

**Standard Purchase Order Terms and Conditions for Indirect Purchase of Goods and Services**  
**Form No. 1001-0116 - ASEAN**

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

- a. “**Items**” means goods and/or services ordered by Buyer from Seller pursuant to a Purchase Order.
- b. “**Purchase Order**” means a transmission 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 (each a “Transmission”), containing a purchase order number, supplier code number, item number, identification or specification number, engineering change number or material code number and/or such other information evidencing an offer to Seller by Buyer relating to the purchase of Items.
- c. “**Purchase Order Release**” means a Transmission specifying quantities and shipping or delivery dates.
- d. “**Purchase Order Revision**” means a Transmission revising the information contained in a Purchase Order.
- e. “**Buyer**” means Solar Turbines International Company, or any of its subsidiary or affiliate companies that reference this Form No. 1001-1115 - ASEAN in its Purchase Order.
- f. “**Seller**” or “**Supplier**” means the entity indicated as Supplier on the Purchase Order.
- g. “**Specifications**” includes the specifications, drawings and data as described on any Purchase Order.

**2. Acceptance of Purchase Order.** Any Purchase Order referencing these Terms and Conditions is an offer to Seller by Buyer to enter into the purchase agreement described by such Purchase Order. These Terms and Conditions along with any other specifications or requirements transmitted to Seller by Buyer in connection therewith shall be the complete and exclusive statement of such agreement. Seller shall be deemed to have agreed to the Purchase 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 Purchase 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 upon the terms of the Purchase 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 Purchase Order is unqualified, unconditional and subject only to these Terms and Conditions and any of Buyer’s terms specifically set forth in 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 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 Purchase Order(s) referencing these Terms and Conditions.

**2A. Specifications.** Seller shall ensure that any Item ordered conforms to the requirements set forth in the Specifications. A Purchase Order Revision from Buyer to Seller shall evidence any changes to the Specifications. Should Seller be unable to accept a Purchase Order Revision as written, Seller will notify Buyer within ten (10) working days of its receipt of such Purchase Order Revision.

**3. Entire Agreement; Governing Law.** No agreement or understanding to modify or supplement any Purchase Order or these Terms and Conditions shall be binding upon Buyer unless set out in writing and signed by Buyer’s authorized agent, which writing must specifically acknowledge that these Terms and Conditions are superseded by such agreement or understanding. Any modifications proposed by Seller are not part of the agreement absent such written agreement. However, all specifications, drawings, and data submitted to Seller by Buyer in connection with any Purchase Order are a part of the agreement of the parties relating to that Purchase Order. These Terms and Conditions and any Purchase Order shall be governed by and construed under the laws of the Republic of Singapore, without regard to the conflict of laws provisions thereof. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law or equity.

**4. Quantities; No Quantity Guarantee.** Unless quantities and shipping schedules are specified, Buyer makes no representations or guarantees as to the quantity of Items it will purchase from Seller, and Purchase Orders are issued to cover the purchases of Items described thereon for an indefinite period or until canceled, with shipping schedules and quantities to be determined by Buyer and indicated to Seller via a Purchase Order Release.

**5. Termination.** Buyer may at any time terminate, cancel or suspend all or any part of undelivered Items or quantities on any outstanding Purchase Order, Purchase Order Revision or Purchase Order Release. Seller agrees that its sole remedy as a consequence of any such termination or cancellation is the reimbursement by Buyer of the reasonable costs of materials and labor actually and directly incurred by Seller on Items

terminated or canceled by Buyer prior to Seller's knowledge of such termination or cancellation. Seller further agrees to take all steps reasonably possible to mitigate such charges.

Seller may only terminate a Purchase Order after giving Buyer reasonable notice of such termination and an opportunity to identify and set up an alternate supplier.

## **6. Shipping Instructions.**

- a. **Freight.** Shipping will be as directed by Buyer on the Purchase Order, Purchase Order Release, or Purchase Order Revision or if not specified shall be DDP Buyer's receiving facility INCOTERMS 2010. If a carrier or method of shipment is used that is not specified in the Purchase Order, a Purchase Order Release, a Purchase Order Revision or in these Terms and Conditions without the advance written approval of Buyer, Seller shall be debited for any increase in the cost of the shipment.
- b. **Packaging; Classification; Labeling.** If Buyer has provided Seller with a copy of Buyer's Materials Standard Practice No. 20, Seller must label the outside of all packages utilizing bar code labels in Buyer's AIAG format as described therein. Seller shall ensure that all Items are properly described, classified, packaged, marked and labeled and are in proper condition for transportation according to applicable laws and regulations.
- c. **Packing Slips.** Seller shall include the packing slip in a waterproof envelope secured to a package on all shipments. The packing slip must show the Purchase Order No., Supplier Code No., Item No., Quantity, Identification or Specification No. and Engineering Change No. or Material Code exactly as shown on the Purchase Order.
- d. **Shipping Notices.** Seller shall send Buyer appropriate separate notice of shipment, including the same information that is contained on the packing slip plus all information relating to shipment date and handling.
- e. **Bills of Lading.** Seller shall include the Purchase Order No. and the Supplier Code on all bills of lading.
- f. **Early Shipments; Overshipments.** On shipments made earlier than the period specified on the Purchase 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.
- g. **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)-(f), Seller must comply with the following requirements for shipment of Hazardous Materials:
  - (1) The shipping term, risk of loss and title transfer shall be DDP Buyer's receiving facility INCOTERMS 2010.
  - (2) Seller shall ensure that all personnel 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 ("MSDS") 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 Purchase Order. Buyer is not to be shown as the "shipper" on any such documents.
  - (3) Seller may use Buyer-designated carriers for the shipment of Hazardous Materials provided that all the conditions in this Section are met. Seller must use "Buyer Straight Bill of Lading for Hazardous Material Shipments" for all shipments to non-Caterpillar facilities. The following fields must be completed on the bill of lading form: Fac., Dk. and Acct. Distribution. Questions regarding this information should be directed to the Buyer's purchasing representative. Upon shipment, Seller shall fax a copy of the completed bill of lading form to the numbers designated by Buyer.
  - (4) Hazard Communication. For all Items, Seller shall provide Buyer with the appropriate hazard classifications and warning messages that should appear on product labels as required by applicable Environmental Requirements, and other laws and regulations of the jurisdictions in which such Items will be 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 Purchase Order) MSDSs 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. When applicable, Seller shall format such MSDSs and labels to identify the Item as a Caterpillar-branded product. "Environmental Requirements" means all relevant and applicable 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.
  - (5) Seller warrants and represents that it shall observe and comply with all applicable statutory and regulatory requirements with respect to: (i) storage and security containerization and labeling/ hazard classifications and warning messages, handling, loading, transportation, escorting and unloading; (ii) emergency treatment in case of accidents and the availability of trained emergency treatment personnel and emergency equipment; (iii) records and reporting; (iv) approvals, permits, safety examinations, and

business qualifications; (v) safety of personnel and use of equipment; and (vi) safety and environmental conditions at Seller's facility including safety evaluation and maintenance.

**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 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. 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.

**8. Limitation on Liability.** In no event shall Buyer be liable to Seller for incidental or consequential damages, or damages for lost profits, including but not limited to compensation, reimbursement or damages on account of lost profits on sales or anticipated sales by Seller, or on account of investments or commitments made in connection with a Purchase Order, or in connection with the establishment, development or maintenance of the business or goodwill of Seller.

**9. 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, sale, or distribution of Items pursuant to Purchase Order(s). Seller is solely responsible for the compliance of the Items with applicable Product Regulations. Seller agrees to provide to Buyer all information and documentation, including but not limited to supply chain data, necessary for Buyer to comply with all Product Regulations applicable to Buyer.

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 (5) years and be subject to audit by Buyer upon reasonable notice. Seller shall include the substance of this Section 9 in all subcontracts awarded by Seller for work under this Purchase Order.

**10. Inspection.** Items are subject to Buyer's inspection, testing and approval. Buyer, at its option, may reject or refuse acceptance of Items that do not meet the requirements of the Purchase Order or any applicable warranty. Items rejected or not accepted by Buyer shall be returned to Seller at Seller's expense, 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.

**11. Work in Process; Quality Program; 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 shall maintain sufficient production capacity to ensure that Buyer's firm orders for Items are promptly and regularly filled.

**12. 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 Purchase Order, and that prices comply with applicable government laws and regulations in effect at time of quotation, sale and delivery. Seller agrees that any price reduction regarding any Items that is implemented prior to shipment or rendering of such Items shall be applied to the Purchase 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 non-conforming or poor quality Items by Seller, its subcontractors or its agents.

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

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

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 Items 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 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 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. 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.

**13. Resale Certification.** If a Purchase Order is marked "Resale," Buyer certifies that Items purchased thereunder are purchased for purpose of resale.

**14. 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 a Purchase 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 or Seller's agents. 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 a Purchase 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, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**15. Confidential Information; Proprietary Rights.** Seller shall take all necessary steps to protect Buyer Confidential Information (as defined below) with at least the same degree of care that Seller uses to protect its own confidential and proprietary information of like kind, but in no event less than reasonable care. "Buyer Confidential Information" means all information relating to Buyer's products or operations that is disclosed to Seller or created during the performance of any Purchase Order. Buyer Confidential Information includes all business or technical information that is disclosed to Seller, directly or indirectly, in writing, orally or visually, but does not include information that: (a) was already in Seller's possession before its receipt from Buyer without restriction on its use or disclosure, (b) is or becomes available to the general public through no act or fault of Seller, or (c) is rightfully disclosed to Seller by a third party without restriction on its use or disclosure. Except as otherwise expressly agreed to in writing by Buyer, Seller shall not: (i) use any Buyer Confidential Information except to conduct business with or on behalf of Buyer, or (ii) disclose to any third party any Buyer Confidential Information except to conduct business with or on behalf of Buyer, in which event Seller shall: (A) first ensure that such third party has signed a written confidentiality agreement having terms at least as restrictive as the terms of this Section 15; and (B) obtain written consent from Buyer for such disclosure. At any time upon Buyer's request, Seller shall promptly return or destroy any media containing any Buyer Confidential Information.

Except for Seller's Financial Statements (as defined in this paragraph), Seller shall not disclose any confidential or proprietary information to Buyer unless Buyer first agrees in writing to the receipt of such confidential or proprietary information. Seller's "Financial Statements" mean independently audited financial statements (income statement, balance sheet, and cash flow statement) for the previous two (2) fiscal years and interim financial statements through the current fiscal year-to-date period. Upon Buyer's request, Seller will promptly provide its and/or its ultimate parent company's Financial Statements to Buyer, as required by Buyer. Buyer shall hold and safeguard such Financial Statements by using the same degree of care it uses to protect its own Financial Statements, provided, however, that Buyer may disclose Seller's Financial Statements to a third party contracted to assist Buyer with analyzing Seller's Financial Statements provided such third party is obligated to maintain the confidentiality of Seller's Financial Statements to the same extent as Buyer is so required under this Section 15. Seller acknowledges that, except as otherwise expressly agreed to in writing by Buyer, all technical information previously or hereafter disclosed by Seller to Buyer in connection with any Purchase Order has been disclosed on a non-confidential basis.

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

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

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

Seller grants to Buyer and its affiliates the right to repair and reconstruct any Item (including, for example, the right to rebuild the Item and the right to remanufacture any Item by disassembling its constituent components and reassembling old and new components into a remanufactured Item) and the right to have the same done by others on behalf of Buyer and its affiliates.

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

In each subcontract of Seller's work performed pursuant to a Purchase Order, Seller shall obtain for Buyer all of the rights and licenses granted to Buyer under this Section 15.

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

Seller shall have no right to apply and further shall not apply to Items any trademark, logo, or trade dress owned by Buyer, including without limitation **CAT, CATERPILLAR, CAT & design** and **CATERPILLAR & design**, or any trademark, logo, or trade dress owned by any of Caterpillar's affiliates or subsidiaries (hereinafter "Buyer's Trademarks"). Notwithstanding the foregoing, if Buyer desires for any of Buyer's Trademarks to be applied to an Item, the drawing or print that accompanies the Purchase Order shall so state or shall specifically call out the 1E0198 specification. Alternatively, Seller may be separately authorized to apply any of Buyer's Trademarks to an Item if such authorization is specifically set forth on the Purchase Order or otherwise authorized by Buyer in writing. Seller agrees and acknowledges that it shall obtain all design artwork for Buyer's Trademarks from Buyer, that it will not recreate any design aspects of Buyer's Trademarks, and that it will correctly apply Buyer's Trademarks to an Item according to the 1E0198 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. Seller shall not apply any trademarks, logos, or trade dress of Seller or any third party 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 to any other goods sold by Seller any of any number, letter, symbol, or combination thereof that is affixed to or embedded in any Item to a part or drawing number associated with the Item (hereinafter "Buyer's Part Numbers"). 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 state the same. 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. To the extent Seller lawfully offers goods to others similar to Items, Seller will not state or otherwise indicate that such goods of Seller are equivalent to Items unless provable without reference or reliance on Seller's sale of Items to Buyer or any Buyer Confidential Information.

**16. Indemnification.** 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, 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 injury to, or death of, any person whatsoever or injury or damage to property of any kind by whomsoever owned, the environment, or any other damages, arising out of or related to, directly or indirectly, the following:

- a. the performance or non-performance by Seller, Seller's subcontractors or Seller's agents of any work which is the subject of the Purchase Order;

- b. 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;
- c. Seller's non-compliance with Seller's obligations listed in Section 17(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;
- d. any claim of defect in the design, materials, manufacture or sale of the Items;
- e. any recall caused by Items provided by Seller or its agents;
- f. Seller's breach of any representation, warranty or covenant in these Terms and Conditions or in any Purchase Order;
- g. Seller's non-compliance with Environmental Requirements or Product Regulations; or
- h. the EU Product Liability Directive 1999/34/EC of the European Parliament and of the Council of May 10, 1999.

### **17. Safety and Insurance.**

- a. If Seller or its subcontractors or agents 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:
  - (1) Comply with, and ensure all of its subcontractors and agents comply with, all requirements of Buyer's third party pre-qualification process, including ongoing requirements, e.g., maintaining a satisfactory grade as defined in that program.
  - (2) Comply with, and ensure all of its employees and its subcontractors, agents and their respective employees comply with, all Health and Safety Requirements (as herein defined). "Health and Safety Requirements" means all applicable 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 occupational safety and health regulations.
  - (3) Control the manner and methods of its operations to ensure the safety of its employees, its subcontractors, agents, delegates, invitees and their respective employees.
  - (4) Designate to Buyer an employee or representative to ensure ongoing compliance with Buyer's expectations under this section.
  - (5) Ensure that its employees and its subcontractors, agents and their respective employees are adequately trained in all Health and Safety Requirements (as defined in item (2) above) applicable to the work being performed for Buyer, prior to commencement of that work.
  - (6) Ensure that its employees and its subcontractors, agents 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.
  - (7) Arrange for and require its employees and its subcontractors, agents and their respective employees to submit to pre-hire and post-accident drug and alcohol testing to the fullest extent allowable by applicable law.
  - (8) Cooperate with and ensure that its employees and its subcontractors, agents and their respective employees who are involved cooperate with Buyer in all injury or incident or accident investigations and in responding to requests from occupational health and safety authorities or any other governmental authorities or agencies; complete post-accident investigations and take all steps necessary to improve workplace safety before work resumes.
  - (9) Ensure that all Buyer facility-specific safety rules are strictly followed by its employees and its subcontractors, agents 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 vehicle 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 (1) through (9), listed immediately above, can result in Buyer requiring Seller to remove one or more workers or Buyer terminating the Purchase Order or Purchase Order Release, 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) 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. Prior to the start of work on the premises, Seller shall submit copies of Certificates of Insurance, acceptable to Buyer or to the person so designated by Buyer.

Category I suppliers:

- i. Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law with a minimum limit of US\$1,000,000 per occurrence or limits set by applicable law, whichever is greater;
- ii. Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, contractual liability coverage for indemnities contained in any Purchase Order or these Terms and Conditions and Seller's contingent liability for subcontractors and agents with a minimum combined single limit of liability of US\$1,000,000 per occurrence for bodily injury or death and property damage;
- iii. Commercial Automobile Liability Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of US\$1,000,000 for each occurrence for bodily injury and property damage; and
- iv. If the Items include design and/or engineering or other professional services, Seller shall maintain Errors or Omissions Liability and Professional Liability Insurance with a minimum limit of US\$1,000,000 each occurrence, and any other specialty policies with appropriate coverage limits as requested by Buyer.

Category II suppliers:

- i. Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law with a minimum limit of US\$3,000,000 per occurrence or limits set by applicable law, whichever is greater. Alternatively, Seller may have a minimum limit of US\$1,000,000 per occurrence, with umbrella/excess coverage of at least US\$2,000,000 per occurrence;
- ii. Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, contractual liability coverage for indemnities contained in any Purchase Order or these Terms and Conditions and Seller's contingent liability for subcontractors and agents with a minimum combined single limit of liability of US\$3,000,000 per occurrence for bodily injury or death and property damage. Alternatively, Seller may have a minimum limit of US\$1,000,000 per occurrence, with umbrella/excess coverage of at least US\$2,000,000 per occurrence;
- iii. Commercial Automobile Liability Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of US\$1,000,000 for each occurrence for bodily injury and property damage; and
- iv. If the Items include design and/or engineering or other professional services, Seller shall maintain Errors or Omissions Liability and Professional Liability Insurance with a minimum limit of US\$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 US\$5,000,000 per occurrence and US\$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 (vi), 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 Purchase Order(s).

- vi. If the Items include services that involve or contemplate Seller's interstate transportation of Hazardous Materials, the Commercial Automobile Liability Insurance coverage shall have a minimum per-occurrence liability limit of US\$5,000,000. The following insurance requirements shall also apply to any Commercial Automobile Liability Insurance required under this subsection: The Commercial Automobile Liability 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 Commercial Automobile Liability 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.
- vii. Category II Suppliers are defined as those who:
  - a. have heavy construction jobs, are involved with machinery or equipment installations, use "cherry pickers", boom cranes, other mobile/material handling equipment, ladders or scaffolds;
  - b. provide or perform any structural work (cement, steel, etc.), electrical work, welding, life safety work (fire alarms, sprinklers, etc.), or roofing work;
  - c. provide, transport or work with any combustibles, flammable materials or Hazardous Materials;
  - d. haul scrap, trash, or waste when vehicles must go to other than receiving docks;
  - e. program directly into Buyer's computer systems; or
  - f. provide health care services.
- c. Any policy of insurance covering Items, which include services to be performed under any Purchase Order or these Terms and Conditions, must be submitted by Seller and must be acceptable to Buyer.
- 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 a Purchase 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. All the above-described policies, together with all other insurance policies now owned or purchased in the future shall contain provisions wherein the insurance companies shall have no right of recovery or subrogation against Buyer or Buyer's affiliates, or their respective directors, officers, employees and agents.
- h. It is Seller's responsibility to determine the adequacy of any subcontractors' or agents' insurance and indemnification obligations.

**18. Compliance with Laws.** Seller covenants, represents and warrants that neither it nor any of its directors, officers, employees, or representatives have engaged or will engage in Bribery in connection with its performance under these Terms and Conditions or any other agreement with Buyer, its affiliates, or their respective directors, officers, employees, representatives, agents, successors, and assigns (collectively referred to in this Section as "Buyer"). 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 Buyer in obtaining, retaining or conducting business.

Seller covenants, represents and warrants that it has read, understands, is, has complied, and will continue to comply, and agrees that Seller and the Items will comply with the provisions of these Terms and Conditions and all applicable laws, rules, regulations, directives, ordinances, orders, or statutes (collectively, the "Laws") from which liability may accrue to Buyer for any violation thereof, and including but not limited to, compliance with all applicable wood packing regulations of the country of destination, Environmental Requirements, Product Regulations, the relevant labor laws, and government procurement Laws, all as amended. Seller agrees that it is responsible for obtaining and maintaining any required, applicable export and import licenses and authorizations for Purchase Order shipment(s) of the Items, unless otherwise mutually agreed to in writing.

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

Seller agrees that a violation of this Section shall constitute a material breach of these Terms and Conditions and that Buyer may, in its discretion, either suspend the Purchase Order or terminate it. Seller agrees to indemnify, defend, and hold harmless Buyer against all demands, liabilities,



finances, 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.

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 any local authorities or government; and (2) Seller has filed all compliance reports required by the applicable laws and regulations. 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 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 Purchase Order.

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 Terms and Conditions or any other agreement with Buyer, Seller shall provide to Buyer 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.

**19. Reserved.**

**20. International Trade Reporting and Documentation.** 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(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, and Hazard Communication information (see Section 6(g)(4) of these Terms and Conditions). 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.

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.

**21. Reserved.**

**22. Assignment.** Any Purchase 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, representatives, attorneys, agents, successors and permitted assigns.

**23. 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 affiliates (or its assignee or financing institution) for amounts due or to become due from Buyer against any claims that Buyer or any Buyer affiliate has or may have arising out of this or any other transaction between Buyer or Buyer's affiliates and Seller or Seller's affiliates.

**24. Change in Ownership and Control.** During the term of the applicable Purchase Order(s), if there is a change in the ownership or control of Seller, Buyer shall have the option of terminating the Purchase 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 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.

**25. Severability; No Waiver.** Invalidation of any of the provisions contained in these Terms and Conditions, or the application of such invalidation thereof to any person, by legislation, judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes hereof.

No failure of either party to enforce at any time any of the provisions of any Purchase Order or these Terms and Conditions, or any rights or remedies with respect thereto, or to exercise any election herein provided, shall constitute a waiver of any such provision, right, remedy or election or in any way affect the validity thereof or of these Terms and Conditions. The exercise by either party of any of its rights, remedies or elections under a Purchase Order or these Terms and Conditions shall not preclude or prejudice such party's right to exercise at any other time the same or any other right, remedy or election it may have. 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.

**26. Headings.** The headings to sections of these Terms and Conditions are solely for convenience of reference, and shall not govern, limit or aid in the interpretation of any terms or provisions hereof or of any Purchase Order.

**27. 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.