

**PROGRESS RAIL SERVICES CORPORATION**  
**STANDARD PURCHASE ORDER TERMS AND CONDITIONS**  
**Effective Date: July 7, 2021**

**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 Progress Rail Locomotive 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 may not assert, as a defense to the enforcement of these Terms and Conditions any conditions or limitations made in a quotation, acceptance, shipping documentation, invoice or acknowledgement. Upon Seller's acceptance of the applicable Purchase Order, these Terms and Conditions shall enter into force and constitute the entire agreement between Buyer and Seller. Seller waives signed acceptance of the Purchase Order by Buyer. 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 and Delivery.** Shipping will be as directed by Buyer on the Order, or if not specified, shall be DDP Buyer's receiving facility INCOTERMS 2020. Title shall transfer when risk of loss passes to Buyer under the applicable mode of transport described in INCOTERMS 2020. 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. Seller shall maintain inventory adequate to meet Buyer's shipping instructions. Seller shall be responsible for any special freight charges or Cost-to-Cover Charges incurred to meet requirements of an Order. In addition to any of the special freight charges or Cost-to-Cover Charges, Buyer may charge Seller for other costs of untimely or inaccurate delivery. Seller shall accept any such charges from Buyer; provided, however, that Seller may request reconsideration of any such charges by submitting a written request to Buyer within sixty (60) days after receipt of the charges, setting forth the reasons and details supporting reconsideration. After consultation with Seller, Buyer shall have sole discretion to determine whether the charges are appropriate and shall inform Seller of Buyer's decision within a reasonable time thereafter. This Section does not limit any other remedies that may be available to Buyer under these Terms and Conditions or at law.
- 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 2020, 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, the Hazard Communication Standard ("HCS"), the Globally Harmonized System of Classification and Labeling of Chemicals ("GHS"), 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, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Occupational Safety and

Health Act, 29 U.S.C. Section 651 et seq., the Federal Hazardous Substances Act, 15 U.S.C. Section 1261 et seq., and the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11011 et seq.

- iv. Seller shall comply with all laws administered by the U.S. Department of Transportation (“USDOT”), and USDOT and United Nations/North America (UN/NA) rules and regulations, including but not limited to the U.S. Federal Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., the UN/NA 1993 regulation regarding flammable liquids, international regulations issued by the International Civil Aviation Organization (ICAO Technical Instructions), and the IMDG Code, that regulate the transportation of Hazardous Materials and apply to transportation of the Items while under Seller’s possession or reasonable control.

**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, all restrictions on the use of mercury in products (including those related to Minamata Convention on Mercury), USEPA Toxic Substances Control Act 15 U.S.C. §2601 et seq. (TSCA, California Health & Safety Code Section 25249.5 et seq. (including the warning regulations and requirements relating to Proposition 65); Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; European Union (“EU”) European Conformity (“CE”) 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 (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 (“WEEE”); Directive on Classification, Packaging and Labeling of Dangerous Preparations; Construction Products Directive; Battery Regulation; 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, product material data and 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. Work in Process; Quality Program; Cost of Poor Quality; Capacity.** Buyer shall have the right, at any reasonable time or times, to inspect materials, work in process, finished Items and parts, and records relating thereto, at any facilities at which Items are manufactured or such records are kept. Buyer assumes no responsibility and waives no rights as a result of any such inspection.

Seller shall maintain a quality assurance program satisfactory to Buyer to ensure that Items consistently satisfy Buyer’s quality requirements. Seller agrees to periodically review with Buyer the potential for product or manufacturing improvements. Items shall meet and be delivered in accordance with Buyer’s technical, quality, reliability, and other specifications as communicated from time to time by Buyer including without limitation, via an Order, Buyer’s Supplier Quality Manual, Item prints or specifications, or otherwise. Seller shall maintain a quality plan that complies with Buyer’s Supplier Quality Manual, the current version of which is available on Buyer’s supplier portal, access to which Seller acknowledges having been provided. Should Seller fail to timely or accurately deliver Item(s) (i) in accordance with the Order; or (ii) that meets such technical, quality, reliability, and other specifications or should it become apparent that Seller will not be able to do so, in addition to any other rights and remedies Buyer may have under an applicable Purchase Order or provided by law, Buyer may purchase replacement product on the open market and Seller shall pay Buyer any amounts incurred in excess of those which would have been incurred had Seller timely delivered Item(s) (“Cost-to-Cover Charges”).

Prior to commencement of the Item Warranty Period, when Item(s) do not conform to Buyer’s specifications, designs, drawings, or requirements, Buyer may charge Seller for costs of poor quality (“COPQ”). Buyer shall reasonably determine the charges and inform Seller. Buyer may debit Seller

for such COPQ charges. Seller shall accept any such charges from Buyer; provided, however, that Seller may request reconsideration of any such charges by submitting a written request to Buyer within sixty (60) days after receipt of the charges, setting forth the reasons and details supporting reconsideration. After consultation with Seller, Buyer shall have sole discretion to determine whether the charges are appropriate and shall inform Seller of Buyer's decision within a reasonable time thereafter. This Section does not limit any other remedies that may be available to Buyer in these Terms and Conditions or at law.

Seller shall maintain sufficient production capacity to ensure that Buyer's firm orders for Items are promptly and regularly filled. Additional to Seller's obligations in the previous sentence, Seller shall maintain capacity plans and Seller shall notify Buyer immediately in writing if it does not have sufficient capacity. Seller's capacity may be audited by Buyer.

**11. 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 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). If the price or quantity on Seller's invoice does not match the price on Buyer's corresponding Order, then no payment of such invoice shall be due Seller until the discrepancy is resolved.

Seller hereby waives any applicable lien over the Items, whether such Items are being supplied to Buyer or Buyer's subcontractors.

Seller's invoices shall comply with Buyer's invoicing instructions. 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.

**12. 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. Title to and full ownership of the Materials shall remain with Buyer at all times. 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.

**13. Intellectual Property and Confidential Information.** (a) Seller (and Affiliates thereof) and Buyer (and Affiliates thereof) will, from time to time, use and/or disclose information such as designs, specifications, ideas, concepts, inventions, works of authorship, plans, formulas, drawings, CAD models, software (including but not limited to embedded software), procedures, business processes, manufacturing processes, part lists, assembly instructions, know-how, organizational information, data, systems, customer lists, supplier lists, financial information, documents, tooling, prototypes, products, samples, assemblies and other technical or business information (collectively "Information"). "Buyer Confidential Information" means any and all Information (1) that Buyer or an Affiliate thereof considers confidential or proprietary, or (2) that is obtained or created by either party in fulfillment of obligations under these Terms and Conditions. "Intellectual Property" means any and all Information that may be patentable, copyrightable, or susceptible to any other form of statutory, contractual or common law legal protection. As used herein, "Intellectual Property" does not include trademarks, service marks, trade dress, and other corporate designations, identifiers or logos, and rights therein (collectively "Trademarks").

(b) Buyer and/or its Affiliates holds rights in all Intellectual Property disclosed by Buyer or an Affiliate thereof to Seller or an Affiliate thereof (collectively "Buyer Intellectual Property"). All Buyer Intellectual Property is Buyer Confidential Information. Seller shall take all necessary steps to protect Buyer Confidential Information with at least the same degree of care that Seller uses to protect its own confidential information of like kind, but in no event less than reasonable care. The obligation of confidentiality hereunder shall not apply to Information that: (1) can be demonstrated by contemporaneous written evidence to have already been in Seller's possession, without restriction on its use or disclosure, before being received from Buyer or an Affiliate thereof, (2) is or becomes available to the general public through no act or fault of Seller, or (3) is rightfully disclosed to Seller

by a third party without restriction on its use or disclosure. Seller will not disclose any Buyer Confidential Information to any third party except: (I) to conduct business with or on behalf of Buyer or its Affiliates; however, before such disclosure occurs, Seller shall first ensure that such third party has signed a written confidentiality agreement having terms at least as restrictive as the terms of this Section 13; or (II) if such information is required to be disclosed pursuant to judicial or governmental decree or order, provided that Buyer or an Affiliate thereof is given prompt notice of and the opportunity to defend against disclosure pursuant to such decree or order. Except as otherwise expressly set forth herein, Seller will not disclose any confidential information to Buyer or an Affiliate thereof unless Buyer or an Affiliate thereof first agrees in a signed writing to the receipt of such confidential information. Seller acknowledges that Buyer otherwise has no confidentiality obligations with respect to any Intellectual Property previously or hereafter disclosed by Seller to Buyer.

(c) Some Intellectual Property may be protected by patents, copyrights, trade secrets, industrial design rights, and/or other forms of statutory or common-law intellectual property protection, or through implied or express contractual rights (collectively "Intellectual Property Rights"). Buyer and/or its Affiliates own certain Intellectual Property Rights in Buyer Confidential Information and/or Buyer Intellectual Property (collectively "Buyer Intellectual Property Rights"). Buyer and/or its Affiliates will grant to Seller, and hereby grant to Seller, a limited, nonexclusive, revocable, and nontransferable license under Buyer Intellectual Property Rights to use Buyer Confidential Information and Buyer Intellectual Property solely to the extent necessary for Seller to produce and supply Items to Buyer and its Affiliates and/or as expressly approved in an advance signed writing by Buyer or an Affiliate thereof. Except as expressly set forth herein, Seller is not acquiring and will not acquire any right, title, or interest in or to any Buyer Intellectual Property Rights, including but not limited to any rights to sublicense Buyer Intellectual Property Rights to third parties. Except as otherwise expressly approved in an advance writing by Buyer, Seller will not (1) use, copy, reverse engineer, disclose, publish, distribute, disassemble, modify, or alter any Buyer Confidential Information or Buyer Intellectual Property for any purpose other than to conduct business with or on behalf of Buyer or its Affiliates; (2) grant access to Resources to any employee without a need thereof or to any third party except on prior written approval by Buyer or an Affiliate thereof; (3) sell or provide any products or services using, embodying, or including Buyer Confidential Information or Buyer Intellectual Property to any person other than Buyer and its Affiliates without prior written approval from Buyer or an Affiliate thereof. At any time upon request by Buyer or an Affiliate thereof, Seller shall promptly return or destroy any media containing any Buyer Confidential Information and/or Buyer Intellectual Property.

(d) From time to time, Buyer may request financial statements from Seller and/or Affiliates of Seller. In particular, Buyer may request, and Seller and/or Affiliates of Seller will promptly provide, independently audited non-technical 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 (collectively "Seller Financial Statements"). Buyer shall hold and safeguard Seller Financial Statements by using the same degree of care Buyer uses to protect its own information of like kind, provided, however, that Buyer may disclose Seller Financial Statements to a third party contracted to assist Buyer with analyzing Seller Financial Statements if such third party is obligated to maintain the confidentiality of Seller Financial Statements to the same extent Buyer is so obligated under this Section 13.

(e) Seller will provide an accurate and usable CAD model for each Item in a Pro/Engineer, Creo or CAD neutral format. Such models shall include (1) accurate, nominal exterior and interface dimensions, (2) mounting locations, (3) weight accurate to two percent (2%) of actual dry weight; and (4) a center of gravity with respect to a predefined coordinate system. If it is not commercially feasible for Seller to include such information in its models, Seller may provide the above information to Buyer instead of embedding the information into its models.

(f) In the course of performing work under a Purchase Order or other written agreement, or in response to receiving Information or a request from Buyer or an Affiliate thereof, Seller might develop new Information and/or Intellectual Property, such as, by way of example and not by way of limitation, a new product or a new modification of an existing Buyer or Seller product (collectively "Purchase Order Intellectual Property"). Further, Seller might use or incorporate Information and/or Intellectual Property in products or services provided to Buyer that is not Purchase Order Intellectual Property (collectively "Seller Background Intellectual Property"). Seller will assign to Buyer, and hereby does assign to Buyer, all right, title and interest held by Seller in all Purchase Order Intellectual Property and all Intellectual Property Rights protecting Purchase Order Intellectual Property, except to the extent that such Intellectual Property Rights protect Seller Background Intellectual Property (collectively "Seller Background Intellectual Property Rights"). Seller will grant to Buyer and its Affiliates, and hereby does grant to Buyer and its Affiliates, a perpetual, worldwide, fully paid-up, royalty-free, irrevocable, transferable, nonexclusive license under the Seller Background Intellectual Property Rights (1) to use, offer to sell, sell, export, import, disclose to third parties, repair, reconstruct, remanufacture and rebuild (but not make or have made) all products and services using or incorporating Seller Background Intellectual Property, (2) to reproduce, distribute, prepare derivative works based upon, publicly perform, and publicly display all works of authorship within products and services using or incorporating Seller Background Intellectual Property, and (3) to sublicense any third parties to engage in any activities set forth in subsection (1) or (2) of this Section 13(f). Seller hereby waives all moral rights in Seller Background Intellectual Property. In accordance with Purchase Orders and/or as otherwise requested by Buyer (or an Affiliate thereof), Seller will provide to Buyer all Purchase Order Intellectual Property and Seller Background Intellectual Property and all supporting or explanatory materials therefor, and will execute any other or further documentation relating to Purchase Order Intellectual Property or Intellectual Property Rights therein, Seller Background Intellectual Property, or Seller Background Intellectual Property Rights that Buyer, in its sole discretion, deems necessary for Buyer to receive the full benefit of the rights granted to Buyer in this Section 13. Nothing contained in these Terms and Conditions prohibits Seller and its Affiliates from using any of their general knowledge (including Seller Background Intellectual Property) to provide similar products or services to others; however, Seller represents and warrants that in providing products and services to others, Seller will not use any Buyer Confidential Information or Buyer Intellectual Property.

(g) Notwithstanding anything contained herein to the contrary, Buyer will own all Information, Intellectual Property and Intellectual Property Rights developed and/or obtained by Seller or its Affiliates that derive from or incorporate any Buyer Confidential Information and/or Buyer Intellectual Property. Seller will promptly disclose and assign to Buyer, and hereby does assign to Buyer, all right, title and interest held by Seller in such Information, Intellectual Property and Intellectual Property Rights. 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 Information, Intellectual Property and/or Intellectual Property Rights.

(h) In each subcontract of Seller's work performed pursuant to a Purchase Order, Seller shall obtain for Buyer all of the rights and licenses granted to Buyer under this Section 13, including any and all rights needed from Affiliates of Seller.

(i) To the extent that any Items and/or any Purchase Order Intellectual Property therein includes, or was developed through the use of, any software that is distributed as free software, open source software or under similar licensing or distribution models, or under any licensing or distribution model that requires that the software or any related software (1) be disclosed, distributed or made available in source code form, or (2) be licensed under the terms of any open source software license, including any license listed by the Open Source Initiative at [www.opensource.org](http://www.opensource.org) (collectively "Open Source Software"), Seller represents and warrants that Seller, its Affiliates and subcontractors (I) have not used any Open Source Software in such a way that (A) creates any obligations for Buyer or its Affiliates with respect to any Items, Buyer Confidential Information, Buyer Intellectual Property, Purchase Order Intellectual Property, and/or Intellectual Property Rights therein, (B) grants to any third party any rights to any Items, Buyer Confidential Information, Buyer Intellectual Property, Purchase Order Intellectual Property, and/or Intellectual Property Rights therein, or (C) otherwise has had or would reasonably be expected to have an adverse effect on Buyer or its Affiliates; (II) are in compliance with all terms and conditions of all relevant licenses for all Open Source Software included in or used during the development of the Items and/or Purchase Order Intellectual Property therein; and (III) will identify to Buyer, relative to all Open Source Software included in or used during the development of Items and/or Purchase Order Intellectual Property therein, (A) the name of the software, the names of the specific Items that include or were developed using the software, the online location of the source code of the software (i.e., the URL), and the license governing the software, (B) whether the software is distributed with the Items, and (C) how the software is linked (i.e., statically or dynamically). Seller further represents and warrants that all software delivered to Buyer and its Affiliates by Seller and its Affiliates will be free of viruses, malware, intentionally disabling code, "keys," "time-bombs," "time-locks," or other devices or defects that could interfere with the uninterrupted and unfettered use of the software.

(j) Seller represents and warrants that the Items and all Purchase Order Intellectual Property therein do not infringe on any Intellectual Property Rights or Trademarks of any third party, either alone or in combination with other Items or portions of the Purchase Order Intellectual Property, except and solely to the extent that such portions are specifically constructed in exact accordance with Buyer's designs or technical specifications. If any Items or Purchase Order Intellectual Property becomes the subject of an alleged infringement of any Intellectual Property Rights or Trademarks of any third party, Seller shall, at its expense and in the sole discretion of Buyer, either (1) procure for Buyer the right to engage in all commercial activities required by Buyer that involve such Items or Purchase Order Intellectual Property; (2) replace or modify such Items or Purchase Order Intellectual Property so they are non-infringing; provided, however, that such replaced or modified versions must provide equal or greater functionality than the original versions; or (3) if, after exhausting commercially reasonable efforts, Seller is unable to obtain either of the results in subsections (1) and (2) of this Section 13(j), refund Buyer's full purchase price. In addition, if any Item or Purchase Order Intellectual Property (including but not limited to any and all embedded software therein) becomes the subject of an alleged infringement of any Intellectual Property Rights or Trademarks of any third party, Seller shall indemnify, defend and hold harmless Buyer, Affiliates of Buyer, and the respective directors, officers, employees, shareholders, agents, successors, assigns, consultants and business invitees of Buyer and Affiliates of Buyer, from and against any and all claims and demands, liabilities, losses, damages, costs, enforcement procedures and expenses, of whatsoever nature (including costs, litigation expenses and counsel fees incurred in connection therewith) arising out of or relating to such alleged infringement. Seller further represents and warrants that Seller is authorized to grant all rights in Intellectual Property that Seller herein grants to Buyer.

(k) Unless otherwise authorized by Buyer in writing, Seller shall have no right to apply and further shall not apply to Items any Trademarks owned by Buyer (hereinafter "Buyer's Trademarks"). Notwithstanding the foregoing, if Buyer grants written authority to apply any of Buyer's Trademarks to an Item, the drawing or print that accompanies the Purchase Order or other written authorization shall so state or shall specifically call out the Buyer's specification. 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 the Buyer's specification. If Seller cannot correctly apply Buyer's Trademarks to an Item, it must reject the Purchase Order. Further, Seller shall only apply Buyer's Trademarks to those Items specifically referenced in the Purchase 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 a Purchase Order. In the event seller acquires any rights whatsoever in any of Buyer's Trademarks, Seller will promptly disclose and assign to Buyer, and hereby does assign to Buyer, all such right, title and interest held by Seller. Seller shall not apply Seller's Trademarks or any third party's Trademarks to any Items that are specifically designed for Buyer without Buyer's prior express written consent. Seller shall have no right to apply and further shall not apply any number, letter, symbol, or combination thereof that is affixed to, marked or printed on, or embedded or embossed in any Item or on packaging for any Item (hereinafter "Buyer's Part Numbers") to any other goods sold by Seller, any packaging for such other goods, or any drawings associated with such other goods. Notwithstanding the foregoing, if Buyer desires for any of Buyer's Part Numbers to be applied to an Item, the drawing or print that accompanies the Purchase Order shall so state. Alternatively, Seller may be separately authorized to apply any of Buyer's Part Numbers to an Item if such authorization is specifically set forth on the Purchase Order or otherwise authorized by Buyer in writing. Except as permitted in Buyer's Supplier Communication Guidelines or as otherwise authorized in a signed writing by Buyer, Seller may not disclose the existence of these Terms and Conditions or the fact that Seller has a commercial arrangement with Buyer as part of Seller's marketing or advertising.

**14. Indemnification and Limitation of Liability.** Seller agrees to indemnify, defend and hold harmless Buyer, Buyer's Affiliates, and Buyer's and Buyer's Affiliates' respective directors, officers, employees, shareholders, agents, successors, assigns, consultants and business invitees from and against any and all claims and demands, suits liabilities, losses, damages, costs, enforcement procedures and expenses, of whatsoever nature (including costs, litigation expenses and counsel fees incurred in connection therewith) arising from, or in any way connected with:

- a. injury to, or death of, any person whatsoever or injury or damage to property of any kind by whomsoever owned, or the environment, arising out of or related to, directly or indirectly, performance under this Purchase Order;

- b. the performance or nonperformance by Seller, Seller's subcontractors or Seller's agents of any work which is the subject of the Purchase Order, including without limitation Seller's acts or omissions in connection with the performance of any services;
- c. Seller's non-compliance with Seller's obligations under any Purchase Order or these Terms and Conditions or any laws or regulations, including, without limitation, those applicable to the packaging, classification, labeling, training, handling and transportation of Hazardous Materials, whether such action is brought by a governmental agency or other person or entity, except to the extent that such claims result from Buyer's gross negligence or willful misconduct;
- d. Seller's noncompliance with Seller's obligations listed in Section 15(a) or any injury or illness to Buyer's employees, Seller's employees, Seller's subcontractors or agents, their respective employees, or any other person, caused by that noncompliance;
- e. any claim of defect in the Seller's design, materials, manufacture, sale or workmanship of Item or failure of Item to conform with Seller's and Buyer's specifications, drawings, and data;
- f. any recall caused by Items provided by Seller or its agents;
- g. Seller's breach of any representation, warranty or covenant in these Terms and Conditions or in any Purchase Order;
- e. Seller's acts or omissions:
  - (1) to comply with all export laws, including Export Administration Regulations, as amended, regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, the International Traffic in Arms Regulations and the U.S. Foreign Corrupt Practices Act; or
  - (2) to satisfy Seller's obligations of cooperation with Export Control Information;
- f. Seller's obligations as an employer;
- g. the breach of or any inaccuracy in Seller's representations and warranties with respect to infringement;
- h. Seller's noncompliance with Environmental Requirements or Product Regulations; or
- i. the EU Product Liability Directive 1999/34/EC of the European Parliament and of the Council of May 10, 1999.

Buyer shall promptly give notice to Seller of any claim for which indemnification shall be sought ("Claim"), specifying in reasonable detail the factual basis for the Claim and, to the extent known, the amount of the Claim. Notwithstanding the foregoing, the failure by Buyer to provide timely notice of any Claim, or any delay in providing such notice, shall not affect or impair the obligations of Seller hereunder, except and only to the extent that Seller has been adversely affected by such failure or delay. Seller shall have the right at its own expense to participate in the defense of the Claim.

Seller shall not consent to the entry of any judgment or enter into any settlement of any Claim without Buyer's prior written consent.

If a claim covered by infringement indemnification has been made, Seller shall have the right to, at its option and expense, either: (i) obtain for Buyer the right to continue using the Item or deliverable or (ii) replace or modify the Item or deliverable so that such deliverable becomes non infringing; provided, however, that such replacement or modified Item or deliverable must provide equal or greater functionality than the replaced Item or deliverable. In the event that, after exhausting commercially reasonable efforts, Seller is unable to obtain either of the above two results, then Seller shall return all amounts paid by Buyer for Item in Buyer's inventory and shall return all amounts paid by Buyer for any infringing deliverable, including without limitation any fees associated with maintenance of and support for such deliverable(s).

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.

#### **15. 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.

## **16. 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 60-300.5(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 regulations 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; (5) Seller does not furnish to Buyer, within the meaning of 48 CFR 52.204-25 as modified by the interim rule at 85 FR 42665, (i) any covered telecommunications equipment or services or (ii) any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system; and (6) 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. Where a purchase of Items or Services is for fulfillment of a specific contract or award requiring representations or certifications regarding Disadvantaged Business Enterprise ("DBE"), Seller represents that it has read, understands, has complied, and during the performance of any Order for Items or Services shall continue to comply, with Buyer's Supplier DBE Requirements, which are available for reference at <https://www.progressrail.com/en/Services/SupplyChain/RollingStock/SupplierDBE.html>. 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.

- iii. **Development Bank Funding.** Items may be used by Buyer in fulfilling contracts, orders, or procurements that are funded in part or entirely by the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank Group, Inter-American Development Bank Group, International Monetary Fund, World Bank Group, or another similarly situated institution (each a "Development Bank"). If the Items are purchased in connection with a contract, order, or procurement funded by a Development Bank, then Buyer hereby agrees to abide any applicable terms and conditions imposed in connection therewith, and will not act, has not acted, and will not cause its suppliers to engage in any prohibited practices, including coercive practices, collusive practices, corrupt practices, fraudulent practices, misuse of Development Bank resources, obstructive practices, or theft ("Prohibited Practices") in connection with any Item acquired under these Terms and Conditions. In the event that Buyer reasonably believes that Seller has committed a Prohibited Practice, Buyer reserves the right to audit, or to have Buyer's authorized representatives conduct audits, to ascertain the extent of the non-compliance with this paragraph.

**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 minimum security criteria required under the Customs-Trade Partnership Against Terrorism, as last updated in March 2020 ("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 16(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 16(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 16(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 16(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 16(e) in all subcontracts awarded by Seller for work under this Purchase Order.
- f. **Supplier Code of Conduct.** Seller represents that it has read, understands, has complied, and during the performance of any Order for Items or Services shall continue to comply, with Buyer's Supplier Code of Conduct, which is available for reference at <https://www.progressrail.com/en/Company/supplychain/generalinformation.html>, or its functional equivalent.

**17. Bond/Letter of Credit Requirements.** If security is required for any Order, Seller must, at its own expense and prior to any payment by Buyer, either (a) purchase surety bond(s), or (b) cause to be issued a letter of credit, payable to Buyer. Such bond(s) or letter of credit shall (1) be in the face amount specified in the Order, or if no amount is specified, then the amount of the purchase price of the Order, (2) remain in full force until the time specified in the Order to allow Buyer to confirm that the Item (service or good) is properly inspected and without defect, passed acceptance testing, and been formally accepted by the designated date (or if no date is given, then upon completion of the acceptance testing), and (3) be in form and substance reasonably satisfactory to Buyer. The Buyer may draw down on the bond(s) or letter of credit, as the case may be, if the Item does not pass acceptance testing by the designated date (or if no date is given, then upon failure of the acceptance testing). If the parties agree to extend such time for inspection and proper function of the Item and acceptance testing, then at Buyer's option, (a) Seller shall replace the original bond(s) or letter of credit with current bond(s) or letter of credit, as the case may be, to remain in full force until such extended time agreed to by the parties, or (b) Buyer may draw down on the full amount of the original bond(s) or letter of credit, as the case may be, before it expires.

**18. 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.

**19. 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.

**20. 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.

**21. Severability; No Waiver.** Invalidity of any of the provisions contained in these Terms and Conditions and any other terms in any agreement or schedule between the parties to which these Terms and Conditions are a part, 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 or the application of the other provisions 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, 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 or any agreement or schedule between the parties to which these Terms and Conditions are a part. The exercise by either party of any of its rights, remedies, or elections under an Order or these Terms and Conditions or any agreement or schedule between the parties to which these Terms and Conditions are a part 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. The rights of termination provided herein are in addition to any other right, remedy or election a party may have hereunder or at law or in equity. No provision of these Terms and Conditions or any agreement or schedule between the parties to which these Terms and Conditions are a part may be waived except in a writing signed by the waiving party. No oral statements, course of conduct, or course of dealing shall be deemed to constitute a waiver. No waiver by either party of any breach of these Terms and Conditions or any agreement or schedule between the parties to which these Terms and Conditions are a part shall be deemed or construed to constitute a waiver of any other breach or as a continuing waiver of any breach.

**22. 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.

**23. Seller's Services.** To the extent that Seller collaborates with or otherwise provides Item(s) that include services to Buyer ordered pursuant to any Order, the following provisions shall apply:

- a. **Independent Contractor.** It is understood that Seller's employees, agents, contractors and representatives ("Personnel") assigned to perform services to Buyer shall be and remain employees of Seller whether services are performed at Seller's facilities or Buyer's facilities, and are not and shall not for any purpose be considered Buyer's employees. Seller shall be solely responsible for the payment of salaries and all matters relating thereto, including the withholding and/or payment of all payroll taxes, worker's compensation, unemployment compensation, insurance related benefits, vacation pay, holiday pay and all such additional legal requirements applicable to Seller's employees. Seller's relationship to Buyer hereunder is one of independent contractor and nothing contained herein shall be construed to imply that Seller or any of Seller's Personnel is an employee or agent of Buyer for any purpose. Seller shall have no right, power or authority to create any obligation, expressed or implied, or to make any representation on behalf of Buyer, except as may be expressly authorized from time to time by Buyer in writing and then only to the extent of such authorization. Nothing herein is to imply an agency, joint venture or partner relationship between the parties.
- b. **Removal of Personnel.** In the sole discretion of Buyer, Buyer shall have the option to request the immediate replacement of any Seller Personnel, in which case Seller shall replace such individual(s) at its own cost. Buyer will not be liable for the removed Personnel's time for any period after the demand for removal, nor for any time that Buyer (in good faith) believes to have been falsely or otherwise improperly billed to Buyer. If the replacement request, including satisfactory replacement personnel, has not been resolved to Buyer's satisfaction within ten (10) days after Buyer submits the request to Seller, Buyer may terminate any outstanding Order at any time thereafter by providing written notice to Seller, such notice to be effective as of the date indicated in the notice.
- c. **Buyer Property.** If any materials, equipment, or other property contained in or constituting a part of a Buyer owned or controlled facility or location shall be damaged or destroyed by Seller or its Personnel in the course of performing services, Seller shall at its expense promptly repair or replace the same, to the complete satisfaction of Buyer.
- d. **Export Law Compliance.** When the performance of services requires access to information or items subject to U.S export laws, including but not limited to, the International Traffic in Arms Regulations, the Export Administration Regulations, and regulations administered by the U.S Treasury Department Office of Foreign Assets Control, as may be amended from time to time ("Export Laws"), Seller shall perform such services in compliance with all necessary and applicable permits, licenses, authorizations, or notifications, including but not limited to any export licenses or other required export, re export, or deemed export authorizations, and in a timely manner. Seller has obtained or will obtain all permits, licenses, authorizations, or notifications, including any export licenses or other required authorizations, necessary to perform the services, including any export, re export or deemed export licenses required for any non U.S. persons or persons located outside of the United States to perform the services, at its sole cost and expense. Upon written request by Buyer, Seller shall provide Buyer with the citizenship or residency status of Seller's Personnel, as well as information, documentation, or correspondence regarding any applicable export licenses, authorizations, notifications, or permits obtained for such Seller's Personnel to perform said services, in order to ensure compliance with Export Laws. If Buyer has reason to believe that the Seller is not in compliance with the Export Laws or this Section 23(d). Export Law Compliance, Buyer reserves the right to audit, or to have Buyer's authorized representatives conduct audits at Seller's expense, to ascertain the extent of the Seller's non-compliance with the Export Laws and this Section 23(d). Export Law Compliance. In the event Seller becomes subject to a government enforcement action related to the subject matter hereof, Seller agrees to provide Buyer with written notice of such action within ten (10) business days. Without prejudice to any remedy available to Buyer under the Export Laws, any other law, or hereunder, failure to comply with this Section 23(d). Export Law Compliance shall entitle Buyer to terminate any outstanding Order with immediate effect, with no liability to Buyer following such termination.
- e. **Enterprise Architecture IT Standards.** Where applicable, Seller agrees to abide by Buyer's then current Enterprise Architecture standards applicable to the services being provided; Seller will ensure that any facilities from which services are being provided will have in place controls that meet or exceed the control objectives of Buyer's IT General Controls or other equally industry accepted auditing standards that Buyer has approved in writing; and offshore resources will adhere to Seller's standard quality procedures while performing services. A copy of Buyer's IT General Controls will be provided to Seller upon written request.
- f. **Software Deliverables.** No Item, software, code and/or firmware delivered to Buyer in fulfillment of Seller's obligations under an applicable Purchase Order will contain any Intellectual Property licensed under a license agreement that requires that derivative works of such Intellectual Property be provided to the licensor or recipient of such derivative works with a right of use, redistribution or modification. Any software delivered to Buyer by Seller under an applicable Purchase Order will be delivered (a) free of viruses or other intentionally disabling code, and (b) free of "keys," "time-bombs," "time-locks," and other similar devices that could interfere with the uninterrupted and unfettered use of such software as contemplated by Buyer and agreed to by the parties.
- g. **Representations and Warranties.** In addition to any other representations and warranties contained herein, Seller represents and warrants that:
  - (1) 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, to the extent applicable to such services, follow Buyer's New Product Introduction ("NPI"), APQP and continuous product improvement processes as applicable and will be provided with a degree of care and competence that, at a minimum, accords with customary industry standards and practice;

- (2) Any deliverables shall conform to any and all specifications provided by Buyer, including, but not limited to, any applicable minimum engineering drawing and model standards set forth on Buyer's supplier web portal, and be free from any and all defects in design, material and workmanship;
- (3) Any Personnel will meet the same standards and will comply with all laws as apply to Seller;
- (4) All equipment used in the performance of services shall be suitable for such use;
- (5) Seller understands the currently known hazards which are presented to persons, property, and the environment in connection with the performance of such services;
- (6) It is aware of and will perform such services in full compliance with all applicable laws, regulations, orders, and other governmental requirements, including obtaining all necessary and applicable permits, licenses, authorizations, or notifications.

**24. Photographs.** Seller shall not take photographs of any Buyer owned or controlled facility or location or on or within such facility or location without prior written authorization of Buyer.

**25. Counterparts.** Any applicable agreement or schedule between the parties incorporating these terms, may be executed in one or more counterparts (including by means of facsimile or electronic mailing of a copy of an original signed signature page), each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and facsimile or other copies of original signatures shall be treated as original signatures hereunder.

**26. Construction.** The parties have participated jointly in the negotiation and drafting of these Terms and Conditions and any agreement or schedule between the parties to which these Terms and Conditions are a part. In the event an ambiguity or question of intent or interpretation arises, these Terms and Conditions and any agreement or schedule between the parties to which these Terms and Conditions are a part shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by the authorship of any of the provisions of these Terms and Conditions or any agreement or schedule between the parties to which these Terms and Conditions are a part.

**27. Survival.** Rights, warranties, and obligations herein, or in any agreement or schedule between the parties that incorporates these Terms and Conditions, that by their nature should survive, shall remain in effect after termination or expiration. Those rights, warranties, and obligations include, but are not limited to, the terms and conditions relating to confidential information, proprietary rights, indemnification, export law or other regulatory compliance, representations and warranties, intellectual property, entire agreement, and order of precedence.