

SOLAR TURBINES INCORPORATED
Purchase Order Terms and Conditions
Effective Date: July 1, 2024

1. DEFINITIONS. As used in this Purchase Order:

- a) **“Buyer”** means Solar Turbines Incorporated or other Solar Turbines business entity as indicated in a Purchase Order.
- b) **“Customer”** means purchaser and user of Buyer's products which incorporate Goods and/or Services provided pursuant to the Order and may include the U.S. Government, dealers in Buyer's products and users thereof, including Buyer.
- c) **“PO Terms”** means these purchasing terms and conditions which will govern any Purchase Order or Order issued by Buyer to Seller.
- d) **“Goods”** means goods, items, materials, equipment, supplies, and associated service work ordered by Buyer from Seller pursuant to a Purchase Order which may be used for resale.
- e) **“Intellectual Property Rights”** means United States and worldwide trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, inventions, mask work rights, moral rights, patents, rights of inventorship, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and/or defamation, rights under unfair competition and unfair trade practices laws, and all other intellectual and industrial property rights related thereto.
- f) **“Laws”** shall mean those laws applicable under the Order, and as defined further in these PO Terms. Laws may include Product Regulations, laws related to Import/Export controls, and Social Responsibility Laws, described herein.
- g) **“Purchase Order” or “Order”** means the purchase order form itself with keyed -in terms (sometimes referred to herein as the “face of the order”); and explicitly includes or otherwise incorporates by reference these PO Terms; all specifications, drawings, data, instructions, schedules and the like that accompany or are incorporated into the order by reference; and any purchase order revisions, modifications or amendments. Seller is advised that when these PO Terms are referenced in a “request for quotation,” they will apply to any offer made by buyer in response to seller's quotation.
- h) **“Seller”** means (i) the supplier described on the face of the Order and, (ii) supplier's subcontractors described on the face of the Order, provided that such subcontractors must agree to these PO Terms prior to Buyer's issuance of an Order to supplier containing such subcontractors.
- i) **“Services”** means any services that are rendered or performed by Seller, which may include both the creation of new Technology and any Intellectual Property Rights related to the new Technology.
- j) **“Technology”** means conceptions, creations, ideas, innovations, discoveries, inventions, compositions, methods, trade secrets, know-how, information, data, works of authorship, and results, whether or not patentable, copyrightable, or susceptible to any other form of statutory or common law legal protection.

2. Acceptance of Purchase Order. Any Purchase Order referencing these PO Terms is an offer to Seller by Buyer to enter into an agreement to supply the Goods and or Services as described in such Purchase Order. The Purchase Order together with these PO Terms along with any other specifications or requirements provided to Seller by Buyer in connection therewith shall be the complete and exclusive statement of such agreement. Seller shall be deemed to have accepted the Purchase Order (including any specifications or requirements stated therein or provided in connection therewith) and these PO Terms when Seller:

- a) executes and returns a signed writing indicating its intent to be bound by the Purchase Order; or
- b) commences work on or delivers to Buyer any of the Goods ordered; or
- c) renders for Buyer any of the Services ordered.

Any Items received by Buyer shall only be upon the terms of the Purchase Order (including these PO Terms), 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

Purchase Order is unqualified, unconditional and subject only to these PO Terms and any of Buyer's terms specifically set forth on the Purchase Order or any signed documents referenced in Buyer's Purchase 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 PO Terms any conditions or limitations made in a quotation, acceptance, shipping documentation, invoice or acknowledgment. Upon Seller's acceptance of the applicable Purchase Order, these PO Terms 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 PO Terms, or assert that they are void for any reason, upon Seller's acceptance of the Purchase Order(s) referencing these PO Terms.

3. **Authority.** No contractual direction, determination, modification, notice, order, approval or ratification under the Order shall be of any effect unless authorized in writing by Buyer.

4. **Packing, Shipping and Risk of Loss.** Seller shall comply with the following packing and shipping requirements. Communications regarding packing and shipping instructions shall be directed to Buyer.
 - a) Unless otherwise specified, all Goods to be delivered under the Order shall without charge be stored, packed and/or packaged to:
 - (i) insure safe arrival at their ultimate destination;
 - (ii) secure the lowest transportation costs;
 - (iii) comply with requirements of common carriers;
 - (iv) be clearly marked if items are specially packed for any reason (e.g. climatic exposure, contamination, expiration or end use date, etc.),pursuant to requirements and subject to any limitations to the then – current **Solar Turbines Packing and Shipping Guide**. Bills of lading or shipping receipts shall be sent to Buyer's Traffic Department on the date Goods are shipped. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Goods shall be shipped in accordance with Buyer's routing instructions.
 - b) Shipments will be released in a valuation which will result in the lowest transportation rate. Transportation insurance for loss and damage will not be purchased unless specifically directed. Prepay and invoice transportation charges are not recommended. If a shipment is prepaid with transportation charges invoiced to Buyer, a copy of the prepaid transportation invoice must accompany Seller's invoice. Shipments made on the same day and consigned to one destination via the same carrier must be consolidated on one bill of lading.
 - c) Excess costs, damage or loss resulting from Seller's failure to comply with the above packing and shipping requirements will be deducted from Seller's account or otherwise used at Buyer's option to offset Buyer's obligation to Seller.
 - d) Delivery of Goods purchased shall be pursuant to the delivery term specified in the Order (which shall be deemed to be per Incoterms 2020 unless otherwise expressly stated), or if not specified in the Order shall be pursuant to FCA Seller's designated facility per Incoterms 2020. Unless otherwise expressly agreed in writing, title and risk of loss will pass upon delivery of the Goods in accordance with the delivery terms specified in the Order, or if not specified in the Order, then the Incoterm set forth in this Clause 4.d. Notwithstanding the foregoing, Seller shall also bear the risk of loss of, or damage to, rejected Goods after receipt of Buyer's notice of rejection; provided, however, that while the Goods remain on Buyer's premises, Buyer shall bear such risk as to loss or damage caused by the willful or negligent acts of its officers, agents or employees acting within the scope of their employment.

5. **Invoices.** Unless otherwise specified by Buyer in the Order, such as in the case of payment through evaluated receipt settlement ("ERS") or similar method, upon shipment of the Goods or completion of the Services ordered, Seller shall include on invoices the same information that is required on Packing Slips, and, unless otherwise instructed on a Purchase Order, shall send such invoices in an electronic format specified by Buyer and to the electronic location provided by Buyer to Seller. Prices contained in a Purchase Order are exclusive of all taxes, including VAT (as defined below). In the event that any Goods supplied by Seller pursuant to a

Purchase 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 Goods, 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 Purchase 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 U.S. sales and use tax. Buyer shall pay all correct itemized electronic invoices received from Seller pursuant to Buyer's then current "Standard Settlement Schedule" or, if no such Standard Settlement Schedule exists, pursuant to Buyer's then current payment terms, a current version of which has been provided to Seller.

6. **Payment.** Unless otherwise specified by Buyer in the Order, Buyer shall be obligated, upon the receipt of Seller's proper invoices, or in the case of ERS or similar method, upon the confirmed entry of a goods receipt by Buyer for the Goods or Services, to pay the prices set forth in the Order for Goods delivered and accepted or Services rendered and accepted less adjustments for shortages, rejections, or other provisions of the Order. Such payments shall be made on Buyer's normal days of payment. Payment, however, shall not constitute acceptance of the Goods or Services. The date for cash discounts shall commence on the date the Goods/Services are received or the date of the receipt of a proper invoice whichever is later. Freight and other charges must be separately shown if cash discount is not to be taken on the full amount of invoice, or Order in the case of ERS or similar method. In the case of transactions conducted by ERS or similar method pursuant to a notation on the Order, Buyer shall not be responsible for any delay in payment that may be caused by clerical errors related to the entry of a goods receipt by Buyer for Goods or Services received and accepted by Buyer.
7. **Price.** Buyer shall not be billed at prices per item higher than stated on the Order unless authorized in writing by Buyer. Seller warrants that the price charged for the Goods and Services covered by the Order do not exceed the lowest 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 Buyer will receive the benefit of any price reductions made on Goods or Services covered by the Order subsequent to the placement of the Order but prior to shipment or the rendering of Services.
8. **Delivery.**
 - a) **TIME IS OF THE ESSENCE and all deliveries shall be made in strict accordance with the delivery schedule set out or referred to in the Order or in any revisions thereto issued by Buyer.** If at any time during the performance of the Order, Seller expects that it will not be able to deliver the Goods ordered in accordance with the Order delivery schedule, regardless of cause, Seller shall promptly notify Buyer of the anticipated delay in delivery, the reason therefor and Seller's recommendation for an alternative course of action. If Seller so notifies Buyer, or, if Seller's deliveries fail to meet delivery schedules, or, if it reasonably appears to Buyer that Seller is not likely to meet the delivery schedules, Seller will, at no additional cost to Buyer (unless excused by Force Majeure pursuant to Clause 27), do one or more of the following as Buyer directs:
 - (i) provide expedited or premium means of shipment;
 - (ii) use its best efforts to meet the delivery schedules (including, but not limited to, overtime or multiple shifts, expedited materials and component acquisition and/or additional subcontracting in accordance herewith);
 - (iii) provide a work program satisfactory to Buyer showing all activities related thereto, the duration thereof and the dates of all significant events so as to meet the delivery schedule.
 - b) Seller is aware that Buyer has contractual commitments to meet delivery dates with its Customer(s) that are dependent upon Seller meeting the delivery schedule set forth in the Order.
 - c) Seller shall not, without Buyer's prior written consent, manufacture any Goods or purchase any components or raw materials in advance of the time reasonably required to comply with Buyer's delivery schedule, as set

forth in the applicable Order(s), based on the time period required by Seller's normal processing or manufacturing process. Seller shall not, without Buyer's prior written consent, deliver any Goods in advance of Buyer's delivery schedule, as set forth in the applicable Order(s). In any event, invoices covering such advance Goods will not be paid, unless otherwise agreed in writing, until their normal maturity after the date specified for delivery. Except as otherwise specifically provided for in the Order, Buyer shall not be obligated to accept untimely, excess, or under shipments and such shipments may, in whole or in part, at Buyer's option, be returned to Seller, shipping charges collect or held for disposition at Seller's risk and expense.

9. Changes.

- a) Buyer may at any time, by written order or revision, and without notice to sureties, if any, make changes within the general scope of the Order including but not limited to any one or more of the following:
 - (i) drawings, or specifications when the Goods to be furnished are to be specially manufactured for Buyer in accordance with the drawings, designs or specifications;
 - (ii) method of shipment or packing;
 - (iii) place of inspection, delivery or acceptance;
 - (iv) reasonable changes in quantity;
 - (v) reasonable changes in delivery schedules;
 - (vi) temporary suspension of work;
 - (vii) the amount, nature, or condition of Buyer-furnished property.

Upon receipt of Buyer's written order or revision, Seller shall immediately comply with the change detailed in such written order or revision.

- b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Order, Buyer shall make an equitable adjustment in the Order price or delivery schedule or both, and shall revise the Order in writing accordingly. Should Seller choose, it may submit in writing any proposal for adjustment, or advise of potential major impact to its performance, resulting from any such changes (hereafter referred to as "Seller's Proposal," or "Proposal"). Seller's Proposal shall be submitted to Buyer within 10 business days from the date of Buyer's written change order or revision. Late proposals will not be allowed. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a Proposal submitted before final payment of the Order. If Seller's Proposal includes the cost of property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of disposition of any such property.
- c) Failure to agree to any equitable adjustment on a Proposal timely made shall be a dispute and Seller may thereupon pursue any remedy which it may have in accordance herewith. Pending the resolution of any negotiation or dispute, Seller shall diligently pursue the performance of the Order as changed. Seller shall not have any rights to terminate performance of the Order. There shall be no adjustment in the price or time for performance under the Order unless Buyer has directed a change to the Order by the issuance of a written change order or revision to the Order.

10. Quality Program

- a) Seller shall maintain a documented quality control program that assures adequate quality throughout all areas of performance. This program may be subject to review by Buyer.
- b) Seller shall advise Buyer of any change(s) that affect the production or manufacturing process prior to, and in advance of, the implementation of the change.

11. Inspection

- a) As used in this Clause, "Goods" includes, but is not limited to, Goods, raw materials, components, intermediate assemblies, end products, Services and delivery lots of Goods, at whatever stage of work or manufacture, to be provided by Seller under the Order.
- b) Notwithstanding any other provisions of this Clause, all Goods purchased under the Order are subject to final inspection and approval at Buyer's plant or final destination notwithstanding any prior inspection or approval.

Buyer reserves the right to reject and refuse acceptance of Goods not in accordance with the Order or the instructions, specifications, data, drawings and Seller's warranty set forth in Clause 13. The method of inspection may be total, or by sampling, at the sole discretion of Buyer who may return all shipments containing defective Goods. Goods not accepted will be returned at Seller's expense, and Seller will refund any payments that it may have received from Buyer including original shipment expenses. Payment for any Goods hereunder shall not constitute final acceptance thereof. Buyer's failure to inspect and accept or reject the Goods shall not relieve Seller from responsibility for defective and nonconforming Goods and shall not constitute or be construed to be a waiver of Buyer's rights or remedies with respect to defective and nonconforming Goods.

- c) Seller shall provide and maintain an inspection system acceptable to Buyer, but in any event, sufficient to detect defects in the Goods, and shall tender to Buyer for acceptance only Goods that have been inspected in accordance with such requirements. Records evidencing such procedures and inspections shall be made available for Buyer's review during performance of the Order and for a minimum of two years thereafter. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this subclause. These reviews and evaluations shall be conducted in a manner that will not unduly delay the work under the Order.
- d) Buyer and its Customer(s) have the right to inspect and test all Goods to the extent practicable, at the source and at all places and times, including the place of manufacture. If Buyer performs inspections and tests on the premises of Seller or a subcontractor, Seller shall furnish, and shall require subcontractors to furnish, all reasonable facilities and assistance for the safe and convenient performance thereof without additional charge.
- e) Buyer has the right either to reject or to require Seller to expedite and correct (and provide proof of correction) of nonconforming Goods. Goods are nonconforming when they are defective in material, workmanship, design or are otherwise not in conformity with the applicable specification or Order requirements. Buyer may reject nonconforming Goods with or without disposition instructions.
- f) Inspections and tests by Buyer do not relieve Seller of responsibility for defects, nonconforming Goods or other failures to meet Order requirements. Buyer shall have no duty to make any inspection or inquiry and shall not incur any liability or obligation by not making any such inspection or inquiry. Buyer's failure to inspect or reject Goods shall not relieve Seller of any warranties or obligations provided hereunder or otherwise affect any of the rights or liabilities of the parties under Clauses 13 or 14.

12. Specification and Configuration Control.

- a) Seller agrees to supply to Buyer all Goods and Services in the quantities listed, in conformance with all Order requirements, including applicable Customer(s), Buyer or other specifications or drawings incorporated or specified in the Order. The required test and/or inspection reports/data resulting from Seller's compliance with applicable Order requirements and specifications shall be kept on file at Seller's facility and made available for review by Buyer at any reasonable time. Seller shall not make any changes in the design of any Goods, as set forth in the specifications or drawings incorporated or specified in the applicable Order, without Buyer's prior written approval.
- b) Seller agrees that if a part, drawing or specification control document is referenced in the Order, it will immediately upon receipt thereof, advise and obtain the written consent of Buyer to any change in or to:
 - (i) the design, configuration, or performance characteristics of the Goods identified in said document;
 - (ii) the materials or manufacturing processes utilized in the production of such Goods.

Changes to be reported include those which may have been made subsequent to the date of publication of any descriptive catalogs, bulletins, data sheets, etc., referenced in the control document.

13. Warranty.

- a) Seller hereby warrants that all Goods furnished under the Order, including any results of Services will:
 - (i) be free from defects in material, workmanship, and design;
 - (ii) operate without error and conform to the applicable Order and specifications, drawings, samples and descriptions;

- (iii) be merchantable and be fit for the intended use identified; and,
 - (iv) be free and clear of all liens, claims, encumbrances and other restrictions (collectively “Goods Warranty”).
- b) Seller warrants that all Services furnished under the Order will:
 - (i) be provided in a professional manner;
 - (ii) be performed by appropriately knowledgeable and skilled personnel;
 - (iii) conform to the standards generally observed in the industry for similar services;
 - (iv) be provided in a manner that does not infringe or misappropriate any third party’s Intellectual Property Rights.
- c) The Goods Warranty shall:
 - (i) extend to Buyer and its Customer(s), and
 - (ii) remain in effect for twenty-four (24) months from date of receipt by Buyer or twelve (12) months from date of Customer'(s) first commercial use of Buyer's products which incorporate the Goods and Services, whichever period shall last expire (“Warranty Period”), subject to any applicable statutory limitations under the commercial code of the pertinent jurisdiction. This warranty shall be considered a condition of the Order as well as a warranty. Seller shall also be responsible to Buyer and its Customer(s) for any additional warranties or guarantees stated or referenced elsewhere in the Order.
- d) During the Warranty Period, Seller shall immediately take all actions necessary to remedy any defects, errors or other failure that results in a breach of the Warranty, including but not limited to replacing or repairing any defective or non-conforming component or part thereof or reperforming the Services. All costs associated with remedying the breach of warranty shall be for the account of Seller.

- 14. Indemnification.** To the fullest extent permitted by law, Seller agrees to indemnify, defend and hold harmless Buyer, its officers, directors, subsidiaries, employees, affiliates, agents and other representatives (the “Indemnitees ”), from and against all damages, claims, demands, allegations, enforcement procedures, liabilities, losses, costs and expenses of every kind or character (including without limitation reasonable attorneys' fees, and related litigation costs incurred in connection therewith), whether or not a lawsuit or other proceeding is filed, arising out of, in whole or in part, or in any way connected with:
- a) injury to, or death of, any person whatsoever, or damage to property of any kind, or to the environment, arising out of or resulting from, directly or indirectly, Seller’s performance under this Purchase Order;
 - b) Seller’s breach of, or failure to comply with, any representation, warranty or obligation under this Purchase Order, including without limitation Seller’s failure to comply with the warranty obligations in accordance with Clause 13 or Seller’s failure to comply with any of the requirements set forth in Clauses 15-18; or
 - c) any claim of infringement of the Intellectual Property Rights of any third party arising from or in connection with the Goods, Technology or Services.

The obligations in this Clause 14 shall be in addition to any warranty obligations of Seller. The indemnification, hold harmless and defense obligations in this Clause 14 shall apply even if the damages, claims, allegations, enforcement proceedings, liabilities, losses, costs or expenses are caused by the active negligence of the Indemnitees, but shall not apply if caused by the sole negligence of, or to the extent caused by the willful misconduct of, the Indemnitees. Seller’s obligation to defend the Indemnitees shall be immediately upon written notice by Buyer to Seller (and Seller shall be liable for the Indemnitees internal costs precipitated by Seller’s failure to promptly defend, hold harmless or indemnify the Indemnitees). Seller shall not settle or compromise any such suit, action, or proceeding without the prior written consent of Buyer. Buyer may, in its sole discretion, elect at any time to conduct the defense of any such suit, action or proceeding at Seller’s expense. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing the indemnity, hold harmless and defense obligations in this Clause 14, including attorney’s fees. This Clause 14 shall survive the completion, termination or expiration of an Order.

15. **Compliance with Laws; Product Regulations; Company Values & Social Responsibility.**

a) **Compliance with Laws.** Seller represents that it has read, understands, has complied, and during the performance of any Purchase Order shall continue to comply, with the provisions of all applicable laws, acts, rules, regulations, directives, ordinances, orders, or statutes and social responsibility regulations (collectively, the “Laws”) from which liability may accrue to Buyer for any violation thereof, and including but not limited to, compliance with all wood packing regulations of the country of destination, environmental requirements, product regulations; safety and health requirements, labor standards; the U.S. Foreign Corrupt Practices Act and any applicable anti-bribery Laws of other countries, the U.S. Export Administration Regulations, the International Traffic in Arms Regulations; 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, and laws regarding government procurement (all as amended); and/or all such similar or related federal, statutory, provincial, state or local acts, regulations, codes or other such Laws applicable to Seller as may be amended.

(i) **Anti-Bribery Compliance.** Seller represents and warrants that neither it nor any of its directors, officers, employees, or representatives have engaged or will engage in Bribery in connection in with its performance under these PO Terms with Solar Turbines or any other agreement with Caterpillar, its affiliates, or their respective directors, officers, employees, representatives, agents, successors, and assigns (“Caterpillar”). Bribery means the offering, promising, giving, or authorizing of any payment or transfer of anything of value, directly or indirectly through third parties, to any person for the purpose of influencing any act or decision of such person or securing an improper advantage to assist Caterpillar in obtaining, retaining or conducting business.

To the extent Caterpillar permits the use of subcontractors under these PO Terms, Seller agrees it: (1) will instruct such subcontractors neither to engage in nor to tolerate any act of Bribery (2) will not use such subcontractors as a conduit for Bribery, and (3) will ensure that such subcontractor complies with this Clause in the same manner as Seller is required to comply. Seller agrees that a violation of this Clause related to Anti Bribery Compliance shall constitute a material breach of these PO Terms and that Caterpillar may, in its discretion, either suspend these PO Terms or Orders, or terminate all.

Upon Caterpillar's request, Seller shall at its expense provide to Caterpillar in a timely manner complete and accurate information requested through due diligence questionnaires and periodic compliance certifications. If Caterpillar has reason to believe that Seller is not in compliance with this Clause, Caterpillar has the right to inquire, or to have Caterpillar’s authorized representatives conduct inquiries, to ascertain the extent of the Seller’s non-compliance with this Clause, and Seller agrees to cooperate and provide all documentation and information related to these PO Terms or any other agreement with Caterpillar that is reasonably requested by Caterpillar in connection with such inquiries.

In the event Seller becomes the subject of an enforcement action or receives an information request from any government entity for Bribery relating to Seller’s performance under these PO Terms or an Order, or any other agreement with Caterpillar, Seller shall provide to Caterpillar written notice not later than ten (10) business days following such enforcement action or information request, or the earliest date thereafter if prohibited from earlier disclosure by applicable law.

b) **Counterfeit Products.** Seller shall not deliver Counterfeit Product to Buyer under any Purchase Order. “Counterfeit Product” means a Good that is itself or contains an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, a source with the express written authority of the original manufacturer, or an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. Seller shall use commercially reasonable efforts to detect

and avoid providing Counterfeit Products to Buyer. Seller shall insure the substance of this clause is provided to its subcontractors and suppliers in the performance of this Purchase Order. In the event that a Good delivered under a Purchase Order is a Counterfeit Product, Seller shall, at its expense, promptly notify Buyer and replace such Counterfeit Product with genuine Goods conforming to the requirements of the applicable Purchase Order. Seller shall be liable for its own costs and expenses relating to the detection, avoidance, removal and replacement of Counterfeit Product. The remedies contained in this Clause are in addition to any other right, remedy, or election Buyer may have hereunder or at law or in equity.

c) **Product Regulations.** The term “Product Regulations,” as used in these PO Terms, shall mean environmental requirements, labeling, marking, license, authorization, certification, country of origin, hazardous material communication, and other United States, non-United States, and international entity regulatory requirements applicable to the import, export, manufacture, sale, or distribution of goods or items pursuant to Purchase Order(s). Such Product Regulations specifically include, but are not limited to, California Health & Safety Code Section 25249.5 et seq. (“Proposition 65”), 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 goods or items: Registration, Evaluation and Authorization of Chemicals (“REACH”); Restriction on Hazardous Substances (“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 Directive; and Gas Appliance Directive. Seller is solely responsible for the compliance of the Goods with applicable Product Regulations and further agrees, at its own expense, to replace, repair, and correct nonconforming Goods and/or Services so that they do conform, as may be requested by Buyer. Seller agrees to provide to Buyer all information and documentation, including but not limited to supply chain data, necessary for Buyer to comply with all Product Regulations applicable to Buyer.

(i) **Conflict Minerals.** On an annual basis or more frequently if requested by Buyer, Seller shall disclose to Buyer any Goods which 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:

- a) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Goods it provides Buyer;
- b) due diligence of its supply chain, as necessary, to determine:
 - i. if Conflict Minerals incorporated into Goods 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
- c) 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 Clause in all subcontracts awarded by Seller for work under this Purchase Order.

(ii) **Hazardous Material Requirement.** Seller shall provide a current Material Safety Data Sheet

(“MSDS”) for all hazardous materials shipped to Buyer under this Order. The MSDS shall be in such form and with such information as required by the OSHA Hazard Communication Standard, or, its equivalent for international orders. Seller shall forward any MSDS directly to Buyer by mail or facsimile to Buyer unless another address is provided for this purpose.

- d) **Company Values & Social Responsibility.** (i) Seller acknowledges that Buyer conducts its business based on a set of values and guidelines for action and behavior regarding people and the environment, as set forth in further detail in Buyer’s “Supplier Code of Conduct,” a copy of which is available at <https://www.caterpillar.com/en/company/working-together/suppliers/supplier-conduct.html>, and, Seller agrees to conduct its business in compliance with Buyer’s values.

(ii) Seller warrants that it is in compliance with, and requires its employees and permitted subcontractors and any person under its control to comply with any applicable laws relating to ethical and responsible standards of behavior, including those dealing with human rights (including without limitation, human trafficking and slavery) environmental protection, sustainable development and bribery and corruption, collectively “Social Responsibility Laws.”

16. Buyer Import/Export Controls.

- a) Seller will comply with the instructions or requirements in the Order pertaining to import documentation necessary to comply with U.S. customs regulations.
- b) The Goods covered by this Order may be further shipped to a destination outside of the United States. Seller agrees to provide all information necessary for Buyer to comply with all applicable laws, regulations and any related legal reporting, notification or other types of approval obligations in the country or countries 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; and for Product Regulations, any Hazard Communication information (as outlined in Clause 15 of these PO Terms). 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 requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable.
- c) When requested by Buyer, Seller shall promptly and without additional cost, furnish Buyer with any documentation, including import certificates, end-user statements, or certificates of origin from Seller or Seller’s government, which is reasonable necessary to support Buyer’s application for U.S. import or export authorizations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable.

- 17. Supply Chain Shipment Security.** If and to the extent Seller is shipping Goods 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 packaging, containerization, transportation and delivery of such Goods throughout the supply chain in adherence with the security criteria required under U.S. Customs & Border Protection's (“CBP”) Customs-Trade Partnership Against Terrorism (“C-TPAT”). Seller’s obligations hereunder shall continue until such time as those Goods 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 compromise to a container seal. Seller shall comply with all CBP laws, defined for purposes of these PO Terms as any laws, regulations or legally binding rules issued or enforced by CBP regarding the export or import of goods, materials, equipment, or any other tangible Goods from or into the United States, any designated U.S. port of entry, or any U.S. territory, including, specifically, the security measures required by C-TPAT. Seller shall promptly notify Buyer if it is a member of the C-TPAT program or any analogous program in its country of domicile (such as “Authorized Economic Operator”, or “Partners in Protection”), as well as any changes to that status or identified instances of non-compliance. Seller shall respond to any supply chain security questionnaire issued by Buyer or provide

a certification demonstrating it meets all minimum supply chain security criteria, where requested for C-TPAT or other supply chain security programs in which Buyer may participate. Seller also agrees that it shall take no action that adversely affects Buyer's status under the C-TPAT or other supply chain security programs.

- 18. Government Procurement.** Goods may be used by Buyer in fulfilling a U.S. government prime contract or subcontract; and, therefore, Seller may be subject to the applicable U.S. government procurement laws in effect at the time of accepting the Purchase Order, including but not limited to, Federal Acquisition Regulation (FAR) 52.211-15; 29 CFR Part 471, Appendix A to Subpart A; 41 CFR Part 60-1.4(a) and Part 60-300.5(a); and all applicable clauses listed in FAR 52.212-5(e) and DFARS 252.212-7001(c). In these 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.

Buyer and Seller shall abide by the requirements of 41 CFR 60-741.5 (a) and 41 CFR 60-300.5 (a); affirmative action compliance requirements of Executive Order 11246, as amended; the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. These regulations prohibit discrimination against qualified individuals based on their status as protected veteran or individual with a disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities abilities. 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); and (3) Seller's representations to Buyer about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete. Seller recognizes that it has a duty to maintain its size requirements for the duration of this Purchase Order and must immediately notify Buyer if there is a change in its size standard, ownership, or control. Where a purchase of Goods or Services 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 Buyer's Purchase Order.

19. Proprietary Information.

- a) In its preparation for or performance of this Order or the provision of Services, Seller may receive or become exposed to Buyer's proprietary information, including but not limited to designs, specifications, instructions, forecasts, trade secrets, data or "know how" or other Buyer Technology pertaining to the Goods covered by this Order or Seller's performance of this Order (collectively "Proprietary Information"). Proprietary Information shall not include information that: (a) is already known by Seller prior to the disclosure by Buyer; (b) is or becomes available to the general public through no act or fault of Seller; or (c) is rightfully disclosed to Seller by a third party not under a similar obligation to maintain the information in confidence. If Seller wishes to rely on the exceptions contained in clauses (a), (b) or (c) above, then Seller must demonstrate to Buyer the facts underlying why the exception applies within thirty (30) days of receipt of the Proprietary Information from Buyer.
- b) Seller agrees to maintain the confidentiality of all Proprietary Information, and specifically agrees:
- (i) to take all actions reasonably necessary under the circumstances to maintain the confidentiality of the Proprietary Information
 - (ii) to use Proprietary Information only in Seller's preparation for or performance of this Order
 - (iii) to limit access to Proprietary Information to only those employees within Seller's company who have a need to know, and inform these employees of the provisions of this clause
 - (iv) to conspicuously mark all documents and electronic files containing Proprietary Information as confidential and the property of Buyer
 - (v) not to copy documents or electronic files that include Proprietary Information, or allow them to be copied, except as required for Seller's efficient performance of this Order
 - (vi) not to use Proprietary Information for the benefit of any person or entity other than Buyer
 - (vii) not to transmit or disclose Proprietary Information to any third party without the prior written

consent of Buyer's Purchasing Representative except 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.

- c) Seller shall notify Buyer immediately upon discovery of any unauthorized use or disclosure of Proprietary Information, and shall fully cooperate with Buyer to help regain possession of Proprietary Information and prevent any future unauthorized use or disclosure of Proprietary Information.
- d) Upon termination of the Order, or at any earlier time as Buyer may request, Seller shall return all documents and electronic files containing Proprietary Information to Buyer, and shall retain no notes on, or copies or abstracts of, Proprietary Information.
- e) Seller hereby acknowledges that Buyer may have valuable Intellectual Property Rights in Technology or other materials provided to Seller. Seller shall not acquire any right, title, or interest in any Intellectual Property Rights of Buyer in Buyer's Technology or other provided materials. Seller may use Buyer's Technology provided to Seller but only for the production of Goods for Buyer. Without limiting the foregoing, Seller agrees that Goods manufactured based on Buyer's Proprietary Information, including drawings, specifications, or other Proprietary Information, may not be used for Seller's own use or sold to third parties without Buyer's prior express written consent.
- f) All technical information disclosed heretofore or hereafter by Seller to Buyer in connection with the Order or the provision of Services is on a non-confidential basis. Seller agrees to not (i) disclose to Buyer or any of its employee's information in confidence belonging to Seller or a third party; or (ii) knowingly in the performance of the Services for Buyer produce anything that embodies information under confidential restriction, or is covered by a patent, patent application, industrial design right, copyright, trade secret, or other Intellectual Property Right owned by any person or company other than Buyer.

20. Inventions; IP Licenses.

- a) Notwithstanding anything contained herein to the contrary, Buyer shall own all Technology and Intellectual Property Rights that derive from or incorporate any Buyer Proprietary Information or Intellectual Property Rights owned by or licensed to Buyer. Seller shall promptly disclose and assign, and hereby does assign, all of Seller's right, title and interest in such Technology and Intellectual Property Rights, that are created by Seller in connection with an Order or the performance of Services, to Buyer or shall cause the same to be so assigned. Further, Seller shall execute, or cause to be executed, at Buyer's expense, all applications, assignments, or other instruments that Buyer may deem necessary in connection with such Intellectual Property Rights. To the extent any of the Technology assigned to Buyer herein qualifies as a "work-made-for-hire," the parties hereby agree that the creation of such works are commissioned at Buyer's request and direction and shall be considered a "work-made-for-hire" under the copyright laws of the United States.
- b) Seller, on behalf of itself and any of its employees who perform any work hereunder, hereby irrevocably waives any right to assert any moral rights against Buyer or any third party with respect to any Intellectual Property Rights assigned to the Buyer under this Agreement.
- c) Seller grants to Buyer and its affiliates the right to repair and reconstruct the Goods (including, for example, the right to rebuild the Goods and the right to remanufacture any Good by disassembling its constituent components and reassembling old and new components into a remanufactured Good) and the right to have the same done by others on behalf of Buyer and its affiliates.
- d) Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license (with a right to sublicense) under each copyright that Seller owns, controls, or has a right to license to reproduce, prepare derivatives of, sublicense, distribute, perform, and display any software that is embedded or loaded in the Goods ("Embedded Software") and/or used in conjunction with the use or sale of the Goods. In addition to the Embedded Software, Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license (with a right to sublicense) under each copyright that Seller owns, controls, or has a right to license in any work of authorship fixed in any tangible medium of expression delivered by Seller under an Order (including, without limitation, drawings, prints, manuals, and specifications) to reproduce, prepare derivatives of, distribute, perform, and display such work.

- e) Seller warrants that the Goods, Services, Technology, or any other materials provided to Buyer, and any Technology created by Seller and assigned to Buyer under this Agreement, do not infringe on any Intellectual Property Rights or other proprietary rights of any third party because or on account of the use, offer to sell, or sale of any such Goods or Technology, alone or in combination with other Buyer products or services; provided, however, that the warranty provided by Seller herein shall not apply if the Goods or Technology are specifically constructed solely in exact accordance with Buyer's designs or technical specifications. If any of the Goods, Technology, or other materials furnished by Seller to Buyer become the subject of an alleged infringement of any Intellectual Property Right of any third party, Seller shall, at its expense, either:
 - (i) procure for Buyer the right to continue using the Goods
 - (ii) replace or modify the Goods, Technology, or other furnished materials so that they are non-infringing; provided, however, that such replacement or modified Goods, Technology, or other furnished materials must provide equal or greater functionality than the original Goods, Technology, or other furnished materials
 - (iii) if, after exhausting commercially reasonable efforts, Seller is unable to obtain either of the above two results, refund Buyer's full purchase price.
- f) If a temporary restraining order, preliminary injunction or similar order or judgment is entered in litigation or arbitration, and Seller is unable to promptly effect a remedy as provided in Clause 20(e), Buyer shall have the right to modify the Goods, Technology or other furnished materials, and/or defend or settle the infringement claims on its own behalf. In such case, Seller shall pay all of Buyer's development and modification costs, attorney's fees, costs and damages within thirty (30) days of each of Buyer's written requests. In addition, upon the commencement of any litigation or other proceeding regarding such infringement or violation of Intellectual Property Rights, Buyer shall be entitled to withhold all further payments due to Seller under all Orders and such payments will only resume when Buyer's use is restored to the level enjoyed by Buyer prior to the injunction or restriction and following full recoupment from amounts of any Buyer's costs and damages under this Clause.
- g) In each subcontract of Seller's work performed pursuant to an Order, Seller shall obtain for Buyer all of the rights and licenses granted to Buyer under this Clause 20.
- h) Any and all Technology assigned to Buyer pursuant to this Clause 20 (including any and all data), shall comprise Buyer Proprietary Information.

21. Materials and Tools.

- a) Title to all tools, materials and other Goods furnished by Buyer to Seller for use in making the Goods or performing the Services under the Order, shall remain in Buyer, or Customers(s) as the case may be. All such items shall be used solely in the performance of work ordered by Buyer, shall be subject at all times to disposition as Buyer may direct, shall be properly identified as Buyer's (or Customer's) property, shall not be commingled with property of Seller or others and, upon demand, termination, or completion of the Order shall be delivered to Buyer in the same condition as when received, reasonable wear and tear excepted. Seller agrees to maintain inventory control, as approved by Buyer, of all such items and to furnish inventories thereof. Buyer does not guarantee the accuracy of any tooling or other quality or suitability of any such item furnished.
- b) If the Order price includes the cost of any dies, tools, equipment and/or patterns acquired by Seller for the purpose of filling the Order, such dies, tools, equipment and/or patterns shall become the property of Buyer and, to the extent feasible, shall be properly identified by Seller as such. Upon demand or when the Order has been completed or terminated, such tools, dies, equipment or patterns shall be delivered to Buyer or disposed of as Buyer may direct.
- c) Seller assumes complete liability for, and will keep free and clear of all liens and encumbrances, any Buyer-owned and Customer-owned Goods, equipment, materials, tools, patterns or articles furnished by Buyer to Seller in connection with the Order, and Seller agrees to pay Buyer for such items spoiled, damaged or not otherwise accounted for to Buyer's satisfaction.

22. Enforcement. Buyer and Seller agree that Buyer will be irreparably harmed and money damages would be

inadequate compensation in the event Seller breaches any provision of this agreement. Accordingly, all of the provisions of Clauses 19 - 21 shall be specifically enforceable by injunctive and other relief against Seller, in addition to any other remedies available to Buyer.

- 23. Survival.** The rights and obligations arising under Clauses 19 - 21 shall survive the cancellation, termination or completion of this Order.
- 24. Termination for Convenience.**
- a) Buyer may, at its sole option, terminate the Order in whole or in part, for its convenience, by written notice to Seller. Upon such termination Seller shall immediately stop work under the Order, or the terminated portion thereof, and shall place no further orders or incur no further cost chargeable to Buyer as to the terminated portions thereof except, however, as to necessary action and costs to protect property in Seller's possession in which Buyer has or may acquire an interest. Unless otherwise specified on the face of the Order, to the extent not previously paid, Seller shall be entitled to the following payments, without duplication, in full settlement:
- (i) the order price for Goods completed and accepted by Buyer;
 - (ii) the actual costs incurred by Seller which are properly allocable or apportionable under standard United States generally accepted accounting practices, to the terminated portion of this order;
 - (iii) reasonable expenses, if any, of Seller in making settlement under Seller's suborders and subcontracts, if any, but not including damages or loss of profit claims in either case; and,
 - (iv) such allowance for profit on work performed as may be reasonable under the circumstances; less any amounts obtained as the result of mitigation efforts as described below. Payments under this Clause 24 shall in no event exceed the applicable pro rata price of the portion of the Order terminated less payments already made thereon. Seller will transfer title to and deliver on Buyer's instructions any property, materials and Goods; the costs of which are reimbursed hereunder.
- b) Seller will use its best efforts to mitigate such termination charges as directed or authorized by Buyer, including and without limitation:
- (i) efforts to sell the Goods or materials
 - (ii) by using or returning to inventory, at cost, all Goods of the type carried in inventory by Seller or which are useable by Seller, and credit Buyer therefor.

25. Termination for Default.

- a) Each of the following shall constitute a default under the Order and Buyer reserves the right to cancel, at no cost to Buyer, all or any part of this order if:
- (i) Seller fails to make progress as to endanger performance of the Order and does not cure such failure within a period of 10 business days (or such longer period as Buyer may in writing authorize) after receipt of written notice from Buyer specifying such failure;
 - (ii) Seller does not make deliveries as provided in the Order or otherwise fails to perform;
 - (iii) if Seller breaches any of the terms of the Order;
 - (iv) in the event of the happening of any of the following: insolvency of Seller; filing of a voluntary or involuntary petition in bankruptcy which is not vacated within 30 days from date of filing; the appointment of a receiver or trustee for Seller; the execution of an assignment for the benefit of creditors or the execution of a composition with creditors of any agreement of like import.

Seller shall be liable to Buyer for all damages, losses, and liability incurred by Buyer resulting from Seller's breach.

- b) If Buyer cancels the Order in whole or in part, it may acquire, (under the terms, delivery schedules, and in the manner Buyer considers appropriate), Goods and Services similar to those canceled and in accordance with the delivery schedule in the Order, and Seller will be liable to Buyer for any excess costs for those Goods and Services. However, Seller shall continue to perform any portion of the Order not canceled.

- c) If the Order is canceled for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any:
 - (i) completed Goods
 - (ii) partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as “manufacturing materials” in this clause) that Seller has specifically produced or acquired for the canceled portion of the Order.Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer(s) has an interest. Buyer shall pay the Order price for completed Goods and Services delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted, which under no circumstance shall exceed Seller's direct cost for such manufacturing materials. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders or from excess costs Buyer may incur in completing the Goods or obtaining substitute Goods and Services from others or claims Buyer may have against Seller.
- d) If, after cancellation, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been made pursuant to Clause 24.

To the extent permitted by, and subject to the mandatory requirements of applicable law, each and every right, power and remedy herein specifically given to Buyer or otherwise in the Order shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such Order as may be deemed expedient by Buyer, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy.

26. Disputes and Governing Law.

- a) In the event there arises between the parties hereto a dispute arising out of or relating to the Order, or the breach thereof, or regarding the application of interpretation of any provision of the Order, including disputes regarded as such by only one of the parties, the aggrieved party shall promptly notify in writing the other party of the dispute within ten (10) calendar days after such dispute arises. If the parties shall have failed to resolve the dispute within fourteen (14) calendar days after delivery of such notice, each party shall, within five (5) days thereafter, nominate a senior officer of its management to meet at Buyer's offices in San Diego, California, or at any other mutually agreed location, to resolve the dispute. Should the parties be unable to resolve the dispute to their mutual satisfaction within sixty (60) calendar days from the date of the original notice, each party shall have the right to enforce any and all rights available to it, pursuant to this Clause 26.
- b) Any controversy, dispute or claim arising out of or relating to the Order shall be finally settled by arbitration by a mutually agreed upon arbitrator in the City of San Diego, California in accordance with the then current Commercial Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. Arbitrators shall be attorneys who have practiced law for at least fifteen years specializing in either general commercial litigation or general corporate or commercial matters. Each party to the arbitration shall be entitled to discovery as permitted by Section 1283.05 of the California Code of Civil Procedure, as such may be amended from time to time. This provision shall not preclude the pleading-in or joining of one of the parties hereto by the other in an action brought by a third party and all matters with respect thereto shall be decided by the court or body deciding that action.
- c) Notwithstanding subclause (b) above, should either party disclose, use or allow others to use proprietary or trade secret information in breach of the Order, the aggrieved party may take and pursue any and all actions and remedies, including injunctive relief and damages with respect thereto in any court of competent jurisdiction, and not by way of arbitration.
- d) The Order shall be governed by, take effect, and be construed according to the laws in force in the State of

California, U.S.A.

- e) For any matter or claim to be considered by a court hereunder the parties consent to the exclusive jurisdiction of the courts of the United States and the State of California and any subdivision thereof located within the City of San Diego, California (and the courts with jurisdiction over the location of Buyer's facility from which the Order was issued if outside of California). Any injunctions, orders or judgments entered, issued, granted or resulting from any arbitration hereunder or from any courts having jurisdiction hereunder shall be enforceable within the State of California and in any state or country wherein lie the offices and/or assets of Seller. The non-prevailing party shall indemnify the prevailing party for any costs, expense and attorneys' fees incurred by the prevailing party in enforcing the Order.
27. **Excusable Delay/Force Majeure.** Neither Buyer nor Seller shall be considered in default of the Order nor shall either party be charged with resulting damage for delays in performance to the extent such party's performance is prevented or delayed due to a Force Majeure. The term "Force Majeure" means an unforeseeable event or condition beyond the control and without the fault or negligence of the party whose performance is affected thereby. Examples of potential Force Majeure events include: acts of the public enemy, acts of the Government in its sovereign capacity, war, terrorist attack, fires, floods, pandemics, epidemics, quarantine restrictions, trade embargoes, and unusually severe weather events (such as tornadoes, hurricanes, etc.). Neither party shall be relieved of its obligation to perform to the extent its failure to perform is due to causes arising out of its own fault or negligence or due to removable or remediable causes which it fails to remedy or mitigate within a reasonable period. A party rendered unable to fulfill any of its obligations under the Order by reason of Force Majeure shall give prompt (but in any event no later than seven (7) days from the occurrence of the Force Majeure) written notice of such fact to the other Party, describing the nature of the event, the anticipated duration and impact on performance, and the steps being or to be taken to remedy the Force Majeure or otherwise mitigate the impact on performance. For so long as the Force Majeure condition is continuing, the obligations of the party affected by the Force Majeure shall be suspended to the extent performance of such obligations is prevented as a direct result of the Force Majeure. Such party shall exercise commercially reasonable efforts to remedy or mitigate the Force Majeure condition as soon as practicable and shall keep the other party advised as to the status of the Force Majeure condition and the efforts of such party to remedy or mitigate the impact of the Force Majeure on such party's performance. If a Force Majeure condition persists for an aggregate period of sixty (60) or more calendar days, then the party to whom performance is owed shall have the option, upon three (3) Business Days' prior written notice, to terminate the Order. A Force Majeure that only partially prevents performance by a party shall not relieve such party from performing its other obligations under the Order to the fullest extent such party is not prevented from performing such obligations as a result of the Force Majeure.
28. **Independent Contractor.** Nothing in the Order shall be deemed to constitute Seller or any of Seller's employees or agents to be the agent, representative or employee of Buyer or the Customer. Seller shall be an independent contractor and shall have responsibility for, and control over, the details and means for performing the work in compliance with the terms of the Order. Anything in this Order which may appear to give Buyer the right to direct Seller as to the details of the performance of the work or Services or to exercise a measure of control over Seller shall only mean that Seller shall follow the desires of Buyer in the results of the Services or Goods rendered.
29. **Advertising.** Seller shall not, without first obtaining the express written consent of Buyer, in any manner advertise or publish the fact that Seller has supplied or contracted to supply to Buyer the Goods or Services mentioned in the Order. The obligations under this clause shall survive the cancellation, termination or completion of this Order.
30. **Assignment and Subcontracting.** SELLER MAY NOT ASSIGN OR SUBCONTRACT THE ORDER, OR ANY PORTION THEREOF, WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER. The term "subcontract" as used in this clause means a contract for the purchase of an item or items to Seller's

specifications, designs, or drawings. The term does not include the purchase of standard commercial supplies or raw materials.

31. Right to Audit.

a) Should such be required by a Customer, or, should the Order or any portion thereof be anything other than a “firm fixed price” order, or, for purposes of confirming compliance with any of these PO Terms, Buyer may inspect, copy and shall have access to, at all reasonable times during the performance of the Order and for five (5) years thereafter, all of Seller's and its subcontractors, books, records, receipts, vouchers, correspondence, instructions and the like pertaining to the Order and Goods and Services provided, for the purpose of and as are reasonably necessary to audit and to verify that the charges presented and the Goods and Services supplied by Seller are in accordance with the Order and to verify, in general, compliance with these PO Terms or any other reasonable purpose.

b) To verify Price data, upon Buyer's request, Seller shall furnish to Buyer cost breakdowns, invoices, and related support material. Any inspection or audit shall be paid for by Buyer. If the inspection or audit shows that Seller has charged Buyer an amount in excess of the amount provided in the Order by three percent (3%) or more for any given period, then Seller shall pay to Buyer within fifteen (15) calendar days after receipt of the inspection or audit report, the amount equal to the overcharge, plus interest thereon at the rate of seven percent (7%) per annum from the original of Buyer's payment of the overcharges to the date of payment, and shall also pay the actual cost of such inspection or audit, including without limitation Buyer's reasonable attorneys' fees, reasonable accountant's fees and other reasonable costs.

c) If Buyer or, for purposes of this condition, Caterpillar Inc., has reason to believe that Seller is not in compliance with the Laws or any of the Clauses (15-18), Buyer reserves the right to audit, or to have Buyer's authorized representatives conduct audits, to ascertain the extent of Seller's non-compliance with the Laws referenced in these articles. Seller agrees to cooperate with Buyer's audit. Seller agrees that a violation of the Laws by Seller will constitute a material breach of its obligations under the Order and thus Buyer shall be entitled to terminate the agreement as established in the Order and these PO Terms.

32. Non-waiver by Buyer. The failure of Buyer to insist, in any one or more instances, upon strict performance of any of the terms of the Order, or to exercise any rights therein conferred, shall not be construed as a waiver or relinquishment to any extent of Buyer's right to assert or rely upon any such terms or rights on any future occasion.

33. Notice. Any claim by Seller that Buyer has breached, or is in default of, its obligations under these PO Terms, or any communication regarding Buyer's confidential information or Intellectual Property Rights shall be sent to:

Solar Turbines Incorporated
2200 Pacific Highway
San Diego, California 92101
Attention: Solar Turbines Buyer

With a copy delivered by certified mail, courier, or such method as shall permit the sender to verify delivery, to the address set forth below:

Solar Turbines Incorporated
2200 Pacific Highway
San Diego, California 92101
Attention: General Counsel

Notice shall be deemed effective when actually delivered to Buyer as demonstrated by courier records. Buyer

may change its address at its discretion by notifying Seller of such change.

34. **Survival and Construction.** The terms, provisions, representations and warranties contained in the Order shall survive the delivery and acceptance of the Goods, provision of the Services and any payment made under the Order and shall be binding upon the successors and assigns of each party. Headings and captions herein are merely for convenience and are not part of the Order and shall not in any way affect or modify the provisions of this Order.
35. **Entire Agreement and Modification.** The Purchase Order, including these PO Terms, and all documents referred to in the Order (but specifically excluding any different terms or conditions proposed by Seller or any attempt by Seller to vary in any respect any of the terms of the Order in Seller's acceptance or in its quotation or by attachment of Seller's terms and conditions, pursuant to Clause 2 above) shall be deemed accepted by Seller without said additional or different terms, shall constitute the entire agreement between Buyer and Seller and supersedes any and all prior agreements relating to the subject matter of the Order. Any change, addition or deviation to this Order shall be evidenced by a writing signed by Buyer. No other person has the authority to commit Buyer in any way or to authorize changes, additions or deviations to this Order.
36. **Attorney's Fees.** If a dispute arises regarding any Order, these PO Terms, the prevailing party shall be entitled to its reasonable attorney's fees and expenses incurred in addition to any other relief to which it is entitled.
37. **Severability.** If any provision of these PO Terms, or part thereof, is declared by a court of competent jurisdiction to be invalid, void or unenforceable, each and every other provision, or part thereof, shall nevertheless continue in full force and effect.
38. **Insurance Requirements.**
- (a) At all times during the entire term of this Order, Seller and its subcontractors, if any, shall carry at its own expense and with deductibles for its own account, with insurance companies acceptable to Buyer, the minimum insurance coverages set forth below.
 - (b) Buyer shall not insure nor be responsible for any loss or damage to property of any kind owned, leased, or rented by Seller (including any subcontractor) its employees, servants or agents.
 - (c) The limits set forth are minimum limits and shall not be construed to limit Seller's liability. All costs and deductible amounts shall be for the sole account of Seller or its subcontractors. All general liability, automobile liability, and umbrella/excess liability policies required by Buyer pursuant to this Order (or otherwise) shall name Buyer as an additional insured per ISO endorsement or equivalent acceptable to Buyer. Seller and all of Seller's insurance policies shall waive subrogation rights in favor of Buyer, except policies providing statutory Errors & Omissions/Professional Liability (if required) coverage. All Seller's required insurance shall be primary and non-contributory to any insurance or self-insurance maintained by or on behalf of Buyer or its subsidiaries and affiliates.
 - (d) Seller shall not commence work or provide supplies, Goods, or Services under this Order until all insurance as required hereunder has been obtained, and certificates of insurance have been submitted to and accepted by Buyer. Failure of Buyer to obtain a certificate of insurance or identify a deficiency from evidence provided by Seller will not be construed as a waiver of Seller's obligation to maintain such insurance and will in no way relieve or limit Seller's obligations and liabilities under this or any other provisions of this Agreement
 - (e) All policies shall contain provisions that provide at least thirty (30) days written notice of any cancellation, non-renewal, or reduction in coverage to Buyer. Seller shall deliver Certificates of Insurance in a form satisfactory to Buyer or copies of policies evidencing the existence of insurance required above.
 - (f) Any policy of insurance in respect to work to be performed under this Order and submitted by Seller must be acceptable to Buyer. Insurers must have a minimum rating of A VII (A7) as evaluated by the most current

A.M. Best Rating Guide. If the insurer has a rating of less than A VII, Seller must receive specific written approval from Buyer prior to proceeding.

- (g) Unless a higher coverage is specified in Buyer's covering Purchase Order, the required coverage shall be:
- (i) Workers' Compensation and Occupational Disease Insurance providing benefits as required by applicable law and Employer's Liability with a minimum limit of \$1,000,000 per occurrence for bodily injury; \$1,000,000 per employee for bodily injury by disease; and a \$1,000,000 policy limit for bodily injury by disease or limits set by applicable law, whichever is greater;
 - (ii) Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, contractual liability coverage of indemnities contained in this Agreement (if applicable) and Seller's contingent liability for subcontractors with a minimum limit of \$1,000,000 per occurrence for bodily injury or death and property damage;
 - (iii) Automobile Liability Insurance (Occurrence Coverage) for any auto, including all owned, non-owned and hired automotive equipment, and Seller's contingent liability for subcontractors with a minimum combined single limit of \$1,000,000 for each occurrence for bodily injury and property damage;
 - (iv) Umbrella/Excess Liability Insurance (Occurrence Coverage) where the limits of liability required herein may be satisfied utilizing a primary base policy or a combination of a primary base policy and an umbrella/excess liability policy, so long as the total amount of insurance is not less than the required limits.
 - (v) If the scope of work under this Order includes design or engineering or other professional Services, Buyer will have the option of requiring an Errors & Omissions/Professional Liability policy with appropriate coverage. Such insurance, where required by Buyer, shall be maintained in force at all times during the term of the Order or other agreement and for a consecutive period of two years thereafter for services completed during the term of the Order, or other agreement.
 - (vi) If designated on the face of the Order, Seller must provide a minimum limit of \$2,000,000 per occurrence for Commercial General Liability and Automobile Liability.
 - (vii) If designated on the face of the Order, Seller must provide Cyber Insurance with a minimum limit of \$1,000,000 per claim covering all acts, errors, omissions, and negligence, including infringement of intellectual property in the performance of services for Buyer. Seller's policy shall include coverage for unauthorized access and use, failure of security, breach of confidential information, privacy perils, breach mitigation costs, and regulatory coverage. Such insurance shall be maintained in force at all times during the term of the Order and for a consecutive period of two years thereafter for services completed during the term of the Order, or other agreement.

39. Drugs or Alcohol Prohibited. It is Buyer's policy that: (i) possession, use, purchase, sale, transfer or being under the influence of drugs or alcohol on Buyer's premises is prohibited; (ii) entry on Buyer's property constitutes consent to an inspection of the person and his or her personal effects while entering on or leaving Buyer's property; and (iii) any person who is found to be in violation of this policy or who refuses to permit an inspection may be escorted and barred from Buyer's property at Buyer's discretion. Seller warrants that it and its employees, agents and subcontractors will abide by the said policy at all times while on Buyer's premises.

40. Compliance with Buyer's Rules. Seller agrees that, while its personnel are on Buyer's premises, they will abide by all of Buyer's rules of conduct, safety standards and practices governing behavior of Buyer's employees. Seller acknowledges its responsibility to obtain and make known as required to its employees all such rules, standards, and practices.

END OF DOCUMENT