



## **STANDARD COMMERCIAL TERMS AND CONDITIONS OF SALE**

### **1. ORDERS**

Buyer will place all orders for goods and services (collectively, "Goods") to be provided by Seller by sending to Seller a purchase order (the "Purchase Order" or "Order"). The Purchase Order shall contain only the Buyer and Seller identification, description, quantity, price, and/or delivery schedule of Goods by Buyer from Seller; and shall be subject to and governed solely by these Standard Commercial Terms and Conditions (the "Terms and Conditions"). Any terms or conditions set forth on any documents or forms utilized by Buyer, including, but not limited to, pre-printed terms and conditions on purchase order documents, and any communications (written or oral) between the parties that are inconsistent with, or are not included within, the Terms and Conditions contained herein, shall be of no force or effect unless signed by an authorized representative of Seller.

### **2. ORDER ACCEPTANCE**

Acceptance of the Order shall be indicated by the written acknowledgement of Seller's authorized representative. Seller shall not be obligated to accept any Order. Seller may not accept any Order issued at a time when Buyer is in default in its payments or other material obligations hereunder, notwithstanding the fact that notice of such default has not been given and/or that a cure period applies.

Seller's acceptance of Orders is given only on the express understanding and condition that only the Terms and Conditions shall govern and establish any rights and obligations of the parties with respect to the Goods covered thereby. Seller's failure to object to provisions contained in any document or communication from Buyer shall not be deemed a waiver of the application of the Terms and Conditions. Without limiting the generality of the foregoing, any terms or conditions set forth on any documents or forms utilized by Buyer and any communications (written or oral) between the parties that are inconsistent with, or are not included within the Terms and Conditions shall be of no force or effect unless signed by an authorized representative of Seller.

If Seller is unable to furnish any Goods on the Order in quantity, size or otherwise, as specified and described on the Order, the Order acknowledgment will so indicate and may provide details as to recommended substitutes, including part number, description, price and availability.

### **3. ORDER OF PRECEDENCE**

(a) In the event of any inconsistency or conflict between or among the provisions of Purchase Order, such inconsistency or conflict shall be resolved by the following descending order of preference: 1. Order-specific provisions which are typed or handwritten on the Purchase Order as additions to the pre-printed terms and accepted by Seller; 2. Documents incorporated by reference on the face page(s) of this Purchase Order; 3. These General Terms and Conditions of Purchase and Supplements thereto; 4. Statement of Work; and 5. Specifications attached hereto or incorporated by reference. Buyer's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over specifications of Seller.

(b) In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer, and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Purchase Order, Seller and Buyer shall decide whose written interpretation shall be final.

#### **4. CANCELLATION**

No cancellations of Orders by Buyer will be accepted within one month of the earliest requested ship date. All cancellations of any order by Buyer 30 or more calendar days prior to the earliest requested ship date shall result in a cancellation charge to be reasonably determined by Seller based on such factors as whether the Goods were manufactured specifically for Buyer, Seller's ability to change its production schedule within the period of the notice provided by Buyer and whether Seller acquired or allocated particular supplies or equipment to meet Buyer's Order.

#### **5. CHANGES**

Buyer may by written notice request changes within the general scope of this Purchase Order to any one or more of the following: (a) method of shipment or packaging; and (b) place of delivery

Any proposed modifications will be evidenced by a written work change order submitted by Buyer and must be agreed to in writing by Seller. If, in Seller's discretion, the proposed modifications would cause an increase in the cost of, or the time required for the performance of, any part of the work in this Order, Seller shall be entitled to an equitable adjustment in the purchase price or delivery schedule or both.

The change will become effective, and Seller will commence performance, after the parties have agreed in writing upon any equitable adjustments applicable to the modifications, and the Purchase Order shall be deemed to be modified to include the modifications. Unless otherwise agreed in writing, upon performance of the change order, Seller will be entitled to invoice Buyer for the costs of the change, even if Seller agreed to proceed with the change prior to such written agreement.

Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's purchasing representative and which states it constitutes an amendment or change to this Purchase Order.

#### **6. DRAWINGS AND SPECIFICATIONS**

Seller is reasonably entitled to rely on information supplied by Buyer concerning the Goods including but not limited to timely furnishing of designs, drawings, specifications, test parameters, and all other technical requirements which are the responsibility of Buyer.

#### **7. INTELLECTUAL PROPERTY**

(a) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Sections 7(d) and 11 below, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a proprietary basis and shall be subject to requirements under Section 11 - COMPLIANCE WITH EXPORT STATUTES AND REGULATIONS. Notwithstanding the above, Buyer shall not at any time without the prior written authorization of Surmet Corp., file, cause or authorize the filing of any patent application in any country with respect to any inventions, discoveries or innovations which are based, in whole or in part, on, or as a result of the use of, Surmet Corp. product samples, coupons, characterization tests and performance results.

(b) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Section 7(d) below, all specifications, information, data, drawings, software and other items which are supplied to Seller by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing goods or services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's

express written consent. All such items supplied by Buyer or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.

(c) Ownership of Intellectual Property related to materials, processing and fabrication of ALON® Transparent Ceramic products shall stay with Seller.

(d) Applicable Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 7 to the extent that such Regulations so require.

## **8. DISPUTES**

Any dispute shall be communicated in writing. If Seller and Buyer cannot agree on a resolution of the dispute within 30 calendar days, the dispute shall be escalated to the respective director-level leadership of both Seller and Buyer for resolution. If the director-level leadership of Seller and Buyer are unable to resolve any dispute escalated to them within 30 calendar days, the dispute shall be escalated to the vice-president-level leadership of Seller and Buyer. If the vice-president-level leadership are unable to resolve any dispute escalated to them within 30 calendar days, Seller, at its option, shall suspend work on the disputed portion of the contract until resolution of the dispute; either Party may, subject to Article 9 – GOVERNING LAW, pursue any rights or remedies available to it hereunder.

## **9. GOVERNING LAW**

This Order shall be governed by the laws of the State of New York, USA, excluding its conflict of laws rules other than as found in Section 5-1401 and 5-1402 of New York's General Obligations Law. The provisions of the Convention for the International Sale of Goods shall not apply.

Any and all disputes (whether arising in tort, contract or otherwise) arising under or in any way relating to the subject matter of this Agreement shall be governed by the laws of the State of New York, without regard to any conflicts of law principles applied in that State that would require application of any other law. Buyer and Seller each hereby consent to the exclusive jurisdiction and venue of the courts, state and federal, located in the State of New York, with respect to any action, suit or proceeding relating to this Agreement.

## **10. ASSIGNMENT**

Either Party may not assign, charge, transfer or otherwise dispose of an Order or any interests, rights or obligations therein in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, 1) Seller may assign any and all of its rights and obligations hereunder upon notification to Buyer to (i) any Seller-affiliated company; (ii) a third party pursuant to any sale or transfer of all or part of the assets or business of Seller; or (iii) a third party pursuant to or in connection with any financing, merger, consolidation, change in control, reorganization or other business combination involving Seller; and 2) Buyer may assign any and all of its rights and obligations hereunder upon notification to Seller to (i) any Buyer-affiliated company; (ii) a third party pursuant to any sale or transfer of all or part of the assets or business of Buyer; or (iii) a third party pursuant to or in connection with any financing, merger, consolidation, change in control, reorganization or other business combination involving Buyer .

Each Party shall promptly notify the other Party in writing of any organizational changes made by that Party, including name or ownership changes, mergers or acquisitions.

## **11. COMPLIANCE WITH EXPORT STATUTES AND REGULATIONS**

If the Goods ordered hereunder are intended for shipment outside the United States, the following additional provisions shall apply:

(a) Buyer shall submit to Seller filled and signed End-Use Application form along with the Purchase Order.

(b) In performing the obligations of this contract, both parties will comply with United States export control and sanctions, laws, regulations, and orders, as they may be amended from time to time, applicable to the export and re-export of goods, software, technology, or technical data ("Items") or services, including without limitation the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), Foreign Assets Control Regulations (as administered and enforced by the Treasury Department's Office of Foreign Assets Control), U.S. Customs Regulations, Foreign Trade Statistics Regulations (U.S. Census Bureau) and Bureau of Alcohol, Tobacco, Firearms and Explosives Regulations (U.S. Justice Dept.) (Collectively, "Export Control Laws and Regulations"). Buyer agrees that it will take measures to ensure that any goods or technical data received from Seller are not modified for or diverted for any use contrary to United States law, including any military application.

(c) The party conducting the export shall be responsible for obtaining the required authorizations for the applicable export, although Seller shall have the sole authority to make or have made any required submissions to the United States Customs Bureau to the extent that it is the U.S. Principal Party in Interest in the export. The party conducting the re-export/re-transfer shall be responsible for obtaining the required authorizations. Each Party shall reasonably cooperate and exercise reasonable efforts to support the other party in obtaining the necessary licenses or authorizations required to perform its obligations under this contract. Seller does not guarantee the issuance or continuation in effect of such authorizations and shall have no liability in such event. If the relevant goods or technical data are subject to a license or other governmental approval specifically identifying Buyer as the end-user thereof, Buyer will not, directly or indirectly, export, re-export, transfer or re-transfer such goods or technical data received from Seller to any destination without Seller's prior written approval unless specifically permitted pursuant to such license or approval. Buyer shall indemnify and hold harmless Seller from any and all liability or other consequences arising as a result of a breach of clauses (a) or (b).

(d) The party providing any Items under this contract shall, upon request, notify the other party of the Items' Export Control Classification Numbers ("ECCNs") as well as the ECCNs of any components or parts thereof if they are different from the ECCN of the Item at issue. Buyer shall be responsible for complying with all applicable export laws, including U.S. laws governing the export, re-export, transfer and re-transfer of U.S. origin items.

(e) Each Party shall immediately notify the other Party if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked.

(f) Items received in Violation of Export Laws: in the event that Seller receives an Item from Buyer that, whether or not through Buyer's fault, is in non-compliance with economic trade sanctions, International Traffic in Arms Regulations (ITAR) or U.S. Export Administration Regulations (EAR), Seller reserves the right to retain possession of such property ("quarantine"). Seller shall have no responsibility or liability for, and Buyer shall indemnify and hold Seller harmless against, any losses, claims, or damages incurred by Buyer or any third party resulting from Seller's quarantine of such unit.

(g) If Seller's noncompliance with paragraphs (a) through (f) is caused by Government acts or omissions beyond the reasonable control of Seller and without its fault or negligence, Seller's noncompliance with such paragraphs shall be excused and no liability shall attach.

(h) Buyer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, to the extent arising from any act or omission of Buyer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

(i) Buyer and Seller may be required to obtain information concerning citizenship or export status of other Party's personnel. Each Party agrees to provide such information as necessary and certify the information to be true and correct.

## **12. WAIVER**

Failure or delay by either party to exercise or enforce any right conferred by this Purchase Order, including Seller's right to deliver invoices under this Purchase Order, shall not be deemed to be a waiver of any such right. Further, a waiver, express or implied, by either party of any default by the other in the observance and performance of any of the conditions, covenants or duties set forth in this Purchase Order shall not constitute or be construed as a waiver of any subsequent or other default.

## **13. EXCUSABLE DELAY**

Seller shall not be in default by reason of any failure in performance of this contract if such failure arises out of causes beyond the control of and without the fault or negligence of Seller including but not restricted to:

(a)(i) acts of God, acts of Government, fire, floods, earthquakes, epidemics, quarantine restrictions, strikes, embargos, severe weather, riot, natural disasters, wars ((declared or undeclared), insurrection, acts of terrorism or any other event or cause whether similar or dissimilar to those enumerated herein that are beyond the reasonable control of Seller ; (ii) interferes with the performance of Seller's obligations; and (iii) the effects of which could not reasonably have been avoided by Seller ("Excusable Delay").

(b) In addition to the events described in paragraph (a), a delay caused by the default of a subcontractor of the Seller shall constitute an Excusable Delay if the event causing the default of such subcontractor is an event which meets the criteria set out in paragraph (a) and such delay has not been caused by Seller, unless the subcontracted supplies or services were obtainable at reasonable prices on commercially reasonable terms from other sources in sufficient time for Seller to meet the required delivery schedule.

In the event of an Excusable Delay, any affected delivery date shall be postponed for such period as is reasonably necessary to offset the effects of the Excusable Delay. No adjustment will be made to price under this Purchase Order; adjustment of the delivery schedule is the exclusive remedy of Seller for an Excusable Delay.

Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a proposed revised schedule.

Notwithstanding the above, after an Excusable Delay has continued for a period of one hundred and eighty (180) calendar days in the aggregate either Party may terminate this Purchase Order. In the event of such termination, the rights and obligations of Buyer and Seller shall be determined in accordance with the provisions of Article 4 – CANCELLATION.

## **14. BUYER-FURNISHED PROPERTY**

- (a) All drawings, tools, jigs, dies, fixtures, materials, and other property supplied by Buyer to Seller shall be and remain the property of Buyer. Upon demand by Buyer, Seller shall promptly return or deliver to Buyer all such items at Buyer's expense.
- (b) All such items shall be used only in the performance of work under this Purchase Order unless Buyer consents otherwise in writing.
- (c) Seller agrees that it has adequate insurance on all Buyer-furnished property, and Seller shall be responsible for all loss or damage to said property, except for normal and reasonable wear and tear.
- (d) If this contract requires the use of Buyer-furnished property, Buyer shall furnish it in accordance with the schedule defined in this contract. Buyer's failure to do so shall entitle Seller to an equitable adjustment in cost, schedule, or both in accordance with Article 5 - CHANGES.

## **15. TOOLS AND MATERIALS**

Title to all Buyer-owned tooling, equipment or materials furnished by Buyer to Seller or completed tools, equipment, or materials called out as a special contractual Deliverable line-item in the contract shall remain with Buyer. Upon completion or termination of the applicable Purchase Order, Seller shall return any such material to Buyer at Buyer's expense. Seller assumes no liability for loss or damage to said property, including normal and reasonable wear and tear. Notwithstanding the foregoing, title to any item relevant to heat treatment of ALON® blanks, shall rest with Seller. Seller shall have the right to retain such items upon completion or cancellation of Order at no additional cost.

## **16. SUBCONTRACTS**

Seller may subcontract any part of the work or services to be provided under this Purchase Order, provided it does not pass any information identifying Buyer, and has a Non-Disclosure Agreement with the subcontractor.

## **17. INSPECTION AND ACCEPTANCE OF GOODS**

(a) All deliverable, completed product (goods) shall be subject to inspection prior to shipment at Seller's facilities. Buyer may require Seller to repair, replace the rejected goods or Buyer may accept any goods and upon discovery of nonconformance, may reject any such goods not so conforming. Cost of repair, rework, replacement, shall be at Seller's expense. Buyer's acceptance of work and services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud, or misrepresentation on the part of Seller exists, unless Buyer further processes or modifies goods.

(b) If inspection and test are made on the premises of Seller, Seller shall furnish with reasonable additional charge all reasonable assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Article are supplementary to and not in lieu of the provisions of Section 17(a) above.

(c) Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Purchase Order.

Unless otherwise mutually agreed in writing, Goods are sold only with Seller's standard quality control tests and calibrations and Seller's standard documentation. Not later than ten (10) working days in advance of the delivery date, Seller shall notify Buyer in writing of the date that the completed Goods will be available for inspection and acceptance. In the event Buyer fails to inspect the Goods or does not present a rejection notice to Seller in writing within two (2) working days of the inspection date, the Goods shall be deemed accepted. At that time, Buyer's only recourse or remedy for non-conforming or defective Goods shall be as provided in the warranty section of this agreement.

## **18. RETURNED GOODS**

No return of Goods will be accepted by Seller without Seller's prior written Return Material Authorization (RMA). Returned Goods must be in original manufacturer's shipping cartons complete with all packing materials and reference Seller-supplied RMA number.

**19. PACKING, CRATING AND SHIPPING**

(a) Purchase Orders from Buyer to Seller shall be subject to Ex Works (EXW) Incoterms 2020.

(b) Seller shall be responsible for ensuring the proper packaging of materials hereunder.

(c) Seller shall comply with Buyer's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. Seller shall submit all required shipping papers to Buyer prior to final payment.

(d) Purchase Order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, airbills, and invoices.

**20. CONFIDENTIAL INFORMATION**

Confidential Information exchanged between the Parties pursuant to this Contract shall be governed by and be in accordance with the Non-Disclosure Agreement (NDA) executed by the Parties,

**21. DELIVERY SCHEDULE**

Buyer acknowledges that any delivery schedule provided by Seller is only an estimation of the lead times. Seller will use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery schedule but shall not be liable to Buyer for failure to meet any delivery schedule or for the costs to procure or design substitute goods.

Delays or changes in schedules resulting from Buyer's acts or omissions shall be subject to price adjustments in accordance with Clause 5 – CHANGES.

**22. PAYMENT TERMS**

Payment shall be received not later than thirty (30) calendar days after the date of Seller's invoice to be submitted only after Acceptance of goods and documentation by Buyer. Interest will automatically and without any notice of default accrue on overdue invoices from the due date until payment at the rate of the lower of: (i) eighteen percent (18%) per annum; or (ii) the highest interest rate permitted by United States law. Buyer will be responsible for any litigation costs and attorneys' fees associated with collection of past due invoices.

**23. TAXES shall be governed by FAR Clause 52.229-3 Federal, State and Local Taxes**

**24. STOP WORK**

When directed by written notice from Buyer (a "Stop Work Notice"), Seller shall promptly stop all or part of the work relating to the applicable Order to the extent specified in the Stop Work Notice for a period of up to ninety (90) calendar days or longer if extended by mutual agreement. When a Stop Work notice is removed, Buyer and Seller shall promptly negotiate an equitable adjustment in the delivery schedule, scope and/or price, and the Order shall be modified in writing accordingly. Seller shall resume work subject to agreement on the equitable adjustment. Failure by Buyer to lift the Stop Work order within the specified time shall be treated as a cancellation, at Seller's option. Notwithstanding anything to the contrary in Article 4 – CANCELLATION, Seller shall be entitled to reasonable compensation for all costs incurred and a reasonable pro-rated portion of profit as a result of the Stop Work and Cancellation.

**25. TERMINATION FOR CONVENIENCE**

The right of either Party to terminate this Contract, for other than default, shall be in accordance with FAR Clause 52-249-2, Termination for Convenience of the Government (Fixed Price).

**26. TERMINATION FOR DEFAULT**

The right of either Party to terminate this Contract, for other than convenience, shall be in accordance with FAR Clause 52-249-8, Default (Fixed Price Supply and Service).

**27. Infringement**

The right of either Party to regarding any claim for infringement for efforts contracted for pursuant to this Contract shall be in accordance with FAR Clause 52-227-1(Authorization and Consent),

**28. WARRANTY**

Seller warrants that all Work furnished pursuant to this Purchase Order/Contract shall strictly conform to all specifications, drawings, samples, and descriptions of this PO and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of 3 months. If any non-conformity with Work appears within that time, Seller shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense. The warranty shall be voided with no residual liability to Seller immediately upon any significant modification, such as additional fabrication, coating, lamination or assembly of the Seller's Work. Any implied warranty of merchantability or fitness for a particular purpose is hereby disclaimed.

**29. LIMITATION OF LIABILITY AND DISCLAIMER OF OTHER WARRANTIES**

The only warranties made by Seller are those expressly provided herein. Any other statements expressed in the contract, including but not limited to proposals, specifications, drawings, or manuals shall not be deemed to constitute a warranty of the products. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. THE REMEDIES SET FORTH IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER FOR ANY CLAIMS, EXPENSES OR DAMAGE ARISING OUT OF OR RELATED TO PRODUCTS DELIVERED UNDER THIS CONTRACT.

SELLER'S LIABILITY WITH RESPECT TO NONCONFORMING OR DEFECTIVE GOODS IS LIMITED TO BUYER'S NET CURRENT PURCHASE PRICE, AFTER CASH AND OTHER DISCOUNTS, OF ANY SUCH GOODS OR, AT SELLER'S OPTION, TO THE REPAIR OR REPLACEMENT OF SUCH GOODS UPON ITS EVALUATION BY SUPPLIER'S TECHNICAL REPRESENTATIVES OR ITS RETURN TO SUPPLIER, TRANSPORTATION CHARGES PREPAID.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY SUCH LIMITED REMEDY, SELLER'S TOTAL LIABILITY IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT PAID BY BUYER TO SELLER UNDER THIS AGREEMENT.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, SELLER SHALL IN NO EVENT BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL, COLLATERAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES SUCH AS BUT NOT LIMITED TO, LOSS OF

REVENUES, LOSS OF ANTICIPATED SAVINGS OR LOST PROFITS, LINE STOP, RECALLS, HARM TO BUSINESS OR BUSINESS REPUTATION, WHETHER OR NOT FORESEEABLE, AND WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**30. INDEMNITY**

Seller hereto agrees to defend and indemnify Buyer, its officers, directors and employees, from and against any and all claims, demands and causes of action (for this Article 29, collectively "Claim") asserted by any third party for loss or damage to tangible property or injury or death of any person, to the extent such damage, injury or death is caused by gross negligence or other wrongful acts or omissions of the Seller in the performance of Seller's obligations under this agreement except to the extent directly resulting from Services performed or Merchandise and other deliverables designed or manufactured in accordance with custom designs or specifications supplied by Buyer if the Claim, Damage, personal illness or injury, or property damage, or loss would not have occurred but for Supplier's compliance with Buyer's custom designs or specifications, or from materials supplied by Buyer or Buyer's negligence or willful misconduct. Buyer shall promptly inform Seller in writing and furnish a copy of each communication, notice or action and give Seller full and complete authority, information and assistance (at the Seller's expense) necessary for the defense, compromise or settlement of such Claim.

**31. PARTIAL INVALIDITY AND SEVERABILITY**

If any provision of the Order or the Terms and Conditions, including any limitation of warranty or liability, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the parties agree to negotiate in good faith to draft a new legal and enforceable provision that, to the maximum extent possible, comports with the original intent of the parties and maintains the economic and other terms to which the parties originally agreed.

**32. INDEPENDENT CONTRACTOR**

Neither party is a partner, agent or legal representative of the other party nor is no fiduciary relationship between the parties created by this Order. Seller is an independent contractor in the performance of the Order, and each party retains authority to manage its personnel, workers, subcontractors, and operations required for performance of its obligations hereunder.

**33. PUBLICITY/RELEASE OF INFORMATION**

This Order does not confer any right to use any name, trademark or other designation of either party in any advertising, publicity or marketing activities. Neither party will issue press releases, advertising, sales promotions or other publicity documents or information referring to the other party and their customer or existence of any Purchase Order(s) without prior written consent of the other party.

**34. CHOICE OF LANGUAGE**

The Order, these Terms and Conditions, any document referenced herein or attached hereto, any report, any drawings or other technical information, or any notice or binding communication shall be drafted in English, shall be interpreted in accordance with the plain English meaning of their terms, and shall employ the units of measure customarily used by Seller in the United States.

**35. COMPLIANCE WITH FAIR LABOR STANDARDS ACT**

Seller hereby certifies that all Goods sold hereunder which are produced or manufactured in the United States of America are produced in compliance with the Fair Labor Standards Act of 1938, as amended (29 U.S. Code 201-219). All requirements as to the certificate contemplated in the October

26, 1949 amendment to the Fair Labor Standards Act of 1938 shall be considered as satisfied by this certification.

**36. COMPLIANCE WITH LAW**

(a) Seller warrants that the materials to be furnished and the services to be rendered under this Purchase Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations and in compliance with applicable international prohibitions on child labor. Seller certifies that with respect to the production of the articles and/or the performance of the services covered by this Purchase Order, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof, if applicable.

(b) Seller warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

(c) For orders placed in support of and charged to a U.S. Government Prime Contract or subcontract thereunder procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of said prime contract are incorporated herein by reference. In all clauses listed herein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under this Purchase Order, except that Buyer shall only be able to audit Seller through appropriate government agencies. In DFARS 252.215-7003, the term "Offeror" shall mean Seller. Seller shall include the terms of this Article, including this Section 19(e) in all purchase orders or subcontracts awarded under this Purchase Order. The DFARS clauses set forth in Subsections 19(e)(11) through Subsections 19(e)(24) below are applicable only to Purchase Orders issued under DoD contracts:

1.	Contractor Code of Business Ethics and Conduct (This clause is applicable to Purchase Orders (i) that have a value more than \$5,000,000; and (ii) that have a performance period of more than 120 days. (In Paragraph (b)(3)(i), the meaning of "agency office of the Inspector General" and "Contracting Officer" does not change, in Paragraph (b)(3)(ii) the meaning of "Government" does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of "OIG of the ordering agency", "IG of the agency", "agency OIG" and "Contracting Officer" do not change.)	52.203-13
2.	Utilization of Small Business Concerns	52.219-8
3.	Equal Opportunity	52.222-26(b)
4.	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	52.222-35
5.	Affirmative Action for Workers with Disabilities	52.222-36

6.	Notification of Employee Rights Concerning Payment of Union Dues or Fees	52.222-39
7.	Combating Trafficking in Persons and Alternate 1 (Include Alternate I if it is in the prime contract)	52.222-50
8.	Employment Eligibility Verification (This clause is applicable to Purchase Orders (i) for construction or commercial Services (except commercial services that are part of a purchase of a COTS item or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item);(ii) has a value more than \$3,000; and (iii) includes work performed in the United States	52.222-54
9.	Subcontracts for Commercial Items	52.244-6
10.	Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64
11.	Requirements for Contracts Involving Export-Controlled Items	252.204-7008
12.	Requirements for Contracts Regarding Potential Access to Export-Controlled Items	252-204-7009

**37. RESPONSIBILITY AND INSURANCE**

Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order. Seller shall also maintain and cause its subcontractors to maintain such General Liability, Property Damage, Employer's Liability, and Workers' Compensation Insurance, and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Purchase Order or, if none are specified, such amount as will protect Seller (and its subcontractors) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes.

**38. INSOLVENCY**

In the event either party shall file a voluntary petition, or any comparable petition, for bankruptcy, insolvency, receivership, reorganization, dissolution, liquidation, trusteeship, or similar proceeding

for the protection or relief of financially distressed debtors, the other party shall have the right to suspend or terminate operations hereunder with immediate effect upon written notice to the other party and to the fullest extent permitted by law.

Seller has the right to demand adequate assurance from Buyer of Buyer's ability to pay for Goods purchased. In the event Buyer is unable to or unwilling to provide such adequate assurance, Seller may suspend or terminate operations hereunder. Seller's right to adequate assurance from Buyer shall not be affected by Buyer's filing for bankruptcy, rehabilitation, insolvency, receivership, reorganization, dissolution, liquidation, trusteeship or similar proceeding.

**39. COPYRIGHT**

Seller electronic firmware assemblies contain computer programs which are protected by copyright. All rights reserved are under copyright laws of the United States of America and other countries. Such computer programs may not be reproduced, in whole or in part, in any form, without prior written authorization from Seller.

**40. SURVIVABILITY**

Both Parties' obligations, including but not limited to obligations under the Termination for Convenience, Termination for Default, Proprietary Rights, Release of Information, Warranty, Infringement, Compliance with Law, Responsibility and Insurance, Indemnity Against Claims, and Export/Import Controls provisions of this Purchase Order, shall survive termination, expiration, or completion of this Purchase Order.

**41. ATTORNEYS FEES**

(a) If Seller brings an action or asserts a counterclaim for enforcement of the Terms and Conditions of any Order, Buyer agrees that Seller shall be entitled to an award of its reasonable attorney's fees and court costs associated with such enforcement or counterclaim proceedings in the event of a favorable judgment for the Seller.

(b) If Buyer brings an action or asserts a counterclaim for enforcement of the Terms and Conditions of any Order, Seller agrees that Buyer shall be entitled to an award of its reasonable attorney's fees and court costs associated with such enforcement or counterclaim proceedings in the event of a favorable judgment for the Buyer.

**42. ENTIRE AGREEMENT**

The Terms and Conditions, including any exhibits and attachments hereto, comprise the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, representations, agreements, and understandings, whether oral or written, except as stated herein.