

**Aviation Manufacturing Group LLC**

**dba**

**The Freeman Company (“Freeman” or “Buyer”)**

**Terms and Conditions of Purchase**

**(“Terms and Conditions”, “Terms” or “T&C’s”)**

**1. Definitions** – the following defined terms are used in these Terms and Conditions of Purchase;

- (a) “Agreement” is the collective terms and conditions described in Section 2.1 (a) and (b) herein,
- (b) “Buyer” means the entity making the purchase as identified above,
- (c) “Seller” means the seller of the Products or Services,
- (d) “Products” means the products that are the subject of the purchase by Buyer, and
- (e) “Services” means the services that are the subject of the purchase by Buyer.

**2. Agreement**

2.1 The terms and conditions that apply to and govern the purchase of Products and Services by Buyer from Seller are exclusively limited to (a) the terms and conditions contained in Buyer’s purchase order and any subsequent releases and/or a separate written agreement signed by an authorized representative of Buyer, together with any documents incorporated in any of the foregoing, and (b) these Terms and Conditions of Purchase, whether or not they are specifically referenced in or incorporated by the forms exchanged by Buyer and Seller or in the separate written agreement entered into between Buyer and Seller.

2.2 Buyer objects to terms and conditions that are additional to or different from those contained in the Agreement, and no additional or different term will be part of the Agreement unless expressly made so in a writing signed by an authorized representative of Buyer. The preceding sentence excludes from the Agreement, among other things, any additional or different terms and conditions of Seller appearing on or referenced in Seller’s quotation, acknowledgement, invoice or other similar document, Seller’s terms and conditions of sale and Seller’s web site or customer e-commerce site.

2.3 Seller will be deemed to have accepted the Agreement if Seller (a) acknowledges Buyer’s purchase order or assents to the Agreement in writing, (b) commences work on, delivers or performs any of the Products or Services, (c) accepts any portion of the payment for the Products or Services, or (d) takes any other action evidencing Seller’s acceptance of the benefits of any part of the Agreement.

2.4 If the Agreement relates to a prime contract with or a subcontract for the U.S. government, Seller shall comply with the flow down clauses and other provisions as set forth in Buyer’s purchase order or

other documents and any other provision in the prime contract or subcontract that is required to be flowed down to Seller, each of which forms part of the Agreement.

2.5 No modification of the Agreement or waiver of any of its terms will be binding on Buyer unless clearly expressed in a writing that both (a) states that it is a modification or waiver of the Agreement, and (b) is signed by an authorized representative of Buyer. Any purported modification or waiver by oral agreement, course of performance or usage of trade is invalid and ineffective.

2.6 The Agreement supersedes all prior written or oral communications and is the sole and exclusive statement of the agreement between Buyer and Seller.

### 3. Delivery

3.1 Delivery terms are as stated in the Agreement, or, if none are so stated, Delivered Duty Paid (DDP) the designated Buyer facility. Delivery terms are governed by Incoterms 2010.

3.2 Seller shall deliver all Products and Services on the dates specified by Buyer. Time is of the essence for purposes of Seller's delivery of Products and Services to Buyer. **Seller is on notice that delays in delivery may result in damage assessments including but not limited to price reductions under Buyer's customer contracts; Seller shall be liable for any such assessments or reductions in price.** Buyer may reject any Products or Services not delivered on time (whether early or late) and return such Products and Services at Seller's risk and expense. Seller may not withhold delivery for any reason without the prior written consent of Buyer.

3.3 Seller shall deliver all Products and Services in the quantities specified by Buyer in a purchase order. Forecast quantities are estimates for reference only and do not constitute binding commitments by Buyer to purchase. Quantities delivered in excess of ordered quantities may be returned at Seller's risk and expense.

3.4 Risk of loss and damage to the Products remains with Seller until the Products have been delivered to Buyer in accordance with the delivery terms.

3.5 If Seller has reason to believe that a delivery of Products or the performance of Services may not be made within the time required by the Agreement, or if an actual delay has occurred, Seller shall promptly send written notice to Buyer, stating the cause and expected duration of the delay. During the period of any delay, Seller shall at its sole cost and expense take all steps as are necessary or desirable to mitigate the effects of the delay on Buyer and minimize disruption of supply to Buyer, including treating Buyer no less favorably than any of its other customers if Seller is required to allocate goods or resources among its customers. If there is an anticipated or actual delay, or a threat by Seller to suspend delivery for any reason, Buyer may, in addition to all other remedies available to it, take one or a combination of the following actions: (a) direct Seller to ship, at Seller's sole cost and expense, Products using an expedited method of transportation such as express air freight, (b) acquire substitute Products or Services from other sources, in which case Seller shall reimburse Buyer for any additional costs and expenses, including incidental costs of cover, and (c) cancel or reduce the quantities under the Agreement. Buyer will have no liability to Seller with respect to the cancelled or reduced quantities.

#### **4. Packaging and Shipping**

4.1 Seller shall properly pack, mark, ship and route the Products in accordance with the requirements of Buyer and the carriers and in accordance with all applicable laws and regulations, or if there are no stated requirements, in accordance with best commercial practices designed to prevent loss or damage due to weather, transportation and other causes.

4.2 With each shipment, Seller shall include packing slips identifying Buyer's complete purchase order number, shipment date, an itemized list of contents using the classification identification of the Products required by Buyer or the carrier, and such other items as Buyer may require. The markings on each package and shipping document must be such that Buyer can easily identify the Products. Buyer's count or weight will be final and conclusive for any shipment. Seller is responsible for all demurrage charges and other expenses incurred as a result of Seller's failure to promptly send Buyer the notice of shipment on the shipping date.

#### **5. Prices and Payment**

5.1 Prices for the Products and Services are as set forth in the Agreement. The price as so determined is the sole amount payable by Buyer to Seller or any third party for the purchase of the Products or Services, and Seller shall be solely responsible for, among other things, (a) costs of raw materials, supplies or manufacture, (b) duties or similar charges, (c) insurance premiums, (d) salaries or benefits of employees, or (e) handling, packaging, shipping or storage costs. No increases or surcharges to pricing will be effective without Buyer's prior written consent.

5.2 The price includes all applicable federal, state, provincial and local taxes other than sales or value added taxes. Seller shall issue invoices for any sales or value added taxes that Seller is required by law to collect from Buyer, in a form sufficient to permit Buyer to make appropriate deductions for income tax purposes. Seller shall provide Buyer with all information and documentation required under local law to enable Buyer to recover any sales, value added or similar turnover taxes.

5.3 Seller may not send invoices earlier than the date of receipt at Buyer's facility of Products or completion of Services. All invoices must include Buyer's complete purchase order number and have all necessary or required bills of lading and other shipping receipts and documents attached.

5.4 Payment terms in respect of undisputed invoices are as stated in the Agreement, or, if none are so stated, net 60 days. Any payment or discount period will be calculated from the date of receipt by Buyer of an accurate and properly prepared invoice (including all required supporting documents).

5.5 In addition to any right of setoff or recoupment provided by law or equity, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates to Buyer and its affiliates, and Buyer shall have the right to set off against or to recoup from any amounts due to Seller and its affiliates from Buyer and its affiliates.

#### **6. Changes**

6.1 Buyer may require Seller to implement changes to the specifications, design, quantities and delivery schedules of the Products, the description, specifications, amount and scheduling of the Services, and other requirements under the Agreement. Seller shall promptly implement such changes. Seller shall make its claim, if any, for equitable adjustment of the price or delivery schedules resulting from such

changes in writing to Buyer within 5 business days after receiving Buyer's instructions to implement the changes, failing which Seller will be deemed to have waived, and Buyer will have no liability for, any such claims. Buyer will equitably determine any adjustment in price or delivery schedules resulting from such changes. To assist in Buyer's determination of any equitable adjustment in price or delivery schedules, Seller shall, upon Buyer's request, promptly provide additional information to Buyer, including documentation of changes in Seller's cost of production and the time to implement such changes. Buyer and Seller will work to resolve any disagreement over the adjustment, but throughout the resolution process and thereafter, Seller shall continue performing under the Agreement, including the manufacture and delivery of Products, the performance of Services and the prompt implementation of the required changes.

## **7. Property of Buyer**

7.1 (a) All materials, patterns, dies, jigs, fixtures and tooling together with any specifications, drawings, process sheets and the like or any other property or intellectual property whatsoever supplied to the Seller by the Buyer or to the Buyer's order, or procured or developed by the Seller specifically for the supply of Goods to the Buyer, shall be and remain the property of the Buyer and must not, without the Buyer's written consent, be used for or in connection with the production of any Goods whatsoever other than the Goods ordered by the Buyer. The Seller shall ensure that such items are always identified as the property of the Buyer and must be returned to the Buyer immediately on demand.

(b) Insurance - All the Buyer's property including that mentioned in condition 7.1(a) hereof together with materials and components provided free of charge by the Buyer in connection with this order must be insured by the Seller to its full replacement value against all risks until it has been received back by the Buyer or used or forwarded in accordance with its instructions.

## **8. Quality**

8.1 Seller shall promote continuous quality improvement and shall comply with Buyer's required quality control standards for the manufacturing, packaging and shipping processes for the Products and the provision of the Services available from Buyer upon request.

8.2 In performing its obligations hereunder, Seller may not, without Buyer's written consent, (a) change the method or place of manufacture of any Products or the provision of any Services, (b) substitute material from any other source for Buyer Material or alter the physical or chemical properties of Buyer Material, except in accordance with applicable Buyer specifications, or (c) otherwise change the materials, processes or sub-suppliers used in the manufacture of any Products or the provision of any Services.

8.3 Seller shall not subcontract its obligations under the Agreement. Any attempted subcontract will be void, unless Buyer has given its prior written consent to such subcontract. In any event, Seller shall remain liable for in respect of all subcontracted obligations. No third party shall have the right to enforce any provision of the Agreement.

8.4 While performing any Services at Buyer's facilities, Seller shall comply with Buyer's rules and policies, including any environmental, health and safety rules and policies.

## **9. Right to Inspect and Audit**

9.1 Seller will permit Buyer and its representatives, consultants and customers to enter Seller's facilities at reasonable times to inspect the facilities, the Buyer Property and Seller's records with respect thereto, and to inspect and test any goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Seller's performance of the Agreement. Seller shall cooperate in any such inspection. No such inspection will constitute acceptance by Buyer of any work-in-process or finished goods.

9.2 Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to audit and review all relevant books, records, financial statements, relevant time and material data, receipts and other related data, policies and procedures, in order to (a) assess Seller's ongoing ability to perform its obligations under the Agreement, and (b) substantiate any charges and other matters under the Agreement. Seller shall maintain and preserve all such documents for a period of 10 years following final payment under the Agreement, and shall cooperate in any such audit or review.

9.3 Such inspections, audits and reviews will be conducted at Buyer's expense, unless Buyer discovers material noncompliance by Seller, in which case Seller shall, in addition to fully correcting the non-compliance, reimburse Buyer for the costs and expenses incurred in connection with that review and the next.

## **10. Non-conforming Products and Services**

10.1 Buyer may, but is not required to, inspect the Products upon arrival, and the Services upon completion.

10.2 If Buyer reasonably suspects non-conformance from its inspection of Products prior to acceptance, and if the Products are needed by Buyer for urgent production, Seller shall promptly dispatch an inspection team to the location where the Products are stored to inspect the Products to verify the non-conformance, or procure the services of a third party inspection service to perform such inspection to verify the non-conformance, with the cost of such service to be borne by Seller.

10.3 If Buyer rejects, on any reasonable basis, any Products or Services as non-conforming, Buyer may take one or a combination of the following actions: (a) reduce the quantity of Product and Services ordered under the Agreement by the quantity of nonconforming Products and Services, and have Seller promptly issue a refund or credit to Buyer for the purchase price associated with the reduced quantity (or, if Seller does not do so, to debit Seller for the same amount), (b) require Seller to repair, replace or re-perform the non-conforming Products and Services, and (c) accept the non-conforming Products or Services and have Seller promptly reduce the purchase price by or issue a credit or refund in an amount Buyer reasonably determines to be the amount by which the value of the nonconforming Products or Services has been diminished (or, if Seller does not do so, to debit Seller for the same amount). Seller shall promptly pay or reimburse Buyer for all costs incurred to inspect, sort, test, rework, replace, return, store or dispose of non-conforming Products, or otherwise associated with the discovery of non-conformance (whether initiated by Buyer or otherwise).

10.4 Buyer will hold non-conforming Products for 48 hours (or a shorter period if reasonable under the circumstances) from Buyer's notice of rejection. If Seller does not inform Buyer in writing of the manner

in which Seller desires that Buyer dispose of the non-conforming Products within that time, Buyer may dispose of the non-conforming Products in any manner it sees fit without liability to Seller, including arranging for shipment of the non-conforming Products back to Seller at Seller's expense. Seller shall bear all risk of loss and damage to non-conforming Products.

10.5 None of the following will constitute acceptance by Buyer of non-conforming Products or Services, limit or impair Buyer's right to exercise any of its rights and remedies under the Agreement or applicable law, or relieve Seller of its obligations (including warranty obligations) under the Agreement: (a) Buyer's inspection of or failure to inspect the Products or Services, (b) Buyer's failure to reject non-conforming Products or Services following receipt, and (c) Buyer's payment for or use of the Products or Services.

## **11. Warranties**

11.1 Seller represents and warrants that the Products and their components will (a) conform to the most updated version of drawings provided by or approved by Buyer, (b) meet and perform in accordance with Buyer specifications and requirements, (c) be of new manufacture and of the highest quality, (d) be free from defects in design, workmanship and material, (e) be of merchantable quality and fit for their intended purposes, and (f) comply with all applicable laws, regulations and standards.

11.2 Seller represents and warrants that the Services will (a) conform to Buyer's specifications and requirements, (b) be of the highest quality, and (c) be performed to the highest professional and workmanlike standards and in compliance with all applicable laws, rules, regulations and standards.

11.3 In respect of software that is incorporated in or forms a part of the Products or Services, Seller represents and warrants that such software will not contain any software intentionally designed to impair, disrupt, disable, harm or impede operation.

11.4 Upon a breach of any warranty in the Agreement, Seller shall promptly, at its sole cost and expense, (a) repair or remedy the defect or other failure, replace the affected Products, re-perform the affected Services or, at Buyer's option, provide a refund to Buyer for any affected Products and Services, and (b) reimburse and otherwise compensate Buyer for all of its direct, indirect, special, incidental, punitive and consequential damages, including recall costs, line shut-down costs and lost or anticipated profits and revenues.

11.5 Seller's representations and warranties and all associated remedies will benefit and be enforceable by Buyer's successors, assigns and customers and by the users of the Products or Services.

## **12. Intellectual Property**

12.1 Seller represents and warrants that the Products and Services, and the manufacture, sale, use and provision of the Products and Services do not and will not infringe any trade secrets, patents, trademarks, copyright, design, other intellectual property right or any other right of any third party. Seller further represents and warrants that it has not received any notice from a third party that any of the Products or Services or their manufacture, sale, use or provision anywhere in the world violates or infringes or would violate or infringe the trade secrets or intellectual property or other rights of another. Seller is responsible for the payment of any fees, royalties and other charges necessary to maintain the rights required to fulfill these warranties.

12.2 If a third party enjoins or interferes with Buyer's use of any Products or Services, then in addition to Seller's other obligations, Seller shall (a) obtain any licenses necessary to permit Buyer to continue to use or receive the Products or Services, or (b) replace or modify the Products or Services as necessary to permit Buyer to continue to use or receive the Products or Services.

12.3 Nothing in the Agreement is intended or may be construed as a grant or assignment of any license or other right to Seller of any of Buyer's (or any of its affiliates') trade secrets or intellectual property or other rights.

12.4 All deliverables and works of authorship created in the course of performing the Agreement constitute works made for hire and will be the sole and exclusive property of Buyer. To the extent that such works do not qualify under applicable law as works made for hire, Seller hereby assigns and agrees to assign to Buyer all of its worldwide right and title to, and interest in, any such deliverables and intellectual property rights in such works of authorship. If such assignment is not possible under any applicable law, Seller hereby grants Buyer a worldwide, irrevocable, perpetual, royalty-free, transferable, sub-licensable license with respect to such deliverables or works of authorship. Seller further grants Buyer a worldwide, irrevocable, perpetual, royalty-free, transferable, sub-licensable license with respect to any intellectual property rights in the deliverables which arose outside the scope of the Agreement but are necessary for Buyer to exercise its rights in the deliverables as reasonably contemplated by the Agreement.

12.5 All improvements and developments related to the Products or Services arising out of the efforts of Buyer or both Buyer and Seller under or in connection with the performance of the Agreement will be owned exclusively by Buyer, and Seller shall reasonably cooperate with Buyer in confirming that result.

### **13. Indemnification**

13.1 Seller shall indemnify, defend and hold harmless Buyer and its affiliates and their respective directors, officers, employees, agents, representatives and customers against all claims, judgments, decrees, liability, damages, losses, costs and expenses (including actual attorneys' and consultants' fees) that arise out of or relate to (a) any act or omission of Seller or its employees, subcontractors, agents or representatives, (b) the performance of any service or work by Seller or its employees, subcontractors, agents or representatives, or through their presence on Buyer's or Buyer's customers' premises, (c) the use of the property of Buyer or Buyer's customer, (d) any breach by Seller of its representations, warranties or obligations under this Agreement, (e) any alleged or actual infringement of the trade secrets or intellectual property or other rights of third parties, (f) Seller-furnished equipment, materials, Products or Services, or (g) any product information, operating instructions, safety information or other information or materials relating to the Products which were created by Seller or provided by Seller to Buyer or to purchasers or users of the Products. This indemnification applies to, among other things, claims for injury to or death of persons (including employees of Seller, Buyer or third parties) or damage to any property (including property of Seller, Buyer or third parties), and regardless of whether claims arise under tort, negligence, contract, warranty, strict liability or any other legal theory.

13.2 Seller intends that its indemnification obligations for claims related to or brought by anyone directly or indirectly employed by Seller or its subcontractors will not be limited by any provision of any workers' compensation act, disability benefits act or other employee benefit act, and Seller hereby

waives immunity under such acts to the extent they would bar recovery under or full enforcement of Seller's indemnification obligations.

#### **14. Insurance**

14.1 Seller shall carry the following insurance at its own cost, with no less than the limits indicated (unless otherwise specified by Buyer in writing), to cover all of Seller operations: (a) workers compensation insurance for all its employees and sub-contracted employees to the full extent required by law; (b) primary comprehensive general liability insurance including products and completed operations coverage to a combined single limit of US\$1,000,000.00 for bodily injury and property damage claims arising out of any one occurrence; (c) primary commercial automobile liability insurance to a combined single limit of US\$1,000,000.00 for bodily injury and property damage claims arising out of any one accident; (d) umbrella or excess liability insurance to a combined single limit of at least US\$2,000,000.00 in the aggregate in excess of the primary comprehensive general liability and primary commercial automobile liability insurance coverage indicated above; (e) for providers of consulting and engineering services - errors and omissions insurance to a combined single limit of US\$1,000,000.00; and (f) any other insurance required by law, reasonably requested by Buyer or customary for a supplier in Seller's position. The insurance coverage required by this Section must be with insurance carriers with an A.M. Best rating of A or better. The policies must name Buyer as an additional named insured. Upon Buyer's request, Seller shall furnish certificates of insurance issued by Seller's insurance carriers evidencing compliance with these requirements, specifying the types of coverage, the policy numbers and the expiration dates, and including a statement that the policies will not be cancelled or altered without Buyer receiving at least 30 days' prior notice. In addition, Seller shall exhibit to Buyer satisfactory proof of full compliance by Seller with all the terms of the applicable workers' compensation law, including payment of all premiums, as it affects Seller's employees, prior to commencing any work hereunder. If Seller does not maintain the required insurance, Buyer may, at its option, procure the insurance for Seller and charge Seller for the costs. Seller shall also ensure that any permitted assignee or subcontractor maintains insurance in the same manner as required for Seller. The furnishing of certificates of insurance and purchase of insurance do not limit or release Seller from Seller's obligations and liabilities under the Agreement.

#### **15. Confidentiality**

15.1 "Confidential Information" means the confidential information of Buyer and its affiliates concerning the Agreement, the Products, the Services or the business of Buyer and its affiliates, that Seller comes to know through disclosure by Buyer or otherwise. Confidential information includes data, designs, drawings, specifications, know-how, trade secrets, the terms of any purchase order and other confidential technical or business information.

15.2 Seller (a) shall not disclose Confidential Information to any third party, except to those of its employees who have a need to know in order for Seller to fulfill its obligations under the Agreement and who have undertaken obligations of confidentiality and non-use no less protective than those binding on Seller under the Agreement, (b) shall protect the Confidential Information by using the same degree of care that it uses to protect its own confidential information of a similar nature (but not less than reasonable care), (c) shall not use the Confidential Information for any purpose other than to fulfill its obligations under this Agreement, and (d) shall return or destroy and certify destruction of all Confidential Information at Buyer's request.



15.3 If any work is subcontracted in accordance with the Agreement, Seller shall require a similar confidentiality agreement from such subcontractors, but shall remain responsible for any breach by such subcontractors.

## **16. Termination for Cause by Buyer**

16.1 Buyer may terminate, in whole or in part, the Agreement or any purchase order issued under the Agreement, without liability to Seller, by notifying Seller in writing upon any of the following events: (a) Seller repudiates, breaches or threatens to breach any of the terms of the Agreement, (b) Seller sells or offers to sell a material portion of its assets, (c) there is a change in the control of Seller, (d) Seller becomes the subject of statutory or court-supervised proceedings in bankruptcy, receivership, liquidation, dissolution, reorganization or other similar proceedings, or (e) Seller has all or a substantial portion of its assets made subject to attachment by creditors or confiscation by government authorities. Seller shall reimburse Buyer for all costs and damages incurred by Buyer in connection with any of the foregoing whether or not the Agreement is terminated, as well as in connection with any termination, including all attorney fees and expenses.

16.2 In the event of a termination pursuant to Section 16.1, Seller shall permit Buyer, at Buyer's option, to take possession of and title to all or part of Seller's tooling, jigs, dies, gauges, molds, patterns and other equipment that are specially designed or outfitted for the supply of the Products or Services. If Buyer exercises such option, Buyer shall, within 45 days following delivery of such equipment to Buyer, pay to Seller the lower of (i) the net book value (i.e. actual cost less amortization) or (ii) the then current fair market value of such equipment.

## **17. Termination for Cause by Seller**

17.1 Seller shall not terminate the Agreement unless Buyer is in material breach of the Agreement, Seller has notified Buyer in writing of such breach and Buyer has not cured such breach within a reasonable time (but in any event not less than 60 days) after receiving such written notification.

## **18. Other Termination**

18.1 Buyer may terminate, in whole or in part, the Agreement or any purchase order issued under the Agreement, at any time for its convenience, by notifying Seller in writing. If Buyer terminates pursuant to this Section, Buyer's sole obligation will be to reimburse Seller for (a) those Products or Services actually shipped or performed and accepted by Buyer up to the date of termination, and (b) actual costs incurred by Seller up to the date of termination for unfinished goods which are useable, in merchantable condition and specifically manufactured for Buyer and not standard products of Seller. Buyer will reimburse the costs in (b) only to the extent such costs are reasonable and properly allocable to the terminated portion of the Agreement, and after first subtracting the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent. Buyer's obligation to reimburse Seller under this Section will not exceed the purchase price in respect of the order (or portion thereof) terminated. All claims by Seller for reimbursement under this Section must be submitted in writing to Buyer within 30 days following the order termination date, with sufficient supporting data to permit an audit by Buyer. Failure to file a claim within such 30 day period will constitute a waiver by Seller of all claims. Seller shall thereafter promptly furnish any supplemental and supporting information Buyer requests.

18.2 Buyer will not be liable for, and Seller agrees not to assert that Buyer is liable for, any of the following: (a) consequential, incidental, indirect, special and punitive damages; (b) recall costs, line shut-down costs, lost or anticipated profits or revenue or cost of capital; (c) finished Products, work-in-process or materials which Seller fabricates or procures in amounts that exceed those authorized by Buyer in purchase orders or releases (but excluding forecast quantities); (d) goods or materials that are in Seller's standard stock or that are readily marketable; (e) claims of Seller's suppliers or other third parties for damages or penalties, and (f) all other losses, damages, liabilities, costs and expenses not expressly set forth in Section 17.1.

18.3 Buyer may terminate, in whole or in part, the Agreement or any purchase order issued under the Agreement, by notifying Seller in writing, if it is affected by customer delays, cancellations or other events beyond its reasonable control. Such termination will be without liability or obligation to Buyer, including any obligation to reimburse Seller for any materials or work-in-process.

## **19. Compliance with Laws**

19.1 In the performance of its obligations hereunder, Seller shall comply with all applicable laws, statutes, regulations and ordinances, including the Foreign Corrupt Practices Act and the Fair Labor Standards Act. All applicable contract clauses required by any applicable law, statute, regulation or ordinance (including those set forth in 41 C.F.R. Parts 60-1.4(a) (women and minorities), 60-250.5(a) (covered veterans) and 60-741.5(a) (individuals with disabilities)) are incorporated herein by reference and made a part hereof.

19.2 The Seller shall comply with all of the Buyer's mandatory customer terms that it is required to flow down to its suppliers.

19.3 At Buyer's request, Seller shall promptly furnish information relating to the hazardous, toxic or other content or nature of the Products or Services. Prior to, and together with, the shipment of Products, Seller shall furnish to Buyer and all carriers sufficient written warning and notice (including appropriate labels on the Products and packaging) of any hazardous material that is an ingredient or a part of any of the Products, together with all special handling instructions, safety measures and precautions necessary to comply with the law or to prevent bodily injury or property damage.

19.4 Where required by Buyer or by applicable laws or regulations, Seller shall furnish Material Safety Data Sheets (MSDS) on the materials used in manufacturing the Products or the provision of the Services. MSDS are to be sent to the plant environmental/safety coordinator at the Buyer facility to which the Products or Services are delivered.

## **20. International Trade and Customs**

20.1 Seller shall comply with all applicable export control laws and regulations, including the Export Administration Regulations. Seller shall not export or re-export any items or technical data furnished by Buyer, except with Buyer's prior written consent.

20.2 Buyer owns all transferable credits or benefits associated with or arising from the Products, including trade credits, export credits and rights to the refund of duties, taxes and fees.

20.3 Seller shall not (a) file, or cause or permit any third party to file, for duty drawback with customs authorities in respect of the Products or any component thereof, or (b) show, or cause or permit any third party to show, Buyer's name as "importer of record" on any customs declaration.

20.4 Seller shall provide Buyer, in a timely manner, with accurate information, records and documentation relating to the Products, which Buyer believes is necessary or desirable to fulfill customs and trade related obligations. This includes import compliance, export compliance, trade preference programs and similar obligations.

20.5 To the extent the Products are to be imported into the U.S, Seller shall comply with all applicable recommendations or requirements of the U.S. Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Where Seller does not exercise control of the manufacturing or transportation of the Products destined for delivery to Buyer or its customers in the U.S, Seller shall make C-TPAT security recommendations to its suppliers and transportation providers and condition its relationship with those entities on their implementation of such recommendations.

20.6 No later than the time of delivery, Seller shall provide Buyer with the applicable Export Control Classification Numbers ("ECCNs") of the Products and their components and the Services.

## **21. Seller Code of Conduct**

21.1 The Seller warrants that it has not, in connection with the Products:

(a) offered, given or agreed to give or receive, requested or accepted any financial or other advantage of any kind as an inducement or reward for doing or not doing any improper act or for the improper performance of any function associated with the order or the Goods; or

(b) acted in any way which would constitute an offence by the Seller or would cause the Buyer to commit an offence under any anti-bribery legislation.

If the Seller breaches the above warranty, the Buyer shall be entitled to terminate the order by written notice with immediate effect. Any termination shall be without prejudice to the accrued rights of the Buyer. The Seller shall indemnify and hold harmless the Buyer from any loss, damage and expense, including all legal fees, incurred or sustained by the Buyer which is caused by or arises as a result of a breach of this clause.

21.2 Buyer further expects Seller to adopt a code of ethical business conduct suitable to its business, and conform to such code. The code should establish that Seller shall comply with all pertinent laws and regulations, and should address Seller's policies regarding workplace health and safety, labor standards, protection of the environment and resources, product safety and quality and anti-corruption.

## **22. Other Rights and Remedies**

22.1 Seller acknowledges that breach by Seller of the Agreement could cause irreparable harm to Buyer for which monetary damages may be difficult to ascertain or may constitute any inadequate remedy. Seller, therefore, agrees that Buyer shall be entitled to sue for specific performance or seek injunctive relief for any violation or threatened violation of the Agreement by Seller without the filing or posting of any bond or surety. Buyer may seek a temporary and/or permanent injunction (or other similar relief in accordance with applicable law) from any court or other authority having competent jurisdiction, and

such courts may apply local laws in determining whether to grant the injunction. 21.2 Buyer's rights and remedies set forth in the Agreement are in addition to any other legal or equitable right or remedy available to Buyer.

### **23. Miscellaneous**

23.1 The words "such as", "include" and "including" are to be construed as if they were followed by "without limitation", unless the accompanying text or the context clearly requires otherwise.

23.2 Seller may not assign its rights or obligations under the Agreement. Any attempted assignment will be void, unless Buyer has given its prior written consent to such assignment. Buyer may assign its rights under the Agreement to its affiliates, and may assign its rights and delegate its obligations under the Agreement to a third party in connection with the sale of all or part its business.

23.3 If any term of the Agreement is declared unenforceable, the remaining terms will remain in effect, and the unenforceable term will be replaced by a term that is valid and enforceable and that comes closest to expressing the intention of the unenforceable term.

23.4 Any terms which, by their nature, extend beyond the expiration or termination of the Agreement will survive the expiration or termination of the Agreement.

23.5 The Agreement is governed by and interpreted in accordance with the laws of the State of Delaware, USA, without reference to its conflict of laws rules. Both parties consent to the jurisdiction of the state and federal courts having authority over the territory of Wilmington, Delaware for the resolution of any dispute arising under the Agreement; that consent will be to the exclusive jurisdiction of such courts, except if Seller is from or Seller's assets are located in a jurisdiction that does not recognize judgments issued by such courts for enforcement, in which case Buyer may choose to bring suit in other courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

23.6 Each party hereby waives to the fullest extent permitted by applicable law any right it may have to a trial by jury in respect of any litigation arising in connection with the Agreement.

23.7 The Agreement does not create an agency, partnership or other relationship other than that of independent contracting parties. Seller has no authority to bind or commit Buyer.

23.8 A reference in this Agreement to the consent or approval of Buyer is a reference to the consent or approval of a representative of Buyer duly authorized by Buyer to give such consent or approval.

23.9 Buyer may provide translated versions of the terms and conditions for informational purposes only. The original English language version will apply in the event of any disagreement over the meaning or construction of any provisions.

23.10 Seller shall not in any manner advertise or publish that Seller has contracted to furnish Buyer the Products or Services, or use any trademarks or trade names of Buyer in Seller's goods, advertising or promotional materials except with Buyer's prior written consent.