

**AM GENERAL LLC**  
**JLTV Supplier Terms and Conditions of Purchase**

1. **Applicability of Terms and Conditions.** The Purchase Order, Quantitative Order, Requirements Contract or Long Term Agreement (including the Prime Purchase Order issued under the Long Term Agreement), in each case, issued by Buyer to Seller (as those terms are defined below) (as applicable, the “**Purchase Document**”), these JLTV Supplier Terms and Conditions of Purchase (“**Terms and Conditions**”) (including any mandated prime contract flow-downs within the Prime Contract) and any statement of work, statement of performance, requirement, specifications or other document attached by Buyer to or incorporated by Buyer by reference in the Purchase Document or these Terms and Conditions (the Purchase Documents, these Terms and Conditions and documents attached or incorporated by Buyer are collectively referred to as this “**Order**”), establish and constitute the complete and exclusive agreement between AM General LLC (“**Buyer**”) and the party to whom this Order is addressed and that party’s affiliates, parents, subsidiaries, and divisions (collectively, “**Seller**”) with respect to the production, purchase, sale and delivery of the Goods or performance of the Services.

2. **Definitions.** Capitalized terms used but not defined in these Terms and Conditions have the meaning given to them in the definitions appendix attached at the end of these Terms and Conditions.

3. **Acceptance.**

3.1 ***Timing.*** Seller has read and understands this Order. Seller accepts this Order upon Seller returning to Buyer the Purchase Document executed by Seller including, if the Purchase Document is a Long Term Agreement, the Prime Purchase Order. Upon execution of the Purchase Document by Seller, this Order will become binding on Seller and Buyer and Buyer’s failure to return a counter-signed copy of the Purchase Document will not preclude acceptance in accordance with the foregoing terms. SELLER SPECIFICALLY WAIVES ANY REQUIREMENT FOR SIGNED ACCEPTANCE OF THIS ORDER BY BUYER. IN ADDITION, IF SELLER FAILS TO PROVIDE A SIGNED COPY OF THE PURCHASE DOCUMENT BEFORE COMMENCEMENT OF WORK ON THE GOODS OR SERVICES, SELLER AGREES THAT IT WILL BE DEEMED TO HAVE ACCEPTED THE ORDER UPON SELLER’S COMMENCEMENT OF WORK ON THE GOOD OR SERVICES, INCLUDING THE SHIPMENT OF GOODS OR PERFORMANCE OF SERVICES, AND SELLER’S COMMENCEMENT OF WORK ON THE GOODS OR SERVICES WILL SERVE AS SELLER’S PROMISE TO BUYER TO DELIVER AN EXECUTED COPY OF THE PURCHASE DOCUMENT UPON REQUEST BY BUYER.

3.2 ***Different or Additional Terms; Precedence.*** All terms and conditions added by Seller that are different from or in addition to this Order (whether in Seller’s quotation, Seller’s Order acknowledgment, Seller’s invoice, or otherwise) are expressly rejected by Buyer and shall not become a part of this Order. The parties intend that this Order will exclusively control their relationship with respect to the Goods. If there is conflict between the Purchase Document, these Terms and Conditions, any prior or contemporaneous agreement or document exchanged between Buyer and Seller, or any other document attached to or incorporated into the Purchase Document by reference, (a) the applicable FAR and DFARS clauses (including the JLTV Flowdowns (as defined below)) incorporated by reference in these Terms and Conditions shall control over any other document, including any other provision of these Terms and Conditions except this Section 3; (b) the terms of the Purchase Document (excluding these Terms and Conditions and any document attached to or incorporated by reference in the Purchase Document) shall control over any other document except the applicable FAR and DFARS clauses (including the JLTV Flowdowns) incorporated by reference in these Terms and Conditions and this Section 3; and (c) these Terms and Conditions shall control over any document other than the Purchase Document, including, without limitation, any statement of work attached to or incorporated by reference in the Purchase Document. The parties have agreed and it is their intent that the “battle of the forms”

described in Section 2-207 of the Uniform Commercial Code will not apply to this Order or to any invoice or acceptance form of Seller relating to this Order.

3.3 *No Modification without Buyer's Consent.* This Order may not be modified or amended without the written consent of Buyer. No officer, employee or other representative of Buyer is authorized to make any oral contract or commitment for the purchase of Goods or to modify or change this Order unless such modification or change is in writing and approved by Buyer's Authorized Representative.

3.4 *Rated Order Contract.* This Order may contain rated order quantities certified for national defense use, Seller will follow all provisions of the Defense Priorities and Allocation System (DPAS) regulation (15 CFR 700) as it pertains to the rated quantities. Rated quantities will be specifically identified on the Purchase Document. Seller is required to comply with acceptance/rejection guidelines and requirements set forth in 15 CFR §700.13(d). Specifically, Seller must (a) accept a DX rated Purchase Document within 10 business days after receipt of this Order or (b) accept a DO rated Purchase Document within 15 business days after receipt of this Order, in each case, in the manner prescribed therein (if any). Seller's failure to specifically accept a DX rated or DO rated Purchase Document shall not relieve Seller of its obligations under this Order.

4. **Duration.** Unless this Order specifies otherwise, the term of this Order begins on the effective date shown on this Order (the "**Effective Date**") and continues for the period of time set forth on this Order (the "**Term**"). After the Term, this Order will expire subject to survival of the sections identified in Section 34.5 of these Terms and Conditions.

5. **Price; Payment Terms; Invoices.**

5.1 *Price.* Prices for the Goods or Services described in this Order are fixed as specified on the face of this Order and constitute the total price for the manufacture and delivery of the Goods or Services. Seller is not entitled to adjustments in the purchase price except as expressly provided in this Order and will not add charges of any type to an invoice without prior written consent from Buyer. Prices may be subject to decreases if specified elsewhere in this Order. Seller represents and warrants to Buyer that the price charged to Buyer complies with all applicable governmental laws and regulations in effect at the time of quotation, sale, and delivery.

5.2 *Taxes.* Unless otherwise specified in a Purchase Document, the prices for the Goods or Services set forth in this Order include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Seller is required to utilize Buyer's duty free entry process when applicable. Contact [DutyFree@AMGeneral.com](mailto:DutyFree@AMGeneral.com) for more information. At Buyer's option, Buyer may pay any taxes directly to the applicable taxing authority and not to Seller. Seller's prices shall not include any taxes on property owned by the Government unless authorized in writing by Buyer. Seller agrees to comply with any reasonable request by Buyer regarding payments under protest, and regarding any refunds, claims, litigation or proceedings with respect to any such taxes and to make appropriate adjustments to afford Buyer the benefit of any refund or reduction in such taxes.

5.3 *Payment Terms.* Unless otherwise specified on the face of this Order, the payment period shall be "net 60" and calculated from the later of (a) the date of Buyer's receipt of an invoice submitted in accordance with Section 5.4 below; or (b) the date Buyer (or its carrier) receives the Goods or Services; provided, however, Seller must acknowledge receipt of this Order by electronic mail addressed to the representative of Buyer who issued the Order for any invoice to be processed. If a payment date falls on a non-business day, payment will be due on the following business day. When shipments to places other than Buyer's plant are authorized, Seller's invoices will be paid by Buyer at the time specified on the face of this Order but not before acknowledgment of receipt of shipment by the consignee. Buyer shall be

entitled to any discounts allowable by Seller for prompt payment even though Buyer is unable to make payment within the time limits set by Seller where such failure is due to strike or other causes beyond the control of Buyer. Any amount paid by Buyer for Goods or Services will not be deemed to be a waiver of any breach of this Order by Seller or any amount otherwise due to Buyer.

5.4 *Invoices.* Seller's invoices shall include the Order number, amendment number, Schedule Notice number (if applicable), Buyer's part number, Seller's part number, quantity of pieces in the shipment, number of cartons or containers, Seller's name, bill of lading number, and the name and department number of the Seller's representative that is responsible for questions relating to the invoice. All invoices must be approved by the authorized representative of Buyer that issued the Order and Buyer reserves the right to reject and return all invoices or related documents submitted incorrectly. Any payment by Buyer of a nonconforming invoice is not an acceptance of any nonconforming element or terms on such invoice. Seller must provide separate invoices for each shipment and all freight charges billable to Buyer must be issued on a separate invoice regardless of the delivery location. On the date of shipment, Seller must send an original and one copy of each invoice to Buyer. Invoices sent via mail should be addressed to AM General LLC, 105 N. Niles Avenue., South Bend, IN 46617. Invoices sent via email should be set to [accounts.payable@amgeneral.com](mailto:accounts.payable@amgeneral.com).

5.5 *Lien Waivers.* To the extent applicable, neither the final payment nor any partial payment will become due under this Order until Seller delivers to Buyer waivers of liens from all Subcontractors and suppliers providing for a complete release of all possible liens arising out of this Order, or receipts in full in lieu thereof; and, in either case, a notarized affidavit stating that said releases and receipts cover all materials and labor incorporated in the work for which a lien might be filed. Seller may, if any Subcontractor or supplier refuses to furnish a release or receipt in full, furnish a bond, satisfactory to Buyer to indemnify Buyer against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Seller will refund to Buyer all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

## 6. **Quantity; Delivery Terms.**

6.1 *Quantity.* Unless a Purchase Document expressly states otherwise, the quantity of Goods or Services required by this Order are specified on the face of this Order. Buyer is not required to make payment for Goods or Services delivered to Buyer which are in excess of the quantity specified on the face of this Order or in Buyer's Schedule Notices, as applicable.

6.2 *Delivery.* Time and quantity are of the essence in performing this Order. Delivery of Goods and Services must be made both in the quantities and at the times specified by Buyer in this Order or in Buyer's Schedule Notices, as applicable. Seller shall not insure or declare value of any shipment made F.O.B. shipping point (Incoterms 2020). Seller agrees it will maintain at its expense and risk a quantity of safety stock of finished Goods and materials at the latest design level. Seller must ensure it has sufficient resources, including equipment and plant capacity, to meet Buyer's needs. Buyer may change the rate or timing of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which will entitle Seller to a modification of the price for Goods or Services covered by this Order. Seller will promptly furnish all properly completed documents and other information required in accordance with customs, tariffs or other applicable governmental regulations including, but not limited to, customs documentation and certificates of origin. Buyer reserves the right to cancel this Order without liability and without waiver of any other remedies provided herein and under applicable law if delivery is not effected as specified herein, in the Order, or in the Schedule Notices.

6.3 *Premium Shipping Expenses.* Seller will adhere to shipping directions specified on this Order or Schedule Notices. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules will be Seller's sole responsibility unless: (a) the delay or expense was solely

the result of actions by Buyer which materially breach Buyer's obligations in this Order (if such material breach was not caused by Seller); (b) Seller provides Buyer with written notice of any claim against Buyer within 10 days after the occurrence of the alleged actions of Buyer giving rise to such claim; and (c) Buyer's purchasing representative specifically authorizes in writing the payment of such premium shipping expenses by Buyer.

6.4 *Title and Risk of Loss.* Title to Goods and risk of loss pass to Buyer at the time and place of delivery as stated on this Order. If no time and place of delivery is specified, title and risk of loss will pass to Buyer upon Buyer's receipt of the Goods at Buyer's facility.

6.5 *Delay.* Should Seller experience or anticipate any delay in performing this Order, whether or not such delay is excusable under any provision hereof, Seller shall immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of this Order's delivery schedule. In addition to any other liability of Seller set forth in this Order, Seller shall be liable for any damages resulting from a delay.

6.6 *Personal Purchases.* Under no circumstances may Seller sell Goods or other products or provide services directly to individual employees of Buyer pursuant to, or under, this Order. If Seller makes, sells, or offers to sell Goods or other products or provide services to individual employees of Buyer under this Order then, in addition to any right or remedy Buyer may have under this Order, at law, or in equity, Buyer may immediately terminate this Order without liability to Seller.

6.7 *Requests for Information under Prime Contract.* Seller understands and acknowledges that Buyer is required under the Prime Contract to track certain metrics and make certain reports and/or provide certain disclosures to Customer in connection with performance under the Prime Contract. As such, Seller agrees to timely cooperate with Buyer requests (a) for information, data, reports summaries or any such similar materials related to Seller and/or the Order, or the Goods and Services procured thereunder; and (b) for Seller to track and record certain metrics related to Seller's Performance under the Order, but only insofar as necessary for Buyer to comply with its obligations to Customer under the Prime Contract.

## 7. **Packaging.**

7.1 Seller must (a) properly pack, mark and ship Goods in accordance with Buyer's requirements and the involved carrier in a manner to secure the lowest transportation cost; (b) route shipments in accordance with Buyer's instructions; (c) make no charge for handling, packaging, storage, transportation (including duties, taxes, fees, etc.), cost of carrier or other transport expenses unless otherwise approved by Buyer in writing or otherwise set forth in this Order; (d) provide Buyer with packing slips identifying the Order number, Schedule Notice number, part number; and (e) promptly forward to Buyer the original bill of lading or other shipment receipt for each shipment that will be sufficient to enable Buyer to easily identify the Goods purchased. Markings must be in English unless this Order specifies otherwise. Seller will reimburse Buyer for all expenses, including damage to the Goods incurred due to improper packing, marking, loading or routing.

7.2 In addition to the requirements of Section 7.1, Seller must:

- (A) Provide separate packing lists for each Order and include the packing lists with each shipment. The location of the packing slip must be clearly marked on the container and contain Buyer's part number for the Goods.
- (B) Provide the complete Order number on all documents.
- (C) Identify single item containers with Order number, part number, and quantity. When multiple Orders or items are combined in one container, Seller must

separately package the Orders or items inside the container and the packages must be identified as to Order, part number and quantity.

- (D) Suitably package and prepare all items for shipment to ensure all items withstand normal transportation and stocking functions and otherwise comply with standard packs that Buyer's uses as an integral element of Buyer's standardized material system.
- (E) Deliver items intended for Buyer's production lines in standard quantities and pack sizes as specified by Buyer in the RFQ or RFP and subsequent release to ship documentation and ensure all containers comply with Best Commercial Practices and be compatible with Buyer's part plan as indicated on the Vehicle Part Record (VPR).
- (F) Provide test reports, x-rays, certificates and other supporting documents, as requested by Buyer, with each shipment when required by this Order.
- (G) Provide separate bills of lading and separate containers for each shipment destined for different Buyer facilities.
- (H) Provide Goods that are marked in such a manner to be readily identifiable with the part number reflected on the Order.
- (I) Unit package and identify as a complete unit all kits, assemblies, and all article consisting of multiple items (e.g., hardware, pins, gaskets, etc.).
- (J) Mark individually packaged Goods. Seller must tag or bag and separate into lots single Goods that are too small to be separately identifiable. Seller will provide tags and/or bags, for handling and storage purposes, which are properly marked with the Order description and part number.

8. **Quality.**

Seller must comply with all quality standards, regulations and legal requirements associated with the Goods or Services, including any specified Customer requirements and the requirements of Buyer's "AM General Supplier Quality Manual", available at <http://www.amgeneral.com/our-suppliers/military-programs-resources/>, which document is incorporated by reference in this Order. Seller's quality management system must meet the quality requirements of ISO 9001 or IATF16949 registered by an accredited third party registrar or have a Buyer approved plan to achieve registration or compliance. Seller's quality management system must, at a minimum, include documented development, implementation, and maintenance of quality procedures, work instructions, flow charts, and records in connection with all Goods and Services under this Order. Seller must maintain complete records of all inspection work as to a particular Good for a 10 year period, and make these available to Buyer upon request. Buyer and the Government may perform quality audits at Seller's facilities in connection with the work performed under this Order.

Seller understands and acknowledges that, per the terms of the Prime Contract, the Government reserves the right to interface with, collaborate with, audit, visit, without prior notifications, all subcontractors of Buyer, including Seller. Seller shall notify its subcontractors in connection with this Order of this requirement and shall not limit its subcontractors from interfacing with the Government, collaborating with the Government, being audited by the Government, working with the Government on future design changes or improvements, or hosting Government personnel. Seller shall establish, implement and maintain documented procedures which shall identify and preclude the use of counterfeit parts in production and

shall impose same requirements on its Subcontractors, and make such information available to Buyer upon request.

9. **Specifications.**

9.1 *Compliance.* Unless otherwise specified in this Order, Seller shall comply with all drawings and specifications cited in this Order or made part of this Order by reference. Unless a different issue is specified on the drawings or in the Order, the issue in effect as of the issuance of the Government solicitation or amendment thereof shall apply to any specifications cited in this Order. Seller represents and warrants it has analyzed and reviewed the specifications and drawings for the Goods before acceptance of this Order and acknowledges that Buyer's specifications and drawings are sufficient and adequate to manufacture the Goods in compliance with this Order.

9.2 *Inspection.* Goods or Services purchased under this Order are subject to Buyer's inspection and approval; provided, however, that Seller agrees that Buyer is not required to perform an inspection of incoming Goods and waives any right to require Buyer to conduct such inspections. Buyer may also choose to inspect the Goods in process at facilities of Seller or its lower-tier suppliers. Buyer, at its option, may reject or require corrections to Goods or Services that are defective in material or workmanship or otherwise not in conformity with the requirements of this Order. Goods that are rejected will be returned for credit, replacement or reworking at Seller's risk and expense, and all inspection, rework completed by Buyer, handling, administrative and transportation expenses, both ways, are Seller's responsibility. No Goods returned as defective will be replaced or reworked without written authorization from Buyer.

- (A) *Evaluation.* Buyer reserves the right for itself and the Government to conduct surveillance and evaluation of Goods or components thereof at Seller's producing facility and to have Goods inspected by Buyer and/or Government at source. Seller agrees to comply with the requirements of the Government and/or Buyer for source inspection.
- (B) *Acceptable Goods and Services.* Notwithstanding the provisions of this Section, Seller is not in any way relieved of the final responsibility to furnish acceptable Goods or Services in accordance with all the requirements of this Order. Specifically, no inspection or evaluation performed by Buyer or Buyer's Customer shall in any way relieve Seller or its suppliers of their respective obligations to furnish all Goods and Services in strict conformance with the requirements of this Order.

9.3 *No Waiver.* Buyer's inspection of Goods or Services, payment for Goods or Services before inspection, or decision not to inspect the Goods or Services, will not (a) constitute acceptance of the Goods or Services, (b) limit or impair Buyer's right to assert any legal or equitable remedy, or (c) relieve Seller's responsibility for any warranty, latent defect or nonconformance. Without limiting the foregoing, and while Buyer reserves the right to inspect and reject Goods or Services, failure of Buyer to inspect or reject shall not waive Buyer's right to reject Goods or Services if defects or non-conformities are discovered at a later date, whether or not such defects or non-conformities are patent or latent, nor shall failure to inspect or reject Goods or Services affect Buyer's right to damages on account of Seller's delivery of defective or non-conforming Goods or Services.

10. **No Drawing Changes.** No drawing changes may be made by Seller without Buyer's prior written approval. Seller will provide updated drawings to any new Good configuration with explanation as to how the changes incorporated differ from the previous configuration.

11. **Material, Equipment, Tools and Facilities.**

11.1 *Seller Resources.* Unless otherwise stated in this Order, Seller shall supply all material, personnel, systems, equipment, tools and facilities required to perform this Order.

11.2 *Seller Property.*

- (A) Unless otherwise agreed to by Buyer, Seller, at its expense, will furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items that are not paid for by Buyer but are necessary for the production of the Goods (“**Seller Property**”). Seller will insure the Seller Property with coverage for all losses for its replacement value. Subject to Section 11.2(B), Seller grants Buyer an irrevocable option to take possession of and title to the Seller Property that is used exclusively for the production of the Goods under this Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items, but less any amounts otherwise owing to Buyer by Seller.
- (B) This option will not apply: (i) if Seller Property is used to produce Goods that are the standard stock of Seller, (ii) if Seller Property is used to produce a substantial quantity of goods similar to the Goods which are being sold by Seller to others, and (iii) in connection with a termination of this Order under Section 24 (Termination for Convenience). If Seller has financed any portion of the Seller Property, Seller will obtain from its financing source for the Buyer any waiver, release or approval necessary for it to exercise the rights granted under this Section 11.2.
- (C) To the extent any Intellectual Property owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Seller Property, Seller hereby grants to Buyer a fully paid, irrevocable, non-exclusive, worldwide, royalty-free license, perpetual to the maximum extent permitted by law, with the right to grant sublicenses to use such Intellectual Property in connection with the Seller Property.

11.3 *Customer-Furnished Property*

- (A) Buyer may provide Seller with property owned by its Customer (“**Customer Furnished Property**”). Buyer authorizes Seller to use Customer Furnished Property only for the performance of this Contract, unless authorized in advance, in writing, by the Buyer’s Authorized Representative or the Customer. The U.S. Government property clause FAR 52.245-1 shall apply to all Customer Furnished Property owned by the U.S. Government, or property that the U.S. Government may take title to under this Contract unless otherwise stated within this Contract.
- (B) Seller shall clearly mark (if not so marked) Customer Furnished Property to show its ownership. All Customer Furnished Property must be kept at the location agreed upon by the parties in writing unless otherwise agreed in writing by Buyer or the Customer.
- (C) Customer Furnished Property is provided in “as-is” condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, Seller shall be responsible for maintaining, managing, preserving, and insuring Customer



Furnished Property from loss or damage while in Seller's care, custody, or control, without additional charge, in accordance with good commercial practice, and FAR 52.245-1 where the U.S. Government owns the property. Seller shall notify Buyer within ten (10) Days of any loss or damage to Customer Furnished Property. Regarding Customer Furnished Property, Seller shall also provide a report containing all information required by FAR 52.245-1 to Buyer within thirty (30) Days. Seller shall support all Buyer or Customer investigations relative to the loss, damage, or destruction of this property.

#### 11.4 *Buyer-Furnished Property.*

- (A) Title to all property (including any material, preproduction samples, tooling, dies, drawings, designs, specifications, software, technical information and other property or data) furnished to Seller by Buyer or specifically paid for by Buyer, or the cost of which is fully or substantially amortized in the price of the Goods purchased hereunder, and any replacement thereof, shall remain in and with Buyer with the right of possession in Buyer (collectively, "**Buyer Property**").
- (B) Seller shall not use, reproduce, appropriate or disclose to anyone other than Buyer any Buyer Property nor shall Seller use the same to produce or manufacture goods other than those required hereunder without prior written authorization from Buyer. Where the Government has received from Buyer the right to authorize such use by Seller, Seller may utilize Buyer's data and information in the manufacture of goods for direct sale to the Government; provided, however, that Seller shall (i) give Buyer prior written notice of each such proposed use; (ii) prominently identify each item being provided by Seller for direct sale to the Government; and (iii) make no claim against Buyer which arises out of use by Seller of such data and information. Buyer does not guarantee the accuracy, quality, or suitability of any Buyer Property. Seller shall bear the risk of loss, damage or destruction, unless such loss, damage or destruction is solely, directly and proximately caused by Buyer's negligence. All Buyer Property must be kept at the location agreed upon in writing by the parties and may not be moved from such location without Buyer's prior written consent.
- (C) All Buyer Property, together with spoiled and surplus materials, shall be returned to Buyer at termination or completion of this Order unless Buyer shall direct otherwise in writing. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies or services by Seller for use in the performance of Buyer's Order, Seller shall insert the substance of this provision in its subcontracts. Seller acknowledges that any such data, designs or other information of Buyer are unique to Buyer, and that Buyer may enforce its rights under this Section 11.3(C) by specific performance.
- (D) For the avoidance of doubt, in no event shall any rights, title, or interest in Buyer-furnished property, whether solely held by the Government, with a third party, or otherwise, be modified or transferred to Seller as a result of this Purchase Document.



11.5 ***Evidence of Satisfactory Tools.*** Invoices and photographs of tools will not be rendered by Seller until Buyer accepts satisfactory Goods produced by such tools as specifically agreed in this Order. Upon acceptance of a satisfactory Good, Seller shall render all invoices and a scaled photograph for each tool listed on the Order to Buyer. The reverse side of the photograph shall reference the tool number, nomenclature and Order number. All negatives and prints shall become Buyer Property and no reproductions shall be made without the written consent of Buyer (a “scaled photograph” is an ordinary photograph which includes a scale ruler, or other measuring device to indicate the approximate size of the tool).

12. **Replacement Parts.** Seller will sell to Buyer the Goods necessary for Buyer to fulfill its current model service and replacement parts requirements at the price(s) set forth in this Order. If the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. During the 10-year period after Buyer completes current model purchases, or such longer period as prescribed by applicable law, Seller will sell Goods to Buyer to fulfill Buyer’s past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first three years of this period will be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for Goods will be as agreed to by the parties. When requested by Buyer, Seller will make service literature and other materials available at no additional charge to support Buyer’s service-part sales activities.

13. **Ingredients; Special Warnings.** If requested by Buyer, Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients in the Goods and the amount of all such ingredients; (b) information concerning any changes in or additions to such ingredients. Before and with each shipment of Goods, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on the Goods, containers and packing and/or provision of applicable materials safety data sheets) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer; and (c) information necessary to allow Buyer to comply with any of its reporting processes.

14. **Changes.**

14.1 ***Buyer’s Right to Make Changes.*** Buyer shall have the right at any time, by written direction of Buyer’s Authorized Representative that identifies such writing as an amendment, modification, or change to this Order, to (i) suspend all or any portion of Seller’s work or (ii) to make changes within the general scope of this Order that affect any one or more of the following:

- (A) drawings, designs, quantities, or specifications of Goods to be provided under this Order;
- (B) the statement of work or description of Services;
- (C) method of shipment or packing;
- (D) the time or place of performance, inspection, delivery, or acceptance of Goods;  
and
- (E) the amount of Buyer Property or Customer-furnished property or facilities.

14.2 *Price/Delivery Adjustment.* If any such suspension, modification, or change causes a change in the cost of, or the time required for, performance of this Order, Buyer shall make an equitable adjustment in the price or delivery schedule or both, and Buyer shall modify this Order in writing accordingly. Any claim by Seller for such equitable adjustment must be made in writing within 10 days from the date of receipt of a written order from Buyer's Authorized Representative directing such a suspension or change. Buyer has the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Minor design changes will not result in price increases.

14.3 *Seller's Obligation to Perform.* Nothing in this Section 14, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this Section 14 shall be resolved in accordance with Section 27 of these Terms and Conditions.

14.4 *Government Prime Contract.* If this Order is placed under a Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, shall be in accordance with the cost principles enunciated in Part 31 of the FAR in effect on the Effective Date.

14.5 *No Constructive Changes.* Information, advice, approvals, or instructions given by Buyer's technical personnel or representatives other than Buyer's Authorized Representative shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights or obligations and shall not be suspensions or changes within the meaning of this Section 14.

15. **Warranty.**

15.1 *Express Warranty.* In addition to the warranties set forth elsewhere in this Order, Seller expressly warrants to Buyer, its successors and assigns and Customers that as of the Effective Date and at each shipment of Goods or performance of Services under this Order and continuing during the Warranty Period, such Goods or Services will:

- (A) conform in all respects to the specifications, standards drawings, samples or other descriptions furnished or specified by Buyer (including, without limitation, as to fit, form, function, and appearance);
- (B) be useable and merchantable;
- (C) be free from latent, patent, or other defects in design, material and workmanship;
- (D) be delivered new, with good title, and free from all liens, claims, and encumbrances;
- (E) comply with all industry standards, laws, rules, and regulations including such standards, laws, rules, and regulations in force in countries where the Goods or vehicles equipped with such Goods are to be sold; and
- (F) be fit and sufficient for the purposes intended.

15.2 *Incorporation of other Warranties.* All warranties set forth herein are in addition to (a) any Customer-required warranties relating to the Goods or Services into which the Goods or Services are incorporated, all of which are incorporated by reference in this Order (b) all other warranties, express, implied or statutory. All warranties will survive Buyer's inspection, test, delivery, acceptance, use and payment of and for the Goods, and insure to the benefit of Buyer, its successors and assigns, and Buyer's Customers and the users of Buyer's or its Customer's products. Buyer's approval of Seller's designs, materials, processes, drawings, specifications or the like will not be construed to relieve Seller of any

warranties, nor will a waiver by Buyer of any required specification as to any particular Good or Service constitute a waiver of any such requirements for the remaining Goods to be delivered or Services to be performed unless so stated by Buyer in writing.

15.3 *Warranty Period.* All warranties provided hereunder will be effective for the longer of (a) the period provided by applicable law or (b) the warranty period provided by Buyer to its Customer, including, without limitation, any period of time during which Buyer's Customer may require Buyer to correct and/or cure nonconformances or defects in any deliverables that incorporate the Goods (the "**Warranty Period**"). Notwithstanding the foregoing, if Buyer or its Customer, voluntarily or pursuant to a Government mandate, provides a remedial action to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a Recall (as defined in Section 20) or other Customer satisfaction or corrective service action (a "**Remedial Action**"), the warranty will continue for such time period as may be dictated by Buyer, its Customer(s) or the federal, state, local or foreign government where the Goods are used or provided. In addition, and notwithstanding any expiration of a warranty period set forth hereunder, Seller will be liable for costs and damages associated with the conduct of any Remedial Action to the extent that such Remedial Action is the result of the Goods or Services failing to strictly conform to the requirements of this Order. The warranty terms set forth in this Section 15.3 shall pass through to Buyer's Customer.

15.4 *Defense of Warranty Claims.* To mitigate its damages, Buyer may, at its sole option, defend any claim that any Goods or Services supplied by Seller are defective, in breach of warranty, or otherwise do not meet applicable legal or contractual requirements. Because Buyer's Customer(s) may attempt to hold Buyer responsible for problems caused in whole or in part by Seller, Seller and Buyer agree that such defense by Buyer is in the interest of both Seller and Buyer. Seller waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Seller for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

## 16. Intellectual Property.

16.1 *Ownership.* Buyer shall own any Intellectual Property invented, conceived, reduced to practice, authored, or otherwise developed by Seller, in whole or in part, and along or with others, in the performance of this Order, and Seller shall (a) execute and deliver to Buyer all documents necessary to perfect Buyer's title in such Intellectual Property, including, but not limited to, assignments of all right, title, and interest Seller may have in such Intellectual Property; (b) obligate Seller's employees and/or contractors involved in the invention, conception, reduction to practice, authoring, or other development of such Intellectual Property to execute all documents necessary to perfect Buyer's title in such Intellectual Property, including, but not limited to, inventor's declarations and assignments of all right, title, and interest such employees and/or contractors may have in such Intellectual Property; and (c) obtain and deliver to Buyer all such executed documents as set forth in clause (b) above. All works of original authorship created by Seller in connection with this Order are "works made for hire" as that term is used in connection with the U.S. Copyright Act to the fullest extent permitted by law. Seller will not assert or transfer to any third party a right to assert against Buyer or its Customers any Intellectual Property rights that Seller has or may have that are applicable to or embodied in any Goods, Services or materials used or furnished under this Order.

16.2 *Licenses.* Buyer hereby grants Seller a nonexclusive, royalty-free, revocable, worldwide right and license to use all Intellectual Property owned by Buyer solely to the extent necessary for Seller to fulfill its obligations to Buyer under this Order. Seller hereby grants Buyer a nonexclusive, royalty-free, irrevocable, perpetual, worldwide right and license, with the right to grant sublicenses, to use all Intellectual Property owned by Seller that relates to the Goods or Services furnished under this Order,

and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) Goods, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Buyer's requirements and responsibilities under this Order or any contract that relates to the Goods or Services furnished under this Order. Seller agrees that neither it nor any of its affiliates or licensees will bring any cause of action against Buyer, its affiliates, suppliers, or agents asserting that the manufacture, use, sale, offer for sale, exportation of, importation of, or repair of the Goods or Services delivered under this Order infringes, misappropriates, dilutes, or otherwise violates any patent, copyright, trademark, trade name, trade dress, trade secret, or other proprietary or Intellectual Property right owned or controlled by Seller or any of its affiliates anywhere in the world, or subject Buyer, its affiliates, suppliers, customers (whether direct or indirect), or subcontractors, or any of their affiliates, representatives or agents to royalties anywhere in the world.

**16.3 *Intellectual Property Warranty.*** Seller represents, warrants and covenants that the sale, use, or incorporation into manufactured products of all Goods, Services, devices, software, and rights furnished or licensed hereunder which are not solely of Buyer's design, composition, or manufacture will not infringe, misappropriate, or otherwise violate any patent, copyright, trademark or other proprietary rights. Seller shall indemnify, defend and hold Buyer and its Customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) growing out of claims, suits, or actions alleging such infringement, misappropriation, or other violation, including proceedings under 28 USC § 1498, which claims, suits, or actions Seller agrees to defend at Seller's sole cost and expense on behalf of Buyer and Buyer's indemnitees. Buyer agrees to give Seller notice of any such suit or action promptly after notice is received by Buyer and Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, Buyer may, at its own election and expense, supersede Seller at any time in any such defense in which event Seller shall thereby be released from its obligation to defend (but not indemnify) Buyer under this Section 16.3 with respect to the particular suit or action involved. Seller further represents and warrants that it has the right to make all assignments and to grant all licenses made in this Order.

**16.4 *Government Prime Contracts.*** If this Order is placed under a United States Government Prime Contract or subcontract, the indemnification set forth in Section 16.3 above shall extend to the United States Government only if and to the extent that the United States Government is or may be indemnified by Buyer.

**16.5 *Replacement/Modification of Infringing Goods.*** In the event that any claim, suit, or cause of action is threatened or brought asserting that any Goods or Services furnished under this Order infringe any third party Intellectual Property rights, Seller may replace or modify infringing Goods or Services with comparable goods or services acceptable to Buyer of substantially the same form, fit, and function so as to remove the source of infringement and shall extend this provision to such comparable goods or services. If the use or sale of any of the allegedly infringing Goods or Services or comparable goods or services is enjoined as a result of such claim, suit, or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's Customers the right to use and sell the infringing Goods or Services or comparable goods or services.

**16.6 *Government Authorization.*** Where the Government has received from Buyer the right to authorize use of Buyer's Intellectual Property by Seller, Seller may utilize such Intellectual Property in the manufacture of Goods or provision of Services for direct sale to the Government; provided, however, that Seller shall (a) give Buyer prior written notice of each such proposed use; (b) prominently identify each item being provided by Seller for direct sale to the Government, (c) pay Buyer a royalty, to be negotiated among the parties separately and (d) make no claim against Buyer which arises out of Seller's use of Buyer's Intellectual Property.

17. **Proprietary Information.**

17.1 *Existing PIA Governs.* If a proprietary information, mutual confidentiality, or non-disclosure agreement (“**PIA**”) exists between Buyer and Seller covering the Goods, Services, or this Order, the term of such PIA shall be and is hereby extended to be co-terminus with this Order, and such PIA is incorporated herein by reference and shall govern the use and disclosure of Proprietary Information hereunder.

17.2 *No PIA.* In the event no PIA covering the Goods, Services, or this Order exists between Buyer and Seller, or such PIA does not already include the following terms, the following terms shall apply:

- (A) *Marking.* A party disclosing Proprietary Information (“**Disclosing Party**”) shall mark or otherwise designate as “proprietary” or “confidential” any written or electronic information that it discloses to a party receiving Proprietary Information (“**Receiving Party**”) under this Agreement. Any Proprietary Information that is disclosed orally shall be treated as Proprietary Information for purposes of this Agreement if (i) it is contemporaneously identified by Disclosing Party to Receiving Party as such, and (ii) Disclosing Party gives written notice to Receiving Party within 10 days of the disclosure.
- (B) *Confidentiality.* Proprietary Information provided by Buyer to Seller shall be kept confidential by Seller, whether or not designated as Proprietary Information, and Seller will not disclose or use, directly or indirectly, such Proprietary Information for the benefit of Seller or any other third party without Buyer’s prior written consent and only as required for performance of this Order, except as provided in Section 17.1. Information, including but not limited to technical information, drawings, and data, submitted at any time by Seller to Buyer relating to Goods or Services covered by this Order or Seller’s business are not deemed to be Proprietary Information unless otherwise specifically agreed to in a writing signed by Buyer. Any restrictive markings affixed upon any such information furnished to Buyer shall be of no force or effect, may be modified, removed or ignored by Buyer without any liability to Seller, and may be used by Buyer in any way in the conduct of its business. Seller’s sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by valid pre-existing patent rights of Seller as related to the manufacture, use or sale of Goods covered by this Order. Seller agrees to promptly notify Buyer of any pre-existing patents or any other form of protection that Seller holds or knows that relates to the Goods to be provided under this Order.
- (C) *No Restriction on Reporting Fraud, Waste, or Abuse.* Receiving Party understands that, as provided in the Defend Trade Secrets Act of 2016 (“**DTSA**”), Receiving Party shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (i) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Furthermore, under the DTSA, nothing in this Agreement prohibits Receiving Party from disclosing a company trade secret to Receiving Party’s attorney, or from using trade secret information in a court proceeding in which Receiving Party makes a claim against Disclosing Party for retaliation based on reporting a suspected violation of law,

provided that: (A) Receiving Party files under seal any document containing a trade secret; and (B) Receiving Party does not disclose a trade secret, except pursuant to court order. Receiving Party also understands that nothing in this Agreement prohibits or otherwise restricts Receiving Party from: (1) lawfully reporting or seeking to report waste, fraud, or abuse to a designated investigative or law enforcement representative of a U.S. Government department or agency authorized to receive such information; or (2) communicating with any federal, state, or local governmental agency, or participating in an investigation by any such agency. Nothing in this Agreement requires Receiving Party to notify or seek approval from Disclosing Party at any time regarding activities described in this provision.

18. **Subcontracting.**

18.1 *Subcontractors.* Seller will not subcontract any of its duties or obligations under this Order without the prior written approval of Buyer. If Seller subcontracts any of its duties or obligations under this Order with a subcontractor of Seller (“**Subcontractor**”) that has been approved by Buyer, Seller will ensure that all such Subcontractors comply with the requirements hereunder. At Buyer’s request, Seller will certify in writing Seller’s and its Subcontractor’s compliance with all such requirements. Buyer will have the right to audit and monitor Seller’s and its Subcontractor’s compliance with Seller’s and its Subcontractor’s obligations under this Order including, without limitation, verifying at the premises of Seller or any Subcontractor that the subcontracted Goods or Services conform to the requirements of this Order. Any audit by Buyer will not (a) shift responsibility for quality by the Subcontractor from Seller to Buyer, (b) absolve Seller of the responsibility to provide acceptable and conforming Goods or Services, or (c) preclude subsequent rejection of Goods or Services by Buyer. Notwithstanding any audit by Buyer, Seller remains fully liable for any work subcontracted.

18.2 *Assignment of Rights.* In the event Seller cannot fulfill one or more of its obligations under this Order, Seller will, at Buyer’s option, assign to Buyer all of Seller’s rights with respect to any of Seller’s Subcontractors under this Order.

19. **Indemnification, Defense, and Hold Harmless.**

19.1 *Indemnification, Defense, and Hold Harmless by Seller.* In addition to Seller’s other indemnification obligations under this Order, Seller covenants and agrees to indemnify, defend and hold harmless Buyer and its affiliates and subsidiaries, and their respective Customers, members, directors, officers, employees and agents (the “**Indemnitees**”), from and against any and all claims, liabilities, damages, settlements, judgments, losses, penalties, costs and expenses (including, without limitation, actual attorney’s fees, costs of experts and consultants) that are related to or arise out of:

- (A) the Goods or Services;
- (B) Seller’s representations, warranties and covenants;
- (C) Seller’s performance of or failure to perform obligations under this Order, including, without limitation, claims based on Seller’s breach or alleged breach of warranty (whether or not the Goods have been incorporated into Buyer’s products and/or resold by Buyer);
- (D) noncompliance by one of Seller’s Subcontractors with any requirement imposed on Seller or Subcontractor under this Order;
- (E) any violation of any applicable law, ordinance or regulation or government

authorization or order by Seller or Subcontractor in connection with this Order;

- (F) damages to the property of or injuries (including death) to Indemnitees or any other person arising from or in connection with Seller's or Subcontractor's performance of this Order, work on Buyer's premises, or otherwise in connection with the use of Buyer Property; or
- (G) the commercialization or utilization of any of Seller's or Subcontractor's technology applied in connection with this Order, including, but not limited to, the making, using, selling, or exporting of products, processes, or services derived from such technology.

20. **Recall.** If Buyer, on its own initiative or pursuant to a government mandate, makes a recall or other field-service action or Customer recall campaign (a "**Recall**"), Seller will be liable to Buyer for all damages related to such Recall to the extent the Recall arises in any way from a defective or nonconforming Good or Seller's breach of this Order.

21. **Remedies.**

21.1 *Cumulative.* The rights and remedies reserved to Buyer in this Order shall be cumulative, and in addition to all other or further remedies provided in law or equity.

21.2 *Remedies for Nonconforming Goods or Services.* Should any Goods or Services fail to conform to the warranties set forth herein or if the materials contained within the Goods are alleged to or are determined to be defective or cause injury or harm to any person or property, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any damages caused by such defective or nonconforming Goods or Services, including, but not limited to, costs (including all attorney's or other professional fees), expenses and losses incurred by Buyer (a) in inspecting, sorting, containing, repairing or replacing such defective or nonconforming Goods or Services; (b) resulting from production interruptions, (c) in conducting Recalls, (d) from claims or litigation arising from personal injury (including death) or property damage caused by such nonconforming Goods or Services, and (e) for any amounts for which Buyer is liable to its Customer on account of such nonconforming Goods or Services. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of charge backs for nonconforming Goods or Services. In addition, Seller shall reimburse Buyer for all liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's breach or anticipatory repudiation of this Order or any other contract between Seller and Buyer, a request or demand by Seller to modify or change the terms of this Order, or legal proceedings involving Seller that, in the reasonable judgment of Buyer, may impact Seller's continued or future performance under this Order, or if Seller is a party to a court case or proceedings in which Buyer appears, participates, monitors or becomes a party. In the event this Order is issued or renewed after Seller becomes a debtor in bankruptcy, Buyer shall be entitled to all of its attorneys' or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

21.3 *Specific Performance.* In the event that Seller fails or refuses to deliver Goods or Services, or otherwise repudiates any provision of this Order, Seller agrees that Buyer may seek specific performance of Seller's obligations under this Order, without the need to post a bond or any other type of security.

21.4 *Additional Remedies.* In the event of a breach, cancellation or termination of this Order, Buyer shall be entitled to one or more of the following additional remedies:

- (A) Require that Seller:



- (1) Immediately stop production of any Goods, performance of any Services, and/or use of any Buyer Property or Seller Property;
  - (2) Disassemble and segregate Buyer Property or Seller Property from any other property, including the removal of Buyer Property or Seller Property from presses or other machinery; and
  - (3) Allow Buyer to immediately take possession of the Seller Property, which includes the right to enter onto Seller's premises or to require Seller to pack and ship the Seller Property, at Seller's expense, to a destination selected by Buyer.
- (B) Seller will provide the Buyer with any engineering, package and installation drawings, specifications, testing protocols and results, documents, data and design aides, bills of materials, manufacturing process information, and other information relating to the Goods or Services ("**Technical Information**") requested by the Buyer that is required for the relocation, installation, assembly, maintenance, or use of the Buyer Property and Seller Property, without restrictions on disclosure or use by Buyer. Seller agrees not to assert any claim with respect to any Technical Information that Seller has or may disclose to Buyer in connection with its performance of this Order; and
- (C) To the extent Buyer may have paid for prototype tooling for the Goods under a separate purchase order or other agreement, then in order to ensure that Buyer could make full beneficial use of the rights provided in this Order, Seller will provide the following for such Goods: (a) any prototype tools (e.g. dies and molds), including without limitation, any computer aided design data for such prototype tools, and (b) in each case as applicable, the specifications, bills of material, Seller information for any purchased components used in such prototype tools, and manufacturing process information regarding such prototype tools.

22. **Insurance.** Seller will maintain insurance coverage with carriers acceptable to Buyer and in the following amounts: Comprehensive General Liability/Product Liability of not less than combined single limits of \$5 million and Professional Liability/Error & Omission of not less than combined single limits of \$5 million. All such insurance coverage will name Buyer as loss payee and as an additional insured. Seller will furnish to Buyer certificates of insurance and additional insured endorsements setting forth the amount of coverage, policy number and date(s) of expiration and otherwise showing compliance with the insurance requirements hereunder prior to Seller performing work under this Order. All such certificates of insurance and endorsements must not be subject to cancellation, material alteration, or reduction in the amount or scope of coverage except after 30 days prior written notice by the insurer via certified mail to the additional insured. The limits of liability coverage set forth above are established as minimum coverage required of Seller and will in no way be construed as a limitation of the liability of Seller under any hold-harmless or indemnification provision contained in this Order. The Seller's policies must contain a provision by the respective insurers waiving the right of such insurers to subrogation. The waiver of subrogation must be in favor of Buyer and its members, officers, employees, agents, successors and assigns. Seller's furnishings of certificates of insurance or purchase of insurance will not release Seller of its obligations or liabilities under this Order. If Seller fails to maintain any insurance under this Order, Buyer will have the right to procure such insurance and Seller will reimburse Buyer on demand, for all actual costs and expenses of procuring such insurance.

23. **Termination for Default.**

23.1 *Buyer's Right to Terminate for Default.* Buyer has the right to immediately terminate all or any part of this Order, without any liability to Seller, Seller's Subcontractors or suppliers, or otherwise if:

- (A) Seller repudiates, breaches or threatens to repudiate or breach any of the terms of this Order (or any other order issued by Buyer to Seller), including, without limitation, Seller's warranties;
- (B) Seller fails to deliver the Goods or perform the Services within the time specified in this Order or Schedule Notices furnished by Buyer, or any extension thereof;
- (C) Seller fails to perform any of the other provisions or meet any of the requirements of this Order;
- (D) Seller conditions the continued full performance of its obligations under this Order on Buyer's agreement to modify the terms of this Order; or
- (E) Seller fails to make progress so as to endanger performance of this Order.

23.2 *Cure Period.* Buyer's rights to terminate this Order under Sections 23.1(A), 23.1(C), and 23.1(E) may be exercised if Seller does not cure such default within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the default. No such cure notice or period is required for a termination under Sections 23.1(B) or 23.1(D).

23.3 *Replacement Costs.* If Buyer terminates this Order in whole or in part for default, it may acquire, under the terms and in the manner Buyer considers appropriate, goods or services similar to those terminated, and Seller will be liable to Buyer for any excess costs of those goods or services. Seller must, however, continue the work not terminated.

23.4 *Transfer of Completed Goods/Materials.* If this Order is terminated in whole or in part for default, Buyer may require Seller to transfer the title to and deliver to Buyer, as directed by Buyer, any (a) completed Goods, and (b) subject to Section 6.1, raw material procured to satisfy quantities set forth on Schedule Notices, partially completed Goods, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "**Manufacturing Materials**") that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.

23.5 *Payment for Completed Goods/Materials.* Buyer shall pay the Order price for completed and conforming Goods and Services delivered and accepted. Seller and Buyer shall agree on the amount of payment for Manufacturing Materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a Dispute (as defined in Section 27 of these Terms and Conditions). Buyer may withhold from the amounts payable under this Section 23.5 any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

23.6 *Termination Remedies Cumulative.* The rights and remedies of Buyer in this Section 23 are in addition to any other rights and remedies provided by law, including the Uniform Commercial Code, in equity, or under this Order. If, after termination, it is determined that none of the events specified under Section 23.1 occurred and Seller is not otherwise in breach of this Order, the rights and obligations of the parties will be the same as if the termination had been issued pursuant to Section 24.1 without Buyer having any obligation under Section 24.3.

## 24. **Termination for Convenience.**

24.1 *Buyer's Termination for Convenience.* In addition to any rights of Buyer to terminate this Order for cause, Buyer may, at its option, upon 30 days prior written notice to Seller, terminate all or any part of this Order. Such termination shall not constitute a breach or default by Buyer.

24.2 *Obligations of Seller.* Within 30 days after receipt of notice of termination pursuant to Section 24.1 ("**Effective Date of Termination**"), Seller, unless otherwise directed in writing by Buyer, will: (a) immediately terminate all work under this Order and immediately inform all its Subcontractors to cease work pursuant to this Order; (b) transfer title and deliver to Buyer the usable and merchantable finished Goods that Seller produced or acquired in accordance with the last issued Schedule Notices or, if no Schedule Notices were issued, this Order, and in each case, which Seller cannot reasonably use in producing goods for itself or for others; (c) take actions reasonably necessary to protect property in Seller's possession which Buyer has an interest; and (d) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the Goods covered by this Order to an alternative supplier designated by Buyer.

24.3 *Termination Charges.* Upon a termination pursuant to Section 24.1 and subject to Section 6.1, Buyer will pay Seller the following amounts without duplication: (a) the Order price for all Goods or Services that have been completed and delivered in accordance with this Order and the Schedule Notices (if applicable) and for which Buyer did not pay previously; (b) the actual costs incurred by Seller (exclusive of profit) for all work in process, raw materials fabricated or procured by Seller and finished Goods inventory, in each case, to the extent such costs and quantities are reasonable in amount and, in the case of quantities, are in amounts not in excess of those amounts called for in the Order or, if the quantities specified in the Order are Buyer's requirements, in the Schedule Notices issued by Buyer prior to the Effective Date of Termination; and (c) the actual out-of-pocket cost incurred by Seller in protecting any Buyer Property. In no event, however, will payments made under this Section 24.3 exceed the aggregate price payable by Buyer for finished Goods or Services which would be produced by Seller under either (i) the Schedule Notice(s) outstanding on the Effective Date of Termination or (ii) if no Schedule Notices are issued to Seller, this Order. Buyer is not liable for and shall not be required to make any other payments to Seller, directly, indirectly, or otherwise, including on account of claims by Seller's Subcontractors or suppliers, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs and general and administrative burden charges from termination of this Order. Notwithstanding the foregoing, Buyer shall have all rights and obligations accruing both at law or equity, including Buyer's rights to title and immediate possession of Goods for which Buyer has made payment.

24.4 *Termination Claim.* Within 60 days from the Effective Date of Termination, Seller must submit to Buyer a comprehensive termination claim setting forth the amounts described in Section 24.3, with sufficient supporting data to permit Buyer's audit, and shall thereafter promptly furnish such supplemental and supporting information as Buyer requests. Buyer, or its agents, will have the right to audit and examine all books, records, facilities, work, material, inventory and other items relating to Seller's termination claim and Seller will cooperate fully with Buyer in the conduct of such audit. The principles in FAR 31.205-42 shall apply.

## 25. **Insolvency.**

25.1 *Seller's Solvency.* Seller represents and warrants to Buyer as of the Effective Date (which representations and warranties will be deemed repeated as of the date of Seller's acceptance of each Schedule Notice under this Order or at the time of each delivery under this Order) that (a) it is not insolvent and is paying all debts as they become due; (b) it is in compliance with all loan covenants and other obligations; (c) that all financial information provided by Seller to Buyer concerning Seller is true, complete and accurate; (d) that such financial information fairly and accurately represents Seller's financial

condition; and (e) that all financial statements of Seller have been prepared in accordance with U.S. generally accepted accounting principles, uniformly and consistently applied.

**25.2 Operational Problems.** Seller agrees that if Seller experiences any delivery or operational problems or requests accommodations from Buyer (financial or otherwise), (a) Seller will permit Buyer and its representatives to review Seller's books and records concerning compliance with this Order and Seller's overall financial condition and agrees to provide Buyer with full and complete access to all such books and records for such purpose upon Buyer's request and (b) Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Buyer provides to Seller any accommodations (financial or otherwise) that are necessary for Seller to fulfill its obligations under this Order, Seller must reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by this Order (and a lien to secure the access right) under a separate access and security agreement.

**25.3 Termination for Insolvency.** Buyer may terminate this Order, without any liability to Seller, Seller's Subcontractors or suppliers, or otherwise, in the event of the happening of any of the following or any other similar or comparable event and such termination shall not constitute a breach or default by Buyer:

- (A) insolvency of Seller;
- (B) the filing of a voluntary petition in bankruptcy by Seller;
- (C) the filing of any involuntary petition to have Seller declared bankrupt that is not vacated within 30 days from the date of filing;
- (D) the appointment of a receiver or trustee for Seller, provided such appointment is not vacated within 30 days from the date of such appointment;
- (E) the execution by Seller of an assignment for the benefit of creditors; or
- (F) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under this Order.

**26. Setoff and Retention/Withholding.** All amounts due from Buyer or any of its parent companies or their affiliates, subsidiaries or divisions ("**Buyer Group**") to Seller or any of its parent companies or their affiliates, subsidiaries or divisions ("**Seller Group**") will be considered net of indebtedness of any member of Seller Group to any member of Buyer Group whether under this Order or otherwise. In addition to any right of setoff, deduction or recoupment provided or allowed by law, any member of Buyer Group may, without notice to Seller or any other member of Seller Group, set off against, and deduct and/or recoup from, any amounts due or to become due from any member of Buyer Group to any member of Seller Group under this Order or otherwise any amounts due or to become due from any member of Seller Group to any member of Buyer Group under this Order or otherwise, including, without limitation, any damages resulting from breaches by Seller of its obligations under this Order or any agreement between Buyer and Seller. If an obligation of Seller Group is disputed, contingent or unliquidated, any member of Buyer Group may defer payment of all or any portion of an amount due to any member of Seller Group under this Order or otherwise until such dispute or contingency is resolved or the obligation is liquidated. Without limiting the generality of the foregoing, and by way of example only, in the event of Seller's bankruptcy, if all of the orders (including this Order) between Buyer and

Seller have not been assumed (under applicable bankruptcy law), then Buyer may withhold payment to Seller for Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.

27. **Dispute Resolution.**

27.1 *Procedure.* Any claim against Seller for failure to deliver the Goods or for breach or repudiation of this Order, as well as any other claim by either party for the threatened, alleged or actual breach of this Order by either party (a “**Dispute**”) shall be handled as follows:.

- (A) Subject to Section 27.1(E), any Dispute will first be promptly referred to the parties’ senior level management (director level or higher) for resolution. If the parties’ senior level management are unable to resolve any such dispute within thirty (30) days following written notice by a party to the other party of the Dispute, then, at Buyer’s election, which will be exercised by written notice to Seller either before or within thirty (30) days following a service of process in any legal action in connection with the Dispute, such Dispute will be resolved in binding arbitration administered by the Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”) pursuant to JAMS’ then current arbitration rules for the resolution of commercial disputes. If Buyer does not elect to proceed with arbitration, the resolution of such Dispute may only be adjudicated in a court of competent jurisdiction in accordance with Section 34.9 unless the parties agree otherwise in writing.
- (B) The existence, content, and result of the arbitration shall be subject to the confidentiality obligations set forth in Section 17, and the parties shall hold the other arbitration participants, including the arbitrator, to the same confidentiality requirements.
- (C) The arbitration will be conducted by a single arbitrator selected by agreement of the parties or, failing such agreement, appointed in accordance with the JAMS rules. The arbitration shall be conducted in English and at a location determined by solely by Buyer. The arbitration award shall be final and binding on the parties, and the parties shall not have the right to appeal any such decision. Each party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in their discretion, award reasonable costs and fees to the prevailing party. Each party hereby excludes and waives irrevocably any rights or application or appeal to the courts of any country otherwise having jurisdiction to the fullest extent permitted by law in connection with any questions of law or fact arising in the course of arbitration or arising out of any decision made, except for actions to obtain a judgment recognizing or enforcing an arbitral award or actions to take (or request any judicial or other authority to order) any provisional measure prior to the commencement of or during the arbitration proceedings for the preservation of its rights and interests.
- (D) If any Dispute in arbitration under this Order is substantially the same or involves common issues of law or fact as another dispute between the parties that is not yet in arbitration then, subject to Section 27.1(E), either party shall be entitled to require that such other Dispute be consolidated with the relevant arbitration pursuant hereto, and the other party shall permit, and reasonably co-operate with the other party in, such consolidation.
- (E) Notwithstanding anything to the contrary in this Order,

- (1) If (i) Seller is in breach of Section 6.2, (ii) Buyer has the right to terminate this Order under Sections 23.1(B) or 23.1(D), or (iii) Seller repudiates, breaches, or threatens to repudiate of breach any terms of this Order and Buyer determines it may suffer irreparable harm for which monetary damages may be inadequate, then, in each case, Buyer may petition a court of competent jurisdiction in accordance with Section 34.9 for injunctive relief, specific performance, or other equitable relief;
- (2) If (ii) a party is seeking to address a claim arising out of the other party's breach of its obligations under Sections 16 or 17 or (c) a party is seeking to enforce an arbitral award obtained pursuant to this Order, then, in each case, such party may petition a court of competent jurisdiction in accordance with Section 34.9 for injunctive relief, specific performance, or other equitable relief.

**27.2 *Obligation to Perform.*** Pending final decision of a Dispute by a court of competent jurisdiction in accordance with Section 34.9 or an arbitrator in accordance with Section 27.1, Seller shall proceed with performance of this Order. If the Dispute arises out of a difference in interpretation between the parties as to any requirement of this Order (including regarding specification, delivery, quality, or pricing), then Seller shall continue performance in accordance with Buyer's interpretation of the requirements.

**27.3 *Dispute Under a U.S. Government Prime Contract.*** If, by a final decision, the Contracting Officer of a U.S. Government Prime Contract interprets any provision or requirement of a U.S. Government Prime Contract (including exhibits, appendices, and attachments thereto and documents referred to therein), and the same or substantially similar provision or requirement is contained in this Order (including exhibits, appendices, and attachments thereto and documents referred to therein), such interpretation shall be binding between Buyer and Seller at Buyer's option. Buyer shall afford Seller a reasonable opportunity to appeal such decision in Buyer's name, subject to any applicable requirements or limitations in such Prime Contract; provided, however, that Buyer shall at all times be the sponsor of any appeal and may revoke its sponsorship at any time. Seller agrees to provide to Buyer any and all information requested by Buyer for the purpose of verifying, supporting, or providing any and all certifications required in any claim or appeal by the Contract Disputes Act of 1978, 41 U.S.C. Section 7101 et seq. or otherwise. Any such appeal shall be at the sole expense of Seller. As used in this Section, the term "appeal" shall include any and all proceedings under this provision before any board of contract appeals or federal court. Seller shall not acquire any direct claim or direct cause of action against the Government. Despite Section 34.9 of these Terms and Conditions, the choice of law for any dispute directly against the Government shall be governed by FAR 52.233-4.

Unless specifically identified otherwise on a statement of work, purchase order or under a master-type agreement that constitutes part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the laws of Indiana, excluding its choice of law rules, except that any provision in this Contract that is incorporated in full text or by reference from the FAR or agency supplements to the FAR, shall be construed and interpreted according to the U.S. federal common law of government contracts as enunciated and applied by U.S. federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the U.S. Government.

## **28. Compliance with Laws.**

**28.1 *General.*** Seller shall comply with all federal, state and local laws, orders, rules,

regulations, and ordinances that are applicable to the Goods or Seller's performance of its obligations under this Order, and such compliance shall be a material requirement of this Order.

28.2 *Child Labor.* By acceptance of this Order, Seller agrees and declares that it has complied with and has not violated in any way the Child Labor provisions of the Fair Labor Standards Act of 1949, as amended.

28.3 *Discrimination.* By acceptance of this Order, Seller certifies that it will comply with all applicable provisions of E.O.11246 and E.O.11375, as amended (41 CFR § 60-1.4); the Vietnam Era Veterans Readjustment Act of 1974 (41 CFR § 60-300.5) and E.O.11701; The Rehabilitation Act of 1973 and E.O. 11758; and the rules, regulations and relevant orders of the United States Secretary of Labor.

28.4 *Software Development.* If Seller performs software development work under this Order, Seller and any of its subcontractors performing software development work shall have and maintain at least a Capability Maturity Model Integration for Development (CMMI-DEV) Level III. If applicable, Seller and its subcontractors shall utilize their corporate CMMI-DEV Level III appraised process in all software development, integration, and testing efforts for the Order.

28.5 *GIDEP Data.* As applicable to this Order, Seller shall deliver information concerning critical or major non-conformances as defined in FAR 46.101 to the Government Industry Data Exchange Program (GIDEP). Seller shall insert the following statement in any subcontract placed under this Order: "The contractor shall deliver information concerning critical or major non-conformances as defined in FAR 46.101 to the GIDEP information system." When so inserted, the word "contractor" shall mean Seller's subcontractor. Seller shall input any GIDEP data which may be pertinent to items of its manufacturer and verify that the subcontractor utilizes any such data.

28.6 *Health, Safety, and Environmental Regulations.* Seller warrants and covenants that (a) the Goods sold pursuant to this Order, and their performance when installed, will conform to the requirements of the Occupational Safety and Health Act of 1970 as amended and all regulations and standards formulated thereunder and any State requirements; (b) the Goods will be in compliance with applicable product safety and environmental regulations; (c) each chemical substance contained in the Goods is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency in conjunction with the Toxic Substances Control Act, as amended; and (d) the Goods shall be in compliance with the applicable sections of the Federal Consumer Product Safety Act, as amended, and the Federal Hazardous Substances Act, as amended, and are not considered hazardous under any state or federal law, except as clearly stated on the shipping and storage containers. Seller shall also comply with the labelling requirements for Class I and Class II Ozone Depleting Substances as required by Section 611 of the Clean Air Act Amendments of 1990 and the final rules (40 C.F.R. Part 82) implementing the same (collectively, the "**Act**"). Seller shall accurately label, consistent with the requirements of the Act, any products containing a controlled substance that it is supplying to Buyer. In the event Seller discovers that it has failed to comply with the labeling requirement of the Act, it shall immediately notify Buyer of those products supplied to Buyer which failed to comply with the labeling requirements of the Act.

## 29. **Compliance with U.S. Export Control Laws and Regulations.**

29.1 *Export.* Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. 730-774, including the requirement for obtaining any export license or agreement, if applicable (together "**Export Controls**"). Without in any way limiting the foregoing, Seller agrees that it will not



transfer any Export Controlled item data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without authority of an export license, agreement or applicable exemption or exception.

29.2 *Notification.* Seller agrees to notify Buyer of the export classification of any deliverable under this Order under applicable Export Controls.

29.3 *Identification.* Buyer shall identify to Seller the export classification of all technical information provided to Seller.

29.4 *Denied Party.* Seller shall immediately notify Buyer in writing if Seller is or becomes listed on any U.S. Export Control or Sanctions list (including, but not limited to, the Denied Persons List, the Unverified List, the Entity List, the Specially Designated Nationals List, and the Debarred List), or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by the Government.

29.5 *Registration.* If Seller is a U.S. Party that is engaged in the business of either exporting or manufacturing (whether exporting or not) Defense Articles or furnishing Defense Services as those terms are defined in the ITAR, Seller represents that it is registered with the Directorate of Defense Trade Controls at the Department of State, as required by the ITAR, and that it maintains an effective export/import compliance program in accordance with the ITAR. With respect to such Defense Articles and/or Defense Services, Seller represents and warrants that it and its Subcontractors have not paid, and will not pay or offer to pay, for solicitation or promotion or otherwise, to secure the conclusion of a sale of Defense Articles or Defense Services to, or for the use of, the armed forces of an international organization or non-U.S. Country any fees, commissions or political contributions as described under Part 130 of the ITAR without prior notice to Buyer. In such event, Seller shall provide to Buyer, not later than 20 days after such an event, full disclosure of all information necessary for Buyer to comply fully with sections 130.9 and 130.10 of the ITAR.

29.6 *No Registration.* If Seller is a U.S. Party that is not currently engaged in the business of either exporting or manufacturing Defense Articles or furnishing Defense Services, and Buyer provides Seller with technical data controlled by the ITAR, Seller agrees to register with the Directorate of Defense Trade Controls at the Department of State, as required by the ITAR, and maintain an effective export/import compliance program in accordance with the ITAR.

29.7 *Violation.* Seller shall provide prompt written notification to Buyer in the event of any violation or potential violation of Export Controls, or the initiation or existence of a Government investigation that could affect Buyer or Seller's performance under this Order.

### 30. **Force Majeure.**

30.1 *Force Majeure Events; Occurrence.* Any delay or failure on the part of either party to perform hereunder will be excused if and to the extent that such delay or failure is caused by circumstances beyond the reasonable control and without the fault or negligence of such party, including acts of God or of the public enemy, acts of the Government (including, but not restricted to, any preference, priority or allocation order), fires, floods, epidemics, quarantine, Government restrictions, strikes, freight embargoes, unusually severe weather, and delays of a Subcontractor due to such causes, provided that Seller will give Buyer prompt notice of any cause that will result in such delay (and the anticipated duration) within five days of the occurrence of such cause.

30.2 *Seller's Obligations During Delays.* During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods or services similar to the Goods or Services from

other sources and reduce the quantities set forth in this Order or the Schedule Notices to Seller by such quantities, without liability to Seller, or have Seller provide the Goods from other sources in quantities and at times requested by Buyer and at the price set forth in this Order. If requested by Buyer, Seller will, within five days of such request, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide adequate assurance (within a commercially reasonable time not to exceed 10 days from the date of the request) that the delay will cease within 30 days, Buyer may immediately cancel this Order without liability.

31. **Strike Bank.** Notwithstanding Section 30, if Seller's employees are subject to a labor contract, Seller agrees that prior to any labor contract expiration at Seller's manufacturing facility and with Buyer's written approval, Seller shall build ahead of schedule in order to have available a strike bank of at least a 30 day supply of the Goods stored in a readily accessible controlled location to prevent a delivery delay resulting from a potential work stoppage at Seller's facility. Seller agrees to pay for all incidental costs associated with providing this strike bank which shall include, but not necessarily be limited to, costs associated with accelerated production, storage and any form or premium payment associated with the manufacture of this strike bank inventory.

32. **Additional Attachments.** In addition to the attachments referenced in Section 33.1, any additional attachments identified on this Order are incorporated by reference herein with the same force and effect as if they were given in full text unless modified as set forth in the attachment. All attachments applicable to this Order can be found on Buyer's corporate website located at [www.amgeneral.com](http://www.amgeneral.com).

33. **Incorporated FAR and DFARS Provisions.**

33.1 *JLTV Flowdowns.* Seller shall be bound to Buyer, and/or, as applicable, the U.S. Government, in the same way that Buyer is bound to the U.S. Government under the Prime Contract, with respect to the FAR clauses, DFAR clauses, and Prime Contract terms and conditions set forth in the document entitled "JLTV Flowdowns and Contract Clauses" attached to the Purchase Document (the "**JLTV Flowdowns**"). With respect to the FAR and DFARS clauses set forth in the JLTV Flowdowns, by entering into this Order and rendering performance under this Order, Seller represents and warrants to Buyer that Seller is fully apprised of and in compliance with the latest version of the FAR and DFARS clause in effect, both at the time of entry into this Order and at any time hereafter when Seller provides Goods or Services pursuant to this Order. Seller is responsible for ensuring at all times that it is in compliance with, and that all Goods and Services received are in compliance with, the latest version of the FAR and DFARS clauses then in effect at the time of performance regardless of whether such FAR and DFARS clauses are posted on Buyer's website or otherwise provided to Seller by Buyer. Buyer reserves the right to make updates and/or changes to the JLTV Flowdowns as necessary for Buyer to comply with its obligations to Customer under the Prime Contract. For avoidance of doubt, Seller shall additionally be bound to Buyer, and/or, as applicable the U.S. Government, in the same way that Buyer is bound to the U.S. Government under the Prime Contract, with respect to any such updates and/or changes. Buyer may communicate to Seller updates and/or changes to the JLTV Flowdowns by either, as applicable, and at Buyer's sole discretion: (1) posting the updated and/or changed JLTV Flowdowns on Buyer's corporate website, located at <https://www.amgeneral.com/suppliers/supplier-resources/>; or (2) sending Seller a copy of the JLTV Flowdowns, as changed and/or updated.

33.2 *Reference to "Disputes" Clause.* Except where otherwise specified in these Terms and Conditions, any reference to the "Disputes" clause in any applicable FAR or DFARS clause incorporated into this Order shall mean Section 27 of these Terms and Conditions.

33.3 *Flow Down of Clauses to Lower-Tier Subcontracts.* Seller shall insert the appropriate clauses set forth in the JLTV Flowdowns in lower tier subcontracts to the extent required for each lower tier subcontract, either verbatim, in substance, by incorporation-by-reference or otherwise as appropriate.

33.4 *Certification of Compliance with Mandated Clauses.* Seller, by accepting this Order, hereby certifies compliance with the mandated clauses set forth within FAR 52.212-3 (for Commercial Items) and/or FAR 52.204-8 (for Non-Commercial Items), including the “AM General Supplier Representations and Certifications” package, which can be found at Buyer’s corporate website located at <https://www.amgeneral.com/suppliers/supplier-resources/>. The completed “AM General Supplier Representations and Certifications” package is to be submitted with all offers.

34. **Miscellaneous.**

34.1 *No Assignment.* This Order may not be assigned by Seller without the prior written consent of Buyer. Any purported assignment in violation of the foregoing will be null and void and of no force or effect. Any sale, merger (by operation of law or otherwise), or transfer of assets, stock or securities of Seller will be deemed to be a purported assignment of this Order. Any payment to any assignee of this Order or of any claim under this Order, in consequence of such consent, shall be subject to set-off, recoupment, or other reduction for any claim that Buyer may have against Seller.

34.2 *Non-Solicitation; Gifts and Gratuities.* Buyer will not solicit and Seller shall not provide, any gifts or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value, or compensation), of any kind to any employee of Buyer including, without limitation, for the purpose of improperly obtaining or rewarding favorable treatment in connection with award of a purchase order or subcontract. Seller shall report in writing any solicitation or suspected solicitation of gifts or gratuities by Buyer’s employees to Buyer’s Authorized Representative.

34.3 *Relationship of Parties.* Seller and Buyer are independent contracting parties and nothing in this Order will make either party the agent, legal representative, partner, or joint venturer of the other for any purpose whatsoever, nor does this Order grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

34.4 *No Advertising and Clearance of Material Intended for Public Release.* Without the prior written consent of Buyer, Seller will not make any disclosure, news release or public announcement in any manner (including, without limitation, in any advertisements, publications or promotional materials) regarding, or refer to, whether by denial or confirmation of same, any of the following: (i) Buyer, (ii) this Order, (iii) any part of the subject matter of this Order, or (iv) the fact that Seller has contracted to furnish Buyer the Goods covered by this Order. Seller will not use any trademarks or trade names of Buyer in Seller’s advertising, publications or promotional materials without first obtaining the written consent of Buyer.

34.5 *Survival.* Sections 1-3, 5.5, 8-12, and 15-34 of these Terms and Conditions (together with any other Section which according to its terms should continue in effect) shall survive and remain valid after the termination, cancellation, or expiration of this Order.

34.6 *Third-Party Beneficiary.* Seller agrees that Buyer is an intended third-party beneficiary of any contracts between Seller and its suppliers and/or Subcontractors relating to the production or assembly of the Goods covered by this Order and Buyer has the right to enforce such contracts. This Order is intended for the benefit of Buyer and, where applicable, Buyer Group, each of which are express third-party beneficiaries under this Order and will have the right to enforce this Order against Seller. This Order is not intended to benefit any other third party. Seller agrees that it is not a third-party beneficiary of Buyer’s contracts with any Customer.

34.7 *No Waiver.* The failure of Buyer to require performance by Seller of any provision of this Order will in no way affect Buyer’s right to require such performance at any time thereafter, nor will the waiver of Buyer of any breach or default by Seller hereunder constitute a waiver of any succeeding breach

of the same provision or any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not. To be effective, any waiver by Buyer of any provision of this Order must be in writing signed by Buyer.

34.8 *Partial Invalidity.* If any provisions of these terms and conditions, or an Order hereunder, is or becomes void or unenforceable, the other provisions shall remain valid and enforceable.

34.9 *Governing Law and Exclusive Courts for Dispute Resolution.* This Order is to be construed according to the laws of the State of Indiana, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another law. Subject to Section 27.1, (i) any legal or equitable action or proceeding by Buyer against Seller may be brought by Buyer in any court having jurisdiction over Seller or, at Buyer's option, in any federal or state court located in St. Joseph County, Indiana, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures in such court; (ii) any legal or equitable action or proceeding by Seller against Buyer may be brought by Seller only in the federal or state courts located in St. Joseph County, Indiana; and (iii) Seller agrees to the sole and exclusive jurisdiction of the foregoing courts for any legal or equitable action or proceeding against Buyer and specifically waives any and all objections to venue in such courts.

34.10 *Certificates.* Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Section, the word "certificate" shall include any plan or course of action or recordkeeping function.

34.11 *Security and Training Requirements.* Seller agrees and understands that the Prime Contract requires Buyer to comply with various security and training requirements and to develop, document, and update a Program Protection Plan to mitigate security risks, including, by way of example and without limitation, countermeasures to mitigate the risk of foreign intelligence or foreign influence, destruction of Customer-furnished data upon completion of use, anti-terrorism training, filling out Common Access Card applications, complying with security access requirements to Customer installations and/or networks, etc. Insofar as said Prime Contract requirements are applicable to Seller or the Goods or Services delivered under this Order, Seller agrees to comply in good faith with any security and/or training requirements requested by Buyer, but only to the extent necessary for Buyer to comply with its obligations under the Prime Contract.

34.12 *Item Unique Identification (IUID) Marking Plan.* Seller agrees and understands that the Prime Contract requires Buyer to plan for and implement specific IUID markings in accordance with the most current version of MIL-STD-130 and 129 and DFARS clauses 252.211-7003, Army Directive 2016-2 and DFARS 211.274, 211.274-2, 211.274-4, and 211.274-5 (the IUID marking plan to be submitted under the Prime Contract, the "**IUID Marking Plan**"). Seller agrees to comply with any aspect of Buyer's IUID Marking Plan that is applicable to the Goods and Services, including, without limitation, with any requirements for IUID marking and sustaining such markings.

34.13 *Parts Management Program ("PMP").* Seller agrees and understands that the Prime Contract requires Buyer to establish, update, and execute a PMP in connection with the JLTV in accordance with MIL-STD-3018 (the program, the "**JLTV PMP**"). The MIL-STD-3018 has since been superseded by MIL-STD-11991B. Seller agrees to comply with any requirements of Buyer's JLTV PMP that are applicable to the Goods or Services.

34.14 *Obsolescence Management.* Obsolescence means the Goods, or any components, raw materials, technologies, or items contained in the Goods, as applicable, will be discontinued or otherwise

no longer be manufactured, distributed, or otherwise made available by Seller, its suppliers, or Subcontractors ("**Obsolescence**").

- (A) Seller acknowledges that the Prime Contract requires Buyer to manage any Obsolescence with its suppliers, including Seller. Accordingly, Seller agrees (i) to participate in any initiatives of Buyer or the Customer related to Obsolescence and (ii) work with Buyer to create, and Seller will manage, a comprehensive Obsolescence management program (the "**Obsolescence Program**") to avoid any distribution in the supply of the Goods (or the applicable portion of the Goods) during and after the Term. Seller agrees that the Obsolescence Program will include an identification, on a component part basis, of any potential Obsolescence and the lead time associated with any replacement component parts; The Obsolescence Program will be reviewed by the parties at least twice per calendar year and may be shared with the Customer.
- (B) Without limiting the foregoing, and for the period of ten (10) year following the end of the Term (the "**Obsolescence Period**"), Seller agrees to provide Buyer written notice promptly following Seller receiving knowledge there may be, and no less than twenty-four (24) months prior to the date of, any Obsolescence (an "**Obsolescence Notice**"). Following receipt of an Obsolescence Notice, Seller agrees that Buyer or its Customer will have twelve (12) months from the date of the Obsolescence Notice (including after the Obsolescence Period) to issue one or more orders for the Goods or the relevant portion of the Goods (a "**Last Time Buy**") and Seller agrees to supply the quantities of Goods in the Last Time Buy. Upon the Buyer's submission of a Last Time Buy order, the Seller agrees to supply the specified quantities at the price in effect under the most recent Purchase Order. If Seller fails to provide Buyer with an Obsolescence Notice or a Last Time Buy, Seller agrees it will be liable for (i) all costs, expenses, and damages incurred by Buyer and Buyer's Customers related to or arising from such Obsolescence, including any internal costs and expenses, and (ii) Buyer's necessary engineering and development activities required to validate and implement the replacement of the Goods.
- (C) To the extent there is Obsolescence and Seller or its suppliers will not be providing an equivalent replacement that will operate in the products that incorporate such Goods (without any design or engineering change to such products), Seller (i) shall furnish to Buyer, at no charge, all drawings, designs, bills of materials, blueprints, and specifications necessary to manufacture the Goods (or any components) and (ii) hereby grants to Buyer a perpetual, royalty-free, fully-paid, non-exclusive, worldwide, transferable right and license to make, have made, use, and sell such Goods (or any components).
- (D) Notwithstanding the provision of this Section 34.14, Seller represents and warrants there will be no Obsolescence during the Term, and the foregoing will not limit or modify Seller's obligations to supply the Goods in accordance with the terms of the Order. In addition, Seller shall ensure that its agreements with its Subcontractors and suppliers contain provisions that will enable Seller to meet all of its obligations under this Section 34.14.

34.15 *Construction; Interpretation.* The headings in this Order are inserted for convenience and identification purposes only, and are in no way intended to describe, interpret, define or limit the scope, extent, or intent of this Order. Any agreement, instrument, law or rule defined or referred to herein will be deemed to mean such agreement, instrument, law or rule as from time to time amended, modified or

supplemented, and includes, in the case of agreements and instruments, references to all attachments thereto and instruments incorporated therein. "Herein," "hereunder," or words of similar import refer to this Order as a whole. Each reference in these Terms and Conditions to "Section" is a reference to a section in these Terms and Conditions unless expressly stated otherwise. "Including" is not limiting and should be followed by the phrase "without limitation." "Or" is not necessarily exclusive. "Will" means mandatory and not permissive and is intended to have the same meaning as "shall."

**34.16 NO JURY TRIAL. BUYER AND SELLER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS ORDER OR ANY DOCUMENT PERTAINING TO THIS ORDER.**

[End of Terms and Conditions – Definitions Appendix on the next page]

## **Definitions Appendix**

Unless otherwise defined in the Terms and Conditions, the following capitalized terms have the following meanings in the attached Terms and Conditions:

**“Buyer’s Authorized Representative”** – Buyer’s Director or Vice President of Supply Chain Management.

**“Customer”** – A Government or Government prime contractor purchasing the Goods or related items under a Prime Contract or otherwise involved in setting Buyer’s requirements for the Goods.

**“Days”** – Calendar days.

**“DFARS”** – The Department of Defense FAR Supplement.

**“FAR”** – The Federal Acquisition Regulation.

**“Goods”** – Any articles, products, materials, supplies, items, or components identified in this Order (each a **“Good”** and collectively **“Goods”**). The term “Goods” includes, without limitation, raw materials, components, intermediate assemblies, tooling, molds, equipment, end products, and all work or effort performed by Seller that is necessary or incidental to the production, sale or delivery of the Goods.

**“Government”** – The government of the United States and its federal agencies, or the government of a foreign country, or agency thereof, in a direct sale.

**“Intellectual Property”** – all (a) inventions (whether or not patented), patents, patent applications and rights to file or patents; (b) copyrights, mask work rights, and all other rights associated with works of authorship, including applications and registration therefore and rights to file for registrations thereof; (c) Proprietary Information, trade secrets, trade dress, know-how, technical data, and other intangible rights; in each instance throughout the world, but specifically excluding trademarks, service marks, and trade names.

**“Prime Contract”** – Government contract(s) under which an Order may be issued.

**“Proprietary Information”** – all information owned, developed or possessed by a party or its affiliates, subsidiaries, employees, agents, representatives or subcontractors that relates to the past, present, anticipated, planned, or reasonably foreseeable business activities of the party, including, but not limited to, all of the party’s trade secrets, know-how, inventions, blueprints, technical data, engineering data, research data, technologies, designs, specifications, ideas, concepts, plans, formulas, compositions, patterns, devices, software, drawings, sketches, photographs, processes, procedures, methods, applications, costs, prices, discounts, margins, financial information, economic information, business development plans, information about current and potential customers (including identity, needs, and preferences), computer software and programs (including object code and source code), and any compilation or combination of the foregoing. Notwithstanding the foregoing, Proprietary Information does not include information that a party can establish, by written records: (a) is or becomes publicly available other than by a breach of this Agreement, or violation of applicable law, by the party; or (b) was lawfully obtained by the party free from any restrictions on disclosure and use imposed by a third party and independent of the parties’ relationship and business dealings of any kind.



Specific information shall not be deemed to be within these exceptions merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed to be within such exceptions because the individual features are within such exceptions.

**“Schedule Notice”** – Schedules issued periodically by Buyer under an Order (whether by electronic mail, electronic delivery interchange, or otherwise) specifying the quantities needed, delivery locations, and shipment dates for Goods. For the avoidance of doubt, if Schedule Notices are issued under this Order those Schedule Notices are not individual contracts that may be accepted or rejected and acceptance of the Order is Seller’s agreement to accept all Schedule Notices issued under this Order.

**“Services”** – Any work or effort to be performed by the Seller that is identified in this Order or that is necessary to accomplish such work or effort.