



## TERMS AND CONDITIONS OF PURCHASE

Document Number:	PUR-042
Business Unit:	Purchasing
Revision Level:	0
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### THESE TERMS AND CONDITIONS OF PURCHASE CONTAIN INDEMNIFICATION PROVISIONS, RELEASE OF LIABILITY, AND ALLOCATION OF RISK.

**1. DEFINITIONS:** As used herein, "Buyer" means **TUCKER ENERGY SERVICES LIMITED**. "Seller" means the party identified on the face of or referenced by this Order (as defined below). In addition to the foregoing, this Order shall have additional definitions, including, but not limited to the following:

- a. "Affiliates" shall be for the purposes of this Order mean, with respect to either party, any entity, including without limitation, any individual, corporation, company, partnership, limited liability company or group, that directly, or indirectly through one or more intermediates, controls, is controlled by or is under common control with such party.
- b. "Confidential Information" shall mean any and all data and information whether in written, digital, oral or visual form and whether or not marked as confidential, provided by Buyer to the Seller pursuant to this Order, including, without limitation, ideas, concepts, development plans for products or processes, research projects, manufacturing and engineering practices and methods, data, formulae, techniques, designs, sketches, know-how, photographs, plans, drawings, methods, specifications, samples, test specimens, reports, price lists, findings, studies, computer programs, software code, technical documentation, manuals, trade secrets, copyrighted materials, patents, diagrams, or inventions, financial and accounting information, customer and marketing information, sales information, training, supplier lists, internal business procedures, business plans, quoting policies and procedures, customer data, contracts, and other technology and information, whether or not patentable or eligible for copyright.
- c. "Order" means the terms set forth herein and in the purchase order to which these terms are attached and/or referenced, which are expressly incorporated by reference herein, including any amendments, supplements, specifications and other documents referred to in this order.
- d. "Products" means, individually or collectively as appropriate, the articles, equipment, hardware, software, documentation, materials, products, accessories, supplies and other items related to any of the foregoing which are to be provided by Seller pursuant to this Order.
- e. "Services" means any warranty, maintenance, marketing or technical support and training and any other services to be performed by Seller pursuant to this Order.
- f. "Supplies" means, individually or collectively as appropriate, Products and Services that are to be furnished pursuant to this Order by Seller.

**2. ACCEPTANCE:** This Order does not constitute an acceptance by Buyer of an offer to sell, any quotation, or any proposal. **This Order is an offer to purchase** and when accepted by Seller becomes the exclusive agreement between the parties relating to Supplies. This offer may be revoked at any time prior to acceptance. Any of the following shall constitute Seller's unqualified acceptance of this Order: (i) written acknowledgement of this Order; (ii) failure to reject the Order within forty-eight hours of receipt of the Order, (iii) furnishing of any Supplies pursuant to this Order; (iv) acceptance of any payment for Supplies or (v) commencement of performance pursuant to this Order. Seller shall have forty-eight hours from receipt of the Order to accept the Order by written acknowledgement, unless revoked by Buyer before such acceptance. As indicated above, in the event Seller fails to give notice denying the Order within forty-eight hours of receipt of the Order, Seller will be deemed to have accepted such Order. Seller agrees to be bound by and to comply with all terms set forth in this Order. Notwithstanding the foregoing, this Order shall not operate as a rejection of any offer by Seller (but merely of the terms and conditions contained within such offer) unless such offer contains variances in the description, quantity, price or delivery schedule of the Supplies. Buyer's submission of the Order is conditioned on Seller's agreement that any terms different from or in addition to the terms of the Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Order, even if Seller purports to condition its acceptance of the Order on Buyer's agreement to such different or additional terms. Reference in this Order to any offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of this Order.

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The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are: i) part of a written master service or supply agreement ("Supply Agreement"), which has been negotiated between the parties and which the parties have expressly agreed may override these specific terms in the event of conflict and/or (ii) set forth on the face of the Order to which these terms are attached and/or referenced. If these terms are part of a written Supply Agreement between the parties, the term "Order" used herein shall mean any purchase order issued under the Supply Agreement.

**3. PRICE:** For each Supply that is properly delivered or performed, the Seller shall transmit to the Buyer an invoice, which sets forth the Buyer's purchase Order number, the Products delivered and/or Services completed, and the price therefore. All prices are firm and shall not be subject to change. If no price is stated herein, the price charged Buyer for the Supplies shall be the lowest of (i) the price last quoted by Seller or last paid by Buyer to Seller, or (ii) Seller's lowest price charged any customer for the Supplies, regardless of any special terms or conditions. Seller warrants that the pricing for any goods or services shall not exceed the pricing for the same or, comparable goods or services, offered by Seller to third parties. Seller shall promptly inform Buyer of any lower pricing levels for the same or comparable Supplies, and the parties shall promptly make the appropriate price adjustment. The price shall be deemed to include all of Seller's costs, expenses, profit, and all obligations arising under this Order. Seller's invoice shall be supported by adequate back-up documentation, as reasonably determined by Buyer. Buyer shall be entitled to reject Seller's invoice if it fails to include Buyer's Order number or is otherwise inaccurate, and any resulting delay in payment shall be Seller's responsibility. Unless otherwise agreed to by the parties, as full and complete remuneration for satisfactory performance of the work and fulfillment of all obligations under the Order, Buyer will pay the Seller the price for undisputed portion of the invoice of the Order within sixty (60) days following the later of: (i) the Delivery Date; (ii) the date of Buyer's acceptance of all of the Supplies; or (iii) Buyer's receipt of a properly prepared invoice. Buyer shall be entitled to take a reduction of the invoice price for late delivery in accordance with the provisions of Section 9 below. No extra charges of any kind will be allowed unless specifically agreed in writing by Buyer in an official Change Order as defined below. If Buyer, at any time, incurs costs that, under the provisions of the Order, Buyer is entitled to recover from Seller, Buyer may invoice Seller for such costs, provided that Buyer may deduct the amount of such costs from any amount due, or that may become due to Seller. Seller agrees to pay Buyer within thirty (30) days of receipt of the invoice any sums outstanding after such deduction.

**4. SELLER'S GENERAL CONDITIONS:** Seller shall carry out all of its obligations under the Order and provide all management, supervision, personnel, materials, and equipment, plant, consumables, facilities and all other things whether of a temporary or permanent nature need to fulfill the Order. Seller shall carry out all of its obligations under the Order and shall execute the Supplies with all due care and diligence and with the skill to be expected of a reputable contractor experienced in the types of Supplies to be carried out under the Order. Except to the extent that it may be illegal or physically impossible or create a hazard to safety, Seller shall comply with Buyer's instructions and direction on all matters relating to the Supplies. Seller undertakes to provide sufficient personnel at all times to ensure performance and completion of the Supplies in accordance with the provisions of the Order. All personnel employed by Seller shall, for the Supplies they are required to provide, be competent, properly qualified, skilled and experienced in accordance with good industry practice.

**5. CHANGES:** Buyer may at any time make changes within the general scope of this Order. If any changes cause an increase or decrease in the cost of, or the time required for the performance of, any work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing agreed to by Buyer ("Change Order"). Any Seller claim for adjustment under this clause will be deemed waived unless asserted within four (4) days from Seller's receipt of the change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change. Buyer will evaluate Seller's notice of change in good faith, and if Buyer agrees that it has made a constructive change, Buyer will issue a Change Order to Seller. Seller will proceed with the changed work as directed, notwithstanding that the parties

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have not negotiated to incorporate an equitable adjustment to this Order. Seller shall not have the right at any time to make changes in any Order, unless Buyer expressly agrees in writing.

**6. PLANT ACCESS / INSPECTION / AUDIT:** In Order to assess Seller's work quality, conformance with Buyer's specifications and compliance with this Order, upon reasonable notice by Buyer, all: (i) Supplies purchased hereunder (including without limitation raw materials, components, intermediate assemblies, work in process, tools and end products) shall be subject to inspection and test by Buyer and its customer or representative at all times and places, including sites where the goods and services are created or performed, whether they are at the premises of Seller, Seller's suppliers or elsewhere; (ii) of Seller's books and records relating to this Order shall be subject to inspection and audit by Buyer; and (iii) of Seller's and Seller's subcontractors' worksites, policies and procedures and records relating to products or services provided to our company shall be subject to inspection and audit. If an inspection, test, audit or similar oversight activity is made on Seller's or its suppliers' premises, Seller shall, without additional charge: (i) provide all reasonable access and assistance for the safety and convenience of the inspectors and (ii) take all necessary precautions and implement appropriate safety procedures for the safety of Buyer's personnel while they are present on such premises. Buyer's failure to inspect, accept, reject, or detect defects by inspection shall neither relieve Seller from responsibility for such goods or services that are not in accordance with the Order requirements nor impose liabilities on Buyer. Seller shall provide and maintain an inspection, testing and process control system acceptable to Buyer and its customer covering the goods and services to ensure compliance with this Order and shall keep complete records available to Buyer and its customer for five (5) years after completion of this Order, or such greater period as set forth on the specifications applicable to this Order or in all applicable standards and codes. Acceptance of such system by Buyer shall not alter the obligations and liability of Seller under this Order. In the event Buyer discovers during an audit of Seller's books that Buyer paid too much or is owed money from Seller, Seller shall pay the sums back to Buyer within thirty (30) days in addition to interest from the date of inaccuracy at the lessor of 18% or the maximum extent of the law.

**7. REJECTION:** All Supplies shall be received subject to Buyer's right of inspection and rejection. Defective Supplies or Supplies not in strict conformance with this Order or Buyer's or Seller's description or specifications, will be held for receipt of instructions, at Seller's risk, and if Seller so directs, will be returned, at Seller's expense. If Buyer does not receive such written instructions within fourteen (14) days of Buyer's request therefor, Buyer may, without liability to Seller, dispose of the goods, as it deems appropriate, in its sole discretion. In addition to other remedies, rights, and choices Buyer may have provided by law, contract or equity, and in addition to seeking recovery of any and all damages and costs therefrom, Buyer may, by written notice to Seller, at Buyer's sole discretion and at Seller's expense: (a) require replacement or correction of rejected Supplies; (b) take such actions as may be required to cure all defects and/or bring the Supplies into conformity with all requirements of this Order, in which event, all related costs and expenses (including but not limited to material, labor and handling costs) and other charges shall be for Seller's account; (c) withhold total or partial payment; (d) reject and return all or any portion of such Supplies; and/or (e) rescind this Order without liability. Payment for goods on this Order prior to inspection shall not constitute acceptance thereof or a waiver of a breach of warranty and is without prejudice to any claim(s) of Buyer. Seller shall inspect all Supplies prior to shipment to ensure conformance with all requirements of this Order. This provision shall survive termination or expiration of this Order.

**8. PACKING AND SHIPPING:** All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices and Buyer's instructions therefor, if any. Each package must be numbered and labeled with Buyer's purchase Order number, stock number (if applicable), contents, and weight. An itemized packing list shall be included in each shipment and the package containing the packing list must be clearly marked as such. Each packing list shall bear the Buyer's purchase Order number and an accurate description of the Supplies and quantities in the shipment. Supplies shipped in excess of Buyer's Order may be returned at Seller's expense. Seller further agrees to provide such additional documentation as required by Buyer, including, without limitation, manuals, certificates of analysis, certificates of conformance, and material test reports where applicable.

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**9. DELIVERY:** The delivery shall be as designated by Buyer in the Order. Except as otherwise agreed to by the parties, delivery of goods shall not be complete until goods have actually been received and accepted by Buyer. Notwithstanding any agreement to pay freight, the risk of loss or damage in transit shall be upon the Seller. Buyer may specify the named place of delivery and the means of transport and carrier for the shipment of the Supplies. Failure of Seller to comply with any such Buyer specification shall cause all resulting transportation charges to be for the account of Seller and give rise to any other remedies available at law or equity. **TIME IS OF THE ESSENCE.** If, for any reason, at any time, Seller shall refuse or be unable, or should reasonably anticipate being unable to deliver any part or all of the Supplies in accordance with the terms hereof, Seller shall notify Buyer of such refusal or inability at the earliest possible time and by the most practical means under the circumstances. Such notification shall not be deemed to operate as a release of Seller from its obligations under this Order. Buyer shall have the right to replace, modify and/or cancel any delayed open Orders without any liability to Seller. In the event of such a replacement or modification, Seller shall pay to Buyer (or at Buyer's option, it may offset such amount from any amount owed to Seller) promptly upon demand therefor, an amount equal to the cost of such replacement or modification, less the amount which would have been payable to Seller for an equal quantity and quality of Supplies, plus any amount incurred by Buyer to effectuate such replacement or modification. Such amount is agreed to be damages for Seller's non- performance and shall not, in any event, be construed to be a penalty. Price increases or extensions of time for delivery shall not be binding upon Seller unless evidenced by a Change Order issued by its authorized representative in accordance with the provisions of Section 5 of this Order. For delayed Orders, Seller shall pay one percent (1%) of the total amount of the Order per day of delay of the total amount of the Order ("Late Delivery Fee"). The parties agree that such amounts, if assessed, are a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based on circumstances existing at the time the Order was issues, with the exception of any documented additional damages in connection therewith, if any. In the absence of agreed to liquidated damages, Buyer shall be entitled to recover damages that it incurs as a result of Seller's failure to perform as scheduled. Notwithstanding the Late Delivery Fee provision above and anything to the contrary herein, if, and only to the extent that, liquidated damages are actually paid by Buyer to a customer of Buyer, due directly to Seller's non-compliance with dates or schedules set out in an Order, then without limiting any other remedy, Buyer shall be entitled to recover from Seller the amount of the liquidated damages that Buyer had to pay Buyer's customer.

**10. TAXES:** Except as otherwise agreed, Buyer shall pay sales or use tax, if any is due. Seller shall pay any other local or foreign taxes or other governmental charges upon the production, transportation or sale of the goods supplied hereunder, including, without limitation, all payroll and/or occupational taxes, any value added tax, and any other taxes, fees and/or duties applicable to the Supplies purchased under this Order. Unless otherwise stated, the prices do not include sales or use taxes applicable to the goods. If Seller is obligated by law to charge any value added and/or similar tax to Buyer, Seller shall ensure that if such valued added and/or similar tax is applicable, that it is invoiced to Buyer in accordance with applicable rules so as to allow Buyer to reclaim such value-added and/or similar tax from the appropriate government authority. All taxes and charges shall be shown separately on Seller's invoice. If Buyer is required by government regulation to withhold taxes for which Seller is responsible, Buyer will deduct such withholding tax from payment to Seller. Notwithstanding anything to the contrary, neither party is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors.

**11. WARRANTY:** Seller warrants that all Supplies (i) shall be new, of good and merchantable quality and workmanship and free from defects, latent or patent, in design, material or workmanship, (ii) shall conform in all respects to all specifications, performance standards, drawings, samples or descriptions of Seller and Buyer, and in accordance with internationally recognized good practices and standards, (iii) shall be free of any claim, lien and/or encumbrances of any third party, (iv) shall be fit for the particular purpose for which they are intended and (v) shall be certified (if applicable) and comply with all applicable laws (including, without limitation, environmental and safety laws, rules and regulations) and as applicable Buyer's quality, health, safety and environmental policies. In addition to the aforementioned warranties, Seller warrants that the Services will be performed in a safe and

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workmanlike manner. The foregoing warranties shall apply for a period of the longer of (i) twenty-four (24) months from the date when goods are put into operation, (ii) forty-eight (48) months from delivery of the Products or performance of the Services, (iii) such longer period of time as customarily provided by Seller or (iv) such warranty period granted by Buyer to its concerned client(s), plus delays such as those due to non-conforming goods and services. These warranties are in addition to all other express warranties and legal rights and shall run to the benefit of the Buyer, and Buyer's successors, assigns, clients, and the users of the Products and Services covered under this Order. All warranties shall survive inspection, delivery, acceptance and payment. No remedy available to Buyer for the breach of any warranties hereunder shall be limited except to the extent and in the manner expressly indicated on the face of the Order that these terms are attached or referenced that specifies such limitation. Buyer's approval of any sample or acceptance of any Supplies shall not relieve Seller from responsibility to deliver goods and to perform services conforming, in all respects, to the specifications. These warranties shall not be deemed waived either by reason of Buyer's acceptance of Supplies or by payment for them and shall survive delivery. In the event of a breach of warranty, Buyer may, at Buyer's sole discretion, (i) cover the same with another supplier or service company, and Seller agrees to pay Buyer on demand for all loss, damage, costs, attorneys' and consultants' fees, and other charges incurred or made by Buyer in connection with such replacement Order, together with interest thereon from the date incurred at 18% or the highest rate allowed by law, or (ii) return all or a portion of the Supplies, at Seller's expense, for correction, replacement or credit as Buyer may direct at its sole discretion. This warranty shall also apply to replacement Supplies. Seller shall effectuate all such corrections or replacements within ten (10) days of receipt of notice from Seller. Without relieving Seller of any of its obligations under the Order, Seller shall assign in full, and without cost to Buyer, all warranties from Seller's subcontractors that are applicable to the Supplies, and deliver such assigned warranties with the Supplies. This provision shall survive termination or expiration of this Order.

**12. CONFIDENTIAL INFORMATION:** If the parties have entered into a Non-Disclosure Agreement ("NDA") that covers disclosure of confidential information under the Order, and if the term of the NDA expires before the execution or termination of the Order, then the terms of the NDA shall be automatically extended to match the term of the Order and the terms shall be incorporated herein. The parties shall treat the terms, conditions, and existence of the Order as Confidential Information as defined in the NDA. In the event that the parties have not executed a NDA, Seller agrees to abide by the following clauses of this section. Seller agrees to keep secret and confidential all Confidential Information of Buyer and the existence, terms and conditions of this Order. Seller hereby agrees, covenants, warrants, and represents to the Buyer that it shall not reveal, distribute, disseminate, use or otherwise disclose in any way, the Confidential Information, to any third party without the prior written consent of Buyer. The Confidential Information shall at all times remain the property of Buyer. Seller shall acquire no proprietary interest in, license, or right (express or implied) to the Confidential Information, and Buyer may demand the return thereof at any time by giving written notice. Seller agrees to be responsible for any breach of this provision of this Order by itself and/or its agents, employees, representatives or Affiliates. Seller will, at its sole cost and expense, use all reasonable, necessary and appropriate efforts, including the initiation and prosecution of actions at law or in equity, to safeguard the Confidential Information from disclosure to anyone other than as permitted hereby. Seller has no obligation under this Order with regard to the Confidential Information that, other than by breach of this Agreement: (a) lawfully comes into Seller's possession without restriction on disclosure, (b) if Seller is required by law, Order, or decree to disclose any Confidential Information or (d) is currently in, or subsequently released by Buyer into, the public domain. If Seller is required by law, Order, or decree to disclose any Confidential Information or if any person seeks to legally compel (by interrogatories, document requests, subpoena, or otherwise) Seller to disclose any Confidential Information, Seller shall promptly provide Buyer with written notice so Buyer may: (a) seek a protective order or other remedy (including, without limitation, participation in any proceeding), or (b) waive compliance with this provision of this Order (but such waiver will be limited to the Confidential Information required to be disclosed). Seller shall be entitled to furnish only such Confidential Information as Seller is advised by written opinion of Seller's legal counsel that it is legally required to disclose and will use all reasonable efforts to obtain confidential treatment

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(including, if appropriate, a protective Order) of any and all Confidential Information disclosed. Seller shall each have the right to communicate such Confidential Information to its employees and subcontractors 1) that have a reasonable need to know and use such Confidential Information in furtherance of this Order, 2) that have been informed of the confidential nature of the Confidential Information and of the obligations of the Seller in respect thereof, and 3) who have executed agreements with the Seller obligating such employees or subcontractors to maintain the confidentiality of the Confidential Information to at least the extent as required by this Order. It is agreed and stipulated by the parties that the breach of this provision of this Order would cause serious and irreparable harm and damages to the Buyer. Accordingly, in the event that this provision of this Order is in any way breached, the Buyer shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation or threatened violation of the Seller's obligations hereunder. Any knowledge or information, which Seller may have disclosed or may hereafter disclosed to Buyer and which in any way relates to the Supplies purchased under this Order (except to the extent deemed to be Buyer's property as set forth in Section 16) shall not be deemed to be confidential or proprietary and shall be acquired by Buyer free from any restrictions (other than a claim for infringement) as part of the consideration for this Order and notwithstanding any copyright or other notice thereon, Buyer shall have the right to use, copy, modify and disclose the same as it sees fit. Seller shall not make any announcement, take or release any photographs (except for internal operation purposes for the manufacture and assembly of the goods), or release any information concerning this Order or any part thereof or with respect to its business relationship with Buyer, to any third party, member of the public, press, business entity or any official body except as required by applicable law, rule, injunction or administrative Order without Buyer's prior written consent. This provision shall survive termination or expiration of this Order.

**13. INDEMNIFICATION:** SELLER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CUSTOMERS OR AFFILIATES ("BUYER'S GROUP") FROM ANY CLAIM, SUIT, LOSS, COST, DAMAGE, AND/OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND THE COSTS AND EXPENSE INCURRED IN THE DEFENSE SUITS OR ACTIONS ALLEGING SUCH LIABILITY) OF ANY PERSON OF WHATSOEVER NATURE OR KIND ARISING OUT OF, AS A RESULT OF, OR IN CONNECTION WITH (I) SELLER'S BREACH OF THE OBLIGATIONS UNDER THE ORDER, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF DEFECTS IN ANY SUPPLIES, (II) THE NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF SELLER OR ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES OR SUBCONTRACTORS, (III) SELLER'S FAILURE TO PAY TIMELY WHEN DUE ALL WAGES, SALARIES AND ANY OTHER COMPENSATION TO ITS EMPLOYEES OR (IV) THE USE OF THE SUPPLIES. IT IS THE EXPRESS CONSENT OF THE PARTIES THAT THE INDEMNITIES AND LIABILITY EXCLUSIONS CONTAINED IN THIS SECTION AND THE REMAINDER OF THE AGREEMENT SHALL, UNLESS EXPRESSLY STATED OTHERWISE, APPLY REGARDLESS OF CAUSE, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE, SOLE, CONCURRENT, ACTIVE OR PASSIVE, OR STRICT LIABILITY OF BUYER, EXCEPT TO THE EXTENT THAT IT IS CAUSED BY BUYER'S GROSS MISCONDUCT OR WILLFUL MISCONDUCT. For the sake of this section 14, "GROSS MISCONDUCT" shall mean an intentional conscious or reckless, disregard of good and prudent industry practice in utter disregard for the harmful and avoidable consequences by the Party or its Affiliates, directors, or employees. In addition to the indemnities listed in this Section, there are additional indemnities listed in this Agreement, including, without limitation, Sections 15, 20, and 22. The indemnities in this Article and elsewhere in this Order shall be effective to the maximum extent permitted by applicable law, it being the intent of the Parties that the indemnification and insurance obligations created in this Order be fully enforceable. If it is judicially determined that any law enacted in any state or country (currently or in the future) limits in any way the extent to which indemnification may be provided to an Indemnitee and such law is applicable to this Order, then this Order shall be deemed automatically amended to provide that the indemnification obligations provided hereunder shall extend only to the maximum extent permitted by such applicable law, but shall extend fully to such maximum extent. However, such amendment shall not in any way modify, reduce or limit the Parties' insurance obligations in any respect except to the extent mandated otherwise by applicable law, and, except to the extent otherwise mandated by applicable law, the Parties' insurance obligations

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shall include all risks and liabilities allocated to each Party prior to any such amendment. This provision shall survive expiration or termination of this Order.

**14. INSURANCE:** Without in any way limiting the foregoing, Seller and any person or entity performing work for or on behalf of Seller under this Order shall maintain public liability and property damage insurance with reputable companies covering Seller's obligations hereunder, including, without limitation, the indemnities, and the Supplies, and Seller shall maintain, in accordance with applicable law, workers' compensation insurance covering all employees performing work with respect to this Order. The obligations of Seller with respect to the provision of insurance under this Order are separate and apart from Seller's indemnification obligations under this Order and Seller's indemnification obligations shall not be limited in amount or in scope to coverage provided by insurance required by this Order. The insurance limits and coverage shall not limit in any way the liability of Seller under the terms and conditions of this Order, nor shall any loss or cost of insurance in excess of these minimum requirements, as may be deemed necessary by Seller, be reimbursable from Buyer. Buyer shall be named as additional insured under Seller's policy for any and all purposes arising out of or connected to this Order. The insurance shall be at Seller's own expense and with deductibles at Seller's sole account. The policies maintained by Seller or Seller's subcontractors in accordance with the Order shall be primary to policies owned, secured, or in place by Buyer, which insurance shall not be called upon by Seller's insurer to contribute in any way. Upon request, Seller shall furnish Buyer an endorsement showing that Buyer has been named an additional insured and a certificate of insurance completed by its insurance carrier(s) certifying that insurance coverage are in effect. The insurance shall provide that Buyer shall be notified at least thirty (30) days prior to any modification or cancellation of coverage. All policies required herein shall expressly waive subrogation against Buyer Group. This provision shall survive expiration or termination of this Order.

**15. INTELLECTUAL PROPERTY:** Seller warrants that it has all right, title, ownership interest and/or marketing rights necessary to provide the Supplies to the Buyer and that the Supplies and their sale and use hereunder do not infringe upon any intellectual property right of any third party. Seller hereby grants a perpetual corporate license relating to any Software or other embodiment of intellectual property embedded in the Supplies, as necessary for Buyer's purchase, use, maintenance, repair and/or sale of Supplies. SELLER SHALL AGREE TO INDEMNIFY AND HOLD BUYER AND BUYER'S GROUP HARMLESS FROM ANY CLAIM, SUIT, LOSS, COST, DAMAGE OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND THE COSTS AND EXPENSE INCURRED IN THE DEFENSE SUITS OR ACTIONS ALLEGING SUCH LIABILITY) OF WHATSOEVER NATURE OR KIND ARISING OUT OF, AS A RESULT OF OR IN CONNECTION WITH A CLAIM FOR INFRINGEMENT OF RIGHTS IN, TO OR UNDER PATENTS, TRADE MARKS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE MANUFACTURE, DESIGN, USE, MAINTENANCE, REPAIR, SUPPORT OR SALE OF ANY SUPPLIES. In the event that an injunction is sought or obtained against the use of a Supply, the Seller shall at Buyer's sole discretion and at Seller's cost: (i) procure for the Buyer the right to continue to use the infringing Supply as set forth in this Order, (ii) replace the Supply with a non-infringing alternative, or (iii) modify the infringing Supply to make its use non-infringing. This provision shall survive termination or expiration of this Order.

**16. BUYER'S PROPERTY:** Buyer assumes no obligation to furnish Seller with any tools, equipment or materials for the performance of Seller under this Order, except as may be expressly provided otherwise. Unless otherwise agreed in writing, all tangible and intangible property, including, but not limited to, information or data of any description, tools, materials, drawings, computer software, know-how, documents, trademarks, copyrights, equipment, materials, tooling, dies, parts, schedules, and Specifications and all reproductions and any replacement thereof, or any materials affixed or attached thereto, and any other property furnished to Seller by Buyer or paid for by Buyer, shall be (i) the property of Buyer, (ii) clearly identified as Buyer's property by Seller, (iii) subject to removal at any time upon Buyer's demand, and (iv) used only in filling Orders from Buyer or its nominee. Seller assumes all liability for loss of, and damage to, such property and Seller shall, unless otherwise directed in writing by Buyer, insure at Seller's expense such property in an amount equal to the replacement cost thereof with loss

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payable to Buyer. In the event that Buyer requests the removal of Buyer's property, Seller shall, at Seller's expense prepare such property for shipment and redeliver to Buyer in the same condition as original received by Seller, reasonable wear and tear excepted. If Seller or its subcontractors make use of any tools, equipment or materials owned by Buyer, such tools, equipment or materials shall be accepted in an "as is" condition, without any warranty whatsoever, express or implied. Buyer shall own exclusively all rights in ideas, inventions, works of authorship, strategies, plans and data created in or resulting from Seller's performance under this Order, including all patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademarks rights and other intellectual property rights. If by operation of law any such intellectual property is not owned in its entirety by Buyer automatically upon creation, then Seller agrees to transfer and assign to Buyer, and hereby transfers and assigns to Buyer, the entire right, title and interest throughout the world to such intellectual property. Seller further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such intellectual property to Buyer. Buyer expressly recognizes and agrees that, unless otherwise agreed in writing, the above rights and ownership of such rights will not extend to or encompass, and Seller shall retain exclusive ownership of, any Seller's owned or proprietary technology that Seller owned prior to the Order. This provision shall survive termination or expiration of this Order.

**17. SUSPENSION:** Buyer may at any time, by notice to Seller, suspend performance of the work for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase Orders and subcontracts for materials, equipment and/or services for the work and take such action relative to such purchase Orders and subcontracts as Buyer may direct. Buyer may at any time withdraw this suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal. All claims for increase or decrease in the cost of or the time required for the performance of any work caused by suspension shall be pursued pursuant to, and consistent with, Section 5 "Changes."

**18. FORCE MAJEURE:** Neither party shall be liable for any failure or delay in the performance under this Order to the extent such failure or delay is caused by circumstances beyond that party's reasonable control and occurring without its fault or negligence, including, but not limited to an act of God, government restriction, war, insurrection, terrorist act, blockade, or embargo (collectively and individually, "Force Majeure"); provided that the party asserting Force Majeure shall provide the other party (i) prompt written notice of such event and (ii) evidence of reasonable steps taken to minimize delay or damages.

**19. TERMINATION:** Buyer shall have the right, without liability to Seller, to cancel, in whole or in part, any Order (i) a portion of which is not in strict conformance with this Order and/or Buyer's or Seller's description or specifications, (ii) in the event that Seller fails to comply with the specific instructions of an Order (including, without limitation, failure to timely deliver the Supplies whether said failure occurred or was announced by Seller), (iii) in the event Seller has breached this Order, any warranty or its obligations to Buyer, (iv) in the event a Force Majeure event lasts for a period of seven (7) days, (v) in the event that Seller fails to provide reasonable assurance of future performance or (v) if the Seller makes an assignment for the benefit of creditors, a receiver or trustee is appointed with respect to the Seller's business, the Seller is adjudicated insolvent or if the Seller files or there is filed against Seller a petition for bankruptcy or other relief under any applicable bankruptcy regulations or any successor statute ("Termination for Cause"). Buyer shall have the right to cancel any unshipped portion of an Order, in whole or in part, at any time, for a reason other than that set forth above, in which event Buyer shall be liable to Seller for the any Supplies delivered in accordance with the terms of the Order prior to the termination of the Order. In the event that an Order is cancelled, Seller shall transfer to Buyer in the manner, time and extent directed by Buyer, all completed Supplies and work in process, including all designs, drawings, specifications, other documentation and material, parts, tools, designs, fixtures, and plans required or produced in connection with such work and all of

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Buyer's Confidential Information and property. In addition, in the event that an Order is cancelled due to a Termination for Cause, Seller agrees to grant Buyer a royalty-free, assignable and non-exclusive license to use and permit others to use, Seller's designs, processes, drawings, and technical data to permit completion by Buyer of the terminated part of the Order. In the event that Buyer performs or has a third party perform the Supplies due to a Termination for Cause, Seller shall, in addition to all other remedies available by law, pay Buyer the full amount expended by Buyer on such supply, replacement or completion minus the amount that Seller would have charged for such Supplies. All provisions or obligations contained in this Order, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of an Order will survive and remain binding upon and for the benefit of the parties, their successors and permitted assigns, including, without limitation, Sections 6, 7, 11, 12, 13, 14, 15, 16, 20, 21 22, 25, and 26.

**20. COMPLIANCE WITH LAW:** Seller warrants and represents that the merchandise, including all packaging thereof, shipped pursuant to this Order shall have been produced in compliance with and meet the minimum standards of all applicable laws, regulations, rules, guides, ordinances and/or standards, including, without limitation, those dealing with the environment, health, safety, employment, records retention, personal data protection, the transportation or storage of hazardous materials, anti-corruption laws, and export control laws and regulations, and that the sale by Seller or purchase by Buyer of such merchandise does not violate any such laws, regulations, rules, guides, ordinances and/or standards. Upon request by Buyer, Seller shall furnish Buyer with a certificate of compliance with such laws, regulations, rules, guides, ordinances and/or standards. Seller shall appropriately label containers of all goods which are known to constitute a health, environmental, safety or explosion hazard and shall provide Buyer any and all material required for Buyer to comply with all laws, regulations, rules, guides, ordinances and/or standards, including, without limitation, Material Safety Data Sheets. SELLER SHALL DEFEND, INDEMNIFY, AND HOLD BUYER GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGE, INJURY, COSTS, EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND THE COSTS AND EXPENSE INCURRED IN THE DEFENSE SUITS OR ACTIONS ALLEGING SUCH LIABILITY), LIABILITY AND CLAIMS THEREOF RESULTING DIRECTLY OR INDIRECTLY FROM SELLER'S FAILURE TO COMPLY WITH THIS PROVISION. This provision shall survive termination or expiration of this Order.

**21. SAFETY, HEALTH AND THE ENVIRONMENT:** Seller and its subcontractors shall at all times comply with the environmental, health and safety rules and regulations of Buyer applicable to the Supplies, and all materials, equipment and Supplies shall comply therewith. Seller will be liable to Buyer for any additional costs Buyer Group incurs as a result of Seller's failure to operate safely. Buyer may conduct safety inspections from time to time. Such inspections will not relieve Seller from its obligations to adhere to safety requirements, nor will such inspections create any liability on Buyer. If Buyer determines that Seller is performing the Supplies in an unsafe manner or impairing health, safety or environment, Buyer shall have the right, but not the obligation, to require Seller, at no cost to Buyer, to stop performing the Supplies until the deficiencies are remedied and to take all necessary action to abate the objectionable practice(s) or condition(s). Seller shall not restart the Supplies until the objectionable practices or conditions are remedied. This provision shall survive termination or expiration of this Order.

**22. BUSINESS CONDUCT & PRACTICES:** Seller shall act in a manner consistent with Buyer's policies and all laws concerning improper or illegal payments and gifts or gratuities, including, without limitation, the Foreign Corrupt Practices Act, the UK Bribery Act, and other applicable anti-corruption regulations, and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order, including, without limitation, offering, giving, or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality to assist it or Buyer in obtaining or retaining business or in carrying out the Supplies. Seller also agrees that neither the owners nor the management of Seller are: (i) current officials of any government, including any government ministry, agency or government-

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owned or controlled enterprise, (ii) current officials of any political party, (iii) close relatives of either (i) or (ii), or (iv) past officials of any government agency, enterprise, or political party. Seller further certifies that neither it nor its principals or owners, nor any of its subcontractors and their principals or owners, nor any other person who will provide Supplies under this Order, are listed on the Specially Designated Nationals, Specially Designated Terrorists, and/or Specially Designated narcotic Traffickers lists maintained by the Office of Foreign Asset Controls, United States Department of Treasury. Seller certifies that neither it nor its principals or owners, nor any of its subcontractors and their principals or owners, nor any other person who will provide services under this Order, are the subject of any other U.S. sanctions programs, of any blocking or denial order by the U.S. government, or of any other applicable sanctions program. SELLER SHALL DEFEND, INDEMNIFY, AND HOLD BUYER GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGE, INJURY, COSTS, EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND THE COSTS AND EXPENSE INCURRED IN THE DEFENSE SUITS OR ACTIONS ALLEGING SUCH LIABILITY), LIABILITY AND CLAIMS THEREOF RESULTING DIRECTLY OR INDIRECTLY FROM SELLER'S FAILURE TO COMPLY WITH THIS PROVISION. This provision shall survive termination or expiration of this Order.

**23. INDEPENDENT CONTRACTOR / NON-EXCLUSIVE RELATIONSHIP:** This Order shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Order. The relationship of the parties under this Order shall be, and at all times remain, that of independent contractors. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf. Except as otherwise specified on the face of the order that these terms are attached to or referenced, the parties expressly acknowledge and agree that the relationship between the parties under this Order shall be non-exclusive, and that each of the parties may, subject to the obligations hereof pertaining to proprietary or confidential information or the like, enter into substantially similar agreements with other parties with respect to (i) products or services similar (or substantially similar) to the Supplies contemplated hereunder, or part thereof, or (ii) as applicable, the Supplies, or part thereof. If Supplies are customized for Buyer in accordance with Buyer's proprietary specifications and requirements, the foregoing shall not apply to Seller (i.e. Seller may not sell to other parties the Supplies customized in accordance with Buyer's proprietary specifications and requirements, except as expressly agreed in writing by Buyer).

**24. ASSIGNMENT & SUBCONTRACTING:** Seller agrees that Seller will neither assign (including by change of ownership or control, by operation of law or otherwise) its rights nor delegate its responsibilities under this Order without the prior written consent of Buyer. Any attempted assignment violates this paragraph shall be void. Buyer may assign this Order to a third party or Affiliate. This Order shall be binding on, and inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns. Seller shall not subcontract or delegate performance of the work called for under this Order without Buyer's prior written consent. In addition, Seller will obtain for Buyer, unless advised to the contrary in writing, written acknowledgement by such assignee, subcontractor, and/or supplier to Seller of its commitment to act in a manner constituent with Buyer's policies, and to submit to, from time to time, on-site inspections or audits by Buyer or Buyer's third party designee as requested by Buyer. Should Buyer grant consent to Seller's assignment or subcontract, such assignee or subcontractor shall be bound by the terms and conditions of this Order. Each subcontract shall expressly provide for Seller's unconditional right of assignment of the subcontract to Buyer in the event that Buyer terminates the Order. Upon termination of this Order, Seller agrees to assign to Buyer such subcontracts as Buyer requests at termination. Seller shall be responsible for all work, acts, omissions, and defaults of any assignee and/or subcontractor as fully as if they were work, omissions, or defaults of Seller.

**25. INTERPRETATION OF ORDER:** Irrespective of the place of performance of this Order, this Order shall be interpreted in accordance with the laws of Trinidad and Tobago, without reference to its choice of law provisions. The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods. Seller hereby irrevocably consents to the exclusive jurisdiction of the courts located in Trinidad and Tobago, in any

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action arising out of or relating to this Order and waives any other venue to which it may be entitled by domicile or otherwise. Each party waives any right it may have to assert the doctrine of forum non convenient or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section, and stipulates that any court of competent jurisdiction in Trinidad and Tobago shall have personal jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Order. The submission by the parties to such jurisdiction shall not limit the right of Buyer to commence any proceedings arising out of this Order in any other jurisdiction it may consider appropriate. If any dispute shall arise under this Order, Seller shall, unless otherwise directed by Buyer in writing, continue to complete the Supply pending resolution thereof by the courts or mutual agreement of the parties. This provision shall survive termination or expiration of this Order.

**26. AMENDMENT, MODIFICATION, WAIVER AND REMEDIES:** Performance of this Order must be strictly in accordance with its stated terms and conditions and no change, modification, revision, alteration or waiver shall be binding unless executed by the Parties. No waiver of and/or failure to perform any or all of the terms or conditions hereof shall constitute a waiver of or an excuse for non-performance as to any other part of this or any other Order. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law or in equity. All rights granted to either of the parties shall be cumulative, and no exercise by either of the parties of any right under this Order shall restrict or prejudice the exercise of any other right granted by this Order or otherwise available to it. Notwithstanding anything to the contrary in this Order, under no circumstances shall the Buyer be obligated for consequential and/or punitive damages, loss of revenue or profit, or any amount in excess of the total amount stated on the face of this Order. Seller shall bear all expenses, including reasonable attorneys' fees, Buyer incurs to enforce its rights under this Order. This provision shall survive termination or expiration of this Order.

**27. SEVERANCE:** If any provision of this Order is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Order. This Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision that achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

**28. ENTIRE AGREEMENT:** This Order, with documents as are expressly incorporated by reference, is intended as a complete, exclusive and final expression of the parties' agreement with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties. This Order may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument. Facsimile signatures and pdf scanned signatures on such counterparts are deemed originals. No course of prior dealings and no usage of trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. No party has been induced to enter into this Order by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Order. Seller warrants that Seller and Seller's representative executing this Order have the power to enter into this Order and have obtained all necessary approvals to do so.

**29. MISCELLANEOUS:** Headings contained in this Order are for reference purposes only and should not be incorporated into this Order and shall not be deemed to be any indication of the meaning of the clauses to which they relate. It is the intention of the parties that all terms of this Order are to be considered as complementary, and the terms of this Order will be construed against neither party being considered the drafter of the agreement or any provision herein. Trade custom, trade usage, and past performances are superseded by this Order, and shall not be used to interpret the Order. The original of this Order has been written in the English language, and

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the English version of this Order shall considered controlling for all purposes.

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