

**Engineered Systems & Products  
Standard Terms and Condition of Sales****1. DEFINITIONS**

- 1.1 **Agreement.** “Agreement” means this Standard Terms and Conditions of Sale, together with all Exhibits and Schedules incorporated in this Agreement by reference, all Purchase Orders and Change Orders issued pursuant to the Agreement, all Plans and Specifications applicable to this Agreement, and all Amendments to this Agreement.
- 1.2 **Amendment.** “Amendment” means a Change Order, written document, or letter signed by or on behalf of both Buyer and Seller, which is intended to modify this Agreement.
- 1.3 **Background Intellectual Property.** “Background Intellectual Property” shall mean any Intellectual Property and associate rights existing before the date of acceptance of any work in relation to the Equipment.
- 1.4 **Buyer.** “Buyer” means the legal entity, firm, or any-one ordering goods and/or services from Seller.
- 1.5 **Buyer Property.** “Buyer Property” means any property of the Buyer provided or made available to the Seller for the purpose of the Seller supplying Equipment or performing any services, including but not limited to Buyer equipment and tooling.
- 1.6 **Change Order** means a written document which is intended to make changes in the character or quantity of the items to be furnished hereunder, including changes in Plans and Specifications, instructions for work, methods of shipment or packaging, or schedules of or places for delivery of the items.
- 1.7 **Confidential Information.** “Confidential Information” means any and all written or documentary information of either the Seller or Buyer transmitted to the other party hereunder and which is marked “Confidential” or Proprietary” at the time of its transmission to the receiving party, and includes information generated by the receiving party that reflects or reveals confidential and proprietary information of the transmitting party. Confidential Information includes, but is not limited to, design and development information, whether conceptual or not or patentable or not, drawings, specifications, graphs, as well as engineering, manufacturing, business and marketing plans and processes, strategies and financial studies and analysis.
- 1.8 **Designer.** “Designer” means Buyer or any other party providing Plans and Specifications to Seller.
- 1.9 **Engineered System.** “Engineered System” shall refer to the Seller’s Electronic Mechanical Actuators (“EMA”) which are configured to actuate the Company’s specially machined products and then sold together as an integrated system.
- 1.10 **Equipment.** “Equipment” means any EMA systems, machined products, assemblies, components, goods or material which are described in Seller’s Quotation.
- 1.11 **Items.** “Items” means all Equipment and Services.
- 1.12 **Services.** “Services” means any Seller services (including any maintenance, repair and overhaul services) to be provided to the Buyer
- 1.13 **Specifications.** “Specifications” means all Seller plans, drawings and other written and pictorial descriptions of the Equipment, intended to fit and describe the size, quality and operating parameters of the Equipment, its systems, materials and other appropriate elements.
- 1.14 **Premises.** “Premises” means the location designated by Buyer at which Equipment is to be installed or Services are to be performed.
- 1.15 **Purchase Order.** “Purchase Order” means a purchase order issued by Buyer subject to written acceptance by Seller.
- 1.16 **Seller.** “Seller” means the legal entity supplying the Equipment hereunder as identified in the Seller’s Quotation.
- 1.17 **Seller’s Quotation.** “Seller’s Quotation” means the written quotation or proposal issued by Seller to Buyer in response to Buyer’s request for a bid, quotation, proposal or similar communication.
- 1.18 **Services.** “Services” means all acts, work, labor and other personal services (including, without limitation, professional services, training and supervision, and transportation of Equipment) done by or at the direction or on behalf of Seller for the benefit of Buyer.
- 1.19 **Work.** “Work” means Seller’s Equipment, Services, or Items provided to Buyer.

**2. CONTRACT FORMATION AND ADMINISTRATION**

- 2.1 **Contract Formation.** The terms and conditions contained in this Agreement apply to any Purchase Order placed by Buyer with Seller with respect to the Items.
- 2.2 **Other Terms.** Any terms contained in Buyer’s offer to buy, request for quotation, Purchase Order or any other form or communication received from Buyer which are in addition to or different from the terms and conditions contained in this Agreement are expressly objected to and shall be deemed rejected by Seller, unless expressly accepted in writing by Seller. In the event that the printed terms of Seller’s order acknowledgment are in conflict with the terms of this Agreement, the terms of this Agreement shall control.
- 2.3 **Suitability.** The Buyer shall determine the suitability of the Equipment and Services for the Buyer’s use and/or application. The Buyer shall be solely responsible for the accuracy of the Buyer’s designs, drawings, specifications and other data supplied to the Seller by the Buyer, even if the Seller examines, inspects, studies or comments to the Buyer regarding any such designs, drawings, specifications or other data.
- 2.4 **Change Orders.** Change Orders may be submitted by

either Buyer or Seller. All Change Orders must be in writing and signed by a duly authorized representative of Buyer and Seller. If any Change Order results in an increase (or decrease) in Seller's cost or in the time for performance, Seller shall be entitled to an equitable adjustment in the price or time for performance of the work covered by this Agreement based upon the actual difference in expense or time necessary for performance of the work, together with a reasonable allocation of overhead and profit. Seller shall provide an estimate of any anticipated price increase or delay in performance time within thirty (30) days of the date of receipt of Buyer's Change Order. However, notwithstanding the foregoing, Seller shall be under no obligation to proceed with major changes in the original Scope of Work without Buyer's written Change Order, and an equitable adjustment in price and/or time to complete the Scope of Work.

2.5 Project Schedule and Price Adjustments. Seller shall be entitled to equitable adjustments of the time to perform and/or Agreement price, including but not limited to any increased costs of labor, supervision, equipment or materials, and reasonable overhead and profit, for any modification of the project schedule differing from the bid schedule, and for any other delays, acceleration, out-of-sequence work and schedule changes beyond its reasonable control, or other delays caused by Buyer or others. Seller may impose upon Buyer reasonable charges for storage for any Items completed by Seller and not shipped when ready to ship due to Buyer's request, including Seller's reasonable costs of demobilization, delay, and remobilization. Should work be delayed by any of the afore-mentioned causes for a period exceeding ninety (90) days, Seller shall be entitled to terminate the Agreement. Seller's change proposals must be processed in not more than thirty (30) calendar days or as otherwise indicated on the change proposal.

2.6 Progress Reports. Seller shall, upon request by Buyer, provide Buyer with written reports on the status of Seller's work under this Agreement.

2.7 Set-off Claims. No set-off or claim of Buyer for services shall be valid except by an agreement in writing by Seller before the work is executed. In the event of Seller's failure to meet any requirement of this Agreement, Buyer shall notify Seller of such default, in writing, and allow Seller reasonable time to correct any deficiency before incurring any costs chargeable to Seller. No set-off charges shall be valid unless agreed upon in writing.

### 3. SHIPMENT TERMS

3.1 Packaging, Labeling and Shipping. Seller will package and load the Equipment, so as to avoid any damage in transit, identify the Equipment by displaying Buyer's name, address and Purchase Order number on each unit or package shipped, and ship the Equipment in the manner and by the route and carrier specified in Seller's Quotation. A packing list in English will be enclosed in all shipments showing Buyer's Purchase Order number and the exact quantity and description of Equipment shipped. Bills of lading showing full routing, car or truck number, other customary data and Buyer's Purchase Order number shall be dated and be included at the time of each shipment.

3.2 Notice of Shipment. Seller shall use good faith efforts to

provide Buyer at least one (1) day advance written notice of the dates upon which each shipment will be made. Each notice shall also specify the mode of each shipment (rail, motor carrier, air, etc.), whether the shipment requires a load permit, and the maximum total value, weight, dimensions and point of origin of each shipment. This requirement must be specifically stated on the applicable bill of lading.

3.3 Shipment. All Shipping Dates are estimates only, as per Seller's quotation or order acknowledgement. Title and risk of loss shall pass to Buyer upon Seller tendering the Equipment with a carrier at Seller's Facility (FCA Incoterms 2020).

3.4 Charges. The Buyer will pay all costs and charges in relation to special packaging (other than standard packaging), loading on carriage, freight, and insurance, together with export and/or import charges or duties, where appropriate.

### 4. PRICES, PAYMENT AND ACCEPTANCE

4.1 Pricing. The prices in this quotation shall be void thirty (30) days from the date hereof or upon Seller's prior notification of a price change to Buyer, whichever occurs first. The prices quoted herein do not include any federal, state, county, local or other taxes levied on the Items, its use or sale, or on this agreement by any jurisdiction either inside or outside the United States. Such taxes, where Seller is required by law to collect them, whether designated as sales tax, gross receipts tax, occupation tax, etc., will be billed to Buyer based on the law in effect at the time of delivery unless Buyer furnishes Seller with a proper tax exemption certificate. Buyer shall reimburse Seller for any state, county, or local property taxes respecting the Items, imposed, assessed, billed or becoming due and payable by Seller on or after the date the Items or its component parts are located on Buyer's premises or the premises of any subcontractor (30) days of Buyer's receipt of Seller's invoice.

4.2 Price Adjustment. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Equipment and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's control (such as, without limitation, any increase in the costs of labor, materials, or other costs of manufacture or supply); any change in the quantities of the Equipment requested by the Buyer; any change in the delivery dates of the Equipment and/or Services requested by the Buyer; or any delay or cost caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Payment Terms. Unless otherwise agreed to by Seller in writing, payment for each Item specified in this acknowledgment shall be due at Seller's main office, no later than (thirty) 30 days after shipment as defined in Section 3.3 above. Partial shipments will be invoiced as shipped. Buyer agrees that Seller specifically retains a security interest under the Uniform Commercial Code in all the Equipment and all proceeds thereof to secure payment of all amounts due from Buyer to Seller. Any payment not made when due shall be subject to a charge of one and one-half percent (1-1/2%) finance charge per month or the highest allowed finance charge, whichever is less, on the unpaid balance and, if collected by or through an attorney at law. Buyer shall also

pay Seller fifteen percent (15%) thereof or the maximum amount allowed by law, whichever is greater, as Seller's reasonable attorney's fees, and shall also pay other costs of collection. If at any time Buyer does not make timely payments or Seller determines that the financial condition of Buyer does not justify the terms of payment established, Seller may, at Seller's sole option, require full or partial payment in advance or shall have the right to cancel any purchase order and shall be reimbursed for Seller's reasonable and proper cancellation charges.

4.4 Invoices and Credit. Pro rata payments shall become immediately due and payable upon Seller's completion of any milestone criteria and/or delivery without set off and without further act or deed of Seller. Seller reserves the right to grant, deny or stop advancing credit at any time in its sole discretion. Seller's credit policies are subject to change at any time without notice. Buyer hereby consents to Seller giving or obtaining credit information to or from third parties regarding Buyer.

4.5 Monies Due. If any sum due from the Buyer to the Seller under the Contract or any other contract or order is not paid to the Seller on or before the due date for payment, then all sums then owing by the Buyer to the Seller or any affiliate of the Seller shall become due and payable immediately and, without prejudice to any other right or remedy available to the Seller, the Seller and any affiliate shall be entitled to:

(a) cancel or suspend performance of the Contract or any other contract or order placed with the Seller or any affiliate including suspending deliveries of the Equipment, Services and/or any other goods until arrangements as to payment or credit have been established which are satisfactory to the Seller; and/or

(b) require the Buyer to pay for the Equipment and/or Services prior to shipment from the Seller's place of business; and/or charge the Buyer interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of one and one-half percent (1-1/2%) finance charge per month until payment is made in full.

4.6 Cost of materials. A change in the price of an item of more than five percent (5%) between the date of Seller's quotation and the date of Seller's procurement or installation shall warrant an equitable adjustment in the Agreement price, which the parties agree to negotiate in good faith.

## 5. DELIVERY, ACCEPTANCE & INSPECTION

5.1 Delivery. Delivery dates for the supply of the Equipment and Services are estimates only and time is not of the essence. The Seller will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Equipment, Buyer Property and/or Services, nor will any delay entitle the Buyer to terminate or rescind the Contract.

5.2 Delivery Refusal. If for any reason the Buyer does not take delivery, or the Seller is unable to deliver the Equipment. Buyer Property and/or the Services on the estimated delivery dates because the Buyer has not provided appropriate instructions, documents, licenses, authorizations, etc., then such Equipment

and/or Buyer Property will be deemed to have been delivered and risk shall pass to the Buyer. The Seller may at its option:

(a) store such Equipment and/or Buyer Property until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance); and/or

(b) re-allocate or take reasonable steps to sell such Equipment and/or Buyer Property at the best price readily obtainable (after providing not less than thirty (30) days' prior written notice to the Buyer). The Seller may charge the Buyer for any shortfall below the Contract price or account to the Buyer for any excess (after deducting all reasonable survey, repair, storage and selling expenses); and/or

(c) invoice the Buyer for all related costs and expenses incurred by the Seller.

The Buyer shall promptly notify the Carrier of any damage to, loss from or non-receipt of any Equipment and/or Buyer Property if transportation has been arranged by or on behalf of the Buyer. The Seller shall not be liable for any such damage, loss or non-receipt.

5.3 Partial Shipment. The Seller may, at its option, make partial shipments of Equipment and invoice the Buyer for each shipment individually in which case each delivery shall constitute a separate contract. Failure by the Seller to deliver any one or more of the shipments in accordance with these terms and conditions or any claim by the Buyer in respect of any one or more shipments shall not entitle the Buyer to terminate the whole Contract or refuse to accept subsequent shipments. The Buyer shall accept any early delivery.

5.4 Acceptance. The Buyer will be deemed to have accepted the Equipment as being in accordance with the Contract, the Seller shall have no liability for any defect and/or failure and the Buyer shall be bound to pay the price unless:

(a) within fifteen (15) days of the date of delivery of the Equipment, the Buyer notifies the Seller in writing of any defect apparent upon inspection of the Equipment to conform with the Contract; or

(b) the Buyer notifies the Seller in writing of any failure of the Equipment to conform to the Contract specifications within a reasonable time where the defect and/or failure would not be so apparent within fifteen (15) days of the date of delivery.

5.5 Documentation. The Buyer shall be responsible for checking that all documentation supplied by the Seller to the Buyer is accurate and free from error. The Seller agrees to remedy any inaccuracies/errors in such documentation provided that the Buyer has notified the Seller of the inaccuracies/errors within thirty (30) days of receipt of the relevant document(s). Beyond such period, the Seller reserves the right to charge an administration fee for any amendments

5.6 Inspection and Testing during Manufacturing. Buyer or Buyer's representatives shall have the right, upon reasonable notice to Seller (usually thirty (30) days in advance of test) to inspect and witness Seller's testing of all Equipment at Seller's

premises. Seller shall provide manufacturing facilities for inspections by Buyer and shall furnish full information regarding all materials entering into the Equipment. Buyer shall immediately notify Seller of any deficiencies identified by Buyer, and Seller shall have a reasonable time within which to rectify such deficiency. Buyer's waiver of inspection constitutes Buyer's acceptance of Seller's test results verifying that the Equipment conforms to the Plans and Specifications. If the Buyer has conducted such inspection, the Seller shall not be liable for any claim made after shipment in respect to any defect in the Equipment which would have been apparent upon such inspection.

5.7 Accuracy of Testing Results. The performance, quality, quantities, dimensions, weight, capacity, conformity and characteristics as established in the Specifications will be deemed accurate when the Equipment is demonstrated to conform with the Specifications at the time of inspection or testing at Seller's premises.

5.8 Factory Acceptance of Equipment. Buyer accepts the Equipment upon satisfactory inspection and testing at Seller's premises. Delivery terms are FCA Seller's plant or warehouse (Incoterms 2020) or as otherwise agreed to as evidenced by Seller's order acknowledgment.

5.9 Acceptance of Services. Any Services performed by Seller relating in any way to Equipment produced by Seller will be subject to this Agreement. Buyer Accepts any Services performed upon the earlier of (a) when Services are performed unless exception is taken at that time in writing, or (b) upon sign-off of Seller's personnel's daily time sheets by Buyer's representative.

5.10 Buyer supplied software, equipment, or personnel. In the event that the availability or functioning (as well as non-availability or non-functioning) of Buyer supplied software, equipment, or personnel delays negatively impacts the manufacturing process, including testing, Buyer agrees to be liable for all additional costs to Seller which may result, including delays to project schedule.

5.11 Suspension of Work. In the event of a suspension of work by Buyer and/or project owner, Buyer's liability to Seller is for payment in full for all Work performed to the date of suspension, costs of delay, demobilization and remobilization that result from the suspension, and an equitable adjustment of the schedule.

5.12 Cancellation. The Buyer may only cancel a Contract (or any part of a Contract) which the Seller has already accepted, with the Seller's prior agreement in writing and provided the Buyer indemnifies the Seller in full in terms established by the Seller. Cancellation charges may apply to such cancellation including but not limited to: (i) all amounts due under the Contract in respect of work performed and/or Equipment delivered up to the date of cancellation, including all applicable overhead and profit; (ii) any sums which have been paid by the Seller or become payable as a result of the cancellation to its subcontractors and supply chain to procure all or any part of the Equipment or Services for the Buyer's requirements including all applicable overhead and profit; (iii) the cost of any work, materials and tooling incurred by the Seller, including initial costs, overhead, profit and preparatory expenses allocable

thereto, used exclusively by the Seller to supply the Equipment and Services; (iv) any non-recurring engineering and project investment costs not paid by the Buyer or recovered by the Seller under the Contract; (v) the costs of settling and paying any losses, damages or claims arising out of the termination of work; and (vi) reimbursing any other reasonable and proper sums suffered or incurred by the Seller solely in connection with or resulting from the cancellation of the Contract including without limitation overhead and the profit the Seller would have earned under the Contract.

5.13 Charges. The Buyer shall pay the Seller all cancellation charges within thirty (30) days of the date of the Seller's demand.

5.14 Breach. In the event (a) the Buyer commits a breach of any of its obligations under the Contract and fails to remedy any such breach within a period of fourteen (14) days; or (b) the Buyer fails to make payment under the Contract when due, or suspends payments or is unable to pay its debts as they fall due; or (c) of the institution of any proceedings by or against the Buyer, voluntary or involuntary, in bankruptcy or insolvency or for the appointment of an administrator, administrative receiver, receiver or trustee or an assignee for the benefit of creditors of the business or property of the Buyer; or (d) the Buyer ceases, or threatens to cease, to carry on business; or (e) the Seller reasonably believes that any of the above events is about to occur in relation to the Buyer, then the Seller shall be entitled to cancel the Contract forthwith by written notice without prejudice to any rights arising prior to said cancellation. The Buyer shall pay cancellation charges as set out in this section.

5.15 Force Majeure. Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes. In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay

## **6. BUYER'S ACTIVITIES UPON SELLER'S MANUFACTURING PREMISES**

6.1 Indemnity. Buyer shall indemnify, hold harmless and defend Seller, including its agents and employees, from and against all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from the Buyer or Buyer's representative's performance of Work on Seller's premises, provided that any such claim, damage, loss, or expense (a) arises out of bodily injury, sickness, disease, or death, or property damage, and (b) is caused by the negligent act or omission of the Buyer, or its employees, agents, customers or contractors, and (c) is not caused by any intentional or negligent act or omission of Seller, or its employees, agents or contractors. In any and all claims against any indemnified party by any employee of the Buyer or anyone acting on behalf of the Buyer, the indemnification obligation under this sub-Section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Buyer or anyone acting on behalf of the Buyer under worker's compensation acts,



disability benefit acts, or other employee benefit acts.

6.2 Insurance. Buyer shall carry and maintain with respect to Buyer's performance of Work, insurance with coverage and minimum limits as reasonably specified by Seller, but at the minimum:

(a) Worker's compensation insurance in accordance with statutory requirements and employer's liability insurance in accordance with statutory requirements.

b) Commercial general liability insurance covering bodily injury and property damage, including Equipment and completed operations coverage with a minimum of \$1,000,000 per occurrence and in the aggregate.

(c) Automobile liability insurance covering bodily injury and property damage including coverage for owned, hired, and non-owned automobiles with a minimum of \$1,000,000 combined single limit. Buyer shall furnish Seller certificates showing that such insurance is in full force and effect prior to participating in any activities on Seller's premises. Commercial general liability insurance shall be endorsed to provide contractual liability.

(d) In the event that Seller agrees to add Buyer as an additional insured under any Work, then Buyer will also be required to add Seller as an additional insured to any Buyer insurance policy, and to waive subrogation for claims covered by workers' compensation or commercial general liability insurance.

6.3 Safety. Buyer and Buyer's representatives will comply with all of Seller's safety policies as well as all applicable rules, regulations, order and other lawful requirements established to prevent injury, loss or damage to persons or property.

6.4 Care and Use of the Buyer Property. It shall be the Buyer's responsibility to ensure that any tooling and/or material issued free of charge and other Buyer Property delivered to the Seller by the Buyer or on its behalf is safe and suitable for manufacture of or incorporation into Equipment or for the Services to be performed in accordance with all regulatory guidelines and procedures.

6.5 Return of Buyer Property. The Seller shall use the Buyer Property solely for the purpose of the Contract and shall at the Buyer's expense maintain the Buyer Property in good order, condition, and repair while it is in the Seller's possession or control. On completion or termination of the Contract, unless otherwise directed by the Buyer in writing, the Seller shall deliver the Buyer Property to the Buyer.

## 7. WARRANTIES AND REMEDIES

7.1 Equipment Warranty. Seller expressly warrants and guarantees to Buyer for the Warranty Period specified herein that all Equipment sold by Seller hereunder (a) will be of good quality and workmanship and free from defects, latent or patent, in materials and workmanship under normal operating conditions and proper application in accordance with Specifications for operations as described in the Seller's Quotation, (b) will be manufactured utilizing new materials, unless otherwise specified or agreed by Buyer, and (c) will be free of all liens and encumbrances and claims of title of third

parties. Third-party supplied hardware/software is warranted only to the extent of the stated warranty by the original manufacturer. Seller does not warrant the compatibility of its Equipment with the goods of other manufacturers or Buyer's application except to the extent expressly represented in Seller's published specifications or written quotation.

7.2 Warranty Services. Seller expressly warrants and guarantees to Buyer that all Services performed by Seller hereunder (a) will be performed in a good and workmanlike manner by qualified persons selected and paid by Seller, (b) will be performed in accordance with generally accepted professional standards and practices and in a manner consistent with the manner in which such Services are customarily performed by experienced and competent persons rendering the same or similar Services with regard to projects of similar size, cost, and complexity, and (c) will conform to the applicable Specifications, and applicable federal and state statutes, codes, and regulations.

7.3 Specifications. Seller shall prepare and submit Specifications, operating and maintenance manuals with respect to the Equipment to the Buyer.

7.4 Repair or Replacement of Non-Conforming Equipment or Services. During the warranty period, Buyer's sole and exclusive remedy under the warranty shall be limited to the repair or replacement of warranted Equipment or Services, location to be at Seller's option. In the event Seller elects to repair such Equipment or Services, Buyer will, at its cost, provide Seller with unobstructed access to the Equipment, adequate space in the immediate vicinity of the Equipment, and such facilities and systems, including, without limitation, forklifts, cranes and other equipment, as well as utility connects and disconnects, as may be necessary to facilitate performance by Seller of its obligations under the warranty. At Seller's option, any such non-conforming Equipment may be returned by Buyer, at Buyer's expense, to Seller's factory or authorized factory service center, or repaired in place at Buyer's facility. Seller shall not be responsible for any charges for labor and/or parts incidental to the removal and re-installation/ remounting of Equipment repaired or replaced under this warranty. The Seller shall pay all reasonable return packaging and transportation costs of a valid warranty claim. The Seller is not liable for the removal of Equipment from, or installation of the Equipment into, any other property to which it may be attached or incorporated.

7.5 Return. If requested by the Seller, the Buyer shall promptly deliver back to the Seller any Equipment and/or materials which have been replaced and legal title to the replaced Equipment shall re-vest in the Seller.

7.6 Warranty Discharge. The Seller's performance of one of the options set out in Section 7.4 shall constitute an entire discharge of the Seller's liability for breach of the warranty at Section 7.1.

7.7 Third Party Equipment. For any Equipment not manufactured by the Seller, the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer to the Seller, to the extent that it is assignable by the Seller to the Buyer.

7.8 Software. In relation to any software that may be incorporated into the Equipment, the Seller gives no warranty that: (i) the functions of the software will meet the Buyer's requirements or will enable it to attain the objectives the Buyer has set for itself, (ii) the software will operate in the combination or environment selected for use by the Buyer, or (iii) the operation of the software will be uninterrupted or free of errors. The Buyer shall be solely responsible for the results produced by the software and ensuring that the results comply with the Buyer's specified requirements.

7.9 Warranty Period. Seller's Warranty Period is the twelve (12) months from the date of shipment as defined in Section 3.3. The warranty period shall not be extended or otherwise modified as a result of the repair or replacement of any non-conforming Equipment or its components. Buyer-supplied and/or Buyer's customer-supplied items on systems, assemblies or power units are warranted per original manufacturer's warranty policy only.

7.10 Warranty Processing Procedures. No Equipment shall be returned without prior authorization from Seller. Buyer shall prepay all transportation charges for the return of such Equipment to Seller's factory or authorized factory service center. Seller will not accept any charges for labor and/or parts incidental to the removal and remounting of Equipment repaired or replaced under this warranty. All repair and replacement parts provided under this warranty will assume the identity, for warranty purposes, of the part replaced and the warranty on such replacement parts will expire when the warranty on the original part would have expired. Claims must be submitted within 30 days of failure or be subject to rejection. This warranty is not transferable beyond the first using Buyer. For Equipment that is returned under warranty and is tested, and no fault found, the Seller will be entitled to reimbursement from the Buyer for reasonable charges incurred for transportation, testing and evaluation.

7.11 Warranty Exclusions. The Seller shall not be liable for a breach of the warranty at Section 7.1 in any of the following circumstances: (i) Equipment or parts thereof have been modified, altered, installed, used or serviced other than in conformity with the Seller's applicable specifications, manuals, bulletins or written instructions, or which shall have been subjected to improper installation, misuse or neglect; (ii) Equipment has not been maintained and operated in accordance with the Seller's instructions; (iii) normal wear and tear, willful or accidental damage, harsh environment or experimental running; (iv) Equipment or parts thereof have been furnished by the Buyer or acquired from others at the Buyer's request and/or to the Buyer's specifications, and any use or incorporation of components not manufactured by or authorized by the Seller in the Equipment; (v) Equipment with a stated shelf life or 'use by' date, if such shelf life has expired or 'use by' date has passed; (vi) tooling purchased or made for the purpose of manufacturing the Equipment; (vii) the Buyer or its customer fails to afford the Seller a reasonable opportunity to inspect the Equipment or Services; (viii) the price for Equipment or Services, or any other goods or services supplied by the Seller or its affiliates, has not been received in full.

7.12 Minor Deviations. Minor deviations from specifications which do not affect performance of the Equipment shall not be deemed to constitute defects in materials or

workmanship or a failure to comply with the specifications referred to herein. The need for regular overhaul of Equipment shall not constitute a defect or failure for the purposes of the warranty at Section 7.1.

7.13 Documents, Materials, Work, Etc. of Third Parties. Seller's obligation to examine documents, the project site, and materials and work furnished by others is limited to notification to Buyer of any defects or deficiencies that a person in the trade of Seller would discover by reasonable visual inspection. No testing beyond reasonable visual inspection shall be required. Seller is entitled to rely on the accuracy and completeness of plans, specifications, and reports of site conditions provided by Buyer to Seller. Any design services provided by Seller will be reviewed by Designer to assure acceptability when integrated with the entire work. Buyer is entitled to rely on the accuracy and completeness of design services or certifications provided by Seller only to the extent that design responsibility is specifically delegated to Seller by agreement in writing and all design and performance criteria are furnished to Seller

**7.14 EXCLUSION. OTHER THAN AS SET OUT IN SECTION 7.1, ALL WARRANTIES, CONDITIONS, TERMS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE CONTRACT.**

## **8. LIMITATION OF DAMAGES**

8.1 **CLAIM PERIOD. EXCEPT FOR WARRANTY CLAIMS HEREUNDER, ANY CONTROVERSY, DISPUTE, OR CLAIM THAT BUYER MAY HAVE AGAINST SELLER MUST BE INITIATED NO LATER THAN ONE (1) YEAR AFTER THE CLAIM ORIGINATED.**

8.2 **INCIDENTAL AND CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INDIRECT OR OTHER SIMILAR-TYPE DAMAGES, OR FOR CONTINGENT LIABILITIES INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, INCOME OR PROFITS, DOWNTIME COSTS, OR OTHER COMMERCIAL LOSS RESULTING FROM NON-CONFORMING EQUIPMENT OR SERVICES.**

8.3 **LIMITATION OF DAMAGES. THE TOTAL AGGREGATE LIABILITY OF THE SELLER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT WHETHER FOR NEGLIGENCE OR BREACH OF CONTRACT OR ANY CAUSE WHATSOEVER SHALL IN NO EVENT EXCEED THE PRICE PAID BY THE BUYER FOR THE AGGREGATE OF ALL EQUIPMENT OR SERVICES PROVIDED BY BUYER UNDER THE CONTRACT OR THE SUM OF ONE MILLION DOLLARS USD (\$1.0M), WHICH EVER AMOUNT IS LESS . NOTWITHSTANDING ANY OTHER TERMS AND CONDITIONS OF THE CONTRACT, THE SELLER**



**SHALL HAVE NO LIABILITY FOR THE USE BY THE BUYER OF COMPONENT PARTS INCLUDING SOFTWARE IN THE EQUIPMENT WHICH ARE NOT MANUFACTURED BY OR AUTHORISED BY THE SELLER**

## **9. SUBCONTRACTING, ASSIGNMENT AND THIRD-PARTY RIGHTS**

9.1 Subcontract. The Buyer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Seller. Seller shall obtain written approval from Buyer, which shall not be unreasonably withheld, prior to making changes to its subcontractors which have been qualified by Buyer. Any such approval shall not relieve Seller of responsibility for the performance of its suppliers or subcontractors

9.2 No Third-Party Beneficiary. Other than affiliates of the Seller, a person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub-contractor of either party) shall not have any right to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Seller and the Buyer.

## **10. INTELLECTUAL PROPERTY**

10.1 Intellectual Property Rights. Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) in the Equipment and/or Services or in any molds, tools, designs, drawings, or Equipment data owned by the Seller or created by the Seller in the course of the performance of the Contract or otherwise used in the manufacture of the Equipment and/or the provision of the Services shall remain the Seller's property unless otherwise expressly agreed in writing by the Seller as a "work made for hire". The Seller grants, on full payment for the Equipment and Services the non-exclusive right for the Buyer and bona fide purchasers from the Buyer to use, for the operation of the Equipment or Services for their intended purpose only, (a) any software supplied with, or embedded in, the Equipment and Services, and (b) technical manuals and instructions relating to operation and maintenance of the Equipment and Services.

10.2 Buyer Grant. The Buyer hereby grants to the Seller, a non-assignable non-exclusive, royalty-free license to use any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) owned by the Buyer to the extent necessary for the Seller to supply the whole or any part of the Equipment and/or Services in accordance with the Contract. Except as expressly stated herein, nothing in the Contract shall be deemed to have given the Buyer a license or any other right to use any of the intellectual property rights of the Seller unless otherwise expressly agreed in writing by the Seller.

10.3 Infringement Warranty. Seller warrants that the Equipment shall not infringe any patent. If Buyer provides timely notice, information and assistance, Seller shall indemnify

and defend Buyer from and against any claimed infringement, which would constitute a breach of this warranty. In the event the Equipment are found to infringe any U.S. patent, Seller shall at its option procure for Buyer the right to continue use, replace the Equipment with non-infringing goods, modify the Equipment so that they are non-infringing or upon return of the Equipment to Seller, refund the purchase price less reasonable depreciation. Seller grants no license, express or implied, other than the right of Buyer to use the Equipment.

10.4 Exclusion. Seller makes no warranty with respect to and shall not be liable for, any infringement relating to or arising out of:

- (a) Equipment manufactured to Buyer's design or specifications, or
- (b) Use of the Equipment in conjunction with any other Equipment not furnished by Seller or in a combination not furnished by Seller. With respect to any claimed infringements arising out of circumstances described in this sub-Section Buyer shall indemnify and defend Seller against any and all loss, damage, costs and expenses including reasonable attorney fees.

10.5 Copyright & License. Seller owns or is the licensee of the copyright to any and all computer software to be transmitted as part of the Equipment. Seller, upon delivering the software to Buyer, grants Buyer a limited, non-exclusive license to use the software and related documents in Buyer's facilities only. Buyer shall obtain no title, ownership nor any other rights in and to the software related documentation nor in the algorithms, concepts, design and ideas request by or incorporated in the software and related documentation. Buyer shall not, except for a back-file copy, copy or reproduce, or permit to be copied or reproduced the software or related documentation for any purpose. Buyer shall not modify, or attempt to modify, the software, nor shall allow the software to be used on any equipment except that supplied by Seller as part of the Purchase Order, or for the Equipment for which the software is purchased. Buyer will not transfer the software to any other person, except as agreed to, in writing, by Seller. Buyer may not remove any copyright, trademark or other notice or Equipment identification from the software and must reproduce and include any such notice or Equipment identification on any back-up made of the software.

10.6 Background Intellectual Property. The purchase of the Equipment and Services shall not be construed as granting to either Party title or rights to any Background Intellectual Property of the other Party.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

11.1 Contract Confidentiality. The Buyer and the Seller shall each keep confidential and shall not, without the prior written consent of the other, disclose to any third party or otherwise make public the terms or existence of the Contract. The Buyer agrees that it will not exhibit the Equipment or any advertisements or price lists relating to any of the Seller's Equipment or services without the prior written consent of the Seller.



11.2 **Confidentiality.** From time to time during the term of this Agreement, either Party] (as the "**Discloser**") may disclose or make available to the other Party (as the "**Recipient**") information about its business affairs, products, services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in visual, written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential"(collectively, "**Confidential Information**"). The Recipient shall: (A) protect and safeguard the confidentiality of the Discloser's Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Discloser's Confidential Information, or permit it to be accessed or used, for any purpose other than to perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who need to know the Confidential Information to assist the Recipient, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Recipient shall be responsible for any breach of this Section caused by any of its Representatives. at any time during or after the term of this Agreement.

11.3 **Return of Confidential Information.** All Confidential Information shall be returned to Buyer or Seller, as the case may be, promptly upon written request therefore, provided, that Seller shall have the right to retain a copy of the final "as built" drawings for the purpose of assisting Seller with any after-sale warranty or service work it may be called upon to perform. Such request may be made at any time during or within six (6) months after completion of Seller's performance hereunder. In addition to all other remedies available at law, the Discloser shall be entitled to specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this Section.

11.4 **Notice of Compelled Disclosure.** In the event that Seller or Buyer is requested pursuant to or required by applicable law or regulation or compelled by legal process to disclose any Confidential Information, such party will immediately provide the other with telephonic and written notice thereof and fully cooperate with and assist in obtaining a protective order to either prevent such disclosure or permit such disclosure only upon such terms and conditions regarding the confidentiality thereof as is acceptable to the owner of such Confidential Information.

11.5 **Cyber Breach.** Buyer shall implement and maintain commercially reasonable physical and cybersecurity safeguards and security mechanisms to protect the confidentiality and integrity of Seller's non-public data and the systems that house or handle such data. Buyer shall immediately notify Seller of: (1) any unauthorized possession, unauthorized disclosure, or unauthorized use of, loss, or any other potential corruption, compromise, or destruction of any of Seller's non-public data, or the systems that house or handle that data; (2) the effect of such use or possession; and (3) the corrective action taken in response thereto. Buyer acknowledges that Seller may be required to notify its customers, regulators, and/or employees of such security incidents and agrees to assist and cooperate with Seller with any investigation, disclosures to affected parties, and other remedial measures, in each case, as reasonably requested by Seller or required by any applicable regulations or privacy laws

11.6 **Survival of Obligations.** The obligations of Seller and

Buyer under Section 11 shall survive the cancellation, termination or completion of this Agreement.

## 12. INDEMNITY

12.1 **Indemnity.** Seller shall indemnify, hold harmless and defend Buyer including its agents and employees from and against all claims, damages, losses, and expenses (excluding attorneys' fees) arising out of or resulting from the performance of the work or services, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, and (b) is caused in whole by any intentional or negligent act or omission of the Seller, or its employees, agents or contractors, and (c) is not caused by any intentional or negligent act or omission of Buyer, or its employees, agents or contractors. In any and all claims against any indemnified party by any employee of the Seller or anyone acting on behalf of the Seller, the indemnification obligation under this sub-Section shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Seller or anyone acting on behalf of the Seller under worker's compensation acts, disability benefit acts, or other employee benefit acts.

12.2 **Insurance.** Seller shall carry and maintain during performance of work or services contracted under any purchase order, the following insurance with minimum limits as specified for each type of insurance:

(a) Worker's compensation insurance in accordance with statutory requirements and employer's liability insurance in accordance with statutory requirements.

(b) Commercial general liability insurance covering bodily injury and property damage, including Equipment and completed operations coverage with a minimum of \$1,000,000 (one million) per occurrence and in the aggregate.

(c) Automobile liability insurance covering bodily injury and property damage including coverage for owned, hired, and non-owned automobiles with a minimum of \$100,000 combined single limit. Each party shall furnish the other party certificates showing that such insurance is in full force and effect prior to commencing the performance of work or services contracted under any Purchase Order from Buyer, and each Party shall provide the other Party with written notice within a reasonable time after receipt by such Party of notice from its insurer that any coverage required hereunder is being canceled or materially modified. All such insurance shall be endorsed to provide contractual liability.

(d) The sufficiency of Seller's insurance coverages shall be deemed to be accepted by Buyer at such time as Buyer initiates payment to Seller, and Buyer shall be deemed to have waived any claims against Seller related to Seller's obligation to obtain insurance compliant with the contract.

12.3 **Buyer's All Risk Insurance.** Seller shall provide reasonable protection for its job site material and work, but shall be liable for losses only to the extent caused by Seller's negligence. It is understood and agreed to that Buyer's all-risk insurance (or that of the property owner where the Equipment is located) includes coverage for the full value of loss or damage to Seller's work in place, for its stored material, and for its



material in transit.

12.4 Additional Insureds. Seller will not be required to add additional insureds to any insurance policy, nor to waive subrogation for claims covered by workers' compensation or commercial general liability insurance. Seller shall maintain insurance with coverage and limits only as provided by Seller's existing insurance program evidenced by its certificate of insurance available on request.

12.5 Temporary Site Facilities. Except as specifically required by the Work and specifications included in this bid proposal, Buyer shall furnish all temporary site facilities, including but not limited to site access, storage space, hoisting facilities, guard rails, covers for floor, roof and wall openings, security, parking, safety orientation, break and lunch facilities, toilet and wash facilities, drinking water and other water facilities, electrical service, telecommunication ser-vice, lighting, heat, ventilation, weather protection, fire protection, and trash and recycling services.

12.6 Damage by Other Parties. Seller is not responsible for damage to its Work by other parties, and any repair work necessitated by such damage is extra work. All materials shall be furnished in accordance with the respective industry tolerance and performance standards. All warranty claims for Seller's work must be received by Seller within the warranty period, and Seller must be provided a reasonable opportunity to inspect and make corrections, or such warranty claims are barred.

### 13. COMPLIANCE WITH LAWS

13.1 Governmental Authorizations, Approvals, Permits and Licenses. Unless otherwise agreed, Buyer shall apply for, pay for and obtain on a timely basis all federal, state, local and municipal authorizations, approvals, permits and licenses which may be required in connection with the installation and operation of the Equipment. Buyer and Seller will assist each other in every manner reasonably possible in securing such authorizations, approvals, permits and licenses.

13.2 Government Procurement Laws and Regulations. If the Items provided are purchased under a government contract or sub-contract, Buyer shall promptly notify Seller (prior to Seller's Quotation) of the provisions of any government procurement laws and regulations. Items sold or licensed hereunder are not intended to be used, nor should they be used, in any nuclear-related application either as a "Basic Component" as defined under United States nuclear regulations or under similar nuclear laws and regulations of any other country or otherwise.

13.3 Export Controls. The Equipment and Services, including any software, documentation, and any related technical data included with, or contained in, such Equipment and any products utilizing any such Equipment, software, documentation, or technical data (collectively, "**Regulated Deliverables**") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. The Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Regulated Deliverables to any jurisdiction or country to which, or any party

to whom, or for any use for which, the export, reexport, or release of any Regulated Deliverables is prohibited by applicable federal or foreign law, regulation, or rule. The Buyer shall be responsible for any breach of this Section by its, and its successors and permitted assigns, affiliates, employees, officers, directors, members, or shareholders customers, agents, distributors, resellers, or vendors. The Buyer shall comply with all applicable federal and foreign laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Regulated Deliverables. The Buyer shall provide prior written notice of the need to comply with such laws, regulations, and rules to any person, firm, or entity which it has reason to believe is obtaining any such Regulated Deliverables from the Buyer with the intent to export or reexport.

13.4 OFAC. Each Party is not (a) directly or indirectly owned or controlled by any Person currently included on the Specially Designated Nationals and Blocked Persons List or the Consolidated Sanctions List maintained by the Office of Foreign Assets Control, US Department of the Treasury ("**OFAC**") or other similar list maintained by any Governmental Entity (collectively, "**SDN List**"), or (b) directly or indirectly owned or controlled by any Person who is located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other Governmental Entity.

13.5 Duty to Notify. Each party shall promptly upon becoming aware thereof notify the other party when it becomes directly or indirectly owned or controlled by any Person (a) included on the then-current SDN List, or (b) located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by OFAC or any other Governmental Entity.

13.6 Anti-Corruption. Buyer shall comply with all applicable anti-bribery and anti-corruption laws and regulations, including the US Foreign Corrupt Practices Act, the UK Bribery Act and other applicable Anti-Bribery laws, (collectively, the "**Anti-Bribery Laws**").

13.7 Bribery. Buyer shall not make, directly or indirectly, in connection with this Agreement or in connection with any other business transaction related to Company, a payment or gift of, or an offer, promise, or authorization to give money or anything of value to any:

- (a) Government Official;
- (b) person or entity; or
- (c) other person or entity while knowing or having reason to believe that some portion or all of the payment or thing of value will be offered, given, or promised, directly or indirectly, to a Government Official or another person or entity;

for the purpose of:

- (d) influencing any act or decision of such Government Official or such person or entity in their official capacity, including a decision to do or omit to do any act in violation of their lawful duties or proper performance of functions; or

(e) inducing such Government Official or such person or entity to use their influence or position with any Government Entity or other person or entity to influence any act or decision;

(f) in order to obtain or retain business for, direct business to, or secure an improper advantage for Company or Buyer

13.8 Government Official. For purposes hereof, "Government Official" means (i) any director, officer, employee, agent, or representative (including anyone elected, nominated, or appointed to be a director, officer, employee, agent, or representative) of any Government Entity, or anyone otherwise acting in an official capacity on behalf of a Government Entity; (ii) any political party, political party official, or political party employee; (iii) any candidate for public or political office; (iv) any royal or ruling family member; or (v) any agent or representative of any of those persons listed in subcategories (i) – (iv).

#### 14. MISCELLANEOUS

14.1 Notices. All written notices, requests, demands, consents, certificates or other communications required or permitted to be given hereunder shall be sufficiently given when mailed by (a) certified mail, return receipt requested, postage prepaid, (b) commercial overnight delivery courier, fees prepaid, or (c) e-mail and/or facsimile transmission, addressed to Buyer or Seller, as the case may be, at their respective addresses set forth on the first page of this Agreement and below. Either party may, by like notice at any time and from time to time, designate a different address to which notices shall be sent.

14.2 Assignment. The Agreement evidenced hereby may not be assigned by either party without the written consent of the other (which consent will not be unreasonably withheld). However, consent will not be required for internal transfers and assignments as between Seller and its parent company, subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganization.

14.3 Waiver. The waiver by Seller of any term, provision, or condition hereunder must be in writing and shall not be construed to be a waiver of any other term, condition, or provision hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same condition or provision on this order or on future orders.

14.4 Force Majeure. The Seller shall not be in breach of the Contract or otherwise liable to the Buyer for any delay or failure in shipment or delivery of the Products or Services or any other delay or failure to perform its obligations under the Contract due to any cause beyond the reasonable control of the Seller, including, without limitation, war, terrorism, breakdown of plant or machinery, fire, flood, epidemics, pandemics, strikes or other labor disturbance, accidents, Act of God, governmental order or requirement, tariffs, interruption, obsolescence, shortage of materials or labor, transportation facilities or energy supply, or events beyond the reasonable control of its suppliers or subcontractors ("Force Majeure") and the Seller shall be excused from deliveries to the extent that deliveries may be prevented or delayed by the foregoing Force Majeure. During any such Force Majeure, the Seller will endeavor in good faith to allocate deliveries fairly among its buyers but expressly reserves in its

discretion, without liability to the Buyer, the final determination of deliveries to be made. If said Force Majeure continues for a continuous period in excess of ninety (90) days the Seller may terminate the Contract without liability by providing written notice to the Buyer.

#### 15. GOVERNING LAW

15.1 Governing Law. The purchase and sale of Equipment hereunder shall be construed and interpreted in accordance with the laws of the State in which the Seller has its principal place of business, without giving effect to said State's conflict of laws. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply to any aspect of this Contract.

15.2 Forum. For any dispute that cannot be resolved to both Parties' mutual satisfaction within sixty (60) calendar days after the initial submission of the dispute, or such other time as the Parties agree upon in writing, either Party may bring suit. Any such suit may only be brought exclusively in a federal or state court in which the Seller has its principal place of business. Each Party irrevocably waives the defense of an inconvenient forum in connection with any such suit. The prevailing party in any such dispute, whether arbitration or lawsuit, shall be entitled to receive all costs and reasonable attorneys' fees, including on any appeals.

15.3 Injunctive Relief. Notwithstanding the above, the Seller may undertake proceedings or seek remedies before the courts or any competent authority of any country for interim or injunctive remedies in relation to any breach or threatened breach of this Contract or infringement of its intellectual property rights.

**15.4 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE THEIR RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS- COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING ON ANY MATTER WHATSOEVER ARISING UNDER, RELATING TO, OR IN ANY WAY CONNECTED WITH THE ORDER, THE RELATIONSHIP OF SELLER AND BUYER OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW NOW OR HEREAFTER IN EFFECT.**

#### 16. GENERAL

16.1 No Partnership. Nothing in the Contract shall create or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

16.2 No Waiver. The rights and remedies of the Seller in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by the Seller nor by any failure of or delay by the Seller in ascertaining or exercising any such rights or remedies. The waiver by the Seller of any breach of the Contract shall not prevent the subsequent enforcement of the



Contract and shall not be deemed to be a waiver of any subsequent breach of that or any other terms and conditions.

16.3 Enforceability. If at any time any one or more of the terms of the Contract or any part of one or more of these terms and conditions is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining terms and conditions of the Contract shall not in any way be affected or impaired as a result of that omission.

16.4 Entire Agreement. The Contract sets out the entire agreement and understanding between the Buyer and the Seller in connection with the sale of the Equipment and/or Services and shall supersede and replace all documentation previously issued by the Seller or the Buyer. In case of conflict, agreed terms appearing on the face of the Contract shall take precedence over these terms and conditions, and these terms and conditions take precedence over any other documents referred to in the Contract.