



Mechanical Systems Standard Terms & Conditions

Goodrich Actuation Systems SAS, a part of Collins Aerospace, acting by and through its Hoist and Winch Business Unit (“Seller”)

STANDARD COMMERCIAL TERMS AND CONDITIONS

1. ORDERS

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

2. ORDER ACCEPTANCE

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

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

3. ORDER OF PRECEDENCE

Buyer and Seller agree that the Terms and Conditions are the only terms and conditions incorporated in Buyer’s Order. In the event of a conflict between the information contained in Buyer’s Order and the Terms and Conditions, the Terms and Conditions shall take precedence, unless otherwise agreed in writing by Seller.

4. CANCELLATION

No cancellations of Orders by Buyer will be accepted within fifteen (15) days of the earliest requested ship date. All cancellations of any order by Buyer sixteen (16) or more days prior to the earliest requested ship date shall result in a cancellation charge to be reasonably determined by Seller based on such factors as whether the Goods were manufactured specifically for Buyer, Seller’s ability to change its production schedule within the period of the notice provided by Buyer and whether Seller acquired or allocated particular supplies or equipment to meet Buyer’s Order.

5. CHANGES

Buyer may by written notice request changes within the general scope of this Purchase Order to any one or more of the following: (a) drawings, designs or specifications; (b) method of shipment or packaging; (c) place of inspection, delivery or acceptance; and (d) amount of Buyer-furnished materials.



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

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

6. DRAWINGS AND SPECIFICATIONS

The Goods shall be manufactured to Seller's drawings and specifications, unless otherwise specified on Buyer's Order and agreed to in writing by Seller. Buyer's drawings and technical specifications (collectively, the "Buyer Specifications") shall be attached to the Order. Seller's compliance with any Buyer-specified Modifications to the Buyer Specifications shall be subject to **Article 5 - CHANGES**.

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

7. INTELLECTUAL PROPERTY

The Goods are based on technology developed solely by Seller, and Seller retains ownership of all intellectual property rights therein. No rights or licenses are granted to Buyer. Seller shall defend or at its option settle, any claim, suit or proceeding (for this Article 7, collectively "Claim") brought against Buyer based on an allegation that Goods manufactured and sold by Seller under this agreement directly infringe a valid United States patent, and Seller shall indemnify Buyer against any direct loss, damage or liability incurred by Buyer as a result of such Claim, provided Buyer: (a) promptly notifies Seller in writing of the Claim; and (b) provides Seller exclusive authority and reasonable information and assistance for the defense and/or settlement thereof. Notwithstanding the foregoing, Seller shall have no obligation to defend or indemnify Buyer, and Buyer shall indemnify Seller against any direct loss, damage or liability incurred, for Claims based upon (i) the combination of Goods with items not provided by Seller; (ii) the modification of Goods by or on behalf of Buyer; (iii) Goods manufactured according to Buyer's detailed design specifications. The foregoing states the entire obligation of Seller with respect to intellectual property infringement indemnification.

8. DISPUTES

Buyer and Seller shall attempt to promptly resolve through good faith negotiation any and all disputes between Buyer and Seller arising out of or in connection with this agreement or its performance, including, but not limited to, any questions regarding the existence, validity or termination hereof (hereinafter "Dispute").

If the Dispute has not been resolved by negotiation within twenty (20) days of receipt of the disputing party's written notice requesting negotiation (or any agreed extension thereof), the Dispute shall be finally subject to the exclusive jurisdiction of the Commercial Court of Versailles, France.

Seller at its sole discretion may discontinue work and suspend its obligations hereunder for the Goods and Services or portions of the Order which gave rise to the Dispute until such time as the Dispute is settled.



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9. CHOICE OF LAW

This Order shall be governed by the laws of France, without regard to any conflicts of law principles applied in that Country. The parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

10. ASSIGNMENT

Neither Buyer nor Seller may assign, charge, transfer or otherwise dispose of an Order or any interests, rights or obligations therein in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Seller may assign any and all of its rights and obligations hereunder upon notification to Buyer to (i) any Seller-affiliated company; (ii) a third party pursuant to any sale or transfer of all or part of the assets or business of Seller; or (iii) a third party pursuant to or in connection with any financing, merger, consolidation, change in control, reorganization or other business combination involving Seller.

11. COMPLIANCE WITH EXPORT STATUTES AND REGULATIONS

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

(a) In performing the obligations of this contract, both Parties will comply with United States export control and sanctions, laws, regulations, and orders, as they may be amended from time to time, applicable to the export and re-export of goods, software, technology, or technical data ("Items") or services, including without limitation the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), Foreign Assets Control Regulations (as administered and enforced by the Treasury Department's Office of Foreign Assets Control), U.S. Customs Regulations, Foreign Trade Statistics Regulations (U.S. Census Bureau) and Bureau of Alcohol, Tobacco, Firearms and Explosives Regulations (U.S. Justice Dept.) (collectively, "Export Control Laws and Regulations").

(b) The Party conducting the export shall be responsible for obtaining the required authorizations. The Party conducting the re-export/re-transfer shall be responsible for obtaining the required authorizations. Each Party shall reasonably cooperate and exercise reasonable efforts to support the other Party in obtaining the necessary licenses or authorizations required to perform its obligations under this contract.

(c) The Party providing any Items under this contract shall, upon request, notify the other Party of the Items' export jurisdiction and classification as well as the export jurisdiction and classification of any components or parts thereof if they are different from the Item at issue.

(d) Each Party represents that: (i) the Items, and the parts and components thereof, it is providing under this Agreement are not "defense articles" as that term is defined in 22 C.F.R., §120.6 of the ITAR; and (ii) the services it is providing under this Agreement are not "defense services" as that term is defined in 22 C.F.R., §120.9 of the ITAR.

(e) To the extent that such Items, or any parts or components thereof, were specifically designed or modified for a military end use or end user or otherwise deemed to be controlled under the ITAR, the Party providing such Items shall notify the other Party of this fact and also shall provide the other Party with written confirmation of the export classification.

12. WAIVER

Failure or delay by either party to exercise or enforce any right conferred by this Purchase Order, including Seller's right to deliver invoices under this Purchase Order, shall not be deemed to be a waiver of any such right. Further, a waiver, express or implied, by either party of any default by the



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other in the observance and performance of any of the conditions, covenants or duties set forth in this Purchase Order shall not constitute or be construed as a waiver of any subsequent or other default.

13. **EXCUSABLE DELAY**

Definition of Excusable Delay: A delay in the performance by Seller of any obligations under this Purchase Order, which is caused by an event which is outside the reasonable control of Seller, including but not limited to an act of God, act of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargo, unusually severe weather, riot, war, acts of terrorism or any other event which constitutes a superior force and is beyond the reasonable control of Seller.

A delay caused by the default of a subcontractor of the Seller shall constitute an Excusable Delay if the event causing the default of such subcontractor is an event, which (i) meets the foregoing Definition of Excusable Delay and (ii) has not been caused by Seller, unless the subcontracted supplies or services were obtainable at reasonable prices on commercially reasonable terms from other sources in sufficient time for Seller to meet the required delivery schedule.

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

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

14. **BUYER-FURNISHED PROPERTY**

Seller acknowledges that all drawings, specifications, patterns, technical data, molds, forms, equipment and materials developed or prepared by Buyer at Buyer's sole expense, which are provided to Seller by Buyer to facilitate Seller's production of the Goods or performance of the Services, and all copies thereof ("Buyer Materials"), shall remain the property of Buyer. Upon demand by Buyer, Seller shall promptly return or deliver to Buyer all Buyer Materials at Buyer's cost. Buyer agrees that it has adequate insurance on all of the Buyer Materials, and Seller assumes no liability for loss or damage to said property, including normal and reasonable wear and tear. If this contract requires the use of Buyer-Materials, Buyer shall furnish it in accordance with the schedule defined in this contract. Buyer's failure to do so shall entitle Seller to an equitable adjustment in cost, schedule or both in accordance with **Article 5 - CHANGES**.

15. **TOOLS AND MATERIALS**

Title to all tooling, equipment or materials furnished or paid for as a direct charge or called out as a special item for use hereunder shall be and remain with Buyer. Upon completion or termination of the applicable Purchase Order, Seller shall return any such material to Buyer. Seller assumes no liability for loss or damage to said property, including normal and reasonable wear and tear.

16. **SUBCONTRACTS**

Seller may subcontract any part of the work or services to be provided under this Purchase Order without Buyer's prior written consent.

17. **ACCEPTANCE OF GOODS**

Unless otherwise mutually agreed in writing, Goods are sold only with Seller's standard quality control tests and calibrations and Seller's standard documentation. Not later than fifteen (15) days from the delivery date, Buyer shall notify Seller in writing upon receipt of Goods of all discoverable



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defects, including quantity shortages, incorrect product and visible defects. In the event Buyer fails to inspect the Goods or does not present a rejection notice to Seller in writing within fifteen (15) days of the delivery date, the Goods shall be deemed accepted. At that time, Buyer's only recourse or remedy for non-conforming or defective Goods shall be as provided in the warranty section of this agreement.

18. RETURNED GOODS

No return of Goods will be accepted by Seller without Seller's prior authorization. Returned Goods must be in original manufacturer's shipping cartons complete with all packing materials. In accordance with the article L. 442-6-1-8 of the French Commercial Code, Buyer shall not reject or return Goods, nor unilaterally deduct from Seller's invoices any penalties or discounts should the delivery date be not met or should the Goods not comply with the specifications, unless the debt is certain, liquid and payable and Seller has been able to control that the claim is justified.

19. PACKING, CRATING AND SHIPPING

The Goods shall be suitably packaged and prepared for shipment to withstand normal transportation and stocking functions.

20. CONFIDENTIAL INFORMATION

Any and all information disclosed or provided by Seller to Buyer in connection with this Purchase Order is proprietary and confidential to Seller. Buyer shall hold such information in confidence, shall not disclose it to any third party without the prior written consent of Seller's authorized representative, and shall use such information only as necessary to use the Goods delivered by Seller under this Order.

Buyer agrees that in the event of a breach or threatened breach of the provisions of this clause, and in addition to any other rights or remedies the Seller may have at law or in equity, Seller may seek injunctive or other equitable relief compelling compliance with the aforementioned confidentiality obligations.

21. SOFTWARE PROVISIONS

If software is provided under this agreement, Buyer is granted a non-exclusive, royalty free license only for Buyer's use of Seller's software provided with the Seller's system. Under this license Buyer may; (a) use Seller's software with Goods delivered by Seller under this Order; and (b) create one additional copy of Seller's software for archival purposes only.

22. SHIPMENT AND RISK OF LOSS

Title to the Goods shall pass to Buyer upon delivery.

International shipments of Goods shall be delivered FCA, Seller's premises (FCA, Incoterms 2010). Domestic shipments of Goods shall be EXW, Seller's premises. Buyer shall be solely responsible for providing and paying for shipping insurance. Further, Seller shall not have any liability for any loss resulting from uninsured or under-insured Goods.

23. DELIVERY SCHEDULE

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

Seller reserves the right to make deliveries in installments. Delivery of a quantity that varies from the quantity specified in Buyer's order shall not relieve Buyer of its obligation to accept delivery and



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pay for the goods delivered. Buyer shall not refuse to accept delivery or any consignment or installment on account of any shortage or defect in any other delivery.

Delays or changes in schedules resulting from Buyer's acts or omissions shall be subject to price adjustments in Seller's sole discretion. If a delivery is delayed at Buyer's request by more than thirty (30) days after ready for shipment notification, Seller may charge demurrage costs in the amount of 0.5% of the purchase price of the order for each month or partial month of delay up to a maximum of 5% of the total purchase price.

24. PAYMENT TERMS

Payment shall be received not later than 30 days after the date of Seller's invoice. Payment shall be made in full.

Pursuant to art.L.441-6 of the French Commercial Code, Buyer shall be liable for penalties for late payment at a rate equal to the interest rate applied by the European Central Bank to its most recent refinancing operation increased by ten (10) percent when the invoices in question fall due. Such penalties shall apply without prior notice, from the day the invoice falls due and shall remain in effect until payment is made. Payment shall not be deemed to be made until Seller has received payment in full for the Products and the associated penalties for late payment.

Pursuant to art.L.441-6 of the French Commercial Code, in case of late payment, Buyer shall be liable for the payment of compensation for recovery costs, set at forty (40) euros. Such compensation is due de facto and without prior notice. It shall take effect on the day the invoice falls due and shall remain in force until payment in full is made. Payment shall not be deemed to be made until Seller has received the full price for the Goods and the compensation for recovery costs.

In the event the Customer has failed to pay any of its invoices on time in accordance with the terms of this Agreement the Supplier reserves the right to suspend all outstanding deliveries of the Products to the Customer unless and until all such outstanding payments have been made to the Supplier. It is acknowledged that any such suspension will not constitute a breach of this Agreement on the part of the Supplier.

25. ABANDONMENT

Any repaired asset remaining in the possession of Seller for more than ninety (90) days following the notification date provided by Seller advising Buyer that the repaired asset is ready for shipment, because of the Buyer's failure to direct shipment or reclaim such asset, shall constitute abandonment of each such asset and shall entitle Seller to take title and either dispose or retain as its own property, at its own discretion.

26. TAXES

(a) For the purposes of this Agreement, taxes shall include, but not be limited to, sales, use, withholding, value added tax, goods and services tax, stamp, excise, gross receipts, transfer, income tax, withholding tax, profits tax, turnover tax, tax payable on the income of expatriate employees, port dues, import, export and custom duties and any related penalties and interest or other similar taxes ("Taxes").

(b) All prices stated in this Agreement shall be exclusive of Taxes.

(c) Buyer shall pay the cost of any Taxes which Seller is required by applicable law to charge to Buyer as a result of the transactions contemplated by this Agreement, unless Buyer shall have timely provided to Seller a valid and properly completed exemption certificate certifying that Buyer is not subject to such Taxes or amounts.



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(d) Seller shall have no liability for any Taxes, assessments, levies or charges due or becoming due, whether imposed on Seller or Buyer, in connection with the performance by Seller of its obligations under this Agreement other than Taxes, as defined above, imposed on Seller's net income.

(e) In the event such Taxes are imposed on Seller, Buyer shall reimburse Seller for such Taxes within 15 days of written request.

(f) All payments shall be made without deduction or withholding. In the event that Buyer is required by any law to make any deduction or withholding from any amount payable to Seller, then the amount payable to Seller shall be increased such that after all deductions and withholdings, the amount paid to Seller shall be equal to the amount to which Seller would have been entitled under this Agreement had no deduction or withholding been required.

(g) Any amounts withheld by Buyer shall be timely remitted to the relevant authority as required by law. Buyer shall promptly provide the Seller with an official receipt or certificate in respect of the payment of such amounts.

(h) Both Parties agree to co-operate to eliminate or reduce any applicable Taxes, duties, interest, penalties or similar charges which may be payable by either Party, including, where applicable, providing or issuing the necessary documentation to support or secure exemptions or recoveries. Furthermore, if as a result of a change in law or a change in the tax practice of any tax authority, either Party becomes subject to additional Taxes, duties or similar charges which increases their financial liability during the term of this Agreement, both Parties will negotiate in good faith to attempt to reduce or eliminate such additional Taxes, duties and similar charges. This is provided that neither Party need take any steps, which in its reasonable opinion and acting in good faith would increase its obligations or would be prejudicial or adverse to it (whether in respect of tax affairs or otherwise).

27. STOP WORK

When directed by written notice from Buyer (a "Stop Work Notice"), Seller shall promptly cease performance of the Order and its obligations hereunder with respect to the Goods specified in the Stop Work Notice for a period of up to ninety (90) calendar days or longer if extended by mutual agreement. If a Stop Work notice is given, Buyer and Seller shall agree to an equitable adjustment in the delivery schedule, or price, or both, and the Order shall be modified in writing accordingly. When a Stop Work notice is cancelled or the period of the Stop Work notice (or any agreed extension thereof) expires, Seller shall resume work subject to agreement on the equitable adjustment in price and/or delivery schedule.

28. WARRANTY

Seller warrants that the Goods furnished under this agreement will, at the time of delivery, be free from defects in material and workmanship, and will conform substantially to the specifications, if any. The warranty period shall twelve (12) months from the date of shipment by Seller. Seller's obligation under this warranty is limited to, at Seller's option, repairing or replacing any Goods which fail to conform to the foregoing warranty. Seller's liability is conditioned upon Buyer giving written notice to Seller of any defect covered by this warranty within thirty (30) days of the appearance of such defect but in no event later than one year from the date of delivery of the Goods to Buyer. Seller's obligation hereunder is further conditioned upon return of the defective Goods to Seller within such period. Buyer is responsible for transportation costs, including taxes, duties or license as applicable, to return unit to Seller with a RMA. Seller is responsible for transportation costs for the return shipment to Buyer. International shipments of Goods shall be delivered FCA, Seller's premises (FCA, Incoterms 2010). Domestic shipments of Goods shall be EXW, Seller's premises. The warranty period for Goods or parts thereof that have been repaired or



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replaced shall be six (6) months or the remainder of the original warranty period, whichever is greater.

Warranty Exclusions

Seller's warranty does not extend to any Goods which i) have been subjected to misuse, neglect, accident, improper, unintended or non-conforming installations; or ii) are used for purposes not included or not in accordance with Seller's prescribed operational maintenance procedures and instructions; or iii) which have been repaired or altered by Buyer or persons other than Seller (except as otherwise authorized by Seller) using practices that do not conform with Seller's

prescribed maintenance and repair procedures; or iv) which have been damaged by secondary causes which are inconsistent with applicable product specifications, including but not limited to, improper voltages, adverse or extreme environmental conditions, improper signals, or products which have had their serial number or any part thereof altered, defaced, or removed.

29. LIMITATION OF LIABILITY AND DISCLAIMER OF OTHER WARRANTIES

TO THE EXTENT PERMITTED BY FRENCH LAW, THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER HEREUNDER, AND THE RIGHTS AND REMEDIES OF BUYER HEREUNDER, ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. SELLER MAKES NO OTHER WARRANTY BEYOND THOSE EXPRESSLY CONTAINED IN THIS WRITING.

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

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

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, SELLER SHALL IN NO EVENT BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL, COLLATERAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES SUCH AS BUT NOT LIMITED TO LINE STOP, RECALLS, HARM TO BUSINESS OR BUSINESS REPUTATION, LOSS OF REVENUES, LOSS OF ANTICIPATED SAVINGS OR LOST PROFITS, WHETHER OR NOT FORESEEABLE, AND WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

30. INDEMNITY

Seller Indemnity: Seller hereto agrees to defend and indemnify Buyer, its officers, directors and employees, from and against any and all claims, demands and causes of action (for this Article 29, collectively "Claim") asserted by any third party for loss or damage to tangible property or injury or death of any person, to the extent such damage, injury or death is caused by the negligence or other wrongful acts or omissions of the Seller in the performance of Seller's obligations under this agreement, provided that Buyer (a) promptly notifies Seller in writing of any Claim; and (b) provides



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Seller exclusive authority and reasonable information and assistance for the defense, compromise or settlement of such Claim.

Buyer Indemnity: Buyer hereto agrees to defend and indemnify Seller, its officers, directors and employees, from and against any and all Claims asserted by any third party for loss or damage to tangible property or injury or death of any person, to the extent such damage, injury or death is caused by the negligence or other wrongful acts or omissions of the Buyer in the performance of Buyer's obligations under this agreement, provided that Seller (a) promptly notifies Buyer in writing of any Claim; and (b) provides Buyer exclusive authority and reasonable information and assistance \ for the defense, compromise or settlement of such Claim.

31. PARTIAL INVALIDITY AND SEVERABILITY

If any provision of the Order or the Terms and Conditions, including any limitation of warranty or liability, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the parties agree to negotiate in good faith to draft a new legal and enforceable provision that, to the maximum extent possible, comports with the original intent of the parties and maintains the economic and other terms to which the parties originally agreed. If after thirty (30) days the parties have been unable to reach agreement, the Order will be deemed terminated and may result in a cancellation charge to be reasonably determined by Seller based on such factors as whether the Goods were manufactured specifically for Buyer, Seller's ability to change its production schedule within the period of the notice provided by Buyer, and whether Seller acquired or allocated particular supplies or equipment to meet Buyer's Order.

32. INDEPENDENT CONTRACTOR

Neither party is a partner, agent, or legal representative of the other party, nor does the Order create a fiduciary relationship between the parties. Seller is an independent contractor in the performance of the Order, and each party retains authority to manage its personnel, workers, subcontractors, and operations required for performance of its obligations hereunder.

33. PUBLICITY

Neither party is hereby granted the right to use any name, trademark or other designation of the other party in any advertising, publicity or marketing activities. Neither party will issue press releases, advertising, sales promotions or other publicity documents or information referring to the other party without prior written consent of the other party.

34. CHOICE OF LANGUAGE

The Order, these Terms and Conditions, any document referenced herein or attached hereto, any report, any drawings or other technical information, or any notice or binding communication shall be drafted in English or in French. All payments shall be in U.S. Dollars unless otherwise agreed in writing.

35. U.S. GOVERNMENT CONTRACT CLAUSES

If this Order is a subcontract for commercial items or commercial components to a U.S. Government prime contract, then only the clauses specified in FAR 52.244-6 and DFARS 252.244-7000 as prescribed by FAR 44.403 and DFARS 244.403, respectively, shall apply.

Any U.S. Government contract clauses incorporated by reference are only applicable to this subcontract pursuant to the guidelines and prescriptions relating to mandatory flow down of requirements of said clauses; contract value; and contract type as defined in the FAR, DFAR, AFFAR, and AFMC FAR Supplement.



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36. ENTIRE AGREEMENT

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