



## Archangel Standard Purchase Order Fixed Price Terms and Conditions

### **CLAUSE 1 – DEFINITIONS:**

The following definitions apply unless otherwise specifically stated:

|               |  |
|---------------|--|
| “Article(s)”: | Good(s), and service(s) described in this Order;   |
| “Buyer”:      | The legal entity issuing this Order, Archangel Systems, Inc.(ASI), Auburn AL;  |
| “Materials”:  | Supplies, materials, samples, tooling, dies, jigs, fixtures, plans, designs, specifications, software, drawings, technical information, and contract rights; |
| “Order”:      | Purchase Order, Change Order, Subcontract or Contract for the Articles;  |
| “Seller”:     | Person or Company providing the Articles.  |

### **CLAUSE 2 – ORDERS / CHANGE ORDERS:**

These Terms and Conditions shall be part of each Order issued to the Seller by the Buyer. Each Order shall contain a description of the Articles and identify the manufacturer’s part number, specifications, drawings, quantities, prices, delivery schedule, terms, and place of delivery, including where appropriate:

- (A) Requirements for approval of product, procedures, special processes and equipment
- (B) Requirements for qualification of personnel.
- (C) Quality Management System Requirements.

### **CLAUSE 3 – AGREEMENT / ACCEPTANCE/MODIFICATIONS:**

An Order is Buyer’s offer to Seller and acceptance is expressly limited to its terms without additions, deletions, or other modifications. Seller’s commencement of performance, delivery of any Articles or acknowledgment of this Order shall conclusively evidence such acceptance. NO CHANGE OR MODIFICATION TO THIS ORDER (INCLUDING ANY ADDITIONAL OR DIFFERENT TERMS IN SELLER’S ACCEPTANCE AND/OR MATERIALCHANGE) SHALL BE BINDING ON BUYER UNLESS SIGNED (OR AUTHENTICATED IF THIS IS AN ELECTRONIC ORDER) BY BUYER’S AUTHORIZED REPRESENTATIVE IN ADVANCE.

### **CLAUSE 4 – CHANGES:**

- (A) Buyer may by written notice make changes within the general scope of this Order in any one or more of the following:
  - (i) Drawing, designs or specifications;
  - (ii) Method of shipment or packaging;
  - (iii) Place of inspection, delivery or acceptance;
  - (iv) Amount of Buyer-furnished Materials;
  - (v) Quantity.
- (B) Seller shall proceed immediately to perform this Order as changed. If any such change causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work in this Order, except as otherwise provided for in paragraph (C) below, Buyer and Seller will agree upon an equitable adjustment in the purchase price or delivery schedule or both. To qualify for adjustment consideration, any notice of intent by Seller to file a claim under this clause must be asserted within twenty one (21) calendar days from the date of receipt by Seller of such written notice of change. Seller shall proceed with the change pending resolution of any claim for adjustment. Buyer may act upon any such claim at any time prior to final payment under this Order.

### **CLAUSE 5 - TERMINATION FOR CONVENIENCE:**

- (A) Notwithstanding any other provisions of this Order, the Buyer may by written or electronic notice, terminate for its convenience the whole or any part of this Order. Upon receipt of such notice, the Seller shall immediately cease work, including but not limited to the manufacture and procurement of materials for the fulfillment of the terminated portion of this Order.
- (B) In the event of termination Buyer and Seller will agree upon

an adjustment of the Order price, provided that:

- (i) Such adjustment shall not exceed the Order total price;
  - (ii) Except as otherwise provided herein, no amount will be allowed for profit on the terminated portion of this Order, regardless of whether the work on the terminated portion has been performed;
  - (iii) Except as otherwise provided herein, in the event of a partial termination no adjustment will be made on the price of the remaining portion of this Order, i.e., that portion which has not been terminated;
  - (iv) The Buyer shall pay the Order price for completed Articles delivered and accepted pursuant to paragraph (C) below;
  - (v) The Seller and Buyer shall agree on the amount of payment for Materials delivered and accepted pursuant to paragraph (C) below;
  - (vi) Seller’s written intent to file a claim for adjustment is received within twenty-one (21) calendar days from the effective date of termination;
  - (vii) Seller’s final claim is received within ninety (90) calendar days from the date that intent to claim is filed. Seller shall have no other remedies after this period; and(viii) Seller shall continue the work not terminated. Failure to agree will be a dispute under the Disputes clause.
- (C) If this Order is terminated pursuant to paragraph (A) above, the Buyer may require the Seller to transfer the title and deliver as directed by the Buyer, any
- (i) Completed Articles, and
  - (ii) Materials that the Seller and its subcontractors have specifically produced or acquired for the portion of this Order under notice of Termination for Convenience. Upon direction of the Buyer, the Seller shall also protect and preserve property in its possession in which Buyer has an interest.

### **CLAUSE 6 - TERMINATION FOR DEFAULT:**

- (A) If the Seller is in default in carrying out any of its obligations under this Order, the Buyer shall, prior to termination of the whole or part of this Order, give the Seller notice of such default. The Seller shall have ten (10) calendar days (or more if authorized in writing from the Buyer) from the date of receipt of such notice in which to cure the default or to satisfy the Buyer that such default shall be cured within a period of time acceptable to the Buyer. Upon failure to cure the default, Buyer may give the Seller written notice of Termination for Default.
- (B) Where the Seller becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Seller, or an order is made or a resolution passed for the winding up of the Seller, the Buyer may, upon giving written notice to the Seller, immediately terminate for default the whole or any part of this Order.
- (C) Upon the giving of a notice provided for in paragraph (A) or (B), the Seller shall have no claim for further payment other than as provided in this Clause, but shall be liable to the Buyer for all direct losses and direct damages which may be suffered by the Buyer by reason of the default, including any increase in the costs incurred by the Buyer in procuring the Articles from another source. Nothing in this Clause affects any obligation of the Buyer under the law to mitigate damages and Seller shall proceed with the portion of this Order not terminated under the provisions of this clause.
- (D) If this Order is terminated for default, the Buyer may require the Seller to transfer the title and deliver, as directed by the Buyer any
  - i. Completed Articles, and
  - ii. Materials that the Seller and its subcontractors have specifically produced or acquired for the portion of this Order under notice of termination for Default. Upon direction of the



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Buyer, the Seller shall also protect and preserve property in its possession in which the Buyer has an interest.

- (E) Upon receipt of a notice provided for in paragraph (A) or (B), the Seller shall have no claim for further payment other than as provided in this clause. The Buyer shall pay the Order price for completed Articles delivered and accepted. The Seller and Buyer shall agree on the amount of payment for Materials delivered and accepted. Failure to agree will be a dispute under the Disputes clause. The Buyer may withhold from these amounts any sum the Buyer determines to be necessary to protect the Buyer against loss because of outstanding liens or claims of former lien holders and Buyer's estimate of excess re-procurement costs due Buyer.
- (F) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, as defined in the Excusable Delay clause, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Buyer and the provisions of the Termination for Convenience clause, will apply.
- (G) The rights and remedies of the Buyer in this clause or in any other clause of this Order are in addition to any other rights and remedies provided to Buyer by the law or under these Terms and Conditions.

### **CLAUSE 7 - EXCUSABLE DELAY:**

- (A) To claim an Excusable Delay, the Seller shall, by written or electronic notice to the Buyer, advise of the occurrence of an event that has resulted or is likely to result in an Excusable Delay and provide the Buyer with an acceptable "work-around" plan within ten (10) calendar days of such facts coming to the attention of Seller. The Buyer shall accept or reject such "work-around" plan in writing or electronically and, if accepted, the Seller shall promptly implement such "workaround" plan at Seller's expense.
- (B) In the event of an Excusable Delay, any affected delivery date shall be postponed for such period as is reasonably necessary to offset the effects of the Excusable Delay. In no event shall the delivery date be extended by a time period longer than the time period in which the Excusable Delay was in effect. No adjustment will be made to this Order price; adjustment to the delivery schedule is the exclusive remedy of the Seller in the case of an Excusable Delay.

### **CLAUSE 8 – BUYER FURNISHED MATERIALS:**

The term "Buyer Furnished Material" includes, when applicable, software, tools and / or Buyer's Customer's property furnished to or acquired by the Seller under this Order.

- (A) Except as otherwise provided herein, Seller shall not use, reproduce, or disclose for the benefit of any party other than Buyer, any Materials furnished by Buyer. Seller shall not use the Materials to produce or manufacture Articles, other than those required by this Order, without prior written authorization from Buyer.
- (B) Title to Materials furnished by Buyer shall be and remain with Buyer as applicable, at all times. Seller shall bear the risk of loss, damage or destruction of the Materials furnished by Buyer and shall promptly replace or repair, without expense to Buyer, any of the Materials which are lost, damaged, or destroyed unless such loss, damage or destruction is solely and directly caused by Buyer's negligence.
- (C) Seller shall be responsible for care, maintenance, use and records of Buyer Furnished Materials. Physical Inventories will be performed as required by Buyer.
- (D) All Buyer furnished Materials, together with spoiled and surplus materials and Articles shall be returned to Buyer upon termination or completion of this Order unless Buyer shall direct otherwise in writing. When Buyer approves Materials to be furnished to Seller's subcontractors for procurement of Articles by Seller for use in the performance of Buyer's Order, Seller shall insert the substance of this clause in its subcontracts.
- (E) Seller acknowledges that Buyer's Materials are unique and

proprietary and that monetary damages will be inadequate to compensate Buyer for Seller's breach of this provision. The parties agree that, in addition to any other remedies available to Buyer under this Order, or at law or in equity, Buyer will be entitled to seek injunctive relief to enforce the terms of this clause.

### **CLAUSE 9 - QUALITY CONTROL / INSPECTION:**

- (A) Seller shall provide and maintain a Quality Control System in accordance with the requirements of ISO 9001, AS 9100 or a Quality Control System approved by the Buyer. Sellers not meeting the Quality Control System requirements will be subject to special Buyer quality requirements. Seller's system shall also be in compliance with the requirements of the Seller's civil airworthiness authority (Transport Canada, the Federal Aviation Administration (FAA), or Foreign Air Worthiness Authority) and, as applicable, the Buyer's Quality Purchasing Requirements. Seller agrees to permit Buyer and/or Customer / Regulatory Authorities to review its procedures, practices, standard and/or special processes and related documents to determine such accessibility. Should the Buyer and/or its customer need to perform verification activities at the Sellers premise, the intended verification arrangements and methods of product release will be stated in the Order. This system accessibility requirement shall remain applicable to Seller in addition to any special quality assurance provisions, which may be incorporated elsewhere in this Order. Seller shall provide, at no charge to Buyer, appropriate facilities and assistance to allow the Buyer or their customer /regulatory authority, to perform quality control / inspection activities hereunder.
- (B) All Articles are subject to Buyer's design, design approval, test, test specimens, examination, inspection requirements and acceptance criteria where appropriate as established by Buyer at destination, notwithstanding any payment or prior inspection at source. The final inspection will be made within a reasonable time, not to exceed ninety (90) calendar days after receipt of the Articles. Buyer shall notify Seller if any Articles delivered hereunder are rejected, and such Articles may be returned to Seller at Seller's risk and expense at Buyer's discretion. Inspection, tests and acceptance by Buyer do not relieve the Seller of responsibility for defects or other failures to meet this Order's requirements. Acceptance shall not be final with respect to latent defects, fraud, or gross mistakes amounting to fraud.
- (C) The Seller shall have an effective program for investigation, corrective action, and follow-up for rejections initiated by the Seller or Buyer. When the Buyer discovers discrepancies for which the Seller is responsible, the Buyer may forward a request for corrective action to the Seller for action and response. The Seller's response shall be returned to the Buyer within thirty (30) calendar days and shall include the causes of the discrepancy(s), the positive corrective action(s) taken to prevent recurrence, and the corrective action effective point by unit serial number or date. The Seller shall notify BUYER of nonconforming processes, products, or services and obtain approval for their disposition. Seller product or services discovered after shipment by the Seller to be nonconforming to any engineering drawing and/or Purchase Order requirement shall be immediately disclosed to BUYER upon discovery, including but not limited to quantity shipped, date shipped, and the extent of the nonconformance. Sellers that receive notification of Nonconforming product shall take appropriate action to contain the nonconforming condition and prevent it from occurring again. The Seller will be notified if formal Corrective Action is required to be submitted to BUYER. Errors with paperwork shall be resolved within 24 hours.
- (D) The Seller shall plan, implement, and control processes appropriate to the organization and the product, for the prevention of counterfeit or suspect counterfeit part use and their inclusion in product(s) delivered to the Buyer.
- (E) The Seller shall ensure that company employees are aware of 1)



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their contribution to product or service conformity, 2) their contribution to product safety, and 3) the importance of ethical behavior.

- (F) The Seller shall ensure that employees and people working on its behalf are competent and trained in accordance with the requirements of AS9100D, where applicable
- (G) The Seller shall use a sampling plan for product acceptance consistent with typical industry standards, unless otherwise specified or agreed upon in writing by the Buyer.
- (H) When required by Buyer or by Buyer's customers, Seller will use customer-specified sources.
- (I) Seller will notify BUYER of any change in certification status (suspension, expiration or non-continual), ownership, management, or location and are subject to re-survey and approval. Seller will notify BUYER of any product or process changes or changes in approval status that affect BUYER's product and are subject to re-survey and approval.
- (J) Unless otherwise specified on the Purchase Order, the latest specification revision in effect at the time the lot of material/parts was originally manufactured or processed shall apply. In the event a document has been superseded, the latest revision of the superseding document shall apply. All certifications, test reports, and inspection reports, as well as receiving inspection, in process inspection, final inspection, and calibration records shall be retained for a minimum of two years, unless otherwise specified by BUYER. These records will be made available to BUYER, BUYER's customers, or regulatory agency upon request.
- (K) All purchasing requirements shall be flowed down to sub-tier suppliers or subcontractors.

### **CLAUSE 10 – WARRANTY:**

- (A) Seller warrants that all Articles delivered under this Order will be free from defects in design; material & workmanship will conform to applicable descriptions, specifications & drawings and are suitable for the purpose intended. THIS WARRANTY SHALL BE IN ADDITION TO ALL WARRANTIES ARISING AS A MATTER OF LAW.
- (B) Defective Articles will be returned to Seller at Seller's expense for repair or replacement, at Buyer's option. The repaired or replacement Articles will be returned by Seller, F.O.B. Seller's plant, to Buyer within twenty-one (21) calendar days from receipt of the defective Article by Seller. For valid warranty claims, Buyer shall debit Seller's account for actual freight charges incurred both from and to the Buyer. If Buyer finds it impractical to return defective Articles, Buyer may perform necessary repair at its own facility and charge the reasonable cost thereof to Seller.

### **CLAUSE 11 - INTELLECTUAL PROPERTY RIGHTS & INDEMNITY:**

- (A) Except for orders issued under a U.S. Government contract, any copyright, trademark, trade secret, software, data, idea, concept, process, formula, invention, system, report or other intellectual property resulting from any Seller work performed for this Order, shall be the sole property of Buyer. Seller agrees to assign and hereby assigns to Buyer any interest Seller may have in such intellectual property right or invention(s) conceived by Seller and/or reduced to practice by Seller using non-U.S. Government direct contract funds provided by Buyer.
- (B) With respect to Articles delivered under this Order, Seller shall save Buyer, its agents, customers, and users of its products harmless from all loss, damage and liability incurred on account of any infringement or alleged infringement of a Patent, copyright, or trademark or misappropriation of a trade secret or other violation of an intellectual property right of a third party, arising out of the manufacture, sale, or use of such Articles by Seller, Buyer, Buyer's agents, customers, or users of its products. Seller shall at its own expense defend all claims, suits and actions against Buyer, its agents, customers, or users of its products in which such infringement or other violation of an intellectual property right of any third party is alleged, provided Seller is notified of such

claims, suits and actions. This indemnification does not apply to articles manufactured to detailed designs developed and furnished by Buyer.

### **CLAUSE 12 - PRICES, PAYMENT AND DISCOUNT:**

Payment by Buyer will be made net thirty (30) days (or as agreed to between Buyer and Seller) from the later of the following:

- (A) The date of acceptance of the Articles or
- (B) From Buyer's receipt of an acceptable invoice. Any payment discounts will be calculated from the same date. Discount terms shall be clearly stated on the face of each invoice.

### **CLAUSE 13 - INVOICING, PACKING AND SHIPPING:**

- (A) Separate invoices indicating Order number, line item number(s), quantity, unit price and extended value are required for each Order. On date of shipment(s) Seller shall mail one copy of each invoice to:

ARCHANGEL SYSTEMS, INC.  
ATTN: ACCOUNTS PAYABLE  
1635 PUMPHREY AVE  
AUBURN AL 36832

- (B) Seller shall comply with the routing instructions shown on this Order. Premium transportation will be paid by Buyer only when specifically authorized. If delays caused by the Seller result in the need for premium transportation, the additional costs for the premium transportation is the sole responsibility of the Seller. Seller shall not prepay, insure, or declare value of any shipment made F.O.B. shipping point.
- (C) Separate packing lists are required for each Order and must accompany each shipment. The complete Order number must appear on all documents.
- (D) Single Article containers will be identified with Order, part number, and quantity. When multiple Orders or Articles are combined in one container, they must be separately packaged inside that container and the packages identified as to Order, part number and quantity.
- (E) All Articles must be suitably packaged and prepared for shipment to withstand normal transportation and stocking functions. Containers must be in compliance with best commercial practices.
- (F) Test reports, x-rays, certificates, and other supporting documents must accompany each shipment when required by this Order.
- (G) Articles will be marked in such a manner as to be readily identifiable with the part number reflected on this Order. Kits, assemblies, and all parts consisting of multiple Articles, that is, hardware, pins, gaskets., must be unit packaged as a complete unit and so identified. If the Article is individually packaged, the package will be so marked. Single Articles too small to be separately identified will be separated into lots and tagged or bagged. Proper markings corresponding to the Order description and part number shall be applied to the tags and/or bags for handling and storage purposes. (H) With each shipment to Buyer the Seller shall include a statement declaring compliance to all requirements specified in applicable standards and/or specification documents. This certification of compliance must be signed by Seller's authorized Quality representative.

### **CLAUSE 14 – DELIVERY:**

- (A) Seller shall be responsible for the Articles covered by this Order until they are delivered to the designated F.O.B. point specified on this Order. If Articles are received more than fifteen (15) calendar days ahead of specified schedule, Buyer reserves the right to keep the Articles and make payment as if the delivery was made per the specified delivery schedule or return the Articles to Seller at Seller's expense. In the latter case, Buyer shall debit Seller's account for actual freight charges incurred both from and to Buyer. The delivery dates contained in this Order are the dates that the Articles are required on dock at Buyer's facilities.



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- (B) Time is of the essence in performing this Order. Should Seller experience or anticipate any delay in performing this Order, Seller shall immediately notify Buyer in writing of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of this Order's specified delivery schedule. The delivery schedule shall not be modified unless the parties do so in writing, except as otherwise provided in the Changes clause. Seller shall be liable for any direct damages resulting from a delay in delivery.

### **CLAUSE 15 – ASSIGNMENT:**

Neither this Order nor any interest herein nor any claim hereunder shall be assigned by Seller without the prior written consent of Buyer. An assignment without Buyer's written consent is ineffective and void. No such consent shall be deemed to relieve Seller of its obligations to comply fully with the requirements of this Order. Seller may, however, without Buyer's consent, assign the rights to be paid monies due or to become due to a financing institution if the following conditions are met:

- (A) Buyer shall continue to have the right to exercise any and all of its rights under, settle any and all claims arising out of, and enter into amendments hereto, without notice to or consent of the assignee;
- (B) The entire amount of said monies is assigned to a single assignee and
- (C) Buyer is given notice of the assignment and all invoices submitted by Seller contain adequate reference to the assignment.

### **CLAUSE 16 - SALES LIMITATION:**

Without the prior written consent of Buyer, Articles carrying Buyer's part numbers may not be sold to third parties.

### **CLAUSE 17 - PUBLIC RELEASE OF MATERIAL:**

Seller shall not advertise or publicize without Buyer's prior written consent, in any medium, including, without limitation, any print, broadcast, direct mailing, or any internet web site maintained by or for Seller, the fact that Seller is a supplier of products or services to Buyer. Neither Seller nor its subcontractors, suppliers or agents shall without Buyer's prior written consent

- (A) Use Buyer's name, photographs, logos, trademarks, or any other identifying information in any such medium;
- (B) Use (except to communicate with Buyer) or its affiliates) any internet domain names, meta tags, or electronic mail addresses containing the names, "Archangel" or the names of any product or service for which Buyer owns the trademark; or
- (C) Provide a link to any domain name or internet address registered to Buyer or any of its affiliates.

### **CLAUSE 18 – DRAWINGS:**

The restrictions in this clause do not apply to the Seller's performance of U.S. Government contracts to the extent the U.S. Government has unlimited rights in the Manufacturing Material, pursuant to DFARS 252.227-7013 "Rights in Technical Data-Non commercial Items".

- (A) In the performance of this Order, Seller is obligated to manufacture materials to applicable specifications, drawings, process requirements, quality instructions and other relevant technical data as specified in this order or on provided documents. Seller is also obligated to manufacture Buyer part numbered materials to the Seller's drawing revision level as specified in this Order or approved by Buyer. In cases where manufacturing will be to a different revision level, Seller will provide Buyer released updated drawings with explanation as to how the present configuration differs from the specified or approved revision level configuration. Seller must receive Buyer's approval of updated drawing prior to the manufacturing and shipment of Articles to Buyer.
- (B) No review and/or approval by the Buyer of any work hereunder or of any designs, drawings, specifications, or other documents prepared by Seller shall be construed to relieve Seller, in any way from design responsibility for the Articles to be delivered

hereunder, or from responsibility to comply with the requirements of this Order.

### **CLAUSE 19 – DISPUTES:**

- (A) In the event of a dispute arising between Buyer and Seller, which is not disposed of by agreement, Seller shall request a final written decision from Buyer's Procurement Manager. If the parties can't agree on a dispute resolution process or otherwise resolve a dispute, the said dispute may be filed in the proper court for disposition pursuant to the Applicable Law and Venue clause hereof.
- (B) Pending final resolution of any dispute or appeal hereunder, the Seller shall proceed diligently with the performance of this Order as directed by the Buyer. If the dispute arises out of a difference in interpretation between the parties as to the performance requirements of this Order, then Seller shall continue performance as determined by the Buyer.

### **CLAUSE 20 – GRATUITIES:**

Seller (or any agent or representative of Seller) will not offer or provide gratuities to any employee of Buyer. Failure of Seller to honor this commitment may, at Buyer's option, result in immediate termination of this Order in accordance with the Termination for Default clause, without provision for cure.

### **CLAUSE 21 - COMPLIANCE WITH LAWS:**

Seller shall comply with all applicable federal, state, provincial and local laws, including, but not limited to, laws with respect to the protection of the environment, and Seller hereby certifies that it is in compliance with all such laws and regulations in the production of the Articles, and that the Articles themselves are compliant with all applicable laws. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage or expense, including lost profit, attorneys' fees and court costs, for any failure or alleged failure of Seller to comply with the requirements of this clause or for any release or threat of release of any hazardous substance, hazardous or solid waste, pollutant or contaminate from any site now, or in the past, owned or operated by Seller, or any site where Seller disposed of or arranged for the disposal of any hazardous substance, hazardous or solid waste, pollutant or contaminate.

### **CLAUSE 22 - HAZARDOUS MATERIAL:**

Seller certifies it is in compliance with any federal, state or provincial laws, including but not limited to the U.S. Occupational Safety and Health Act of 1970 (OSHA) or the Canadian Hazardous Products Act as applicable. Furthermore, if the Articles purchased herein are considered toxic or hazardous as defined in the above set of regulations, Seller shall appropriately mark each material shipment. Seller shall also provide a copy of the Material Safety Data Sheet (MSDS) with each shipment or as otherwise specified on this Order.

### **CLAUSE 23 – INDEMNIFICATION:**

Seller shall hold harmless and unconditionally indemnify Buyer, its directors, officers and employees to the full extent of any liability, loss, cost, claim, damage or expense including, but not limited to, reasonable attorneys' fees for the defense of all liabilities, costs, claims, damages and expenses by reason of any alleged or actual property damage or personal injury arising out of, as a result of, or in connection with the work performed hereunder due to:

- (A) Any act or omission of Seller or its employees, agents, subcontractors, or lower tier subcontractors; or
- (B) Any act or omission of Buyer or its officers, agents, employees, subcontractors, or lower tier subcontractors, including, but not limited to, any negligent act or omission of Buyer or its respective officers, agents, employees, subcontractors, or lower tier subcontractors.

### **CLAUSE 24 - PARTIAL INVALIDITY: WAIVER:**

If any provision of this Order including these Terms and Conditions becomes void or unenforceable, the other provisions shall remain valid and enforceable. Waiver of one or more provisions of these Terms and



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Conditions by Buyer shall in no way act as a waiver of any other provision herein.

### **CLAUSE 25 - ORDER OF PRECEDENCE:**

In the event of any inconsistency among the provisions of this Order hereunder, such inconsistency shall be resolved by giving precedence in the following sequence:

- (A) Provisions typed on the face of this Order,
- (B) Memorandum of Agreement / Overriding Agreement, if applicable,
- (C) Terms and Conditions,
- (D) Statement of Work,
- (E) Specifications,
- (F) Other documents, exhibits, and attachments to this order.

### **CLAUSE 26 - OFFSET CREDIT / FOREIGN SUBCONTRACTS:**

Buyer represents that its business base consists, in part, of international orders, and that it must, from time to time, enter into international offset agreements to secure such orders. To the extent that the Articles ordered hereunder are components of Buyer's products / systems sold to a foreign nation or concern or are non-recurring activities, tooling, equipment, engineering, etc. associated with Buyer's products/systems sold to a foreign nation or concern, and in recognition that such sale results directly or indirectly in business opportunities, sales or revenue for the Seller, the Seller agrees to cooperate with Buyer in the fulfillment of any offset program obligations that Buyer may be required to accept as a condition of such foreign sale. Seller hereby commits to assume and discharge, a proportionate share of said offset obligation(s), either directly or through a mutually agreeable third party, by engaging in such activities as subcontracting, co-production, co-development, technology transfers, counter-trade, investments, joint ventures, etc. in Buyer's customer countries.

Buyer expressly claims the right to all industrial benefits and other offset credits arising with respect to any Articles ordered hereunder, including any related subcontracts issued by the Seller to sources in the foreign customer's country. The Seller agrees to provide all necessary information in such form as may be required to enable Buyer to obtain the aforementioned offset credits.

### **CLAUSE 27 - OUTSOURCING:**

Notwithstanding any other provision of this Order, Seller shall not procure any of the completed or substantially completed Articles described herein without the prior written consent of Buyer. Seller agrees to only outsource items to companies that meet the applicable requirements of this Order.

### **CLAUSE 28 - ELECTRONIC DATA INTERCHANGE:**

Buyer and Seller agree that in the event any part of the purchase and sale of Articles covered by these Terms and Conditions shall hereafter be affected using electronic data interchange, these Terms and Conditions shall continue to apply thereto. Sellers must be capable of receiving and maintaining electronic data.

### **CLAUSE 29 - GOVERNMENT REGULATIONS RELATING TO EXPORT/IMPORT OF ARTICLES AND DATA:**

The Articles and data provided under this Order may be subject to the provisions of the Export Administration Act of 1979 (50 USC 2401-2420) and the Export Administration Regulations (15 CFR 768-799) promulgated hereunder; the Arms Export Control Act of 1976 (22 USC 2751-2779) and the International Traffic in Arms Regulations (22 CFR 120-128 and 130) promulgated hereunder; the Canadian Export and Import Permits Act (RS Chapter 17); and the Foreign Corrupt Practices Act.

The parties acknowledge that these statutes and regulations impose restrictions on import, export and transfer to third countries of certain categories of data and Articles, and that licenses from the U.S. Department of State and/or U.S. Department of Commerce and/or Canadian Department of Foreign Affairs and International Trade may be required before such Articles and data can be provided hereunder, and that such licenses may impose further restrictions on use of such Articles and data. Disclosure of such Articles and data to foreign persons is subject to the above regulations

regardless if the export occurs in the U.S. or abroad. Seller agrees to comply with all U.S. and Canadian Governmental regulations mentioned above as they relate to the import, export and re-export of Articles and data. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage or expense, including lost profit, attorney's fees and court costs, for any failure or alleged failure of Seller to comply with the above referenced laws and regulations.

### **CLAUSE 30 - ENTIRE AGREEMENT:**

This Order, including attachments hereto, constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and understandings, whether oral or written. However, nothing herein shall be construed as a limitation or exclusion of any right or remedy available to Buyer by law. Buyer and Seller agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to any purchase and sale of Articles governed by these Terms and Conditions.

### **CLAUSE 31 - INDEPENDENT CONTRACTOR:**

Seller is an independent contractor in all its operations and activities under this Order and all personnel furnished by Seller or used by Seller in the performance of this Order shall be Seller's employees exclusively without any relation whatsoever to Buyer. Seller is responsible for all obligations and reporting requirements covering social security, unemployment insurance, worker's compensation, income tax, and any other reports, payments or deductions required by local, state, or federal law or regulation. Seller is not granted, expressly or impliedly, any right or authority to create any obligation or liability on behalf of or in the name of Buyer.