

**PREDATOR SYSTEMS, INC.**

**PURCHASE ORDER  
TERMS AND CONDITIONS**

**HEADINGS NOT CONTROLLING**

Headings and captions set forth in this order are for convenience of reference only and are not intended to, nor do they, alter the meaning, content or enforceability of any provision hereof. Where the contract requires, items stated in the plural herein shall be deemed to mean the singular and vice versa.

**AUTHORITY AND COMMUNICAITION**

"Buyer" means Predator Systems, Inc., acting through its purchasing organization. No other department of Buyer is so authorized to act. Claims by Seller for any adjustments will not be allowed unless duly authorized in writing by Buyer's purchasing organization prior to implementation. All written communications are to be directed to Buyer's purchasing representative. Any agreements resulting from communications with organizations of Buyer other than its purchasing organization shall be binding only if documented by Buyer's written change notice.

**APPLICABILITY/ACCEPTANCE OF  
TERMS/ENTIRE AGREEMENT**

Unless otherwise provided, this order is for the purchase and sale of goods and services described on the face of this order (hereinafter "Order"). Seller's acceptance of this Order shall be expressly limited to the terms and conditions contained herein and incorporated herein by reference. Seller shall indicate its acceptance of this Order in writing. If Seller fails to do so, this Order shall be declared accepted upon Seller's commencement of any work or performance for this order. Any terms proposed in Seller's acceptance of Buyer's offer which add to, vary from or conflict with the terms herein are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties.

## **PRICES AND PAYMENTS**

As compensation for services to be performed by Seller, Buyer shall pay Seller as set forth in this contract. THE PRICES APPEARING HEREIN INCLUDE ALL PACKAGING, CRATING AND TAXES, IF APPLICABLE, AND ARE FIRM FOR THE DELIVERY PERIOD SHOWN. Buyer shall have no liability for any other expenses or costs incurred by Seller. Payment due date, including discount periods, shall be computed from the date of the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. The payment date will be delayed on a day-for-day basis for any item that is delivered later than called for by the schedule on the face of this order. Payment shall be deemed to have been made on the date the Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

## **DESIGN IMPROVEMENTS**

If this Order has as one of its purposes, design, experimental, development or research work, Seller agrees to communicate promptly to Buyer full details of any design or Invention (whether or not patentable) conceived or first reduced to practice by Seller or any of its employees in connection with the performance of this Order. Seller assigns to Buyer all right, title and interest of Seller or its employees in each such design or invention, and will perform all acts (at Buyer's expense) and execute all papers which are necessary to vest in Buyer full right, title and interest therein, including the patenting thereof.

## **CONFLICTING PROVISIONS**

In the event of any conflict among the provisions of this purchase order/contract, the following order of precedence shall apply in interpreting this order:

1. The text of the order.
2. These General Purchase Order Provisions.
3. Any Special or Supplemental Terms and Conditions incorporated by reference in the order.
4. Other Contract Documents.

## **ASSIGNMENT**

Neither party shall assign these Conditions of Sale and any Purchase Order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained. Notwithstanding the foregoing, Buyer may assign this agreement to any entity controlled by or under common control of Curtiss-Wright Corporation.

## **WAIVER**

Failure by Buyer to assert all or any of its rights upon any breach of these Conditions of Sale shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No waiver of any right shall extend to or affect any other right Buyer may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

## **INSPECTION**

Notwithstanding (i) payment, (ii) passage of title, or (iii) prior inspection or test, all items are subject to final inspection and acceptance or rejection by Buyer at Buyer's facility. At all reasonable times, including the period of manufacture, Buyer, its customers and/or representatives may inspect and/or test the items to be furnished hereunder at the places where the work is being performed, including those of the Seller's suppliers, and Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and test. Buyer may inspect 100% or a sample of all items or any lot of items at Buyer's option. In case any supplies, material or services are defective or otherwise not in conformity with Order requirements, Buyer may elect to terminate this Purchase Order for default or, without waiving any other remedies that may be provided by law, may (1) reject and return the supplies and material at Seller's expense for refund of invoice price or for correction or replacement, or (2) rework same to conform them to Order requirements and charge Seller the cost occasioned thereby, or (3) require that Seller re-perform non-conforming services and/or (4) equitably adjust the price.

## **WARRANTY**

(a) Seller warrants that all goods, supplies or services delivered under this Order shall be merchantable, free from defects in material and workmanship, conform to specifications and drawings, and, to the extent that detailed designs have not been furnished by Buyer, be free from defects in design and suitable for the purposes intended by Buyer. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations under any provision of this Order, including this Warranty.

(b) Seller's warranties hereunder shall run to Buyer, its successors, assigns, customers and users of its products and shall extend to any defect or nonconformity arising within three years after delivery to Buyer or two (2) years after first placed in use, whichever occurs first.

(c) With respect to items not in accordance with any such warranties, Buyer, without waiving any remedies provided by law and/or under this Order, may require Seller (1) to correct or replace items, or re-perform services at Seller's risk and expense or (2) to refund such portion of the Order price as is equitable under the circumstances. Items or material corrected or replaced shall be subject to the provisions of this Order in the same manner as those originally delivered hereunder. If Seller refuses or fails promptly to correct or replace such items, or to re-perform services when requested by Buyer, Buyer

may, by contract or otherwise, correct or replace such items or procure substitute services and Seller agrees to reimburse Buyer for the costs incurred thereby.

## **CHANGES**

A. Buyer may, at any time, by a written change order (a "Change Order"), without notice to any sureties, make changes to any aspect of the Contract/Order and/or its performance, including but not limited to: (i) drawings, designs, specifications; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of services ordered, (v) the work or service schedules, and (vi) the amount of any Buyer furnished property. If the Seller considers that the conduct, statement or direction of any of Buyer's employees constitutes a change hereunder, Seller shall notify Buyer's Subcontract Administrator and take no action on the perceived change pending written approval of Buyer's Subcontract Administrator. Only Buyer's purchasing organization has authority to approve a change, which approval shall be effective only if reduced to writing. Any change made by Seller without such written approval shall be deemed voluntary by Seller and not compensable in the cost of or time required for performance.

B. Seller shall, upon receipt of a valid Change Order, promptly advise Buyer of any effect thereof on the provisions of this Agreement, the performance of the work, including cost and/or schedule. If any such Change Order causes an increase or decrease in the cost of or time required for performance of this order, whether or not changed by the Change Order, Seller shall promptly prepare and submit to Buyer for its agreement an estimate of the increase or decrease in the applicable fees and/or time for performance necessitated by such Change Order. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date notice of any such Change Order is received by Seller. If Seller timely proposes an adjustment to its applicable fees and/or time for performance, Buyer and Seller shall mutually agree in writing upon any adjustment to reflect the extent, if any, that such Change Order has resulted in an increase or decrease in the price and/or time for performance.

C. Upon receipt of a Change Order issued by Buyer, Seller shall implement same and proceed diligently with its execution notwithstanding that agreement may not have been reached on an equitable adjustment. Neither anything in this article nor a failure to agree on an equitable adjustment shall excuse Seller from proceeding with performance of this Contract/Order as changed by a Change Order.

**D. NOTWITHSTANDING THE ABOVE OR ANY OTHER PROVISION OF THIS CONTRACT/ORDER, THE SELLER HEREBY AGREES THAT NO CHANGES TO THE ITEMS THAT MAY BE REQUIRED IN ORDER TO MEET THE SPECIFIED PERFORMANCE REQUIREMENTS OF THIS CONTRACT/ORDER SHALL ENTITLE THE SELLER TO ANY ADJUSTMENT IN EITHER PRICE OR DELIVERY.**

## **EXCUSABLE DELAYS**

Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence; provided, that any delay or failure to perform caused by the default of a supplier of the Seller at any lower-tier shall be excused only if it is beyond the control of both Seller and such supplier and without the fault or negligence of either and the items to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule; and provided further, that Seller furnishes prompt written notice to Buyer of the occurrence of any such cause that will or may delay Seller's performance. If delivery of any item is delayed by any excusable delay for more than three (3) months, Buyer may, without any additional extension, cancel all or part of any order with respect to the delayed product, and exercise any of its remedies hereunder or at common law.

## **INSURANCE**

In addition to, and without limiting any liability, warranty and indemnity obligation contained in this Agreement, Seller shall, as a separate obligation, carry and pay for insurance of the types and in the minimum amounts as follows covering items, risks, and operations related to or required to fulfill this Agreement, with insurance carriers acceptable to Buyer:

- A. Workers' Compensation in an amount no less than the applicable statutory minimum requirement and Employer's Liability Insurance in an amount of no less than \$1 million.
- B. Commercial General Liability Insurance on an "Occurrence Form" with a combined single limit of no less than \$5 million including coverage for (i) premises and operations, (ii) products and completed operations, (iii) explosion, collapse, and underground damage, and (iv) contractual liability.
- C. Business Automobile Liability Insurance covering liabilities for the death of or injury to any one person and liabilities for loss of or damage to property resulting from any one accident with a combined single limit of not less than \$5 million per occurrence.
- D. Excess liability covering the matters described and in excess of the coverage provided by A., B., and C above with a combined single limit of no less than \$5 million per occurrence.
- E. Buyer and its subsidiaries and affiliates shall be named as an additional insured on all insurance required to be maintained hereunder except for Workers' Compensation Insurance. In addition, all of the insurance policies required to be maintained hereunder shall be primary to any other insurance of Buyer and shall provide that all rights of subrogation against Buyer and its affiliates are waived when permitted by applicable law.

F. Prior to commencing work under an Order, Seller shall furnish Buyer Certificates of Insurance that document the insurance required to be maintained hereunder. These certificates shall provide that such coverage shall not be cancelled or changed without thirty (30) days advance written notification to Buyer from the carrier(s).

In the event that any of the goods and/or services provided under an Order are performed by a subcontractor, Seller will cause each such Subcontractor to comply with the obligations imposed upon Seller pursuant to this paragraph as if such subcontractor were Seller hereunder.

### **TIME FOR DELIVERY**

Delivery of the items and related data and/or documentation and/or performance of required services in accordance with the established delivery schedule is a material requirement of this purchase order/contract. **TIME IS OF THE ESSENCE.** Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's reasonable flow time. Seller will, at its expense, ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered for any reason other than by reason of Buyer's change of delivery date or through its gross negligence. Buyer reserves the right to reject all or any part of any delivery that varies from the quality or quantity authorized by Buyer for shipment. Seller shall give notice of shipment to Buyer at the time of delivery of any shipment of items to a carrier for transportation. Buyer will have no liability for payment for items delivered to Buyer that are in excess of quantities specified in this purchase order/contract and delivery schedules. Such items shall be subject to rejection and return at Seller's expense, including transportation both ways, or may be accepted by Buyer with the obligation for payment deferred until the agreed upon payment period after delivery should have been made pursuant to the delivery schedule.

### **PACKING/PACKAGING**

Seller shall mark, pack and ship all supplies in accordance with the requirements of the Order, any supplemental instructions of Buyer, and otherwise in compliance with transportation regulations and good commercial practice for protection and shipment, and shall secure the most advantageous transportation service and rates therewith. A master packing sheet in duplicate shall accompany each shipment. Packing sheets shall not show any prices. Buyer's count or weight shall be accepted as final and conclusive on shipments not accompanied by packing sheets. Each container shall have plainly marked on its exterior the following: (1) Name of Seller (2) Name of Buyer (3) Order number (4) Quantity of Parts or Units in container (5) Part Number (6) Date of shipment (7) Bill of Lading Number (8) Packing Sheet Number (9) Shipping Container Number in Lot and (10) Number of Containers in Lot. Seller shall submit an invoice for each shipment against this Order which shall show the amount of material being shipped. Invoices shall be submitted in triplicate to Buyer's Accounts Payable Departments. Bills of lading, express receipts, or other evidence of shipment containing the information required above shall be mailed to Buyer on date of shipment. The Purchase Order number and part

number (including blueprint change letter), or where there is no part number, then a description of material, shall appear on all invoices, packing sheets, bills of lading, express receipts correspondence and other instruments in connection with this Order, and where Seller and shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment.

## **PROPERTY OF BUYER**

Title to all property furnished to Seller by Buyer or paid for by Buyer shall remain with Buyer. Seller shall not alter our use such property for any purpose or for any other party other than that specified by Buyer, without the prior written consent of Buyer. Seller shall keep adequate records, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industry practice, all at Seller's expense.

In the event that Buyer's property becomes lost or damaged to any extent for any cause while in Seller's possession, Seller agrees to replace or repair such property, at Seller's expense, in accordance with Buyer's request. At the completion or any termination of the work for the goods or services for which Buyer's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller shall make such property available to Buyer per Buyer's request, including preparation, packaging, and shipping as directed. Expense for preparation for shipment shall be for Seller's account and shipment shall be made FOB Seller's plant. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Seller.

## **NEW MATERIAL**

Seller warrants that none of the items furnished under this order are surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless otherwise specifically stated on the face of this order.

## **DOCUMENTATION AND MANUALS**

All documentation, installation, maintenance, and operations manuals will be in English. Any translation requirements are Seller's responsibility.

## **CONFIDENTIALITY; INVENTIONS**

Seller shall not, without the prior written consent of Buyer, make any release of information concerning this order or any other information related to the Buyer (other than to Seller's employees and subcontractors that is required for the performance of their duties), including providing copies of this order or identifying the items sold by Seller to Buyer, nor use the name of Buyer in any advertising or publicity, except as may be necessary to comply with a subpoena or other proper mandatory legal demand. Recognizing that any breach of this provision may result in damages that cannot be

remedied through money damages, Seller agrees to the entry of injunctive or other equitable relief for any violation of this provision. Seller agrees not to assert any claim against Buyer with respect to any information that Seller shall have disclosed or may hereafter disclose to Buyer in connection with the items or services covered by this order. Seller agrees that all designs, drawings, processes, compositions of material, specifications, software, mask works or other technical information made or furnished by Seller in connection with the items or services covered by this order, including all rights thereto shall be the sole and exclusive property of Buyer, from any restriction and Seller shall protect same against unauthorized disclosure to or use by any third party. Seller agrees that as to all inventions and improvements in such designs, drawings, processes, compositions of material specifications, software, mark works or other technical information made or furnished by Seller in connection with the items or services covered by this order. Seller will promptly identify and disclose such inventions or improvements to Buyer and execute or obtain the execution of any papers as may be necessary to perfect ownership of the inventions or improvements to Buyer or as may be necessary in the obtainment, maintenance, or enforcement by Buyer of any patent, trademark, copyright, trade secret, mask work right or other proprietary right pertaining to the inventions or improvements. The confidentiality provisions and the obligations of this paragraph shall survive termination or completion of this order.

#### **INTELLECTUAL PROPERTY INDEMNITY**

Seller shall indemnify and save Buyer harmless from all losses, damage and liability which may be incurred on account of infringement or alleged infringement of any United States or foreign patent, or other claimed intellectual property right, whether or not patentable, with respect to all goods and supplies delivered under this Order, except for items manufactured by Seller pursuant to designs solely developed by Buyer and furnished to Seller by Buyer. Seller shall, at its own expense, settle or defend all suits, actions or claims against Buyer in which any such infringement is alleged, and if any judgment shall be rendered against Buyer in any such suit, action, or claim, Seller shall, at its own cost and expense, satisfy and discharge same. The foregoing obligations shall apply to all claims asserted by third parties against Buyer, including patent infringement claims of the Government against Buyer, unless Government patent indemnity is elsewhere provided for in this Order.

#### **INDEMNITY**

Personal Injury and Property Damage. Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, its parent and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims of loss, damage or injury from and against any suits, actions, or legal proceedings of any kind brought against Buyer, or such other parties by or on account of any person, persons, or entities, on account of any injuries received or sustained by any person, persons, or entities in any manner and/or any damages suffered by Buyer, (howsoever arising, including without limitation, by reason of negligence, breach of

warranty, defect in design, material, workmanship, services or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture of materials used in the goods, or negligence in the manufacture or installation of the goods or any other services supplied hereunder.

Attorneys' Fees. Seller shall, at its own cost and expense, pay all charges of attorneys, and all costs and expenses arising from or related to any of the aforesaid suits, actions or claims, or from any other claim for indemnity made by Buyer against Seller under this Order, including all charges of attorneys costs and expenses incurred by Buyer in connection with the enforcement of this clause against Seller in any suit, action or claim.

## **EXPORT RELATED REQUIREMENTS**

a. Export Compliance. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 -2420 (Export Administration Act) and 15 code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively referred to hereinafter as the Export Laws and Regulations”). Seller represents and warrants that it is either (1) a U.S. person as that term is defined in the Export Laws and Regulations, or (2) that it has disclosed to Buyer’s Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

b. Foreign Personnel. Seller shall not give any Foreign Person access to Technical Data or software as those items are defined in the applicable Export Laws and Regulations without the prior written consent of buyer. Any request for such consent must state the intended recipient’s citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the “Immigration and Naturalization Act”), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller’s request under this paragraph b. shall relieve Seller of its obligations to comply with the provisions of paragraph a or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph a, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

c. Indemnification. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs and expenses, including attorneys’ fees, arising out of claims, suits allegations or charges of Seller’s failure to comply with the provisions of this section entitled **EXPORT RELATED REQUIREMENTS** and breach of the warranty set forth in paragraph a above shall be a material breach of this Order.

d. Subcontracts. The substance of this section entitled **EXPORT RELATED REQUIREMENTS** shall be incorporated into any subcontract entered into by the Seller for the performance of any part of the work under this Order.

## **SOFTWARE LICENSE**

In the event that any software or software documentation is provided to Buyer by Seller in any form whatsoever under a Purchase Order and no software license agreement governing this sale has been signed between Buyer and Seller, Buyer and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder:

- A. Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, transferable license to use the software or software documentation in connection with the products and/or services being provided pursuant to this Agreement.
- B. Making copies of software or documentation is permitted so long as Buyer reproduces and includes all Seller proprietary and copyright notices and other legends in the same manner that Seller provides such notices and legends, both in and on every copy of licensed software and documentation and in any form.
- C. This software license is effective as of the date of first delivery hereunder and shall continue until terminated by Buyer for any reason whatsoever upon thirty (30) days prior written notice to Seller, provided Buyer ceases using and either returns or destroys Seller software and documentation; or by Seller, if Buyer does not comply with any of the terms and conditions of this software license and Buyer fails to remedy such failure within thirty (30) days after having received notice from Seller of such failure.
- D. This license and sale is subject to the laws and regulations, and other administrative acts, now or hereinafter in effect, of the United States and other governments and their departments and agencies relative to the exportation and/or re-exportation of licensed software and documentation. Buyer acknowledges that it will be responsible for compliance as necessary with such laws, regulations and administrative acts.

## **TAXES**

Unless this purchase order/contract specifies otherwise, the price of the goods and services purchased under this purchase order/contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption. There shall be no change in any term or condition of the purchase order/contract on account of any change in taxes of any type applicable to any aspect of this purchase order/contract.

## **SEVERABILITY**

If any provision of these Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.

## **TITLE AND RISK OF LOSS**

Title to materials or goods furnished (or information generated or developed) under this Purchase Order/Contract shall be deemed transferred to Buyer or Buyer's customer as payments are made, and in the same proportion as the cumulative payments bear to the Purchase Order/Contract price. Seller shall identify and segregate such materials which are the property of Buyer, unless waived in writing by Buyer. In the event payments are made by Buyer prior to delivery, Seller shall execute and deliver such security agreements, financing statements and other documents as may be deemed necessary by Buyer to protect its rights therein. If title is not transferred in accordance with the foregoing, title shall pass to Buyer or Buyer's customer upon delivery to Buyer's or Buyer's customer's facility, and acceptance by Buyer, at the point of delivery. .

Seller shall have risk of loss of the materials or ordered items purchased under this Purchase Order/Contract until arrival at the destination designated in this Purchase Order/Contract.

## **SETOFF**

Buyer shall have the right, without notice to the Seller, to set off against and apply to such due and payable amount of any amount due to Buyer from Seller. Such right shall be absolute and unconditional in all circumstances, regardless of the contract or entity through which the parties are acting with respect to the offset obligations and regardless of the existence or adequacy of any other direct or indirect security or any other right or remedy available to such Buyer. The provisions hereof shall not be deemed or construed to limit rights of set-off or liens or similar rights which Buyer may otherwise have by reason of applicable law or other agreement.

## **TERMINATION FOR DEFAULT**

If Seller shall at any time (i) become insolvent, (ii) suspend its operations, (iii) enter into or have filed against it a petition in bankruptcy or receivership, (iv) make an assignment for the benefit of creditors, (v) fail to furnish sufficient labor or materials to complete the goods and/or services in accordance with an Order, (vi) fail to make prompt payment for labor, material, or persistently disregard laws, ordinances, or instructions of Buyer, or (vii) fail to perform or default in any obligation hereunder, then Buyer, without prejudice to any other right or remedy it may have under these Conditions of Sale or at law, may terminate an Order in whole or in part. Any such termination shall be without liability to Seller except to pay for completed goods and/or services delivered and accepted by Buyer, subject to all set-off rights contained herein. In the event of any such termination,

Buyer may take possession of any materials or equipment incorporated or contemplated to be incorporated into the goods and/or services and cause the work to be completed in whatever manner Buyer deems appropriate at the Seller's sole cost and expense. Seller shall promptly assign to Buyer, or Buyer's designee, such contracts and purchase orders as Buyer shall request be so assigned in connection with the goods and/or services. The Seller shall be liable to the Buyer for any and all costs and expenses (including reasonable attorneys' fees) incurred by the Buyer, whether directly or indirectly, as a result of any breach by Seller of these Conditions of Sale.

#### **TERMINATION FOR CONVENIENCE**

Buyer shall have the right, even though Seller is not in default, to terminate this Order in whole or in part by written notice without judicial intervention being necessary. In such event, Seller shall be paid the agreed price for the goods or services delivered to and accepted by Buyer, plus reasonable costs incurred on any partly completed goods or services so terminated, which shall in no event exceed the agreed price, less the aggregate of all prior payments made. All amounts paid shall be determined in accordance with generally accepted accounting principles. In connection with any such termination, Buyer may examine Seller's records relating to this Order as Buyer may deem necessary, provided, however, that if Seller objects to an examination of Seller's records by Buyer, a mutually acceptable independent certified public accounting firm may make such examination and prepare a report for both parties at Seller's sole expense. Upon payment of the amounts specified above, Seller shall make such disposition of completed and uncompleted goods as Buyer may direct. Immediately upon receipt of a notice of termination Seller shall stop the work terminated to the extent specified in the notice and place no further order or subcontracts except as may be necessary for the completion of the work not terminated.

#### **DISPUTE RESOLUTION – FOREIGN**

A. If any party to this contract is a non-U.S. entity, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC") as in force at the commencement of the arbitration by one or more arbitrators appointed in accordance with the said Rules. If the dispute involves \$5 million or less, the arbitration shall be conducted by a single arbitrator. Either party to this agreement may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If, within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the single arbitrator shall be appointed by the ICC in accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator (who shall serve as the chairperson of the tribunal) within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the ICC in accordance with its

Rules. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder.

B. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of any documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrator(s).

C. The place of arbitration shall be Geneva, Switzerland. Any arbitral tribunal constituted pursuant to this Agreement shall apply the law of England to all disputes. The arbitration shall be conducted in English. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. Notwithstanding the foregoing, Buyer may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights. The parties acknowledge that this Agreement and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The award shall be made within nine (9) months of the filing of the notice of intention to arbitrate, and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator(s) if necessary.

D. The parties shall each bear and pay 50% of the fees and other expenses of the ICC in connection with the arbitration set forth herein; provided, however, that if the ICC identifies a prevailing party, then the non-prevailing party shall be responsible for reimbursing the prevailing party for all of its reasonable out-of-pocket costs and expenses incurred in connection with the resolution of the dispute, including all reasonable attorneys' fees, accounting fees and experts' fees, and shall also be responsible for paying all of the costs associated with the arbitration provided for herein, including all fees and expenses of the ICC in connection with the arbitration.

E. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

## **DISPUTE RESOLUTION – DOMESTIC**

A. If all parties to this contract are U.S.-entities, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in effect. If the dispute involves \$5 million or less, the arbitration shall be conducted by a single arbitrator. Either party to this contract may propose to the other the names of one or more persons, one of whom would serve as the single arbitrator. If, within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the single arbitrator shall be appointed by the AAA in accordance with its Rules. If the

dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator (who shall serve as the chairperson of the tribunal) within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA in accordance with its Rules. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder.

B. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of any documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrator(s).

C. The place of arbitration shall be New York City, New York. Any arbitral tribunal constituted pursuant to this agreement shall apply the law of New York to all disputes. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, Buyer may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights. The award shall be made within nine (9) months of the filing of the notice of intention to arbitrate, and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator(s) if necessary.

D. The parties shall each bear and pay 50% of the fees and other expenses of the ICC in connection with the arbitration set forth herein; provided, however, that if the ICC identifies a prevailing party, then the non-prevailing party shall be responsible for reimbursing the prevailing party for all of its reasonable out-of-pocket costs and expenses incurred in connection with the resolution of the dispute, including all reasonable attorneys' fees, accounting fees and experts' fees, and shall also be responsible for paying all of the costs associated with the arbitration provided for herein, including all fees and expenses of the ICC in connection with the arbitration.

E. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

#### **APPLICABLE LAW**

Except as otherwise set forth herein, this Agreement shall be interpreted in accordance with the laws of the State of New York, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

## **COMPLIANCE WITH LAWS**

Seller in the performance of this Order shall comply with all federal, state and local laws, rules and regulations applicable to or incorporated by reference in this Order, including but not limited to, all applicable environmental protection laws, rules and regulations, the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.) and the Occupational Safety & Health Act of 1970, as amended (“OSHA”), the International Traffic in Arms Regulations as amended, and all rules and regulations thereunder. Seller is a federal contractor which complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60; 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 and/or 60-300; and Executive Order 13201 and the applicable regulations contained in 29 C.F.R. Part 470.

Each invoice submitted against this Order shall constitute a representation and warranty by Seller that the goods, supply and/or services were delivered in compliance with all such legal requirements, and if Buyer is subjected to any liability as the result of Seller’s or its Subcontractors’ failure to comply with the requirements of this clause, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.

Seller agrees to furnish information, within seven (7) days of Buyer’s request, regarding payment, offer, or agreement to pay “political contributions” or “fees or commissions” (as those terms are defined at 22 C.F.R. 130) with respect to any sale by the Buyer for which a license or approval is required from the Office of Defense Trade Controls, Department of State or any sale pursuant to a contract with the Department of Defense under Section 22 of the Arms Export Control Act (22 U.S.C. § 2762).