

Terms and Conditions of Sale

OBERG INDUSTRIES, INC.

Oberg Industries, Inc. (hereinafter "Seller") hereby gives notice of its rejection of any different or additional terms and conditions except for any such terms and conditions as may be expressly accepted by it in writing.

Unless different or additional terms and conditions are stated or referred to in Seller's Proposal, in which event such different or additional terms and conditions shall be exclusive as to the particular subject covered, the terms and conditions stated below apply, and such terms and conditions supersede any prior or contemporaneous agreements or correspondence between the parties.

1. Definitions

Whenever used herein with initial capitalization, the following definitions shall be applicable:

- A. "Acknowledgement" shall mean Seller's acceptance of Buyer's purchase order.
- B. "Application Software" shall mean that Software utilized to perform the end use function associated with the specific system or configuration of system components for which this Contract is directed.
- C. "Buyer" shall mean the entity purchasing Products and/or Services under the Contract.
- D. "Buyer's Material" shall mean product, materials, components and items of any kind for which Buyer is to provide Services under the Contract.
- E. "Contract" shall mean the Seller's Proposal, these terms and conditions, and Buyer's purchase order (excluding any preprinted terms therein or attached thereto) the acknowledgement or other document evidencing acceptance of Seller's Proposal; or, an integrated agreement signed by Seller and Buyer for the supply of Products and/or Services.
- F. "Equipment" shall mean equipment, hardware, components, parts, and materials provided by Seller.
- G. "Firmware" shall mean Software embedded permanently within electronic hardware components
- H. "Goods" shall mean products, including parts, fixtures, tooling, and components manufactured by Seller and purchased by Buyer as set forth in the Contract.
- I. "Oberg Industries, Inc." shall mean Oberg Industries, Inc., a Pennsylvania Business Corporation and all of its subsidiaries and affiliated entities, domestic and foreign, including Oberg Medical Products Company, Oberg Costa Rica, Limitada and Troqueles De Precisione, S.A.
- J. "Products" shall mean the Goods, Equipment and/or Software furnished by Seller under this Contract.
- K. "Seller" shall mean Oberg Industries, Inc., its subsidiaries, successors and assigns.
- L. "Seller's Proposal" shall mean written documents provided to Buyer that define a scope of supply of Seller's Products and/or Services, the price to be paid by the Buyer, and complete Seller's terms and conditions of sale.

The Seller's Proposal also may contain or reference specifications for system performance and Buyer's Materials, and other descriptive materials as appropriate; i.e. customer supplied specifications and/or industry standards. These Terms and Conditions of Sale will apply strictly unless Seller's Proposal states otherwise.

The terms "Proposal", "Seller's Quotation" and "Quotation" shall have identical meanings to that given above for "Seller's Proposal."
- M. "Services" shall mean services, including any training, provided by Seller.
- N. "Site" shall mean the locations where Seller is to provide Products and/or Services under the Contract.
- O. "Software" shall mean computer programs, procedures, rules and any associated documentation including Application Software and Firmware.
- P. "Substantial Completion" shall mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract documents so the Owner may utilize the Work for its intended use.
- Q. "Supplier" shall mean any subcontractor or supplier of any tier who supplies goods and services to Seller in connection with Seller's obligations under the Contract.
- R. "System" shall mean a combination of Products and Service, including Software, and/or Firmware designed and delivered by Seller.
- S. "Technical Assistance" shall mean advice and consultation given to Buyer by Seller with respect to: (a) installation, inspection, repair and maintenance activities performed by others at the Site, and (b) any Seller recommended quality assurance procedures for activities performed at the Site. Where Seller furnishes Technical Assistance, Buyer shall be responsible for (a) supervision, management, regulation and determination of the number of its personnel or contractors and their work, and (b)

planning, scheduling, management and progress of the work.

T. "Work" shall mean all Goods, Products, Services, Software and Technical Assistance and Services which may be provided by Seller under the Contract.

2. **Scope**

Seller will furnish to Buyer Products and/or Services as specified in Seller's Proposal.

3. **Price Basis**

Prices are quoted in US Dollars and are valid for acceptance within 30 days from the Proposal date unless otherwise stated therein. Prices for deliveries are firm for the agreed period of delivery, subject, nevertheless, to the Seller's right to change prices due to material price fluctuations and unforeseen and unusual subcontracting price increases from Suppliers.

Prices for deliveries are understood to be net and FOB, Seller's manufacturing facilities. Freight will be prepaid and invoiced to the Buyer. The price includes packing in accordance with Seller's general practices.

Cables, installation material, installation, Technical Assistance, or any other Services are not included in this offer unless otherwise stated in the Proposal.

4. **Taxes**

In addition to any price specified herein, Buyer shall pay or reimburse Seller the gross amount of any sales, use, gross receipts, excise, value-added, or similar tax applicable to this Contract or the subject matter hereof, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

5. **Terms of Payment**

Except as otherwise noted in the Purchase Order or Contract, all payments are due and payable net 30 days from date of invoice immediately following delivery. Invoices may be issued in accordance with payment milestones that have been mutually agreed and specified in the Contract. Invoices for Technical Assistance are provided on a per diem basis unless otherwise specified in the Purchase Order or Contract, and invoices for training and spare parts will be issued for the total amount due immediately upon delivery of the services or parts.

6. **Credit Approval and Payment.**

Seller may alter or suspend credit, or change credit terms provided herein, when it is sole opinion the financial condition of Buyer so warrants. In such case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Buyer may be required by Seller before shipment, or the due date of payment by Buyer under any contract or order with Seller may be accelerated. If such assurances are requested by Seller and not provided by Buyer, Seller may stop work

and withhold all subsequent deliveries and the portion of the selling price representing hours and material in process at such time shall be due and payable. Failure to pay any invoice at maturity shall make all other invoices from Seller to Buyer immediately due and payable, irrespective of terms, and Seller may stop work and withhold all subsequent deliveries on any open orders and retain possession of all other property of Buyer in its possession, until full payment is settled. Acceptance of less than full payment by Seller shall not be a waiver of any of its rights. The waiver by Seller of any of its rights hereunder shall not be construed to be a waiver of those rights upon any subsequent default.

7. **Delivery/Title**

- A. Delivery will be made FOB Seller's facilities with freight prepaid and invoiced to the Buyer.
- B. Title to and risk of loss of the Goods, Equipment, or any part thereof shall pass to Buyer upon delivery to the carrier.
- C. Delivery time is the number of weeks included in the Proposal for delivery calculated from the date on which Seller has acknowledged the Contract or received down payment (if applicable), whichever is later.
- D. The quoted schedules depend upon prompt agreement on complete definition of the detailed scope of supply and receipt of information, including design data, drawing approval and manufacturing release according to the established project schedules. Delays by the Buyer in providing such agreement or information may result in an appropriate adjustment of the Contract in accordance with the Changes Article.
- E. Buyer's failure to reject any non-conforming Products within ten (10) days of delivery receipt and/or tender by Seller shall constitute acceptance of such Products. Buyer must provide Seller with written notice of rejection of any non-conforming Products within said ten (10) day period.

8. **Changes**

Buyer may request changes in the scope of the Work and, if accepted by Seller, the price, schedule and other pertinent provisions of the Contract shall be adjusted by written agreement of the parties prior to implementation of the change. No changes to the Contract are binding on Seller unless approved by Seller, in writing, in advance of the proposed or agreed change. Any change to the Contract resulting in a price adjustment shall be automatically added to the Contract Price and becomes due and payable as set forth in paragraph 5 hereof.

Seller's expenses due to (a) delays (other than delays which are within the reasonable control of Seller), (b) changes in applicable laws and requirements after the date of Seller's Proposal and (c) additional inspections or tests required by Buyer beyond those required for compliance with Seller's quality assurance program will be treated as changes to the scope of Work and the Contract will be adjusted as set forth

in the previous paragraph.

9. **Force Majeure**

Seller will not be liable for failure to perform any obligation or delay in performance resulting from any cause beyond the reasonable control of Seller or its Suppliers or from any act of God: act of civil or military authority; act of war whether declared or undeclared; act (including delay, failure to act, or priority) of any governmental authority, Buyer, Buyer's Customer, or other contractors; or civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labor difficulty; embargo; fuel or energy shortage; wreck; major Product breakdown; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor or materials from its usual sources.

In the event of delay in performance excusable under this Article, the time for performance of the Work will be extended by a period of time reasonably necessary to overcome the effect of the delay.

10. **Warranties**

A. Goods, Products and Systems

A typical Product may be sold separately or may include individual components, parts, fixtures, tools, or a combination of Goods, Products and Services including Equipment; Software; Firmware, Buyer's Material; third party (purchased) software and documentation; and Seller's Technical Assistance and Services as an integral system. Each of these individual categories of Seller's Products and Services, and also the resultant Product, have separate warranty provisions as set forth below.

Seller's warranties do not apply to Buyer's Material, including process specifications, interfaces, installation labor, operation, and maintenance services.

1) Warranty and Exclusive Remedy

Seller warrants that the Goods, Products and/or Services supplied by it will be of the kind and quality specified in the Seller's Proposal and will be free of defects in workmanship and material for a period of twelve (12) months from date of Substantial Completion. In the event any Product fails to comply with this warranty, and Buyer notifies Seller promptly in writing of such noncompliance, Seller shall correct such noncompliance, at its option, by repair or replacement of defective products, F.O.B. Seller's repair plant or factory.

This Product warranty does not apply to consumables, Firmware, and wearing parts.

2) Software Warranty and Exclusive Remedy

Seller's Software is warranted to be free from errors which materially affect its utility and functionality as described in the Seller's Proposal for a period of

twelve (12) months from the date of Substantial Completion. In the event any Seller's Software fails to comply with this warranty, and Buyer notifies Seller promptly in writing of such noncompliance, Seller, at its option, will furnish corrected Software on the original medium or will provide a procedure that will correct the operating effect of the error.

This Software warranty does not apply to any Application Software or set of instructions composed by the Buyer utilizing Seller provided Software; however, this warranty will extend to any Seller Application Software composed in accordance with the Buyer's instructions, but only to the extent that such instructions and information supplied by the Buyer are error free, correct and complete.

Third party software or documentation is not warranted as to form and content by Seller and are provided subject only to such warranties, if any, that may be provided by such third party.

3) System Performance Warranty and Exclusive Remedy

Seller warrants that the System delivered hereunder will perform and function as described in the Seller's Proposal, provided the actual operating requirements are within the operating limits of the Product as defined in the Proposal, for a period of twelve (12) months from date of Substantial Completion.

The System warranty is applicable only when final adjustment, tuning and pilot operation are approved by Seller personnel.

In no case does the warranty apply to any failure or noncompliance due to products or processes supplied by others.

In the event the System materially fails to perform and function as described in the Seller's Proposal and Buyer notifies Seller promptly in writing, Seller will remedy the material noncompliance in accordance with the remedies described in paragraphs 1) and 2) above.

However, in the event Seller cannot reasonably correct the material noncompliance. Seller shall make an equitable price adjustment with the Buyer based on the functions and performance actually provided. Since it may be difficult to determine this price adjustment, Buyer shall be entitled to claim as liquidated damages, and not as a penalty, an amount to be mutually agreed upon based on the degree of noncompliance for the specified function or performance criteria as defined in the Seller's Proposal. In no event shall such liquidated damages exceed an aggregate of ten (10) percent of the Contract value.

B. Technical Assistance/Service Warranty and Exclusive Remedy

Seller warrants for each Service (whether Technical Assistance, installation Service or otherwise) that (a) the

recommendations and performance of its personnel will reflect competent professional knowledge and judgement, and (b) the technical information, reports and analyses transmitted by Seller in connection therewith will reflect competent Seller engineering judgement.

If, during the period of twelve (12) months from date of the Service, such Service fails to comply with the Service Warranty and Seller is promptly so notified in writing. Seller will promptly re-perform the noncomplying portion of the Service by repair, adjustment, modification or replacement of the noncomplying portion, or if re-performance is impracticable, Seller will refund the amount of the compensation paid to Seller for such noncomplying portion of the Service.

C. Spare Parts Warranty and Exclusive Remedy

All spare parts are warranted against defects in workmanship and material as described in paragraph 10.A.1., Product Warranty and Exclusive Remedy, for a period of 90 days from the date of delivery of the part, or for the remainder of the warranty period applying to the item of Equipment in which the spare part is installed, whichever occurs last.

D. Title Warranty and Exclusive Remedy

Seller warrants that the Product and/or System, when delivered, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any noncompliance with this warranty, Seller, upon prompt written notice, shall defend the title to the Equipment.

E. Warranty Conditions

The warranties and remedies set forth in this Article are conditioned upon:

- 1) Buyer's receipt, handling, storage and maintenance during any such storage, installation, testing, operation and maintenance, including tasks incidental thereto, of Work in normal and proper manner with competent supervision in accordance with the recommendations of Seller to the extent applicable or in the absence of such recommendations or to the extent such recommendations are not applicable, in accordance with generally accepted industry standards and practices. In addition, such Work shall not have been operated in excess of limitations specified in writing by Seller and not have been subjected to accident, alteration, abuse or misuse.
- 2) Buyer providing, without cost to Seller, diagnosis, working access to the noncompliance by disassembling, removing, replacing and reinstalling any equipment, product, materials or structures to the extent necessary to permit Seller to perform its warranty obligations.

F. Exclusivity of Warranties and Remedies

THE WARRANTIES IN THIS ARTICLE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE).

The remedies provided herein are the Buyer's exclusive remedies for any failure of Seller to comply with its obligations. Correction of any defect or noncompliance in the manner and for the period of time provided above shall constitute complete fulfillment of all such liabilities of Seller whether the claims of the Buyer are based in contract, in tort (including negligence or strict liability), or otherwise with respect to or arising out of the Work furnished or performed hereunder.

11. Suspension

If performance under this Contract is held, delayed or rescheduled for not more than 90 days at the request of the Buyer, it will be subject to the Changes Article. If performance under this Contract is held, delayed or rescheduled for more than 90 days at the request of the Buyer, Seller may define these actions as a termination for Buyer's convenience, and Seller will then be entitled to recover all costs and fees as defined in Paragraph 12.A.1 below.

Further, if Product is ready for shipment and shipment cannot be made for causes beyond Seller's reasonable control, Seller shall submit an invoice for the balance due on such Product payable net 30 days from date of invoice.

12. Termination

A. For Convenience

- 1) This contract may not be terminated by the Buyer for Buyer's convenience. Any attempt to terminate other than for material breach will result in Buyer being charged a reasonable cancellation fee equivalent to all of Seller's costs for labor, materials and overhead identified to the contract which have been incurred up to the date of notice of termination, plus the cost of all special tooling, fixturing, manufacturing equipment, special software, and other materials or supplies required by Seller to complete the contract; together with the payment of an additional amount equal to ten (10) percent of the contract price to compensate Seller for the administrative and overall organizational support required to perform under the contract.
- 2) This contract may be terminated by the Seller for Seller's convenience only by written notice and upon return of Buyer's materials and any unearned payments to date of termination. Seller shall not be liable to Buyer for any compensatory damages, including consequential and incidental damages, as a result of termination for Seller's convenience.

B. For Material Breach

In the event either Buyer or Seller commits a material breach (other than Seller's obligations under any of its warranties, for which the remedies provided are exclusive), and the breaching party fails to take steps to remedy such breach within 30 days from receipt of written notice specifying the nature and extent of such breach, and such breach prevents Substantial Completion of the Contract, the other party may, by subsequent written notice, terminate the Contract. Any recoveries of Buyer and Seller shall be determined by mutual agreement. In no event will any such recovery be in excess of any limitations contained in this Contract as to the types or amounts of damages recoverable.

13. **Intellectual Property Rights**

A. License

No title to or ownership of any Software or any parts thereof is transferred to Buyer or Buyer's end user by any delivery of Software to Buyer hereunder. In connection with this Contract, Seller grants Buyer and Buyer's end user, if applicable, a non-exclusive license to utilize Seller's Software provided hereunder in whatever physical form. Seller's Software is licensed only for use with the Product unit with which such Software is incorporated. The license fee may be included within the price of each Product unit or charged separately for use with the Product. Buyer or Buyer's end user may make a backup copy of the Seller's Software for installation and maintenance of the Seller's Product.

In connection with this Contract, Buyer and Buyer's end user, may modify Seller's Application Software with respect to which a license is granted, as set forth in this Article, provided such modifications are composed in consultation with Seller, at Seller's direction, or relate solely to the adjustment of Product or process values using the safe parameters dictated by the process manufacturer. At Seller's discretion any other modifications to the Application Software may void the warranty, maintenance obligations and proprietary rights indemnity provided by Seller for such Software or for the Seller's Product.

Third party Software provided by Seller may be subject to a separate license agreement and/or registration requirements, including prohibition on copying and limitations on use.

B. Designs, Engineering Details and Other Data

Seller retains for itself all of its intellectual property rights in any supporting documentation supplied hereunder, including but not limited to all designs, engineering details, and other data pertaining to any Product sold except where such rights are assigned under written agreement by a corporate officer or Seller.

C. Proprietary Information

Seller may have a proprietary interest in any information

that may be furnished pursuant to the Contract. Buyer will keep in confidence and will not disclose any such information which is specifically designated as being proprietary to Seller without the prior written permission of Seller or use any such information for other than the purpose for which it is supplied. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Buyer without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third party without limitation or restriction on said third party or Buyer at the time of disclosure.

Seller also has a proprietary interest in the Proposal and the Contract. Accordingly, neither document will be disclosed in whole or in part to third parties without the prior written permission of Seller.

Notwithstanding any other Articles of the Contract, the Product, Software and/or system provided by Seller can only be exported or re-exported after Buyer has obtained the appropriate export license or authorization from the US Department of Commerce required by the Export Administration Regulations. Buyer's Contract will contain a notice of Buyer's intention to export or re-export Product contracted hereunder.

D. Infringement

- 1) Seller will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer so far as based on an allegation that any Services, Products (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States intellectual property rights of others, if Seller is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Seller will pay the damages and costs awarded in any suit or proceeding so defended after all appeals are exhausted.

Seller will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In the event that the Service, Product or any part thereof is held to constitute infringement or its use by Buyer is enjoined, Seller will, at its option and its own expense, either (a) procure for Buyer the right to continue using said Product, Service or Buyer's Material; (b) replace it with substantially equivalent non-infringing Product; (c) modify it so it becomes non-infringing; or (d) if all else fails, refund a portion of the price paid to Seller.

- 2) Seller will have no duty or obligation to Buyer under this Article to the extent that the Service or Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Seller to deviate from its

normal course of performance, (b) modified by Buyer or its contractors after delivery, or (c) combined by Buyer or its contractors with items not furnished hereunder and by reason of said design, construction, modification or combination, a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Seller, Buyer shall protect Seller in the same manner and to the same extent that Seller has agreed to protect Buyer under the provisions of paragraph 13.D.1 above.

- 3) THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO INTELLECTUAL PROPERTY RIGHTS AND DIRECT OR CONTRIBUTORY INFRINGEMENT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING INTELLECTUAL PROPERTY RIGHTS.

Compliance with this Article as provided herein shall constitute fulfillment of all liabilities of the parties under the Contract with respect to intellectual property rights.

14. **Assignment**

Seller reserves the right to assign any or all of its rights and obligations under the Contract to a subsidiary, an affiliated company, or successor(s) of interest of Seller, in which event Seller shall notify the Buyer in writing and will remain liable as guarantor of the performance of the obligations thus assigned.

15. **Limitation of Liability**

BUYER EXPRESSLY AGREES THAT NEITHER SELLER NOR ITS SUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER; DAMAGE TO OR LOSS OF PROPERTY, EQUIPMENT AND/OR PRODUCT; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF BUYER'S MATERIAL; EQUIPMENT PRODUCT OR POWER SYSTEM; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR CLAIMS OF CUSTOMERS OF BUYER.

BUYER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SELLER AND ITS SUPPLIERS UNDER ANY THEORY OF RECOVERY,

WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY OR OTHERWISE, EXCEED TEN (10) PERCENT OF THE TOTAL PRICE PAID TO SELLER UNDER THE CONTRACT.

THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS CONTRACT AND SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS CONTRACT.

16. **Interpretation**

The validity, construction and performance of the Contract, shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, United States, without application of its choice of law rules.

17. **Survival**

The Article contained in the Contract titled "Limitations of Liability", "Intellectual Property Rights" and all other Articles providing limitation of or protections against liability of Seller and/or its Suppliers, shall apply notwithstanding any other Articles of the Contract and shall survive termination, cancellation or expiration of the Contract.

18. **Training**

When included in the scope of Sellers supply, Seller will provide its standard training course(s) including all course materials in accordance with its current schedule. Enrollment of Buyer's employees ("Trainees") in any scheduled course shall be determined by space availability. Unless otherwise stated in the Contract, all training courses shall be conducted at a Seller designated facility or Supplier facility as the case may be. Seller will designate the specific equipment or product located at its facility which will be utilized during the training course. Buyer shall be responsible for the Contract price of the course and all travel, lodging and living expenses of its employees attending the Seller training course(s).

Notwithstanding such training, Seller does not warrant or represent that such "Trainees" shall be qualified, capable or competent to operate, maintain, or perform Service on any Product for which such training has been provided.

19. **Indemnification and Insurance**

Seller shall indemnify and hold the Buyer harmless for claims of third parties for physical damage to property and personal injury, including death, occurring on the premises of the Seller during the performance of the Work hereunder, and resulting directly from (and to the extent of) any negligent act, action, omission, or failure to act when under a duty to act, on the part of Seller or its subcontractors while engaged in the Work.

Buyer will, at its own expense, indemnify, defend, and hold harmless Seller for all claims, demands, losses, obligation, liabilities, damages, deficiencies, actions, settlements, judgments, costs, and expenses which Seller may incur or suffer or which it may be faced with (including reasonable costs and legal fees incident thereto or in seeking indemnification therefor), arising out of or based upon (a) an allegation that any product or service provided by Seller were the cause of any personal injury or damage to property, or (b) any claim that the use of any product was in a manner for which it was neither designed or intended; or (c) any claim that the product was modified by Buyer or any third party; or (d) any claim based upon Seller's compliance with Buyer's instructions, specifications, or directions. Buyer will indemnify, defend, and hold harmless Seller against any award of damage and costs made against Seller by a final judgment of a court of last resort with respect to all such suits.

Buyer shall indemnify and hold Seller harmless for claims of third parties for physical damage to property and personal injury, including death, occurring on the premise of the Buyer during the performance of the work hereunder, and resulting directly from (and to the extent of) any negligent act, action, omission, or failure to act when under a duty to act, on the part of Buyer or its subcontractors.

Subject to the limitations and exclusions set forth herein, or in the contract, Seller shall defend and indemnify Buyer against all damages, liabilities, claims, losses and expenses (including attorney's fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any failure by Seller to fully comply with the provisions of this contract or any act or omission of Seller, its agents, employees or sub-contractors. Seller shall maintain general liability insurance (excluding products and completed operations liability and contractual liability) and automobile liability insurance (including liability for hired and non-owned vehicles) with combined single limits of not less than \$1,000,000. Seller shall also maintain worker's compensation and employer's liability to comply with state specified minimum limits. Higher limits of insurance may be required as determined by the Buyer as will adequately protect Seller and Buyer against damages, liabilities, claims, losses, and expenses. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.

20. Codes and Standards

Seller will design and manufacture Product under this Contract in accordance with the applicable United States codes and standards relating to design and manufacture which prevail as of the date of the Proposal, unless otherwise specified in writing by Seller. Where such codes and standards are not applicable, Seller will design and manufacture the Product to Seller's standards. Seller will consider Buyer's request for compliance with new or revised codes and standards effective after the date of the Proposal as a revision in accordance with the Changes Article. If not contained in the design specifically in the Seller's Proposal, charges required to comply with state or

local codes and standards shall be brought to Seller's attention prior to the commencement of manufacture, and shall also be subject to the Changes Article.

21. Government Regulations

Seller shall, in connection with any goods or services or workmanship provided by Seller hereunder, comply with all applicable federal, state and local laws, rules, and regulations, and indemnify and hold Buyer harmless from any claim, fine, penalty or proceeding resulting therefrom. Seller certifies that it is in compliance with: (A) **FAIR LABOR STANDARDS ACT**. Each of the Seller's invoices covering materials covered by this purchase order must carry the following certificate or its equivalent in order to be passed for payment: "Seller hereby certifies that any materials covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of regulations and orders issued thereunder." (B) **OCCUPATIONAL SAFETY AND HEALTH ACT**. Seller warrants that the goods to be furnished hereunder comply with the requirements of the Occupational Safety and Health Act of 1970, as amended. (C) **EQUAL EMPLOYMENT OPPORTUNITY**. This purchase order is subject to non-discrimination provisions 1 through 7, Section 202 of Executive Order No. 11246 or amendments thereof. (D) **VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1974**. This purchase order is subject to the requirements of 38 U.S.C. 2012, Executive Order No. 11701, and the regulations set forth at 41 C.F.R. 60-250.1 et.seq., as amended. (E) **REHABILITATION ACT OF 1973**. This purchase order is subject to the requirements of 29 U.S.C. 793, Executive Order No. 11758, and the regulations set forth at 41 C.F.R. 60-741 et.seq., as amended. (F) **MINORITY BUSINESS ENTERPRISE**. This purchase order is subject to the requirements of Executive Order No. 11625 and the applicable regulations, as amended. (G) **U.S. GOVERNMENT CONTRACTS**. In the event this order is issued under a U.S. Government Contract, the flowdown terms thereunder shall take precedence over and supplement these terms and conditions.

22. Regulated Substances

Seller warrants that each and every chemical substance delivered under this Purchase Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 (b) of the Toxic Substance Control Act (Public Law 94-469), as may be amended. Seller shall submit to Buyer, Material Safety Data Sheets, prepared in accordance with OSHA Hazardous Communication Standard, 29 CFR 1910.1200, as required. Seller shall be responsible for all chemical substances or mixtures which it or its subcontractors or suppliers of any tier bring upon premises of Buyer or Buyer's customer. Seller shall be responsible for removing and disposing all such substances and/or mixtures, containers, materials, and residue from their use,

in accordance with all applicable federal, state, and/or local statutes, laws, regulations, rules, orders and ordinances.

23. **Independent Contractor**

Seller shall be an independent contractor with respect to any goods, services, or workmanship provided by Seller hereunder. Neither Seller nor its subcontractors, nor the employees of either, shall be deemed to be servants, employees, or agents of the Buyer.

24. **Gratuities**

It shall be deemed on event of default subject to possible termination by Buyer under Section 8 hereof if it is found that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Seller to any officer, agent, employee or representative of Buyer with a view towards securing a contract or securing favorable treatment with respect to the awarding, amending, or the making of any determination with respect to the performance of such contract.

25. **Applicable Law**

All questions arising in connection with this transaction shall be resolved in accordance with the Laws of the Commonwealth of Pennsylvania.

26. **Disputes**

All disputes, unless previously settled between the parties, shall finally be settled in accordance with the Commercial Rules of Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with the rules. The decision of the arbitrators shall be final. The arbitration shall be held in Pittsburgh, Pennsylvania. Notwithstanding the foregoing, either party may petition a court of appropriate jurisdiction for emergency or injunctive relief to enforce its rights hereunder in which case, Buyer and Seller consent to the exclusive jurisdiction of the State and Federal District courts sitting in the Western District of Pennsylvania.

REV: 01/11/2011 ACK