

ARETÉ ASSOCIATES GENERAL TERMS AND CONDITIONS OF PURCHASE (Services)

Hereinafter, Areté Associates is referred to as "Buyer" or "Areté", and the Seller identified on the face of the Order is referred to as "Seller", meaning the party with whom Areté is contracting. "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Order", "Subcontract" or other designation, including these General Terms and Conditions. "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this contract.

1) ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Seller's acknowledgement, acceptance of payment, commencement of performance, shall constitute Seller's unqualified acceptance of this contract.
- b) Unless expressly accepted in writing by Areté, additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgement are objected to by Areté and shall have no effect.
- c) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope of the intent of the provisions of this contract.

2) ASSIGNMENTS AND SUBCONTRACTS

This Order is not assignable and shall not be assigned by Seller without the prior written consent of Buyer. Further, Seller agrees to obtain Buyer's approval before subcontracting this order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials.

3) CALIFORNIA LAW TO GOVERN

The Order shall be governed by subject to and construed according to the laws of the State of California, a uniform commercial code state, without regard to its conflict of law provisions.

4) CASH DISCOUNTS.

In connection with the discount, if any, offered by Seller for prompt payment, time will be computed from the latest of (i) the scheduled delivery date, (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received by Areté. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of Buyer's check or the date of Buyer's wire transfer of funds.

5) CHANGES

- a) The Areté Purchasing Representative may, by written notice to Seller at any time before complete delivery is made under this order, make changes within the general scope of this order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) place of inspection, acceptance or point of delivery, (d) method of shipment or routing; or (e) changes in the amount of Buyer furnished property.
- b) If any such change causes a material increase or decrease in the price, or of the time required for the performance of any part of the work under this order, an equitable adjustment shall be made in the order price, delivery schedule, or both. Seller must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written change order from Buyer. No such adjustment or any other modification of the terms of this order will be allowed unless authorized by Buyer by means of a purchase order revision. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

6) CONTRACT DIRECTION

- a) Only the Areté Purchasing Representative has authority on behalf of Areté to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.
- b) Areté engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- c) Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to the Areté Procurement Representative.

7) COMPLIANCE WITH LAWS

- a) Seller, in performance of this contract, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.
- b) Seller shall comply with all applicable U.S. export control laws and regulations, specifically including but not limited to the Arms Export Control Act, 22 U.S.C.2751-2794, and the International Traffic in Arms Regulations (ITAR) 22.C.F.R 120, et seq, and the Export Administration Regulations, 15 C.F.R. 730-774. Seller agrees to notify Areté if any deliverable under this Contract is restricted by export control laws or regulations.

- c) Seller shall (i) comply with all applicable country laws relating to anti-corruption or anti-bribery; (ii) comply with the requirements of the Foreign Corrupt Practices Act, as amended, (FCPA) (15 U.S.C. §578dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States.
- d) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, costs of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

8) CONFIDENTIALITY.

All information furnished or made available by Buyer to Seller or to Seller's employees or subcontractors in connection with the Work covered by this order, including information pertaining to and of Buyer's current and potential clients, shall be treated as confidential and shall not be disclosed by Seller, its employees and subcontractors to any third party either in whole or in part, without Buyer's prior written consent. Seller agrees not to assert any claim against Buyer with respect to any information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the items or services covered by this order.

9) CONTRACT DIRECTION.

Only the Buyer's Purchasing Representative has the authority on behalf of Areté to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties. Areté technical or program personnel may from time to time render assistance of give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis of equitable adjustment. Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to the Areté Procurement Representative.

10) DELIVERY.

Seller's timely performance is a critical element of this Contract. If Seller becomes aware of a difficulty in performing the Work, Seller shall timely notify Areté, in writing, giving pertinent details. This notification shall not change any delivery schedule. The date specified for delivery is the required delivery date at Buyer's plant, unless otherwise specified. Buyer reserves the right to refuse any Work and to cancel all or any part hereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's deliveries will not meet agreed schedule, Buyer may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by the Seller. Buyer is not bound to accept future shipments or performances of services, and retains the right to return all or any part of the goods because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages. Such rights shall be in addition to any other remedies provided hereunder or provided by law or otherwise. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier or until orders for services have been performed, received and accepted.

11) DISPUTES.

In the event that any controversy or dispute between Buyer and Seller arising out of or relating to the Seller services, including, but not limited to any disputes in connection with the validity, construction, application or enforcement of the terms of this Order occurs, it shall be resolved by mutual negotiation and direct discussions. If no resolution is reached, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation using the Commercial Mediation Rules the American Arbitration Association, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, shall be settled by arbitration using the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In rendering the award, the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of California. The Arbitrator(s)' award may include compensatory damages against either Party but under no circumstances will Arbitrator(s) be authorized to nor shall they award punitive damages or consequential, incidental, or multiple damages against either Party.

12) GRATUITIES/KICKBACKS.

Seller shall not offer or give a kickback or gratuity in the form of entertainment, gifts, or otherwise, for the purpose of obtaining or rewarding favorable treatment as an Areté supplier. By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

13) INDEPENDENT CONTRACTOR RELATIONSHIP AND Seller PERSONNEL

(Paragraphs c through j are applicable only when Seller's personnel are primarily performing the Work at Areté or Areté 's Customers' facilities)

- a) It is understood and agreed that Seller shall be an independent contractor in all its operation and activities hereunder; and that the employees furnished by Seller to perform work under this Contract shall be Seller's employees exclusively without any relation whatever to Buyer as employees or as independent contractors; that such employees shall be paid by Seller for all services in this connection; and that Seller shall carry worker's compensation insurance.

- b) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor or benefits related laws
- c) Nothing contained in this Contract shall be construed as granting to Seller or any personnel of Seller rights under any Areté benefit plan.
- d) Seller will ensure that Seller personnel assigned to work on Buyer's or Customer's premises comply with any on-premises guidelines and: (i) do not bring weapons of any kind onto Buyer's or Customer's premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Buyer's or Customer's premises; (iii) do not possess hazardous materials of any kind on Buyer's or Customer's premises without Buyer's authorization; (iv) remain in authorized areas only; (v) will not conduct any non-Areté related business activities (such as interviews, hirings, dismissals or personal solicitations) on Buyer's or Customer's premises; and (vi) will not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Buyer's or Customer's premises without Buyer's written permission or as permitted by law
- e) Seller will promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer's or Customer's intellectual or physical assets, and all physical altercations, assaults, or harassment.
- f) Prior to entry on Buyer premises, Seller shall coordinate with Buyer to gain access to facilities. Seller shall provide information reasonably required by Buyer to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.
- g) Seller personnel: (i) will not remove Buyer or Customer assets from Buyer's or Customer's premises without authorization; (ii) will use Buyer or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that Buyer agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Seller's data residing on Buyer's or Customer's information assets.
- h) Buyer may, at its sole discretion, have Seller remove any specified employee of Seller from Buyer's premises and request that such employee not be reassigned to any Buyer premises under this Contract. (j) Seller shall provide Buyer any information about Seller's personnel that Buyer is required by law to obtain, including information on "leased employees" and "management services organization" as these terms are used in Secs. 414(m), (n), and (o) of the Internal Revenue Code.
- i) Violation of this clause may result in termination of this Contract in addition to any other remedy available to Buyer at law or in equity. Seller shall reimburse Buyer or Customer for any unauthorized use of Buyer or Customer assets.
- j) Seller shall advise the Buyer Procurement Representative of any unauthorized direction or course of conduct.
- k) Seller shall be responsible for and hold harmless Buyer and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.
- l) Seller shall indemnify and hold harmless Buyer from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Buyer may sustain or incur in consequence of (i) Seller's failure to pay any employee for the Work rendered under this Contract, or (ii) any claims made by Seller's personnel against Buyer.

14) INSPECTION and ACCEPTANCE

- a) Buyer and its customer may inspect all Work at reasonable times and places, including, when practicable. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection shall relieve Seller of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract.
- b) If Seller delivers non-conforming Work, Buyer may, in addition to any other remedies available at law or at equity, accept all or part of such Work at an equitable price reduction, or reject such Work.
- c) Seller shall not re-tender rejected Work without disclosing the corrective action taken.

15) INSURANCE/ENTRY ON ARETÉ PROPERTY

- a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Areté or its customers for any reason in connection with this Contract then Seller and its subcontractors shall maintain for the performance of this Contract workers compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such other insurance as Areté may require. Seller shall provide Areté thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller shall name Areté as an additional insured to the CGL and AL policies for the duration of this Contract. If requested, Seller shall provide Areté with a "Certificate of Insurance"

evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Areté and is not contributory with any insurance which Areté may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier. Seller's obligations for maintaining insurance coverage herein are freestanding and are not affected by any other language in this Contract.

- b) Seller's personnel, including Seller's subcontractors, shall comply with all Areté security, safety, rules of conduct, badging and personal identity, and related requirements while on Areté premises. In addition, prior to entry on Areté premises, Seller shall coordinate with Areté to gain access to facilities. Seller shall provide information reasonably required by Areté to ensure proper identification of personnel, including but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status. Areté may, at its sole discretion, have Seller remove any specified employee of Seller from Areté's premises and request that such employee not be reassigned to any Areté premises under this Contract.
- c) Seller shall defend, indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers employees, agents, suppliers, or subcontractors.

16) PACKING AND SHIPMENT/EXCESS

- a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Contract number, line item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c) Unless otherwise specified, delivery shall be FOB Place of Shipment.
- d) Shipments must equal exact amounts ordered unless otherwise agreed by Buyer in writing. Buyer reserves the option to return, at Seller's expense, any shipment of products either in excess of the amount stated on the face of the purchase order or received at Buyer's facility more than ten (10) days in advance of the agreed upon schedule. Such shipments will be held at Seller's risk and expense including reasonable storage charges while awaiting shipping instructions.

17) PATENTS AND INTELLECTUAL PROPERTY

- a) Unless otherwise stated in this Contract, Seller agrees that Buyer shall be the owner of all inventions, discovery, improvement, technology, designs, works of authorship, mask works, technical information, computer software, materials, business information and other information ("Intellectual Property") conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Seller, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Buyer's request and expense, all documentation necessary to perfect title therein in Buyer. Seller agrees that it will maintain and disclose to Buyer written records of, and otherwise provide Buyer will full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Buyer. Seller agrees to assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause
- b) Items delivered under this Contract such as operation and maintenance manuals shall be delivered with the right to copy for internal use and/or copy and deliver with the right to use to Buyer's Customers.
- c) Seller warrants that the Work performed or delivered under this Contract shall not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to, at its expense, defend, indemnify and hold harmless Buyer and its customers from and against any claims, damages, losses, costs and expenses including reasonable attorneys fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- d) To the extent that any of Seller's pre-existing Intellectual Property are used, included or contained in the Work or deliverable items and not owned by Areté pursuant to this or a previous agreement with Seller, Seller grants to Areté an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing Intellectual Property; and (ii) authorize others to do any, some, or all of the foregoing.
- e) All reports, memoranda or other materials in written form, including machine-readable form, prepared by Seller pursuant to this Contract and furnished to Buyer hereunder shall become the sole property of Buyer.

18) PAYMENT, TAXES, AND DUTIES

- a) Payment to Seller shall be made upon the basis of invoices submitted in such form and detail as Lockheed Martin may require. Buyer shall make payment within thirty (30) days after receipt and approval of such invoices.

- b) Payment for labor shall be computed by multiplying the appropriate hourly rate(s), set forth in this Contract by the number of direct labor hours performed. Rates shall include wages, overhead, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
- c) Seller's invoice shall include the following information: purchase order number, period covered by invoice, current and cumulative direct hours performed, labor rate, extended totals; material, travel, or other direct costs.
- d) No overtime will be paid by Buyer unless approved in advance by the Buyer Procurement Representative. If no overtime rates are provided in this Contract, overtime rates will be negotiated.
- e) Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts actually paid by Seller to lower-tier subcontractors.
- f) Seller shall procure required materials at the most advantageous prices available. Cash and trade discounts, rebates, allowances, credits, and other amounts, which have been accrued to the benefit of Seller, are for the account of Buyer. All residual material shall belong to Buyer who shall provide disposition instructions to Seller.
- g) Buyer may audit invoices and substantiating books and records as Buyer deems necessary. Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer or Seller not to have been properly payable, and shall also be subject to reduction for overpayments. Seller shall promptly notify Buyer of any such overpayments found by Seller.
- h) Unless otherwise stated in this order, prices shown on the face of this order include, and Seller is liable for and shall pay, all Federal, State, Local or other taxes, duties, tariffs, or similar fees imposed by any government, all of which shall be separately stated on Seller's invoice. Prices shall not include any taxes, duties, tariffs or similar fees for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

19) PRECEDENCE

Any inconsistencies in this Order shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order document, including any continuation sheets and referenced attachments thereto including special terms and conditions, (2) this Terms and Conditions document; (3) the Statement of Work including any specifications or other attachments thereto.

20) PRICES.

Seller warrants that the prices to be charged for products or services ordered by Areté are not in excess of prices charged to other customers for similar quantities and delivery requirements. Any price decrease applicable to the products or services which are similar to the products or services ordered herein shall automatically reduce the unit price of the unshipped products or services not yet rendered by a comparable percentage, at the time of the price decrease.

21) QUALITY CONTROL SYSTEM.

Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.

22) RECORD MAINTENANCE AND RETENTION.

- a) Seller shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate Seller's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts, and job summaries.
- b) Additional records include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records.
- c) Unless otherwise specified herein, or required by law or regulation, Seller shall retain all records related to this Contract for three (3) years from the date of final payment. At no additional cost, Seller shall provide access during normal business hours to such records to the U.S. Government or Areté upon reasonable notice for so long as such records are required to be retained.

23) RELEASE OF INFORMATION.

Seller agrees that prior to the issuance of any publicity or publication of any advertising which in either case makes reference to this order or to Buyer, Seller will obtain the written permission of Buyer with respect thereto.

24) RESPONSIBILITY FOR BUYER'S PROPERTY.

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Order, or property that may be provided to Seller by Buyer or Buyer's customer (Furnished Property). Except for reasonable wear and tear, Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Order without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer, upon completion, termination or

cancellation of this Order, Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Seller agrees, if and when requested by Buyer to procure a policy or policies of insurance in form satisfactory to Buyer including endorsement specifically naming Buyer as an insured, insuring all property of Buyer or its customers which is connected with this order and of which Seller has care, custody, control or the right of control against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Satisfactory evidence of such insurance shall be submitted to Buyer within a reasonable period of time after request.

25) SEVERABILITY.

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

26) STOP WORK.

Seller shall stop Work for up to 90 days in accordance with any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the occurrence of costs allocable to the Work during the period of Work stoppage. Within such period, Buyer shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provisions affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within 30 days after the date of notification to continue.

27) SURVIVABILITY.

If this Contract expires, is complete, or is terminated, Seller shall not be relieved of those obligations contained in the following clauses: Applicable Laws, Counterfeit Work, Export Control, Confidentiality, Intellectual Property, Release of Information, Warranty/Counterfeit Goods, Insurance/Entry on Areté Property, Record Retention.

28) TERMINATION FOR CONVENIENCE

- a) Buyer may terminate work remaining under this purchase order in whole, or from time to time, in part by giving written notice to Seller specifying the extent to which performance of work is terminated and the time at which such termination becomes effective. After receipt of such notice and except as otherwise directed by Buyer, Seller shall stop all work under this order to the extent specified in the notice of termination. Within thirty (30) days after receipt of the notice of termination, Seller shall submit to Buyer its written termination claim. Failure of Seller to submit its termination claim as provided herein shall constitute an unconditional and absolute waiver by Seller of any claim arising from Buyer's notice of termination.
- b) Seller shall reasonably assess costs for raw materials, work in process and subassemblies as may be included within its termination claim to determine whether or not such items may be used by Seller for the manufacture of associated products or diverted for any other purpose, and to correspondingly reduce its termination claim by the value of such items. When settlement has been made, title to any of such items determined not usable by Seller and charged to Buyer as the termination claim shall vest in Buyer upon payment of the claim and shall forthwith be delivered to Buyer.
- c) Seller's termination claim shall consist solely of the following:
 - i) Completed products accepted by Buyer and not previously paid for, the sum determined by multiplying the number of such products by the unit price as specified in this order, and,
 - ii) The total of (i) the cost of work in process not to exceed the average unit cost multiplied by the number of units in process, however, if it appears that Seller would have sustained a loss on the entire purchase order had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. Such amounts shall not include any costs attributable to Seller's products paid or to be paid under subparagraph (e)(1) above. The total sum to be paid to Seller shall not exceed the total order price minus the amount of payments otherwise made and the price of work not terminated under this order.
- d) In no event shall Seller be entitled to incidental or consequential damages, anticipated or projected profits, costs of preparing claims, attorneys' fees, costs of tooling or equipment or sales or agents' commissions on the terminated quantity.
- e) Buyer reserves the right to verify claims hereunder by Seller making available relevant books, records, and inventories to a mutually agreed upon third party audit agency. In the event material discrepancies are found during the audit process, Seller shall pay for the audit.

29) DEFAULT

- a) Buyer may, by written notice to Seller, terminate or cancel all or part of this Order if (i) Seller fails to deliver the goods within the time specified by this Order or any written extension; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any

assignment, reorganization or arrangement by Seller for the benefit of its creditors. Default involving bankruptcy or adverse change in financial conditions shall not be subject to the cure provision.

- b) Seller shall continue work not canceled. If Buyer cancels all or part of this Order, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, Work similar to that terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar Work.
- c) Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed goods, and (ii) any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Order rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Order. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.
- d) Following a termination for default of this Contract, Seller shall be compensated only for Work actually delivered and accepted. Buyer may require Seller to deliver to Buyer any supplies, materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. Buyer and Seller shall agree on the amount of payment for these other deliverables.
- e) If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Order had been terminated according to the "Termination for Convenience" article of this Order.

30) WAIVERS/APPROVALS/REMEDIES.

The failure of either party to enforce any of the provisions of this order or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such a provision or law. Buyer's approval of designs or documents shall not relieve Seller of its obligation to comply with the requirements of this contract. The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provide by law or in equity.

31) WARRANTY

- a) Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications and requirements of this Contract and shall be free from defects in materials and workmanship. To the extent goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the goods shall be free from design and specification defects. This warranty shall survive inspection, test and acceptance of, and payment for, the Work. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance, and shall extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, Seller, at Buyer's option, shall promptly repair, replace, or re-perform the non-conforming Work. Transportation of replacement Work, return of non-confirming Work, and re-performance of Work shall be at Seller's expense. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust the Order price.
- b) Seller agrees to indemnify and hold Buyer harmless from all claims, liability, loss, damage and expense including special, consequential and incidental damages incurred or sustained by Buyer by reason of any breach of any warranty with respect to the Work which are purchased in accordance herewith.

32) NEW MATERIALS.

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety, without written authorization from Buyer.

33) COUNTERFIT WORK

- a) For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
- b) Seller agrees and shall ensure that Counterfeit Work is not delivered to Buyer.
- c) Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer.
- d) Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.
- e) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.

- f) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Contract.
- g) Seller shall include paragraphs (a) through (e) and this paragraph (g) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.
- h) Seller warrants that any hardware, software and firmware goods delivered under this Order:
 - i) Shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to damage, destroy or alter any software or hardware; reveal, damage, destroy, or alter any data; disable any computer program automatically; or permit unauthorized access to any software or hardware;
 - i) Shall, without the written consent of Buyer, not contain any third party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed or otherwise made available; or (b) may require distribution, copying or modification of any software free of charge

34) ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.