may at any time and without notice recoup, deduct, or set-off claims by Seller or Seller's subsidiaries or affiliates (or its assignee or financing institution) for amounts due or to become due from Buyer against any claims that Buyer or any Buyer subsidiary or affiliate has or may have arising out of this or any other transaction between Buyer or Buyer's subsidiaries or affiliates and Seller or Seller's subsidiaries or affiliates.

**18. Change in Ownership and Control.** During the term of the applicable Order(s), if there is a change in the ownership or control of Seller or a parent company of Seller, Buyer shall have the option of terminating the Order(s) immediately by giving written notice thereof. For purposes of this Section, a change in the ownership and control of Seller or a parent company of Seller, as appropriate, shall be deemed to have occurred if and when any one or more persons acting individually or jointly purchases substantially all of the assets of Seller or a parent company of Seller or is or becomes a beneficial owner, directly or indirectly, of securities representing twenty-five percent (25%) or more of the combined voting power of the then outstanding securities of Seller or the parent company of Seller.

**19. Severability; No Waiver.** Invalidation of any of the provisions contained in these Terms and Conditions, or the application of such invalidation thereof to any person, by legislation, judgment, or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes hereof. No failure of either party to enforce at any time any of the provisions of any Order or these Terms and Conditions, or any rights or remedies with respect thereto, or to exercise any election herein provided, shall constitute a waiver of any such provision, right, remedy, or election or in any way affect the validity thereof or of these Terms and Conditions. The exercise by either party of any of its rights, remedies, or elections under an n Order or these Terms and Conditions shall not preclude or prejudice such party's right to exercise at any other time the same or any other right, remedy, or election it may have.

**20. UN Convention on Contracts for International Sale of Goods.** The United Nations Convention on Contracts for the International Sale of Goods, the United Nations Convention on the Limitation Period in the International Sale of Goods of 1974, and Protocol of 1988 (amending the Limitation Period Convention) shall not be applicable to any transaction pursuant to these Terms and Conditions.

**21. Independent Contractor.** To the extent this Order calls for the provision of services, Buyer and Seller intend that an independent contractor relationship be created by this Order and nothing herein or done pursuant hereto shall be construed as creating an employer/employee relationship, partnership, joint venture, or other business group or concerted action. Seller shall have no authority to legally bind Buyer to any liability or obligation whatsoever. Seller shall pay for the services of all of its directors, officers, employees, agents, subcontractors, and/or representatives (including, without limitation, all salaries, taxes, insurance, fringe benefits, or other costs and expenses of any kind), and shall be solely responsible for the means and methods used by such directors, officers, employees, agents, subcontractors, or representatives and for maintaining control, direction and supervision of same in the performance of any services hereunder.

**22. Entire Agreement.** These Terms and Conditions along with the applicable Order and any other specifications or requirements transmitted by Buyer to Seller in writing in connection therewith which specifically references the applicable Order constitutes the entire agreement between the Seller and Buyer with respect to the matters contained therein and supersedes all prior oral or written representations and agreements.