

TERMS AND CONDITIONS OF PURCHASE

A. OFFER, ACCEPTANCE & AGREEMENT

1. Offer and Terms and Conditions

General. Each Order issued by the Buyer or its affiliate or subsidiary that issues an Order, is an offer to the Supplier for the purchase of Deliverables and is governed by these Terms which are incorporated by relevance into every subsequent Order and Supplier agrees to be bound by such. A Buyer affiliate or subsidiary that issues an Order will be severally but not jointly liable under the Terms. No portion of the Contract (as defined in Section 2) constitutes an acceptance by Buyer of any offer or proposal made by Supplier.

2. **Contract.** If these Terms are part of a Supply Agreement, then a contract is formed when the parties execute such Supply Agreement and includes all related schedule(s), documents incorporated by reference, orders and/or releases as applicable. If no Supply Agreement applies to the purchases, and these Terms are part of an order, then a contract is formed upon acceptance and includes as applicable, all documents incorporated by reference and any releases. Either form of contract is a "contract" and may include as applicable, a supply agreement documents incorporated by reference, schedules, orders and/or releases all of which together, as applicable, form such Contract. Supplier agrees to accept all orders from buyer, whether they are Spot Buy Orders or Blanket Orders. Any and all terms and conditions proposed by Supplier which differ from or are in addition to these terms are hereby deemed to be material alterations and shall neither become a part of any Contract nor shall they be binding upon Buyer. Any modifications or changes to this order shall be made only in accordance with Section 45.

A. DELIVERY & PERFORMANCE

3. **Delivery.** Strict adherence to the buyer's stated delivery schedule is a material condition of any contract. In accordance with the requirements of the customer, supplier shall deliver deliverables in the quantities and on the dates specified in orders or releases, as applicable or as otherwise agreed in writing by the parties. Delivery is not complete until deliverables have been actually received and accepted by buyer. Except for delays caused by buyer or a Force Majeure event. TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY OF DELIVERABLES. If, for any reason, supplier anticipates difficulty in complying with a required delivery schedule, supplier shall immediately notify buyer in writing (and in all cases within 24 hours of learning) providing details and causes of the anticipated difficulty in complying any action being taken to mitigate such delivery and when delivery is anticipated. Such notice shall not reduce or limit any of the buyer's rights or remedies arising out of supplier's delay.
4. **Fabrication and Material Commitment.** If supplier delivers to buyer a quantity of deliverables that exceeds the quantity specified in an order, buyer shall have no obligations to pay for these excess deliverables and buyer may return those excess deliverables to supplier at supplier's risk and expenses. Supplier shall be solely responsible for managing its inventory with respect to any of its obligations under any contract and if supplier procures materials released to the deliverables or produces deliverables without having first received an order for such deliverables from buyer. Supplier does so at its own risk.
5. **Forecasts.** Buyer may provide supplier with forecasts of its future anticipated deliverable requirements. Supplier acknowledges that any such forecasts, including without limitation,

estimated annual volumes are for informational purposes only and are based in a number of factors which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts, including, without limitation, with respect to the accuracy or completeness of such forecasts.

6. Changes.

6.1) Buyer's Changes. Buyer reserves the right to change any specifications, drawings, delivery dates, quantities and items covered by any contract by giving supplier written notice of the change. If that change causes a material increase in supplier's costs to perform, supplier may charge an increased amount provided that supplier 1) notifies buyer in writing within five business days of receiving buyer's request; 2) furnishes buyer documentation reasonably supporting such material increase and 3) receives from buyer written approval of the proposed price increase. If such change causes a decrease in the cost of the deliverables or some portion thereof, the parties will make a corresponding decrease in the price of the deliverables. Supplier shall not suspend performance under the contract while buyer and supplier are in the process of making such changes and any related adjustments. Buyer's election to implement electronic data interchange or suspend performance for three or less months shall not be grounds for any price increase.

6.2) Supplier's Changes. Supplier shall not make any changes in the specifications, manufacturing location, subcontractors, suppliers, physical composition of, or processes used to manufacture the deliverables without prior approval in a signed writing from buyer's supplier quantity department.

7. **Sub-Suppliers.** Supplier is responsible for the management of any sub supplier and will be liable for their performance, including but not limited to sub suppliers' errors, acts of omission, neglect or otherwise, whether or not buyer directed or recommended the sub supplier.
8. **Liens.** Supplier shall pay for all labor, services, materials, equipment parts and other expenses incurred by it in connection with meeting supplier's obligations and shall indemnify (pursuant to Section 31), defend and hold buyer harmless from and against all claims and liens arising out of supplier's unpaid accounts.
9. **Relationship of Parties.** Supplier, including anyone engaged by it to and in the performance of its obligations hereunder, and buyer are independent connecting parties and nothing in this contract shall make either party the agent, employee, or legal representative of the other, nor does this contract grant either party any authority to assume or create any obligation on behalf of or in the name of the other.
10. **Buyer's Property.** All items and information furnished to supplier by buyer or which buyer specifically authorizes supplier to acquire for work on buyer's behalf shall be the property of buyer ("Buyer's Property"). Buyer's property shall be maintained in a suitable condition to do the work by and at the expense of supplier, and returned to buyer upon request, under the shipment terms. Supplier shall 1) maintain insurance on buyer's property in an amount equal to the replacement cost thereof with loss payable to buyer; 2) name buyer as a loss payee and 3) furnish a certificate of insurance evidencing such insurance upon buyer's request. Supplier shall execute any documents reasonably requested by buyer to record, identify or protect buyer's property. Upon the request of the buyer, buyer's property shall be immediately released to buyer or delivered to buyer by supplier, either A) (named place) incoterms 2010 (for shipments outside of the US) or FOB (named port of shipment) property packaged and marked in accordance with the requirements of the carrier selected by buyer to transport such property, or to any location designated to buyer in which event buyer shall pay the reasonable cost of delivering such property to such location. Notwithstanding anything contained herein to the contrary, buyer shall have the right, without waiving any remedy under the contract, to seek

from any court of competent jurisdiction (a) equitable relief and (b) any interim or provisional relief that is necessary to protect the rights of the buyer in the buyer's property.

- 11. Force Majeure/Excused Performance.** Delay in non-performance of any obligation herein shall be excused in the case of the delay is a Force Majeure Event. The non-performing party will notify the other party of such delay immediately but in no event more than 10 days thereafter and will use its best efforts to mitigate the non-performance. None of the following shall individually or collectively constitute a Force Majeure Event. 1) Supplier's ability to sell deliverables at a higher price; 2) increases in supplier's production costs; 3) a strike of other legal or illegal labor disruption of supplier's inability to obtain labor, or 4) a significant increase in suppliers cost of new materials.

B. Freight, Trade Compliance, Risk of Loss and Transfer of Title.

- 12. 13.1) Freight Terms.** Shipping Terms FOB ORIGIN. Delivery shall be made in accordance with the Terms of this Order. The Order number must appear on all documents pertaining to the Order, invoices, packing lists, correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity ordered without prior consent from the Buyer. Seller is responsible for delivery to the means of transport and for all cost associated with that delivery, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods.

13.2) Risk of Loss. Following the point of transfer referred to in the shipment terms, the party initiating shipment will bear the risk of loss or damage to deliverables in transit, and the deliverables will be considered delivered only upon receipt at buyer's named place of delivery in conformance with the applicable order or release (the "delivery location"). Buyer has no obligation to obtain insurance and shall not bear the risk of loss while the deliverables are in transit from supplier's facility to the point of transfer referred to in the shipment terms. For example, the shipment terms are FCA (Shanghai Port). Supplier shall bear risk of loss and provide insurance until the deliverables are delivered to the Shanghai Port and buyer will bear risk of loss and provide insurance from the Shanghai Port to the delivery location.

13.3) Transfer of Title. For all shipments (domestic or international), title shall not pass to buyer and delivery shall not be deemed to occur until buyer has received, conducted its incoming inspection of and accepted the deliverables at buyer's receiving facility.

C. PRICING, INVOICES & TAXES

- 13. Pricing.** The applicable currency is specified in the contract and if not specified, is the currency of the country of buyer's purchasing legal entity indicated on the order in question. No price increases or surcharges of any kind of any other action that has the effect of increasing the cost to buyer shall be allowed unless part of a signed writing.

14.1) Price Warranty. Supplier represents and warrants to buyer that the deliverables are sold at supplier's lowest prices for the same quality deliverables offered for sale or sold to other customers.

- 14. Invoices.** All invoices or receiving documentation provided by supplier must contain the control number, order number, Spaulding Composites, Inc. product or item number, clear description of the deliverables, sizes, quantities, buyer facility and unit prices and any other information requested by buyer. Buyer may reject any invoice that does not contain the appropriate information.

- 15. Payment Terms.** Payment terms shall be on a NET 30 basis following the date of buyer's receipt of conforming invoice and related deliverables, buyer may, at its option, make payment by check, bank transfer payable to a designated EFT or wire address.

- 16. Taxes.** Any applicable sales, use for federal, state or local taxes shall be shown separately on the invoice. Supplier agrees to accept a valid tax exemption certificate or other evidence acceptable to the involved governmental authority in lieu of payment or reimbursement for such taxes. Buyer is not responsible for any taxes arising from or in connection with supplier's business activity, payroll, income or assets. Unless otherwise specified in the applicable contract, supplier shall reimburse buyer for such taxes within ten (10) days of notice and shall indemnify (pursuant to Section 31), defend, and hold buyer harmless against all claims arising out of buyer's payment of such taxes.
- 17. Contractual Recoupment and Set-Off.** All amounts due from buyer or buyer's affiliates to supplier or supplier's affiliates under this contract or any other agreement will be net of any indebtedness or other obligations of supplier or supplier's affiliates to buyer or buyer's affiliates, including direct and indirect losses, costs and damages resulting from supplier's failure to timely deliver deliverables, the failure of any deliverables to conform to applicable warranties or other breach by supplier of this contract or any other agreement with buyer or buyer's affiliates. Buyer may at any time and regardless of whether there is any connection between the obligations giving rise to the amounts due, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are or will become, owing due or payable to supplier or supplier's affiliates by buyer or buyer's affiliates under this contract or any other agreement.

D. WARRANTY, QUALITY ASSURANCE & GENERAL REMEDIES

18. Warranties.

18.1) General. Supplier expressly warrants and guarantees to buyer and its successors and assigns, that all deliverables will i) be competitive to price, quality, delivery and technology, ii) conform to all applicable specifications, standards, drawings, samples, descriptions and revisions, iii) conform to all applicable laws, orders, regulations and standards in country where the deliverables are manufactured and in the country where the buyer receiving facility is located, iv) be merchantable and free of defects in a) design (to the extent designed by supplier or any of its subcontractors, agents or suppliers, even if the design has been approved by buyers) b) materials (including . without limitation, rust or other contamination and c) workmanship; v) be selected, designed (if designed by supplier or its subcontractors, agents or suppliers even if the design is approved by buyer), manufactured and assembled by supplier based upon buyer's stated use, vi) be fit and sufficient for the purposes intended by buyer. vii) be free of all liens, claims and encumbrances whatsoever including, without limitation, claims of infringement of intellectual property, vii) _____ expressly provided for differently in the order, manufactured entirely with new materials ix) be in the services or technical data performed or prepared in a professional and workmanlike manner and in compliance with buyer's instructions or other requirements x) be, in the case of software or code making up any part of the deliverables, free from viruses, disabling code and open source software and xi) comply strictly and completely with buyer's quality standards. In addition to the foregoing warranties, supplier will assign and pass through to the buyer all representations and warranties provided by manufacturers of parts or components of the deliverables.

18.2) Warranty Term The term of this warranty by supplier shall be the longer of:

- i) the duration of any warranty provided by buyer in connection with buyer's sale of the final product, which durations are publically available and will be provided by buyer upon written request and are INCORPORATED HEREIN BY REFERENCE or
- ii) thirty-six (36) months from the date the related final product is first placed into operation.

18.3) Non-Exclusive Warranties The warranties contained in this section are in addition to and are not to be construed as restricting or limiting any warranties or remedies of buyer, express or implied, which are provided by any contract or by law. Any attempt by supplier to limit, disclaim or restrict any such warranties or remedies of buyer, in any manner shall be null, void and ineffective.

18.4) Notice of Breach. The following shall each constitute notice of a breach of warranty; 1) any communication from buyer to a supplier specifying a defect, default, claim or defect, or other problem or quality issue concerning the deliverables (e.g. buyer sends supplier a supplier corrective action request or customer warranty claim data for any final product, 2) any communication to supplier claiming that the deliverables are in breach of any warranty or that supplier is in default under any contract and 3) an applicable termination notice (from buyer under Section 33.2 (iii). Any such claim by buyer of breach may not be rescinded in a signed writing.

18.5) Defense of Claims. To mitigate damages claimed by a third party attempting to hold buyer liable for problems caused is whole or in part by supplier. Buyer may fully defend any third party claim that deliverables supplied by supplier are defective, breach of warranty or otherwise do not meet legal or contractual requirements. The parties agree that this defense is mutually beneficial and supplier waives any argument that buyer's rights to recovery or contribution from supplier are limited by such defense.

18.6) Notification of Quality Escape: When a supplier has any reason to believe suspicious or non-conforming material has been shipped, notification must be sent to the buyer within 24 hours of realization. The notification shall contain the part number(s), identification of which shipments are suspect, detailed description of the issue, on-sight containment to ensure no additional suspect product ships.

19. Quality Assurance.

19.1) Quality Assurance System. Supplier will provide and maintain a quality assurance system ("QAS") that meets buyer's requirements and is approved by buyer. Buyer may audit supplier's QAS production process and materials destined for buyer at any time. If an audit is conducted, buyer will advise supplier of the result and provide such instructions or recommendations as it deems necessary to improve the QAS. Supplier shall promptly develop and submit to buyer a plan to implement and keep buyer advised of the status of necessary measures of improvement according to the buyer's recommendation. Acceptance criteria and sample size for root cause determination of nonconforming deliverables shall be calculated according to industry standard ANSI/ASQ Z1.4 2008. General Inspection Level II. Single Sampling Plan AQL = 0.65. This acceptance criteria and sample size determination shall apply to all deliverables including without limitation, deliverables in incoming inspection, deliverables in inventory and deliverables in final products.

20. Remedies. The rights and remedies reserved to buyer herein are cumulative and in addition to all other legal or equitable remedies.

20.1) General Remedies. Supplier will reimburse buyer for any damages caused by supplier's breach or by nonconforming deliverables, including without limitation: 1) cost incurred for replacement materials or replacement parts available via parts center, dealer or other distribution channel: 11) freight costs incurred to diagnose and repair final product including labor, travel and per diem diagnostic time and locally purchased materials and sublet services, including refrigerant and refrigerant handling: iv) costs associated with containing and correcting a supplier-caused problem resulting in recalls, field service actions or other large scale issues including, without limitation, manpower spent planning, directing and coordinating containment efforts, engineering testing, jobsite product inspections, training and travel for

repair crews, warranty concessions to buyer's customers; v) costs of inspecting, sorting, storing, reworking, repairing or replacing the nonconforming deliverables: vi) costs resulting from product interruptions; conducting recall campaigns, customer field service actions or other corrective service actions: vii) costs resulting from personal injury (including, without limitation, death) or property damage caused by nonconforming deliverables, viii) actual and reasonable professional fees, settlements and judgments incurred by buyer and other costs associated with buyer's administrative time, labor and materials and ix) costs incurred as a result of deliverables being accused of or found to be infringing any intellectual property right (including without limitation and in addition to the remedies specified in Section 31.2 all costs relating to obtaining suitable replacement deliverables. If nonconforming deliverables are rejected by buyer, the quantities under any order shall be reduced unless buyer otherwise notifies supplier. Supplier shall not replace reduced quantities without a signed writing. Buyer's damages include, without limitation, third party charges and buyer internal expenses (eg, hourly wages, salaried wages and carrying costs) relating to transportation (including, without limitation, expedited freight, containment, sorting and other attempts at mitigation relating to any supplier breach, will reimburse buyer for any damages caused by supplier's breach or by nonconforming deliverables, including without limitation: i) cost incurred for replacement materials or replacement parts available via parts center, dealer or other distribution channel; ii) freight costs incurred to deliver replacement material to a jobsite or to expedite shipments or to return deliverables to supplier: iii) expenses incurred to diagnose and repair final product, including labor, travel and per diem, diagnostic time and locally purchased materials and sublet services, including refrigerant and refrigerant handling, such labor and related costs for diagnosis, repair and shipping costs for transporting the replacement deliverables/alternative product, as applicable, shall be limited to maximum amount of \$500 per warranty claim under this warranty provision. If nonconforming deliverables are rejected by buyer, the quantities under any order shall be reduced unless buyer otherwise notifies supplier.

20.2) Recalls and Field Fix Programs. If at any time a governmental agency of any country, state, province or municipality requires buyer to conduct a product safety recall or a field fix program, or buyer voluntarily undertakes such an action, related to the deliverables, buyer will notify supplier within thirty (30) days of the initiation any such action and supplier shall, at buyer's option, either repair or replace the related deliverables, and reimburse buyer for any damages.

20.3) Return of Non-conforming Deliverables to Supplier. Upon supplier's prior written request, buyer will use commercially reasonable efforts to return, at supplier's expense, nonconforming deliverables to enable the parties to analyze and determine, at the supplier's expense, the root cause. Sample size is determined in accordance with Section 20.2 Quality Assurance System. Supplier shall hold all returned deliverables associated with denied claims at supplier's facility for inspection or return to buyer after written notification to buyer of intent to deny claim. After a reasonable period, not less than thirty days, the parties will agree on the disposition of the nonconforming deliverables.

20.4) Credit. Reimbursement amounts for warranty claims will be addressed, at buyer's option, through credits issued by supplier, debits taken by the buyer or cash payments from supplier to buyer, and will be executed thirty (30) days after notification to supplier of product failure within the warranty time period.

E. PROPRIETARY INFORMATION & INTELLECTUAL PROPERTY

21. Confidential Information.

21.1) Use of Confidential Information. Supplier may use confidential information solely for the purposes of supporting the current business relationship with buyer. Supplier shall not disclose confidential information to any third party without buyer's express written consent, except hat

supplier may disclose confidential information to its contractors, sub-suppliers, consultants or agents who have a need to know and have executed confidentiality agreements with supplier, obligating them to treat such information in a manner consistent with these Terms and Buyer's Non-disclosure Contract, if any, with supplier. Supplier shall not i) sell buyer parts or components incorporating or containing confidential information to any third party or ii) sell any goods or services produced using confidential information to any third party.

21.2) Exceptions to Confidential Information Restriction. Notwithstanding the foregoing, these terms shall not restrict or affect supplier's rights to use or disclose information i) which is or may hereafter be in the public domain through no fault of supplier or ii) which supplier can show, as reflected by its written documents, was known to it prior to the disclosure by buyer: or iii) which is disclosed to supplier by a third party with the legal right to disclose, subsequent to buyer's disclosure: or iv) which supplier can show; as reflected by its documents was independently developed by supplier without the use of the confidential information.

21.3) Equitable Relief. Supplier acknowledges that a breach of Section 22 would result in immediate and irreparable harm to buyer for which there is no adequate remedy at law. Buyer is entitled to equitable relief compelling supplier to cease and desist all unauthorized use and discharge of confidential information.

22. Intellectual Property Rights. Except as otherwise addressed in any separate contract between the parties, supplier agrees that, where it undertakes, jointly with buyer, any research, development and/or design activities relating to deliverables i) in the course of performance of any contract and/or 2) using confidential information provided by buyer. Buyer shall own all rights in any resulting intellectual property. Supplier agrees to promptly disclose to buyer such intellectual property and hereby irrevocably transfers, conveys and assigns to buyer all of its worldwide right, title and interest in and to such intellectual property. Buyer shall have the exclusive right to apply for or register any patents, mask work rights, copyrights and such other proprietary protections with respect to such intellectual property on a worldwide basis and to require the incorporation of such intellectual property into the deliverables at no additional charge. Supplier shall execute such documents, render such assistance and take such other actions as buyer may reasonably request to apply for, register, perfect, confirm and protect buyer's intellectual property rights under this section. Supplier shall be solely responsible for any compensation payable by law or by contract if any to individual inventors of supplier. Where buyer and seller agree to participate in a unique ongoing development effort a separate agreement covering intellectual property will be established.

23. Grant of License Rights to Buyer. Supplier hereby irrevocably grants to buyer, its affiliates and its directed agents, a non-exclusive, royalty-free fully paid worldwide right and license to practice, use have used, assemble, offer for sale, sell, import, export any intellectual property whether preexisting or later developed, relating to the deliverables. Supplier covenants not to sue buyer, its affiliates, its directed agents, its customers or its end users for violating any intellectual property rights of supplier relating to the deliverables, supplier represents and warrants that supplier has all rights necessary and sufficient to make the licenses and grants hereunder.

24. Grant of Limited License Rights to Supplier. The use by supplier of any intellectual property and/or confidential information of buyer is authorized only for the purposes set forth in the applicable contract and upon termination of the applicable contract such authorization shall cease.

F. AUDIT

25. Audit and Inspection. Upon buyer's request, supplier shall deliver to buyer data, records and other materials in evidence testing, inspection, conflict minerals use and conflict mineral

controls and compliance with law, including without limitation and bribery and anti-corruption laws and quality assurance actions. Right of Access will be granted to **buyer**, their customer, and regulatory authorities upon request. Buyer has the right to conduct onsite audits of the applicable facilities of the supplier, the deliverables and compliance with law, including without limitation: 1) inspecting the deliverables and/or work in process on the deliverables and/or 2) conducting compliance audits, quality control measures and tests at supplier's or its sub-supplier's premises. Without cost to buyer, supplier shall provide facilities and assistance for buyer audits, inspections, and tests. Buyer shall not be liable for any reduction in value of samples used, nor shall any deliverables rejected be submitted to buyer. Buyer's audit(s) and/or inspection of the supplier or the deliverables or the failure to audit or inspect, does not constitute acceptance of any work-in-process or finished deliverables, does not remove responsibility from supplier for compliance with the terms of any contract and does not relieve supplier of any of its responsibilities or warranties (likewise, buyer's audit test or approval of any design, drawing, material, process including, without limitation Supplier's responsibilities or warranties. Likewise, buyer's audit, test or approval of any design, drawing, material, process including without limitation supplier's QAS) or specifications will not limit or waive buyer's rights under this provision or any contract. Nothing in any contract releases supplier from the obligation of testing, inspection and quality control. For preproduction inspections, supplier will provide a written response with proposals for corrective action within fifteen (15) days of any notice from buyer concerning an unsatisfactory condition identified by buyer.

- 26. Financial Review and Distress.** Buyer or buyer's designee may, at any time, review the financial condition of supplier and its affiliates and supplier will fully cooperate in such review including promptly providing copies of or access to requested documents including without limitation, financial records and statements, forecasts, business plans, banking contacts and loan documents and will make its financial managers available for discussions during reasonable business hours. Buyer and/or its designee will keep confidential any nonpublic information about supplier obtained in a financial review and use such information only for purposes of the review except as needed to enforce any contract. Supplier agrees that if supplier experiences any delivery or operational problems, buyer may designate one or more representatives to be present in supplier's applicable facility to observe supplier's operations.

G. COMPLIANCE

27. Compliance with Laws.

27.1 General All deliverables supplied to buyer shall comply with and supplier agrees to be bound by, all applicable foreign, United States federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, or other requirements contained in, issued under, or adopted pursuant to such laws, including, without limitation, product content and labeling, including without limitation the US Toxic Substances Control Act and applicable RoHS and REACH regulations, anti-bribery, anti-corruption laws. Conflict Mineral prohibition and Conflict Mineral disclosure requirements. Supplier further agrees that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the production or provision of deliverables, delivery of any deliverables shall constitute suppliers representation to buyer that there has been and will be full compliance with all applicable laws and, at buyer's request, supplier shall certify in writing its compliance with the foregoing.

27.2 Environmental Compliance. Supplier shall comply with 1) all applicable environmental laws and regulations and 2) the environmental compliance guidelines set forth on buyer's website, as it may be amended by buyer from time to time THESE COMPLIANCE GUIDELINES

ARE INCORPORATED HEREIN BY REFERENCE. At supplier's request, buyer will mail supplier's hard copy.

27.3 Equal Employment Opportunity. Buyer is a US federal contractor that complies with Executive Order 12466, as amended, and applicable regulations in 41 CFR parts 60-1.29 U.S.C. 793 and applicable regulations in CFR 60-741: AND 38 U.S.C. 4212 and applicable regulations in 41 CFR Part 60-250 and 60-300. THE FOLLOWING PROVISIONS ARE INCORPORATED HEREIN BY REFERENCE: Executive Order 11246 and 41 CFR 60-4.3 (a): Executive Order 11701 and 41 CFR 60-300.: Executive Order 11258 and 41 CFR 60-741.5(a): U.S. immigration laws, including the I-1 Visa Reform Act of 2004 and the H-1B Visa Reform Act of 2004 and Executive Order 13496.

28. Record Retention. Supplier must keep documentation relating to deliverables for at least ten (10) years. Supplier will provide such documentation to buyer upon buyer's written request.

H. INDEMNITY

29. Indemnification.

29.1 General.

- a) Supplier shall indemnify, defend and hold buyer, its affiliated companies and its respective officers , directors, customers, users and agents (collectively the "indemnitees") harmless from and against all suits, actions, losses, damages, claims or liability of any character, type or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs and attorneys' fees for injury or death to any person or injury in any property (collectively "damages"), received or sustained by any person(s) or property, arising out of, occasioned by, attributable or related to i) the deliverables; ii) any breach or any representation or warranty made by supplier; iii) any failure by supplier to perform or fulfill any of its covenants or due to its acts or omissions; iv) any litigation, proceeding or claim by any third party relating in any way to the obligations of supplier; or v) any act or omission, negligent or otherwise, in the performance of any contract whether by supplier, its subcontractors or employees. Supplier shall not consummate any settlement without the relevant indemnities' prior written consent. Supplier's indemnification obligation will continue in full force and effect notwithstanding the termination or expiration of any order or any contract. In any claim against any of the indemnitees by a subcontractor or employee of supplier, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, these indemnification obligations shall not be limited in any way under any applicable worker's compensation act, disability or other employee benefit act.
- b) Buyer shall indemnify, defend and hold supplier, its affiliated companies and its respective officers, directors, employees, customers, users and agents (collectively the "Supplier Indemnitees") harmless from and against all suits, actions, losses, damages, claims or liability of any character type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees for injury or death to any person, or injury to any property (collectively "supplier damages"), relating to (a) personal injury, (b) death or (c) property damage received or sustained by any person(s) or property, arising out of, occasioned by, attributable or related to any act or omission, negligent or otherwise, in the performance of any contract by buyer, its subcontractors or

employees. Buyer shall not consummate any settlement for such a claim without the relevant supplier indemnitees' prior written consent. Buyer's indemnification obligation will continue in full force and effect notwithstanding the termination or expiration of any order or any contract. In any claim against any of the supplier indemnitees by a subcontractor or employee of buyer, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, these indemnification obligations shall not be limited in any way under any applicable worker's compensation act, disability or other employee benefit act.

- 29.2 Intellectual Property Indemnity. Supplier represents and warrants to the indemnitees that the deliverables shall not infringe any intellectual property rights including, without limitations, claims arising from patent, copyright, trademark, trade secret or other intellectual property infringement. Supplier agrees to hold the indemnitees harmless from and defend the indemnitees against any such claim of intellectual property infringement, including any damages resulting from that claim, the cost of indemnitees of complying with any preliminary or permanent injunction, and all other costs of defense (including the attorneys' fees and costs) in connection with any breach of the foregoing.

I. INSURANCE

30. Insurance. Supplier shall provide and maintain throughout the term of any and all contract(s)

- 30.1 the following insurance in US Dollars (or such other currency as specified in the applicable contract): 1) **Workers Compensation/Work-related Injury Insurance:** statutory in accordance with the state in which the deliverables are being manufactured or assembled; 2) **Employers Liability** in the amount of \$1 million each occurrence; 3) **Commercial General Liability** with limits of \$1 million each occurrence, \$2 million aggregate, for bodily injury and property damage combined, including the following coverage features: i) blanket contractual liability, ii) products, iii) completed operation and iv) independent contractors coverage; 4) **Automobile Liability** with limits of \$1 million each occurrence for bodily, injury and property damage combined, covering all "owned", "hired", and "non-owned" automobiles and including contractual liability coverage; and 5) **Umbrella or Excess Liability** with limits of \$5 million each occurrence and aggregate for bodily injury and property damage with such policy "following form" to all primary policies listed above with the exception of Workers Compensation. All insurance required above will be written with insurers rated A or better by the latest "A.M. Best" Guide. Where allowable under law, a waiver of subrogation from supplier (including affiliates, directors and officers) and its insurers will be provided in favor of buyer. If applicable, all policies, with the exception of Workers Compensation, will identify buyer as an additional insured and require that the buyer receive at least thirty (30) days' notice prior to cancellation or termination. Supplier's insurance will be primary and noncontributory to that maintained by buyer. Such insurance shall not be subject to any self-insured retentions without the prior written consent of buyer. All self-insured retention and deductibles for such insurance shall be the responsibility of supplier. The insurance coverages under this section, including, without limitation the additional insured coverage provided to buyer, shall be independent of the indemnity obligations of any contract and are not designed solely to guarantee payment of supplier's indemnity obligations. Supplier shall, at the request of buyer, provide buyer with copies of all policies and/or certificate, satisfactory to buyer, of the insurance coverages and endorsements set forth in this section and shall specify all self-insured

retentions. Supplier's insurance coverage will not be buyer's exclusive remedy; instead buyer will be entitled to all remedies available to it under equity or the law.

31. J. TERMINATION

32. Termination by Buyer.

- 32.1 Termination for Convenience. Buyer may cancel all or any part of any contract at buyer's convenience by giving supplier written notice of the termination. Buyer's liability for any termination for convenience is limited to: i) conforming deliverables already delivered to buyer as of the date of termination, and ii) payment for work in progress, limited to the costs of raw material and labor incurred for outstanding orders as of the date of termination, and further limited to not include work in process for deliverables under such outstanding orders whose delivery date is outside the lesser of A) the firm lead time agreed by the parties for the deliverables in question or B) six (6) weeks. However, buyer may elect to have supplier continue production on the in-process deliverables (described in Section 33.1 (ii) above) subject to the obligation of buyer to purchase such conforming deliverables under the terms of the contract in question. In addition, in no event shall the liability of buyer for a termination for convenience exceed the price of the related and outstanding deliverables under the contract in question.
- 32.2 Termination for Cause. Should supplier i) A) become insolvent; B) become unable to pay its debts as they mature; C) make a general assignment for the benefit of creditors; D) come under a suspension of payments; E) have a receiver appointed for the whole or any part of its assets; or E) become in any way the subject of a bankruptcy petition, ii) have a change in ownership or management such that a competitor of buyer gains an ownership or controlling interest in supplier, or iii) default in the performance of any provision or part of the contract then buyer may, in its discretion, terminate any contract (in whole or in part) for "cause" by giving supplier seven (7) days prior written notice. If supplier remedies the cause giving rise to the notice to Buyer's sole satisfaction within seven (7) days following its receipt of that notice the termination shall be deemed void and any contract so terminated shall continue in effect. Delivery defaults shall not be subject to the seven (7) day period.
- 32.3 Continuation of Work. In the event of termination, supplier shall immediately stop all work hereunder unless otherwise directed by buyer and shall immediately cause any of its sub-suppliers or subcontractors to cease work.
- 32.4 Liability for Termination for Cause. In the event of a buyer termination for cause: i) buyer shall have no liability to supplier unless it directs supplier to continue work under Section 33.3 and then only for the resulting conforming deliverables delivered and sold to buyer hereunder; ii) buyer may also acquire replacement deliverables for parts of replacement deliverables (or parts of replacement deliverables) elsewhere on such term or in such manner as buyer may deem appropriate and supplier shall be liable for any excess cost or other expenses incurred by buyer.

33. Termination by Supplier. Supplier may terminate any contract (in whole or in part) only for non

- 33.1 Payment by buyer of the purchase price for deliverables in accordance with such contract and then only if: 1) the amounts are material and more than sixty (60) days past due; and 2) supplier first provides buyer written notice specifying; i) the amounts past due including, without limitation, relevant order and invoice numbers and dates) and ii) supplier's intent to terminate if the past due amount is not paid; and 3) buyer, within thirty (30) days of supplier's notice, does not either i) pay the past due amounts or ii) notify supplier that the amounts claimed to be unpaid are disputed by buyer.

Provided the foregoing conditions are met, supplier may terminate the order by delivering a termination notice to buyer. Supplier may not terminate or cancel any contract (in whole or in part) for any reason except as permitted under this section. Supplier may not suspend any performance under any contract for any reason.

34. Exit Plan. In case of termination or expiration of any contract, in whole or in part, the parties

34.1.1 agree to work together in good faith to promptly develop an exit plan for the manufacturing by supplier and purchase by buyer, under the terms of such contract. At buyer's request, buyer and supplier mutually agree to produce a safety stock of deliverables under the terms hereof including, without limitation, price, to support buyer's requirements for a transition period not to exceed six (6) months from the applicable termination date.

35. Use of Name. When requested by buyer in writing, supplier shall label the deliverables with

35.1.1 buyer's name, logo, domain name, trademark and/or other proprietary designation ("Designation") as specifically designated by buyer. Supplier shall not sell or otherwise transfer deliverables with buyer's designation to any person or entity other than buyer, except as provided in this section. Supplier shall not use buyer's designations for any purpose, including but not limited to, advertising and press releases without prior written approval in each instance of buyer's Vice President of Communications.

36. Notices and Change of Address. All notices or other communications under any contract shall

36.1 be in writing and may be delivered in person or may be sent by receipted courier, express mail, e-mail or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the addresses set forth in such contract. Either party may change its address for notice by giving written notice to the other party. A notice or other communication shall be deemed given no later than the date actually received. Notice by courier, express mail, certified mail or registered mail shall be deemed given on the date it is officially recorded as delivered and, in the absence of such record of delivery, it shall be presumed to have been delivered on the third business day after it was deposited. Notices sent by e-mail require tangible confirmation of receipt from the addressee.

37. Assignment.

37.1 General. Unless buyer has provided prior written consent, any partial or complete

37.2 assignment by supplier of right(s) or delegation of obligations(s) hereunder, including without limitation, subcontracting, shall be void. Notwithstanding any permitted assignment, such assignment shall not relieve supplier of its obligations and liabilities under any contract. Buyer may assign or otherwise transfer some or all of its rights under any contract to a third party.

37.3 Affiliates. If affiliates or subsidiaries of the buyer are buying under the same contract, then such buyer affiliates or subsidiaries will be severally but not jointly liable for the obligations thereunder.

37.4 Third Party Manufacturers. In addition, buyer reserves the right to assign to a third party manufacturer the obligation to purchase deliverables covered by any contract from supplier on behalf of buyer, for which buyer will receive the benefit from supplier for the volume of any deliverables purchased by buyer's third party manufacturer, including but not limited to, calculations for volume discount pricing or rebates that may be achieved based on buyer's spend with supplier. Buyer shall notify supplier prior of the assignment to the third party manufacturer. Supplier agrees to provide the same terms and conditions as set forth in any contract related to prices and lead times to such third party manufacturer. In the event of assignment to a third party manufacturer,

buyer reserves the right at any time to revert the purchase back to buyer or assign the purchase to an alternative third party manufacturer. In the event the third party manufacturer fails to comply with the agreed payment terms, the supplier agrees to provide written notification in the third party manufacturer and request immediate payment and a copy of the notice to buyer. Buyer will use commercially reasonable means to assist in brokering a resolution of any such claim but buyer will not be required to take any action that would materially impair its ability to meet delivery and quality requirements using these products.

38. Electronic Communications and Electronic Signatures. Supplier shall comply with any method

38.1 of electronic communication/payment processing specified by buyer, including electronic funds transfer, pay-on-receipt processes/systems, order transmission, releases, electronic signature and electronic communication systems including, without limitation, the use of electronic data interchange (“EDI”) portals, e-mails, even those containing a signature block of one of the buyer’s representatives shall not constitute a signed writing.

39. Signatures in Counterpart. Any contract may be executed in counterparts, each of which when

39.1.1 executed shall be deemed to be original, but all together shall constitute but one and the same agreement. A facsimile, e-mail or other electronic copy thereof shall suffice as an original.

40. Headings. The paragraph and other headings herein are for convenience only and form no part

40.1 of these terms.

41. Complete Contract. The contract to which these terms are attached, including any documents

41.1 incorporated therein by reference, sets forth the full and complete agreement of the parties regarding the deliverables and supersedes any and all prior or contemporaneous proposals, agreements, understandings, representations, statements and courses of conduct between the parties regarding the deliverables made prior to the effective date of the applicable contract, excluding non-disclosure/confidentiality, bailment or development agreements previously entered into by the parties. Where a website is incorporated by reference into these terms or any contract, the most recently updated version of that website shall govern supplier’s performance and supplier agrees to regularly check those websites to ensure supplier’s compliance with the most recently updated version.

42. Conflicts. In the event of a conflict in terms of any contract, or any part of a contract, unless the

42.1 parties agree otherwise in writing, the various components of the agreements shall be given the following precedence (in descending order of precedence): 1) the Supply Agreement, if any; 2) an Order; 3) an applicable Country/Region Supplement; and 4) these Terms.

43. Severability. If any term is invalid or unenforceable under any statute, regulation, ordinance,

43.1.1 executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with the applicable law (ie, Section 33.1 for Deliverables subject to Uniform Commercial code 2-306). The remaining provisions of an applicable contract will remain in full force and effect.

44. No Implied Waiver and Amendments. The failure of either party at any time to require

44.1.1 performance by the other party of any provision will not affect the right to require performance at any later time NOR WILL THE WAIVER BY EITHER PARTY OF A BREACH OF A CONTRACT CONSTITUTE A WAIVER OF A LATER BREACH OF SUCH CONTRACT. No amendment to a contract shall be binding unless it is contained on an Order or on a Signed Writing.

45. Survival. The provisions of a contract, which by their nature are intended to survive termina-

45.1 tion, cancellation, completion or expiration of the Contract (for example, spare and replacement parts, warranty, remedy, indemnification, dispute resolution, survival) shall continue as valid and enforceable obligations of the parties, notwithstanding any such termination, cancellation, completion or expiration.

46. Dispute Resolution.

46.1 47.1) Governing Law: Venue: U.S. Transactions. If either i) a contract is issued, in whole or part, for deliverables to be shipped to a buyer location within the United States of America or its territories (as shown by the ship to or receiving address of buyer) or ii) supplier's applicable shipping location is within the United States of America or its territories (as shown by the shipping address of supplier), then: A) such contract is to be construed according to the laws of the United "States of America and the State of Delaware

46.2 47.2) Governing Law; Venue: Non U.S. Transactions. In all cases not covered by Section 47.1 above, i) a contract is to be construed according to the laws of the country (and state or province if applicable) where buyer's receiving facility is located, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law: ii) any legal or equitable action or proceedings by buyer against supplier arising out or in connection with, any contract may be brought by buyer in any court(s) having jurisdiction over supplier or, at buyer's option, in any court(s) having jurisdiction over buyer's receiving facility in which event supplier consents to such jurisdiction and venue, including service of process in accordance with applicable procedures: and iii) any legal or equitable actions or proceedings by supplier against buyer arising out of, or in connection with, such contract may be brought by supplier only in the court(s) having jurisdiction over the buyer's receiving facility.

46.3 47.3) Claims by Supplier. Any action or proceeding by supplier under any contract must be commenced no later than one (1) year after the alleged breach or other event giving rise to supplier's claim occurs without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute.

47. Definitions: As used in these terms, and in any other contract, or part of a contract, capitalized terms shall have the following meanings:

- **"Acceptance"** means, with respect to an order, the earlier of supplier's 1) shipment of deliverables, 2) performance of services, 3) commencement of work, 4) written acknowledgement confirming acceptance, or 5) any other conduct of supplier that recognizes the existence of a contract pertaining to the deliverables.
- **"Blanket Order"** shall mean an order where deliverables are ordered over a period of time by means of releases issued from time to time under such blanket order, or, as the case may be, via amendments on the face of such blanket order.
- **"Buyer"** shall mean the legal entity identified as the buyer in the applicable contract.
- **"Buyer's Property"** shall have the meaning set forth in Section 11.
- **"Confidential Information"** means 1) information, knowledge or data disclosed by buyer to supplier, regardless of whether disclosed in written, tangible, oral, visual or other form, including without limitation, sample products, equipment, software, or other objects or material, provided by buyer to supplier, and 2) information, knowledge or data which was obtained from visits to buyer facilities by supplier.

- **“Conflict Minerals”** means minerals or their derivative that the U.S. Secretary of State has determined are financing conflict in a DRC country, including without limitation, cassiterite, columbite-tantalite (coltan), gold, wolframite, tin, tantalum and tungsten.
- **“Contract”** shall have the meaning set forth in Section 2 of these terms.
- **“Country Supplement”** shall have the meaning set forth in Section 1.2.
- **“Damages”** shall have the meaning set forth in Section 31.1 of these terms.
- **“Deliverables”** means any or all goods and/or services provided by supplier to buyer, including improvements or developments.
- **“Delivery Location”** shall have the meaning set forth in Section 13.2 of these terms.
- **“Designation”** shall have the meaning set forth in Section 36.
- **“EDI”** shall have the meaning set forth in Section 39.
- **“Estimated Annual Volume”** means the forecast of annual volume requirements of buyer’s facility or facilities, as applicable.
- **“Final Product”** shall have the meaning set forth in Section 19 of these terms.
- **“Force Majeure Event”** means an event that is beyond the reasonable control of the party seeking to be excused from performance; is not attributable to such party’s negligence, and could not have been avoided or overcome and includes, but is not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, civil disobedience, insurrections, natural disasters, pandemics or epidemics, acts of terrorism, sabotage, declared or undeclared war or the public enemy.
- **“Indemnities”** shall have the meaning set forth in Section 31.1 of these terms.
- **“Lead Time”** means the calendar days from the time of the order to delivery to the Incoterms/Shipment Terms “named place” (e.g. FCA (Shanghai Port) would be the Shanghai Port). A firm lead time is the agreed upon minimum lead time for orders between the parties.
- **“Order”** mean each purchase order or purchase order revision issued by the buyer or its applicable affiliate or subsidiary, whether as a Blanket Order or as a Spot-Buy Order as an offer to the supplier or its applicable affiliate or subsidiary, for the purchase of deliverables.
- **“QAS”** shall have the meaning set forth in Section 20.2 of these terms.
- **“Quality Standards”** shall have the meaning set forth in Section 20.1 of these terms.
- **“Region Supplement”** shall have the meaning set forth in Section 1.2.
- **“Release”** means any delivery schedule issued under a Blanket Order or on the face of a Blanket Order.
- **“Supply Agreement”** means a supply agreement if any and as applicable.
- **“Shipment Terms”** means the applicable Incoterms 2010 freight terms set forth in Section 13.1.
- **“Signed Writing”** means a writing signed by the party to be charged and does not include the body of an e-mail or other electronic document although a Signed Writing may be attached to an e-mail or other electronic document.
- **“Spot-Buy Order”** means a discrete Order for a specific quantity of deliverables.
- **“Supplier”** shall mean the legal entity identified as the Supplier in the applicable contract.
- **“Supplier Indemnities”** shall have the meaning set forth in Section 31.1 of these terms.
- **“Supplier Damages”** shall have the meaning set forth in Section 31.1 of these terms.

- **“Terms”** means the terms set out in these terms and conditions of purchase, together with any applicable Country Supplement or Region Supplement.

7/19/2016