

**GLOBAL TERMS AND CONDITIONS OF PURCHASE
TABLE OF CONTENTS:**

1. Offer; Acceptance; Terms; Buyer and Seller Defined	2. Time Period of Order	3. Quantities; Delivery; Material Releases
4. Shipping Terms; Invoicing and Pricing; Title and Risk of Loss	5. Packaging; Marking; Shipping; Sustainability; Genuine Products; Custom Manufacturing; Security by Design	6. Customs; Related Matters
7. Inspection; Non-Conforming Goods/Services; Audit	8. Payment	9. Changes
10. Warranties	11. Quality and Development; Required Programs	12. No Solicitation
13. Minority, Women Business Enterprise MWBE Goals (United States only)	14. Service Literature	15. Remedies
16. Compliance with Laws, Regulations and Statutes; Ethics	17. Customer Requirements	18. Indemnification
19. Insurance	20. Sustainability	21. Termination
22. Force Majeure	23. Technical Information Disclosed to Buyer	24. Proprietary Rights; Indemnification
25. Buyer's Property	26. Seller's Property	27. Tooling; Capital Equipment
28. Set-Off; Recoupment	29. Confidentiality	30. No Publicity
31. Relationship of Parties	32. Conflict of Interest	33. Non-Assignment
34. Divestiture, Acquisitions	35. Dispute Resolution	36. Language; Severability; No Implied Waiver
37. Survival	38. Entire Agreement	39. Counterparts; Electronic Signatures

GLOBAL TERMS AND CONDITIONS OF PURCHASE A, 2020

These **GLOBAL TERMS AND CONDITIONS OF PURCHASE** apply when referenced by Buyer's ordering document(s) e.g., purchase order, statement of work, electronically transmitted ("EDI") order, or other documentation (individually and collectively, an "Order") and consist of the following which are available for download at www.hartandcooley.llc and are incorporated herein by this reference (1) these GLOBAL TERMS AND CONDITIONS OF PURCHASE; (2) all Hart & Cooley LLC policies and guidelines (together, "Buyer Policies"); (3) any Amendments; and (4) if subcontract labor services are to be provided, the Subcontract Labor Terms. The foregoing together constitute the "Terms" or the "Agreement". Hart & Cooley LLC may change these Terms or Buyer Policies at any time in its sole discretion. Such changes will be effective upon posting of such updates on www.hartandcooleyllc.com. Seller is responsible for periodically visiting this site to review any changes to the Terms. Seller warrants it has fully reviewed, understands, and can fulfill its obligations under the Terms. By furnishing Product to Buyer, Seller acknowledges and agrees to be bound by these Terms and any future changes to them and that Seller is responsible to ensure that all of Seller's contractors, subcontractors, vendors of any tier furnishing the Products (individually and collectively, "Seller Affiliate") purchased under this Agreement comply with these Terms. Seller should print a current copy of these for its future reference using the print feature in its browser.

1. **Offer; Acceptance; Terms; Buyer and Seller Defined;**

1.1 **Offer; Acceptance; Terms; Buyer and Seller Defined.** Each Buyer Order is an offer to Seller for the purchase of items enumerated in the Order such as supplies, goods, services, hardware, firmware, or software as well as any components or parts which are integral to or required for the operation of such items ordered or the provision of the services (individually and collectively, the "Product(s)"). Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time. Any reference to Seller's quotation, bid, or proposal does not imply acceptance of any term, condition, or instruction contained in that document. The Order supersedes all prior agreements, orders, quotations, proposals and other communications regarding Products covered by the Order. Notwithstanding, if the parties have executed a prior agreement (e.g., an Award Letter, Master Subcontractor Agreement, Master Services Agreement, Supply Agreement, Statement of Work or Non-Disclosure Agreement) such prior agreement shall apply unless otherwise agreed in writing with specific reference to the provisions that do not apply. Seller accepts these Terms and forms a contract by: (a) commencing any work under the Order; (b) accepting the Order in writing; (c) failing to provide written rejection of the Order within 48 hours of receipt; or (d) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. All Orders are limited to and expressly conditioned upon Seller's acceptance of these Terms. "Buyer" is "Hart & Cooley LLC, Inc. unless otherwise identified in the Order. Buyer's Affiliates may also purchase Products from Seller for their own account on the same terms and conditions as are applicable to Buyer under this Agreement. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party or that is a successor (including, without limitation, by change of name, dissolution, merger, consolidation, reorganization, sale, or other disposition) to any such entity or its business and assets; in addition, any entity that has Hart & Cooley LLC as its ultimate parent company, and any joint venture in which Buyer or a Buyer Affiliate has any ownership interest, shall be an Affiliate of Buyer. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such other entity, whether through the ownership of voting securities, by contract or otherwise. For avoidance of doubt, Hart & Cooley LLC shall not be included in the definition of Affiliate for purposes of this Agreement. "Seller" is the person or entity furnishing the Products as identified in the associated Order whether directly, or indirectly through an affiliate or subcontractor. Seller understands, acknowledges and agrees that compliance with these Terms is also required by all of Seller's suppliers and subcontractors of any tier providing Products or Services under this Agreement. "Buyer and Seller may each be referred to herein individually as a "party" or collectively as the "parties." No course of prior dealing or usage of the trade may modify, supplement, or explain any terms used in the Order. All contract documents related to the Order are interpreted together as one agreement; provided, however, that in the event of any conflict among the provisions of one or more of such contract documents as are validly in effect at the time of such conflict, the following order of precedence applies:

(a) any written amendment executed by the parties, (b) these Terms, (c) the face of the Order, (d) any contract for labor services; then (e) any supplemental terms included or incorporated by reference. No change to or modification of the Order or these Terms will be binding upon Buyer unless by written amendment, specifically identifying the provisions of the Order that it amends, and signed by an authorized procurement representative of Buyer. If Seller becomes aware of any ambiguities, issues, or discrepancies between the Order and any specification, design, or other technical requirement applicable to the Order, Seller will immediately submit the matter to Buyer for resolution. Buyer may, at its option, purchase Products for its internal use or for resale or distribution to third parties as standalone Product or in combination with other goods and services.

2. **Time Period of Order.** Subject to Buyer's termination rights, the agreement formed by the Order is binding on the parties for one year from the date the Order is transmitted to Seller or, if an expiration date is stated in the Order, until that date. Subject to Buyer's termination rights, the Order will automatically renew and be extended on the same terms for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Order not be renewed.

3. **Quantities; Delivery; Material Releases.** Quantities listed in an Order as "estimated" are Buyer's best estimate of the quantities of Products it might

purchase from Seller for the term specified in the Order. If no quantity is stated or if the quantity is stated as one: (a) Seller is obligated to supply Buyer's stated requirements for the Products in quantities as specified by Buyer in Material Releases; (b) unless expressly stated on the face of the Order, Buyer is not required to purchase Products exclusively from Seller; and (c) Buyer is required to purchase no less than one piece or unit of each of the Products that are goods and no more than those quantities identified as firm orders in material authorization releases, manifests, broadcasts, or similar releases ("Material Releases") transmitted by Buyer to Seller or, for services, to the extent expressly stated in a Statement of Work signed by Buyer. Buyer may require Seller to participate in Buyer's electronic inventory management or EDI program, at Seller's expense, for notification of Material Releases, shipping confirmation and other information. Buyer may purchase additional quantities of the listed Products using Material Releases Time and quantities are of the essence under the Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as stated in the Order and related Material Releases. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Products. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries.

4. Shipping Terms; Invoicing and Pricing; Title and Risk of Loss. Products shall be delivered to the address or location specified in the Order (the "Hart & Cooley LLC Location") during Buyer's normal business hours. Incoterms 2020 will apply to all shipments except those entirely within the USA. Shipments originating in and shipped entirely within the USA which shall be shipped FCA (loaded) at Seller's final production location, using Buyer's transportation. Product prices includes storage, handling, packaging and all other expenses and charges, duties and taxes, but excludes any governmentally imposed value added tax (VAT), which must be shown separately on Seller's invoice for each shipment. Buyer is not responsible for any business activity taxes, payroll taxes or taxes on Seller's income or assets. To the extent Products are identified as industrial processing and exempt from sales taxes, the tax identification number and/or other exemption information shall be provided by Buyer. Seller shall notify Buyer in writing when the Products are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill or bill of lading (as applicable) and any other documents necessary to release the Products to Buyer within two business days after Seller delivers the Products to the transportation carrier. The Order number, amendment and/or release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, and other information required by Buyer must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order. Buyer will pay invoices which comply with all of the terms of the Order (a "Proper Invoice"). If an expedited shipping method is required to meet agreed delivery dates, Seller shall pay all premium freight costs over normal freight costs and will reimburse Buyer for any costs incurred by Buyer, including amounts charged by Buyer's customer(s), arising from Seller's failure to comply with shipping or delivery requirements. Title passes to Buyer upon payment for or delivery of the Products to the Hart & Cooley LLC Location, whichever occurs first. Seller bears all risk of loss or damage to the Products until delivery of the Products to the Hart & Cooley LLC Location.

5. Packaging; Marking; Shipping; Sustainability; Genuine Products; Custom Manufacturing; Security by Design.

5.1 Packaging; Marking; Shipping. Seller will: (a) properly pack, mark, and ship Products according to the requirements of Buyer, the involved carriers and the country of destination, if there are no instructions, in a manner sufficient to ensure that the Products are delivered in undamaged condition; (b) route the shipments according to Buyer's instructions; (c) label or tag each package according to Buyer's instructions; (d) provide papers with each shipment showing the Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (e) promptly forward the original bill of lading or other shipment receipt for each shipment according to Buyer's instructions and carrier requirements. Seller will provide all special handling instructions that are needed to advise carriers, Buyer, and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of the Products, containers, and packing. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

5.2 Disclosure; Special Warnings or Instructions. Seller will provide Buyer with the following Product information, in a form that would satisfy the requirements of the Sustainability Directives, as defined below, or as otherwise requested by Buyer: (i) a list of all elements, minerals, compounds, and other ingredients that comprise the Products ("Required Minerals") and are the subject of, or addressed by, the Sustainability Directives, defined below, or as otherwise requested by Buyer; (ii) the manufacturing location of Products; (iii) the amount and, as applicable, the percentage of each Required Mineral in Products, and (iv) in addition and pursuant to Section 9, information concerning any changes in or additions to Required Minerals in these Products. Seller will provide the aforementioned information to Buyer as expeditiously as possible prior to the shipment of these Products by Seller, but in any event, in sufficient time to afford Buyer reasonable time to a) determine Buyer's disclosure requirements and b) reject any Products, cancel any Order, or pursue all other remedies, including, but not limited to, legal and equitable remedies, in the event Seller either fails to meet applicable Sustainability Directives or Buyer's disclosure requirements as provided in Sections 5.2 and 5.3. Additionally, before and at the time Products are shipped, Seller will give Buyer sufficient warning in writing (including all required labels on all Products, containers, and packing, including without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Products. Seller agrees to comply with (1) all of Buyer's published policies on sustainability as they exist from time to time; and (2) all current, and subsequently enacted laws and regulations applicable to Buyer, Buyer's customers, Seller, or any combination of (1) and (2), pertaining to content of Products and warning labels ("Sustainability Directives"), including without limitation the U.S. Toxic Substances Control Act and European Union Directive 2012/19/EU and 2011/65/EU regarding restrictions of certain hazardous substances, Dodd-Frank Act regarding conflict minerals and European Union Regulation 1907/2006/EC regarding Registration, Evaluation, Authorization and Restriction of Chemicals. Link to Registration, Evaluation, and Authorization of Chemicals (REACH) Regulation: http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm Link to RoHS Directive: http://ec.europa.eu/environment/waste/weee/index_en.htm. Seller will reimburse Buyer for any expenses incurred as a result of improper or incomplete disclosure, packing, marking, routing, or shipping of Products.

5.3. Sustainability. Seller will also (1) completely, accurately, and timely, respond to Buyer's surveys and requests related to the Sustainability Directives

and Required Minerals, and (2) fully cooperate with Buyer in Buyer's efforts to collect information throughout Seller's supply chain on the origin (including determination of a recycled or scrapped source, mine location, smelter, and initial entry into the supply chain) and use of Required Minerals in the Products.

5.4. **Genuine Products.** Seller represents and warrants that only new and Authentic materials are used in Products sold to Buyer and that the Products contain no Counterfeit Parts.

"Authentic" means (1) genuine, (2) from the legitimate source claimed or implied by the marking and design of the product offered, and (3) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

"Counterfeit Parts" means a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (a) parts that have been marked/remarked to disguise them or falsely represent the identity of the manufacturer, (b) defective parts and/or surplus material scrapped by the original manufacturer, and (c) previously used parts pulled or reclaimed and provided as "new".

"Independent Distributor" means a person, business, or firm that is neither authorized nor franchised by Manufacturer to sell or distribute the Manufacturer's products but which purports to sell, broker, and/or distribute such Manufacturer's products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by Buyer.

No other material, part, or component other than a new and Authentic part is to be used unless approved in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase Authentic parts/components directly from the original equipment manufacturers ("Manufacturer") or through the Manufacturer's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, documentation that authenticates traceability of the components to the applicable Manufacturer. Requests to use parts/components sourced from Independent Distributors must include (i) compelling support for the request, and (ii) actions taken to ensure the parts/components procured are Authentic parts. Buyer's approval of Seller's request to use an Independent Distributor does not relieve Seller's responsibility to comply with the Terms. Seller shall maintain a system (policy, procedure, or other documented approach) that documents requests and approvals to use parts/components outside of Manufacturer's authorized distribution chain. Seller shall provide copies of such documentation upon Buyer's request.

5.5 **Electronic components/devices requirement.** Certification of Origin of Product: Acceptance of these Terms constitutes confirmation by the Seller that it is either the Original Equipment Manufacturer ("OEM"), Original Component Manufacturer ("OCM"), or a franchised or authorized distributor of the OEM/OCM for the Product. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components is accurate and available upon request. If the Seller is not the OEM/OCM or a franchised or authorized distributor, the Seller confirms by acceptance of this Agreement that each product supplied to Buyer has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM.

5.6. **Private Labeled Product.** Per the Order, Products may be private labeled finished goods (hardware or software) that ship directly to Buyer's Customers or pass through a staging center without entering Buyer's factory or other internal quality systems. Private Labeled Products may be designed and manufactured to specifications different from other Products. If Buyer has requested "Private Labeled Product", the Buyer shall provide the Seller with the necessary materials and licenses needed to badge the Product with the Buyer's markings. Upon Buyer's request, Seller shall label the Products and Product Documentation with Buyer's trademarks and trade names ("Buyer Trademarks") at no additional charge to Buyer ("Private Labeling"). All use of Buyer Trademarks by Seller in connection with any Private Labeling hereunder shall be subject to a limited, personal, non-exclusive, non-transferable, non-assignable license or sublicense (in each case, without right of sublicense) granted by Buyer to Seller to use the Buyer Trademarks during the Term solely and exclusively for Seller's performance of Private Labeling as described herein and for such other purposes as Buyer may expressly authorize in advance in writing (the "Limited Trademark License"). All Private Labeling shall be submitted to Buyer for review in advance and specific written consent prior to use of Buyer Trademarks. For every place where Buyer Trademark appears, a prominent legend shall be displayed stating that Buyer Trademarks are registered trademarks of Buyer or Buyer's Affiliates. The registered symbol "®" appearing each time as part of the Buyer Trademark will constitute a sufficient legend. Seller acknowledges that Buyer is, and shall at all times remain, the sole and exclusive owner of the Buyer Trademarks and all goodwill contained therein, and that neither the Limited Trademark License, nor any Private Labeling, shall convey any right, title, or interest in or to any of the Buyer Trademarks or such goodwill to Seller. All goodwill arising from Seller's use of the Buyer Trademarks shall inure solely to the benefit of Buyer, and Seller shall not assert any claim to any right, title, or interest in or to the Buyer Trademarks or the goodwill associated therewith, nor shall Seller at any time take any action that could be detrimental to the goodwill associated with any Buyer Trademark, either during the Term or after the termination or expiration of this Agreement. Buyer may revoke the Limited Trademark License as to any Product or Product Documentation not then in production upon written notice to Seller at any time with or without cause. Upon any such revocation, or any termination or expiration of this Agreement for any reason whatsoever, including any termination resulting from the material breach of either party hereto, the Limited Trademark License shall automatically terminate, and Seller shall immediately cease all further use of the Buyer Trademarks.

5.7 **Hardware; Software/Firmware; Warranty; Support; Availability; Escrow; Security by Design; Threat and Vulnerability Notice and Remediation.**

5.7.1 **Hardware.** As used herein, "Hardware" means tangible items which may include both hardware and compiled and embedded versions of software needed for the Product to function (such software being referred to as "Firmware").

5.7.2 **Software.** If the Products include or incorporate software developed, owned or licensed by Seller ("Software"), Seller hereby authorizes Buyer to sell, resell and/or license the Software to Buyer's customers ("Buyer's Customers"). Use of the Software by Buyer's Customers shall be subject to the condition that such Buyer's Customers enter into the Seller's End User License Agreement, if applicable, a copy of which is attached hereto (the "EULA") or, if no such EULA is provided, shall be subject to Buyer's standard end user license agreement terms.

5.7.3 **Software Warranty.** Seller warrants to Buyer and to Buyer's Customers that Products comprised of Software shall perform in conformance with the specifications and other documentation provided by Seller describing the functionality of the Software ("Software Specifications") for a period of sixty (60) months after Product installation (the "Software Warranty" and "Software Warranty Period", respectively). If there is a conflict between the terms of the EULA and these Terms, these Terms shall prevail. If the Software has a defect or fails to conform to the Software Warranty during the Software Warranty Period, at Buyer's option, Seller shall promptly repair or replace the Software. If Seller fails or is unable to promptly repair or replace the Software, Buyer or Buyer's Customer, as applicable, shall be entitled to a full refund of the license and other fees paid with respect to the Software.

5.7.4 **Software Support Services.** If Seller provides Software as part of the Products, then both during and following the expiration of the Software Warranty Period, Seller shall provide the following support services for Buyer and Buyer's Customers with respect to the Software. The support services shall be provided at no additional charge, unless otherwise agreed in writing. Seller agrees to: (a) correct any failure of the Software to perform in accordance with the Software Specifications, including without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to maintain the Software so that it operates properly and in accordance with the Software Specifications; (b) provide telephone support for the Software Monday through Friday, 8:00 AM to 9:00 PM EST; (c) provide online access to technical support bulletins and other user support information and forums; (d) respond to Priority One Issues (as defined below) within thirty (30) minutes of Buyer's service request and initiate work on such issues within two (2) hours thereafter, regardless of time of day or day of week. "Priority One Issues" involve substantial failure of the Software, or those which are critical to the User's operations. Seller shall initiate work on all other support issues within four (4) hours from receipt of a service request. In the event Seller fails to achieve the foregoing response times, Seller shall issue to the User a credit in the amount of \$250.00 for each (i) additional thirty (30) minutes, in the case of call response time; and (ii) additional hour, in the case of repair initiation time; and (e) provide all updates, modification, bug fixes and releases that Seller provides to its customers generally at no additional charge, or if applicable, in exchange for the support fees to be paid to Seller as mutually agreed to by the Customers.

5.7.5 **Availability.** The following shall apply if the Seller provides Software and/or Software services via the Internet or other wide area network connectivity ("Hosted Software"). Seller will make the Hosted Software available, as measured over the course of each calendar month, 99.5% of the time, excluding unavailability as a result of the Exceptions described below (the "Availability Percentage"). "Available" means the Hosted Software is available for access and use by Buyer or Buyer's Customer, as applicable (the "User") over the Internet and operating in material accordance with the Software Specifications. In the event the Hosted Software is not available 99.5% of the time, but is available at least 98% of the time, the User shall be entitled to a credit in the amount of fifteen percent (15%) of the monthly fee for the Hosted Software due in the month the failure occurred. If the Hosted Software is not available at least 98% of the time, the User shall be entitled to a credit in the amount of thirty percent (30%) of the monthly fee for the Hosted Software due in the month the failure occurred. In the event the Hosted Software is not available at least 70% of the time, the User shall be entitled to a credit in the amount of one hundred percent (100%) of the monthly fee for the Hosted Software due in the month the failure occurred. For purposes of calculating the Availability Percentage, the following are "Exceptions" to the service level requirement, and the Hosted Software shall not be considered unavailable, even if not actually accessible to a User, if any such inaccessibility is due to: (i) the User's acts or omissions; (ii) the User's Internet connectivity; (iii) Internet traffic problems not under Seller's reasonable control; (iv) the User's failure to meet minimum hardware and/or software requirements, if any; (v) the User's hardware, software, or other equipment; (vi) any hardware, software, service, or other equipment used by a User to access the Hosted Software or (vii) regularly scheduled maintenance for which Seller provides at least seven (7) days advance written notice.

5.7.6 **Open Source Software.** Except as expressly set forth in the Order, no Open Source Software is incorporated (either directly by Seller, or indirectly, by the incorporation of third-party software that itself incorporates Open Source Software) into or required for the intended use or operation of any of the Products. Seller is and shall continue to be in full compliance with the terms of all licenses relating to the Open Source Software incorporated into or required for the operation of any of the Products ("Open Source Licenses"). None of the Open Source Licenses obligate or will obligate Buyer or Buyer's Customers to make any source or object code available to third parties or to include any license agreement, copyright notice or other attribution when distributing any Product, except for any such items that Seller has included in or with such Products. None of the Open Source Licenses obligate or will obligate Buyer to (a) distribute or disclose any other software combined, distributed or otherwise made commercially available with such Open Source Software in source code form, or (b) license or otherwise make available such Open Source Software and/or other software combined, distributed or otherwise made commercially available with such Open Source Software or any associated Intellectual Property on a royalty free basis. As used herein, the term "Open Source Software" means any software, program, module, code, library, database, driver or similar component (or portion thereof) the use of which requires any contractual obligations by the user such as, without limitation, that software that is subject to, distributed, transmitted, licensed or otherwise made available under any of the following licenses: GNU General Public License, GNU Library or "Lesser" Public License, Berkeley Software Design (BSD) license, MIT license, Apache Software License, or any substantially similar license, or any license that has been approved by the Open Source Initiative, Free Software Foundation or similar group.

5.7.7 **Software Claims.** In addition to Seller's indemnification obligations, for claims involving software, including but not limited to Open Source Software, Seller shall provide Buyer with all necessary assistance in addressing such claim. Such assistance may include promptly providing Buyer (or a Buyer's designee) with access to the source code for such software and/or related information for the purpose of assessing and remediating such claim.

5.7.8 **Escrow.** If Buyer requests information needed for the manufacture of the Products, including but not limited to source code for any Firmware, Software, and/or information related to the manufacture of spare parts and any and all other actions necessary to support such Products be placed into escrow, then Seller agrees to deposit the foregoing into escrow upon terms mutually agreeable to the parties.

5.7.9 **Security by Design.** Seller represents and warrants a commercially reasonable program consistent with industry standards to ensure that all such Software and Firmware is free from material vulnerabilities (whether in proprietary software code or third party software code (including Open Source Software)) will be established and maintained for any Software and Firmware, including when used in, or incorporated the Products, or Software used in the installation, maintenance, configuration, or support of the Products ("Security Protocol"). The Security Protocol will include a testing regime designed to model

threats and detect security and design bugs, defects, and flaws through: (a) static code analysis; (b) penetration testing (ethical hacking); (c) open source software scanning; and (d) any other testing and verification necessary to ensure adherence to industry standard "Security by Design" principles (collectively, a "Security by Design Program"). Seller further represents and warrants that it will reasonably assist with and participate in any similar Security by Design Program established by Buyer, including providing Buyer documentation regarding Seller's compliance with these requirements reasonably requested by Buyer. Seller shall implement any improvements to Seller's Security by Design Program as reasonably requested by Buyer to address existing or future threats, vulnerabilities, or design flaws.

5.7.10 Threat and Vulnerability Notice and Remediation. During the Product life (*i.e.*, until the formal end-of-life of any Product) in commercial use, Seller shall monitor and address all Software and Firmware material threats and vulnerabilities by: (a) issuing necessary patches or updates; (b) providing prompt notice to Buyer of said threats and vulnerabilities, prior to any public disclosure, except where such notice would be impossible or impracticable; and (c) developing fixes, workarounds, and/or compensating security controls and documentation ("Compensating Controls") to address any unmitigated material threats and vulnerabilities while Seller undertakes the process of issuing patches or updates, and providing Buyer notice of said Compensating Controls as soon as reasonably practicable.

5.7.11 Mandatory Flow Down. Seller shall flow the requirements of this section to its subcontractors and suppliers at any tier for the performance of this Agreement.

5.8 Seller's failure to fully and timely comply with this Section 5, shall provide Buyer with the following remedies which shall be in addition to all other remedies available to Buyer (a) Buyer may, in its sole and absolute discretion, revoke the acceptance, reject, abandon, return or hold such Products at Seller's expense and risk ("Refused Product"), and (b) Buyer may cancel in whole or in part, i) any Order, ii) award letter, iii) any other agreement, iv) any other obligation Buyer may have to purchase any or all Products from Seller, or v) any combination of (i), (ii), (iii), and (iv) (collectively "Canceled Product"), and (c) at Seller's sole cost (including the cost for expediting, quality validation, losses related to adverse effects on Buyer's business as Seller's failure to comply) Buyer may source replacements for any Refused Product, Canceled Product, or any combination thereof.

6. Customs; Related Matters. Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Seller will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's customers) to receive these benefits or credits. Seller agrees to fulfill any customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Products are Seller's responsibility unless otherwise stated in the Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly notify Buyer in writing of any material or components used by Seller in filling the Order that Seller purchases in a country other than the country in which the Products are delivered. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Products' purchase price. If Products are manufactured in a country other than the country in which Products are delivered, Seller will mark Products "Made in [country of origin]." Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Products into the country in which Products are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Products is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Products are exported.

6.1. Importer Security Filing. Seller acknowledges its obligation with respect to any goods intended for shipment to the United States to provide all required information in support of Buyer's obligation under U.S. law to timely submit (*i.e.*, more than 24 hours prior to ocean lading) its Importer Security Filing ("ISF") with U.S. Customs & Border Protection ("CBP"). That information shall include but not be limited to: (1) Seller name and address; (2) Manufacturer or other supplier name and address (if different from Seller); (3) Country of origin; and (4) Commodity HTSUS number (if provided by Buyer for inclusion by Seller in its sales/shipping documentation). Seller agrees to work with the designated local freight forwarder to provide the requested data and coordinate the export of goods by the required timeframes. Any fines, penalties, liquidated damages or other costs resulting from a delay in the release of merchandise or inability to load merchandise for export shipment to the United States resulting from Seller's failure to provide this requested information shall be at the sole expense of Seller and Seller hereby agrees to reimburse Buyer for any amounts it may incur as a result of said failure.

7. Inspection; Non-Conforming Goods/Services; Audit. Buyer may enter Seller's facility to inspect the facility, Products, materials, and any of Buyer's property related to the Order. Buyer's inspection of Products, regardless of when occurred, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Order releases Seller from the obligation of testing, inspection and quality control. If defective Products are shipped to and rejected by Buyer, the quantities under the Order will be reduced unless Buyer otherwise notifies Seller. Seller will not replace reduced quantities without a new Material Release from Buyer. In addition to other remedies available to Buyer: (i) Seller agrees to accept return, at Seller's risk and expense at full invoice price, plus transportation charges, and to replace defective Products as Buyer deems necessary; (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Products that fail to meet the requirements of the Order; and/or (iii) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Products. Seller will document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Products is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or its director or indirect customers may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section.

8. **Payment.** Unless different payment terms are stated in the Order, the applicable Country Amendment, or required by law, payment on Proper Invoices will be processed 90 days from the invoice posting date on the next scheduled payment run. For tooling and/or capital equipment must be issued only as approved, as provided in the Order. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances, or claims on Products provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars.

9. **Changes.** Buyer reserves the right to direct changes, or to cause Seller to make changes, to drawings, specifications, samples or descriptions of Products. Buyer also reserves the right to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also direct the supply of raw materials from itself or from third parties. Seller will promptly make any such requested change. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Buyer of its request in writing within ten days after receiving notice of the change. Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. Seller will not make any change in the Products' design, specifications, location of manufacturing, processing, packing, marking, shipping, price or date or place of delivery except at Buyer's written instruction or with Buyer's written approval.

10. **Warranties.** SELLER EXPRESSLY WARRANTS AND GUARANTEES TO BUYER, TO BUYER'S SUCCESSORS, ASSIGNS AND CUSTOMERS, THAT ALL PRODUCTS DELIVERED TO BUYER WILL: (A) CONFORM TO THE SPECIFICATIONS, STANDARDS, DRAWINGS, SAMPLES, DESCRIPTIONS AND REVISIONS AS FURNISHED TO OR BY BUYER; (B) CONFORM TO ALL APPLICABLE LAWS, ORDERS, REGULATIONS AND STANDARDS IN COUNTRIES WHERE PRODUCTS OR OTHER PRODUCTS INCORPORATING PRODUCTS ARE TO BE SOLD; (C) BE MERCHANTABLE AND FREE OF DEFECTS IN DESIGN (TO THE EXTENT DESIGNED BY SELLER), MATERIALS AND WORKMANSHIP; AND (D) BE SELECTED, DESIGNED (TO THE EXTENT DESIGNED BY SELLER), MANUFACTURED AND ASSEMBLED BY SELLER BASED UPON BUYER'S STATED USE AND BE FIT AND SUFFICIENT FOR THE PURPOSES INTENDED BY BUYER. THE WARRANTY PERIOD IS THE LONGEST OF: THREE YEARS FROM THE DATE BUYER ACCEPTS THE PRODUCTS; THE WARRANTY PERIOD PROVIDED BY APPLICABLE LAW; OR THE WARRANTY PERIOD OFFERED BY BUYER OR BUYER'S CUSTOMER TO END-USERS OF THE PRODUCTS. FOR ALL SERVICES, SELLER FURTHER WARRANTS THAT ITS WORK WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER, BY PROPERLY LICENSED AND TRAINED PERSONNEL, CONSISTENT WITH ALL STANDARDS AND SPECIFICATIONS AGREED ON WITH BUYER, AND OTHERWISE CONSISTENT WITH INDUSTRY STANDARDS. SELLER WILL IMMEDIATELY NOTIFY BUYER IN WRITING WHEN IT BECOMES AWARE OF ANY INGREDIENT, COMPONENT, DESIGN OR DEFECT IN PRODUCTS THAT IS OR MAY BECOME HARMFUL TO PERSONS OR PROPERTY. BUYER'S APPROVAL OF ANY DESIGN, DRAWING, MATERIAL, PROCESS OR SPECIFICATIONS WILL NOT RELIEVE SELLER OF THESE WARRANTIES.

11. **Quality and Development; Required Programs.** Seller will conform to the quality control standards and inspection system, as well as related standards and systems (including without limitation the ISO 9000 series of standards), that are established or directed by Buyer. Seller will also participate in supplier quality and development programs of Buyer as directed by Buyer. As requested by Buyer at any time, unless otherwise specified in an applicable Country Amendment, Seller will participate in and comply with the Buyer's programs and standards made available to Seller including: (a) supplier performance evaluations, (b) minority/women owned business expectations. If there is any discrepancy between any part of the above programs or standards and an express provision of these Terms, these Terms will control.

12. **No Solicitation.** Except to the extent prohibited by law, Seller shall not, without the express written consent of an officer of Buyer, recruit or solicit any Buyer employee during the term of this Agreement and for a period of one (1) year thereafter. In the event of Seller's breach of this provision, Buyer may proceed against Seller by way of injunction or otherwise to restrain or prevent the continuance of such breach. Moreover, in respect of each such breach (each occurrence or repetition thereof constituting a separate breach event), Seller shall pay on demand to Buyer an amount equal to such employee's prior year's compensation as a genuine pre-estimate of damages and not as a penalty, the whole without prejudice to Buyer's right to claim, institute legal proceedings for and collect such greater amount of damages as may be sustained by Buyer. It is understood and agreed between the parties that this provision is reasonable and necessary for the protection of Buyer's business and this is an essential to the formation of this Agreement.

13. **Minority, Women Business Enterprise MWBE Goals (United States only).** Seller recognizes the benefits of purchasing goods and services from minority and women owned business enterprises certified as MBE Minority Business Enterprise by the National Minority Supplier Development Council or WBENC Women Business Enterprise Council and shall establish goals for utilization and drive coordination of Seller's supplier Diversity Program with Buyer's efforts.

13.1 **Utilization of Minority/Women-Owned Business Enterprises ("MWBE").** An "MWBE" is a for-profit enterprise, regardless of size, physically located in the United States or its trust territories, which is owned, operated and controlled by minority group members (United States citizens who are African-American, Hispanic-American, Native American, Asian-Pacific American and Asian-Indian American). Ownership by minority individuals means that the business is at least 51% (or such lesser percentage as may be established by the National Minority Supplier Development Council ("NMSDC") or the Women's Business Enterprise National Council ("WBENC") as sufficient to be certified as and/or deemed to be a minority-owned business) owned by such individuals or, in the case of a publicly-owned business, at least 51% (or such lesser percentage as may be established by the NMSDC or WBENC as sufficient to be certified as and/or deemed to be a minority-owned business) of the stock is owned by one or more such individuals; and further, that the management and daily operations are controlled by those minority group members.

13.2 **Utilization of Minority/Women-Owned Business Enterprises.** Seller agrees to provide MWBE's the maximum practicable opportunity to participate

in the subcontracts and orders it may award in connection with this Agreement. The target goal for utilization of MWBE's under this Agreement is set at fifteen percent (15%); the material failure, if any, to meet this target goal shall constitute a default by Seller of its obligations under this Agreement. Seller will require a minority/women-owned certification by one of the affiliated local Councils of the NMSDC or WBENC from any firm claiming to be an MWBE. Seller will report on a quarterly basis the MWBE participation in this Agreement, including without limitation an identification of each MWBE utilized, the goods and/or services procured from each MWBE and the total amount paid to each MWBE in connection therewith.

13.3 Utilization of Minority/ Women-Owned Business Enterprises Waived if the Seller Allows Hart & Cooley to Pay Sub-tier Diverse Supplier Directly. Seller agrees to provide MWBE's the maximum practicable opportunity to participate in the subcontracts and orders it may award in connection with this Agreement. The Seller further agrees to allow Hart & Cooley LLC to pay sub-tier MWBE suppliers directly that work for Seller on Hart & Cooley LLC projects. The target goal for utilization of MWBE's that Hart & Cooley, LLC would pay directly under this Agreement is still set at fifteen percent (15%); the material failure, if any, to meet this target goal shall constitute a default by Seller of its obligations under this Agreement. Seller will require a MWBE certification by one of the affiliated local Councils of the NMSDC or WBENC from any firm claiming to be an MWBE. Seller will report on a monthly basis the MWBE participation in this Agreement, including without limitation an identification of each MWBE utilized, the goods and/or services procured from each MWBE and the total amount Hart & Cooley, LLC should pay to each MWBE in connection therewith.

14. Service Literature. Upon request, Seller will make product brochures, service literature and other materials available at no additional charge to support Buyer's sales and support activities.

15. Remedies. The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other or legal or equitable remedies. Seller will reimburse Buyer for any incidental or consequential damages caused by Seller's breach or by nonconforming Products, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or its customer(s): (a) in inspecting, sorting, repairing or replacing the nonconforming Products; (b) resulting from production or supply interruptions; (c) conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the nonconforming Products. Consequential damages include reasonable professional fees incurred by Buyer. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Products, and will participate in and comply with warranty reduction or related programs as directed by Buyer that relate to the Products. In any action brought by Buyer to enforce Seller's obligation to produce and deliver Products under the Order, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to specific performance of Seller's obligations under the Order.

16. Compliance with Laws, Regulations and Statutes; Ethics. Seller, and any Products supplied by Seller, will comply with all laws, regulations and statutes in the jurisdiction in which the agreement applies including with all applicable laws, rules, regulations, orders, conventions, ordinances and standards, that relate to (a) the manufacture, labeling, transport, import, export, licensing, approval or certification of the Products, and (b) environmental matters, hazardous materials, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety and motor vehicle safety. Seller shall obtain all applicable permits and licenses required in connection with performing its obligations hereunder. The Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Products or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. A list of restricted substances is available at [upon request](#).

16.1 Ethics. Buyer has established an Ethics Policy as described and accessible upon request, and expects Seller and Seller's Affiliates and each of their employees and contractors, to abide by this policy or an equivalent ethics policy of their own. Seller acknowledges that it has reviewed its supply chain security procedures and certifies that in the countries in which Seller is doing business Seller does and shall (a) comply with laws prohibiting slavery and human trafficking, and (b) not use labor from persons of less than minimum working age.

16.2 U.S. Federal Government Contract Requirements. For Products Buyer identifies as used in performing work under a prime or higher tier-subcontract by the U.S. Government, Seller shall comply with the following provisions of the Federal Acquisition Regulation (FAR), 48 CFR Part 52: (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days; (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) if the subcontract is funded under the Recovery Act; (iii) 52.219-8, Utilization of Small Business Concerns (Jan 2013) if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities; (iv) 52.222-26, Equal Opportunity (Mar 2007); (v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2010); (vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010); (vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause (viii) 52.222-50, Combating Trafficking in Persons (Feb 2009); and (ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64. As used in the referenced FAR clauses "Contract" means this Agreement; "Contracting Officer" means the U.S. Government Contracting Officer; "Contractor" and "Offeror" means Seller; "Prime Contract" means prime contract between Buyer and the Federal government; and "Subcontract" means any contract placed by Seller or lower-tier subcontracts under this Agreement. Seller further agrees to supply information requested by Buyer for compliance with Subcontracting Reporting Representations of FAR 52.204-10, and product country of origin requirements, including but not limited to: the American Recovery and

Reinvestment Act (Public Law 111-5, Sec. 1605, 123 Stat. 115, 303 (Feb. 17, 2009) ("ARRA"); the Buy American Act (41 USC 10a-10d); Trade Agreements identified at 48 CFR 25.400; and "Buy America" requirements of 49 U.S.C. 5323j and 49 CFR Part 661.

17. **Customer Requirements.** As directed by Buyer in writing, Seller agrees to comply with the applicable terms of any agreements between Buyer and its customer(s) to which Buyer provides the Products. Buyer may in its discretion supply Seller with information regarding purchase orders from its customers. Seller will be responsible for ascertaining how such customer purchase order information affects Seller's obligations under the Order, and Seller will meet all such disclosed customer terms to the extent within Seller's control. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term between the Buyer and Seller.

18. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER, BUYER'S CUSTOMERS (BOTH DIRECT AND INDIRECT), AND USERS OF THE PRODUCTS AND ALL OF THEIR RESPECTIVE AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "BUYER INDEMNITEES"), AGAINST ALL DAMAGES, LOSSES, CLAIMS, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' AND OTHER PROFESSIONAL FEES, SETTLEMENTS AND JUDGMENTS) ARISING OUT OF OR RELATED TO THIS AGREEMENT. IF SELLER PERFORMS ANY WORK ON BUYER'S OR BUYER'S CUSTOMER'S PREMISES OR UTILIZES THE PROPERTY OF BUYER OR BUYER'S CUSTOMER, WHETHER ON OR OFF BUYER'S OR BUYER'S CUSTOMER'S PREMISES: (A) SELLER WILL EXAMINE THE PREMISES TO DETERMINE WHETHER THEY ARE SAFE FOR THE REQUESTED SERVICES AND WILL ADVISE BUYER PROMPTLY OF ANY SITUATION IT DEEMS TO BE UNSAFE; (B) SELLER'S EMPLOYEES, CONTRACTORS, AND AGENTS WILL COMPLY WITH ALL REGULATIONS THAT APPLY TO THE PREMISES AND MAY BE REMOVED FROM BUYER'S PREMISES AT BUYER'S DISCRETION; (C) SELLER'S EMPLOYEES, CONTRACTORS, AND AGENTS WILL NOT POSSESS, USE, SELL, TRANSFER OR BE UNDER THE INFLUENCE OF ALCOHOL OR UNAUTHORIZED, ILLEGAL, OR CONTROLLED DRUGS OR SUBSTANCES ON THE PREMISES; AND (D) TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER WILL INDEMNIFY AND HOLD BUYER, BUYER INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITY, CLAIMS, DEMANDS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' AND OTHER PROFESSIONAL FEES, SETTLEMENTS AND JUDGMENTS) FOR DAMAGES TO THE PROPERTY OF OR PERSONAL INJURIES TO BUYER, BUYER INDEMNITEES, OR ANY OTHER PERSON OR ENTITY TO THE EXTENT ARISING FROM OR IN CONNECTION WITH SELLER'S WORK ON THE PREMISES OR SELLER'S USE OF BUYER'S OR BUYER'S CUSTOMER'S PROPERTY, EXCEPT TO THE EXTENT CAUSED BY BUYER'S SOLE NEGLIGENCE.

19. **Insurance.** The following requirements shall apply to any and all work under the Order. Compliance is also required by all contractors and subcontractors of any tier ("Contractor"). Seller or any of its Contractors shall not commence any work of any kind under the Order until all insurance requirements contained in these Terms have been complied with and a Certificate of Insurance (PDF is acceptable) and any other documents required. All insurance required by these Terms shall be maintained until all of Seller's obligations under the Order, including any extensions thereto, have been fulfilled. Approval or acceptance of the insurance by Buyer shall not relieve or decrease the liability of the Seller or Contractor hereunder and failure to maintain insurance shall constitute a material breach of these Terms.

19.1 **Standard Conditions Rating.** Any and all companies providing insurance required under the Order must meet certain minimum financial security requirements. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide – Property-Casualty. The ratings for each company must be indicated on the Certificate of Insurance Form. All insurance policies must be written by companies with a current Best's rating (as set forth in the most current edition of Best's Key Rating Guide, published by A.M. Best and Company), of A-VIII or better or equivalent rating of another rating agency.

19.2 **Cancellation.** Seller shall provide, without exception, at least thirty (30) days' written notice prior to any cancellation of insurance unless for non-payment of premium. Evidence of such notice appearing on the Certificate of Insurance and on any and all insurance policies required under this Order will serve as proof of compliance. For non-payment of premium cancellations, Seller shall provide ten (10) days' written notice of cancellation.

19.3 **Waiver of Subrogation.** Seller/Contractor waives its right of recovery and will cause their insurers to waive their rights of subrogation under all insurance policies required including their respective agents and employees. Seller/Contractor hereby releases Buyer and Buyer's Affiliates, and their directors, officers and employees, for losses or claims for bodily injury, property damage or other insured claims arising out of performance under this Agreement.

19.4 **Additional Insured.** Buyer and any other entities as may be reasonably requested shall be named as an additional insured under the CGL and Auto policies with respect to work performed under the Order.

19.5 **Primary.** It is expressly agreed and understood by and between Seller and its Contractors and Buyer and Owner that the insurance afforded the additional insureds shall be the Primary insurance and that any other insurance carried by Buyer and/or Owner shall be excess of all other insurance carried by Seller or its Contractor and shall not contribute with the Seller's or its Contractor's insurance.

19.6 **Coverage Limits.** The following minimum insurance coverage and limits are required. Where insurance coverage and/or limits are mandated by local law or statute, local requirements apply subject to the minimum limits stated below. The procurement and maintenance of the below insurance coverage shall not limit or affect any liability which Seller or its Contractor may have by virtue of this Agreement. All insurance policies related to the minimum coverage and limits should be issued on an occurrence form (with the exception of Professional Liability to which a claims made policy is acceptable as long as the retroactive date precedes the date of this contract). All limits are stated in U.S. Dollars.

Type of Insurance	Minimum Limits
Commercial General Liability (“CGL”)*, insurance for bodily injury and property damage arising from premises, operations, personal injury, products / completed operations, and contractual liability covering the indemnity provision as set forth in the Indemnification section	\$5,000,000 Per Occurrence, General Aggregate, Product and Completed Operations Aggregate, Personal & Advertising Injury
Automobile Liability (“Auto”) covering all autos used in connection with the work performed	\$2,000,000 combined single limit covering property damage and bodily injury
Workers’ Compensation	Statutory
Employer’s Liability	\$1,000,000 each accident, each employee, each disease – policy limit
Professional Liability (if applicable)	\$1,000,000 each claim
Cyber Liability (Required if Seller’s products or services access data or networks of Buyer or Buyer’s customers)	\$2,000,000 annual aggregate
Blanket Fidelity Bond (Crime Insurance)	Where and as applicable
Payment & Performance and/or Labor & Material Bonds	Where and as applicable

*CGL limits may be met with a combination of General Liability and Umbrella/Excess Liability policy limits.

20. **Sustainability.** Buyer and Seller hereby recognize the value in supporting initiatives which strive to achieve excellence in environmental and social performance. While this Agreement defines the parameters in which the parties will conduct business and seek mutually advantageous financial advantage, the parties agree that there is a recognition, belief in, and practice of the principles of sustainable business woven into the fabric of how they will conduct themselves.

21. **Termination.** In addition to all other Buyer rights, Buyer may terminate all or any part of the Order at any time and for any reason by giving written notice to Seller. Upon receipt of notice, and unless otherwise directed by Buyer, Seller will: (1) promptly terminate all work under the Order; (2) transfer title and deliver to Buyer the finished Products, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing goods for itself or for others; (3) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors’ possession; (4) take actions reasonably necessary to protect property in Seller’s possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (5) upon Buyer’s reasonable request, cooperate with Buyer in transferring the production of Products to a different supplier. Upon termination, Buyer shall pay Seller: (a) the Order price for all finished Products in the quantities ordered by Buyer that conform to the Order; (b) Seller’s reasonable actual cost of work-in-process and the parts and materials transferred to Buyer under part (2) above; (c) Seller’s reasonable actual costs of settling claims regarding its obligations to its subcontractors to the extent directly caused by the termination; and (iv) Seller’s reasonable actual cost of carrying out its obligation under subsection (4). Under no circumstances, shall Buyer be required to pay Seller any indirect or consequential damages or fees regardless if directly incurred or on account of claims by Seller’s subcontractors. Indirect fees include those related to loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials in amounts exceeding those authorized in the Material Releases, or general administrative burden charges from termination of the Order. Buyer’s obligation upon termination under this Section will not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one month after the date of termination (or such shorter period as may be required by Buyer’s customer), its termination claim, which will consist exclusively of the items of Buyer’s obligation to Seller that are expressly permitted by this Section. Buyer may audit Seller’s records before or after payment to verify amounts requested in Seller’s termination claim. Buyer will have no obligation for payment to Seller under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Seller.

21.1 **Insolvency.** The Order may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including without limitation attorneys' and other professional fees: (a) Seller becomes insolvent; (b) Seller files a voluntary petition in bankruptcy; (c) an involuntary petition in bankruptcy is filed against Seller; (d) a receiver or trustee is appointed for Seller; (e) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; or (f) Seller executes an assignment for the benefit of creditors.

21.2 **Termination for Breach or Nonperformance.** Buyer may terminate all or any part of the Order, without liability to Seller, if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Order; (b) fails or threatens not to deliver Products or perform services in connection with the Order; (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Products and does not correct the failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach; or (d) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Products for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller. Seller will notify Buyer within ten days after entering into any negotiations that could lead to the situation specified in subsection (d) above, provided that upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

22. **Force Majeure.** Any delay or failure of either Party to perform its obligations will be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; civil unrest; wars; sabotage; inability to obtain power; or court injunction or order (a "Force Majeure Event"). The change in cost or availability of materials or components based on market conditions or Seller's actions will not constitute a Force Majeure Event. As soon as possible (but no more than one full business day) after the Force Majeure Event occurred, Seller will provide written notice describing such delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer may at its option: (a) purchase Products from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Products from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Products to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

23. **Technical Information Disclosed to Buyer.** Seller agrees not to assert any claim against Buyer, Buyer's customers, or their respective suppliers, with respect to any technical information that Seller has disclosed or may disclose to Buyer in connection with the Products covered by the Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Order.

24. **Proprietary Rights; Indemnification.** Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors and customers against claims of direct or contributory infringement or inducement to infringe any proprietary right (including any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorneys' and other professional fees, settlements and judgments, arising in any way in relation to Products procured or provided by Seller (including without limitation their manufacture, purchase, use and/or sale), including such claims where Seller has provided only part of Products, and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specification, except to the extent such infringement is actually embodied in designs created by Buyer and provided in writing to Seller; (b) to waive any claim against Buyer, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against Seller or Buyer for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret); (c) that Buyer and its subcontractors and direct or indirect customers have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt, Products delivered under the Order without payment of any royalty or other compensation to Seller; (d) that manufactured parts based on Buyer's designs, drawings or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written consent; (e) to assign to Buyer each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of the Order; (f) to promptly disclose in an acceptable form to Buyer all such inventions, discoveries or improvements and to cause its employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for patents throughout the world; and (g) to the extent that the Order is issued for the creation of copyrightable works, that the works will be considered "works made for hire," and to the extent that the works do not qualify as such, to assign to Buyer upon delivery thereof all right, title and interest in all copyrights and moral rights therein (including any source code). Except as expressly agreed by Buyer in a signed writing, all Products or other deliverables provided under the Order (including without limitation computer programs, technical specifications, documentation and manuals) will be original to Seller and will not incorporate any intellectual property rights (including copyright, patent, trade secret or trademark rights) of any third party. Except as expressly agreed by Buyer in a signed writing, all Products or other deliverables provided under the Order, and all related intellectual property rights, are owned solely by Buyer. Buyer shall also retain all intellectual property rights related to energy efficiency improvements and their related benefits (including, but not limited to, white tag credits, green tag credits, federal tax incentives, state or municipal tax credits, advertising rights) for products or services which Buyer purchases from Seller/Contractor which may directly or indirectly increase the energy efficiency of the products or facilities of Buyer or Buyer's customers. Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section. At no additional cost, Seller will grant Buyer a license to use any intellectual property owned by Seller that is necessary or incident to the reasonably intended use or application of the Products.

25. **Buyer's Property.** All tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), packaging and all documents, standards or specifications, trade secrets, proprietary information and other materials and items furnished by Buyer, either directly or indirectly to Seller to perform the Order or for which Buyer has agreed to reimburse Seller (collectively, "Buyer's Property"), will become Buyer's property (including passage of title) as it is fabricated or acquired, and will remain Buyer's property regardless of payment. Buyer's Property will be held by Seller or by a third party, to the extent that Seller has transferred possession of Buyer's Property to a third party, on a bailment basis as a bailee-at-will. Seller bears the risk of loss of and damage to Buyer's Property. Seller is solely responsible for inspecting, testing and approving all Buyer's Property prior to any use, and Seller assumes all risk of injury to persons or property arising from Buyer's Property. Buyer's Property will be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Products meeting all applicable specifications, will not be used by Seller for any purpose other than the performance of the Order, will be deemed to be personal property of Buyer, will be conspicuously marked by Seller as the property of Buyer, will not be commingled with the property of Seller or with that of a third person, and will not be moved from Seller's premises without Buyer's approval. Seller will insure Buyer's Property with full fire and extended coverage insurance for its replacement value. Any replacement of Buyer's Property will become Buyer's property. Seller may not release or dispose Buyer's Property to any third party without the express written permission of Buyer. Buyer will have the right to enter Seller's premises to inspect Buyer's Property and Seller's records regarding Buyer's Property. Only Buyer (or Buyer's Affiliates) has/have any right, title or interest in Buyer's Property, except for Seller's limited right, subject to Buyer's sole discretion, to use Buyer's Property in the manufacture of Products. Buyer and Buyer's Affiliates have the right to take immediate possession of Buyer's Property at any time without payment of any kind. Seller agrees to cooperate with Buyer if Buyer elects to take possession of Buyer's Property. Effective immediately upon written notice to Seller, without further notice or legal action, Buyer has the right to enter the premises of Seller and take possession of all of Buyer's Property. Seller expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Buyer's Property. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect Buyer's interest in Buyer's Property. At Buyer's request, Buyer's Property will be immediately released to Buyer or delivered by Seller to Buyer either (i) FCA (loaded) transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of Buyer's selected carrier, or (ii) to any location designated by Buyer, in which case Buyer will pay Seller the reasonable costs of delivery. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any of Buyer's Property, including but not limited to molder's and builder's liens.

26. **Seller's Property.** Seller, at its expense, will furnish, keep in good working condition capable of producing Products meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items that are not Buyer's Property and that are necessary for the production of Products ("Seller's Property"). Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Products for other customers, including aftermarket customers, such goods or services will not incorporate any of Buyer's logos, trademarks, trade names or part numbers. Seller will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for the production of Products under the 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. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others.

27. **Tooling; Capital Equipment.** This Section applies only to orders for tooling and/or capital equipment. Buyer will have access to Seller's premises, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order. The price set forth in the Order will be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller further agrees to retain all cost records for a period of two years after receiving final payment of the charges. All tools and equipment are to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's customer). Any exception to such specifications must be stated in writing on the Order or otherwise in a signed writing by Buyer. To the extent the Order expressly states that it is for "tooling" or "capital equipment", freight terms are FCA (loaded) Origin – Freight Collect, and Seller should not prepay or add freight charges.

28. **Set-Off; Recoupment.** In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and Seller's Affiliates to Buyer and Buyer's Affiliates. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or Buyer's Affiliates from Seller or Seller's Affiliates. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.

29. **Confidentiality, Protection of Personal Data, Data Security and Investigation; Noncompliance.**

29.1 **Confidentiality.** Seller may acquire knowledge of Buyer Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Buyer Confidential Information confidential during and following termination or expiration of this Agreement. "Buyer Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, Personal Data (as defined below), work product and other material or information considered proprietary by Buyer relating to the current or anticipated business or affairs of Buyer which is disclosed directly or indirectly to Seller. In addition, Buyer Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Products to Buyer. Regardless of whether such information is marked or identified as "confidential," Seller shall keep all such Buyer

Confidential Information in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use such Buyer Confidential Information for any purpose other than to fulfill Seller's obligations under the Agreement. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Buyer Confidential Information. Following the expiration or termination of the Agreement, upon Buyer's request, Seller will promptly deliver to Buyer any and all documents and other media, including all copies thereof and in whatever form that contain or relate to Buyer's Confidential Information. Seller's obligations under this Section will continue for a period of five years from the date of disclosure of Confidential Information, unless a longer period is specified in writing by Buyer or is imposed under a separate non-disclosure agreement executed between the parties. Notwithstanding anything to the contrary in this Agreement, any non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by this Agreement. The restrictions and obligations contained in this Agreement will not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation that such Buyer Confidential Information was (1) properly in its possession prior to disclosure by Buyer, or (2) was independently developed by Seller without use of or reference to Buyer's Confidential Information.

29.2 Protection of Personal Data. As a result of this Agreement, Seller and Seller's Affiliates may obtain certain information relating to identified or identifiable individuals ("Personal Data"), and such Personal Data shall be considered Buyer Confidential Information. Seller shall have no right, title or interest in Personal Data obtained by it as a result of this Agreement. Seller shall, and shall ensure that any Seller's Affiliates with access to Personal Data: (a) collect, access, maintain, use, process and transfer Personal Data in accordance with the requirements set forth in this Section 29 and for the sole purpose of performing Seller's obligation under this Agreement; (b) comply with Buyer's instructions regarding Personal Data, as well as all applicable privacy laws, regulations and international accords or treaties (collectively, "Legal Requirements"), and refrain from engaging in any behavior which renders or is likely to render Buyer in breach of same;

29.3 Seller as Data Processor. Where Seller acts as Data Processor for Buyer, Seller shall abide by the **Hart & Cooley, LLC Global Personal Data Processing Terms**. In addition, where applicable to the relationship between the parties, Seller certifies that it understands its obligations under the California Consumer Privacy Act as a service provider to Buyer, and agrees that it will not sell Personal Information; retain, disclose, or use Personal Information (as defined in the California Consumer Privacy Act) for any purpose other than providing the Services and any Deliverables under an SOW to Buyer as set forth in this Agreement; or retain or use Personal Data outside of this direct business relationship between Seller and Buyer. At Buyer's request, Seller will delete from its records any Personal Data that was provided by Buyer or collected by Seller on behalf of Buyer.

29.4 Data Security. Seller shall take all appropriate legal, organizational and technical measures to protect against unlawful and unauthorized processing of Personal Data or Buyer Confidential Information ("Confidential Data"). Seller shall maintain reasonable operating standards and security procedures, and shall use best efforts to secure Confidential Data through the use of appropriate physical and technical organization security measures in substantially the form shown in the **Data Access Agreement** if requested by Buyer at any time during the term of this Agreement, Seller shall promptly and accurately complete Buyer's written information security questionnaire regarding any network, application, system or device applicable to Seller's access to Confidential Data. Seller will provide any additional assistance and cooperation that Buyer may reasonably require during any assessment of the Seller processes in scope to protect Confidential Data, including providing Buyer with reasonable access to personnel, information, documentation and application software. Seller shall promptly, and in no event later than forty-eight (48) hours notify Buyer in the event that Seller learns or has reason to believe that any person or entity has breached Seller's security measures, or gained unauthorized access to Confidential Data ("Information Security Breach"). Upon any such discovery, Seller will (a) investigate, remediate, and mitigate the effects of the Information Security Breach, and (b) provide Buyer with assurances reasonably satisfactory to Buyer that such Information Security Breach will not recur. If Buyer determines that notices (whether in Buyer's or Seller's name) or other remedial measures (including notice, credit monitoring services, and fraud insurance) are warranted following a Security Breach, Seller will, at Buyer's request and at Seller's cost and expense, undertake the aforementioned remedial actions. Following an Information Security Breach, Buyer will maintain the right to conduct Penetration Testing on Seller Systems used to access Confidential Data, or Seller systems that are used to connect to Buyer's internal systems. On reasonable notice, in coordination with Seller, Buyer (or Buyer's independent third party assessor that is not Seller competitor) may perform penetration testing or other security assessment on Seller systems used to access Confidential Data. Buyer will treat information that you disclose in connection with the Penetration Testing as Seller Confidential Data.

29.5 Investigation; Noncompliance. In the event of an investigation by a data protection regulator or similar authority regarding Personal Data, Seller shall provide Buyer with reasonable assistance and support, including, where necessary, access to Seller's premises to the extent needed to respond to such investigation. In the event that Seller is unable to comply with the obligations stated in this Section 29.3, Seller shall promptly notify Buyer, and Buyer may do one or more of the following: (i) suspend the transfer of Personal Data to Seller; (ii) require Seller to cease processing Personal Data; (iii) demand the return or destruction of Personal Data; or (iv) immediately terminate this Agreement. Upon termination of this Agreement for any reason, Seller shall promptly contact Buyer for instructions regarding the return, destruction or other appropriate action with regard to Personal Data.

30. No Publicity. Seller will not advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Products covered by the Order or the terms of the Order, or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining written consent from an Officer of Buyer and such consent may be withheld in Buyer's sole discretion.

31. **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

32. **Conflict of Interest.** Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order.

33. **Non-Assignment.** Seller may not assign or delegate its obligations under the Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller shall retain all responsibility for Products, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.

34. Divestiture, Acquisitions.

34.1 **Divestiture.** Should Buyer, from time to time, sell, transfer or otherwise divest (whether by way of spin-offs, restructurings, reorganizations or otherwise) itself of the equity ownership, or substantially or a majority of all of its assets, or any division or business unit (all jointly hereafter referred to as "Divested Unit"), and as part of such divestiture Buyer agrees to provide transitional services to the Divested Unit following the divestiture of the Divested Unit, including the continued receipt of the Products by such Divested Unit, then Buyer shall have the right to do so for the remainder of the Term of this Agreement after the completion of any such divestiture with no additional payment to Seller, except for those Purchase Prices set forth in this Agreement or an applicable Order. Additionally, if a Divested Unit is a party to a previously issued Order, then Seller agrees to continue to allow the Divested Unit to continue to obtain Products pursuant to the terms of the Order, provided that such Divested Unit continues to pay any applicable Purchase Price due for such Products.

34.2 **Acquisitions.** If Buyer acquires a business entity ("Acquired Business") that receives products or services from Seller pursuant to an existing agreement, then at Buyer's option, the Acquired Business's agreement with Seller may be cancelled (without penalty) and any further Products provided to the Acquired Business shall be provided in accordance with this Agreement.

35. Dispute Resolution; Governing Law; Arbitration; Jurisdiction.

35.1 **Dispute Resolution Procedures; Dispute Escalation.** If any dispute occurs between Buyer and Seller arising from, relating to, or in connection with this Order, or the Products that are the subject of this Order, the parties shall promptly attempt in good faith to resolve same by negotiation by the parties' local authorized representatives. If the parties are unable to resolve such dispute despite such good faith efforts, the parties shall submit such dispute to members of their regional leaders. At any time, at Buyer's election, the parties shall participate in mediation to assist in resolving the dispute. The location of the mediation shall be in Grand Rapids, Michigan, unless both parties agree in writing to a different location. The costs of the mediation shall be borne equally by the parties. If the parties are unable to agree on a resolution after exhausting these procedures, either party may seek resolution pursuant to the provisions of Section 35.2 (*Governing Law; Jurisdiction; Arbitration Provision*).

35.2 **Governing Law; Jurisdiction; Arbitration.** Unless stated otherwise in the applicable [Country Amendment](#), the construction, interpretation and performance hereof and all transactions, hereunder, including the resolution of any claims or disputes arising from, related to, or in connection with this Order, or the Products that are the subject of this Order, will be governed by the laws of the State of New York, USA without regard to or application of its principles or laws regarding conflicts of laws. The parties agree the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (and any amendments or successors thereto), and any conflict of laws provisions that would require application of another choice of law, are expressly excluded. Except as hereinafter provided, any claim or dispute arising from, relating to, or in connection with this Order, or the Products that are the subject of this Order (whether or not such claim is based upon breach of contract or tort), that is not settled by negotiation or mediation as set forth in Section 35 shall be subject to the exclusive venue and jurisdiction of the federal court located in Manhattan, New York, USA or in the event that such federal court does not have jurisdiction, in the commercial division or complex commercial litigation division of the state court in Manhattan, New York, USA. Seller hereby irrevocably waives any objection to jurisdiction or venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon the doctrine of forum non conveniens. Seller also irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding in connection with this Order by mailing a copy thereof via registered, certified mail, and/or overnight delivery to such party at the address identified in this Order. Notwithstanding the foregoing, and at Buyer's sole option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any claim or dispute arising from, relating to, or in connection with this Order, or the Products that are the subject of this Order (whether or not such claim is based upon breach of contract or tort), other than requests for injunctive relief, will be resolved by binding arbitration in Manhattan, New York, USA, conducted in the English language, using a single arbitrator. The parties shall attempt to agree on an arbitrator from the commercial arbitrator list provided by the ADR organization in which Buyer initiates the arbitration proceedings. If the parties cannot agree on an arbitrator, each party will select a person from the commercial arbitrator list and those two people will jointly select a third person from such list who will conduct the arbitration as the sole arbitrator. The arbitrator will issue written findings of fact and conclusions of law, and may award attorneys' fees and costs.

to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. The award of the arbitrator will be final and enforceable and judgment over the award may be entered by any court authorized under this Order or otherwise having jurisdiction over the relevant party and its assets. The arbitration provisions of this Section will be governed by the United States Federal Arbitration Act. Any request for injunctive relief arising from, relating to, or in connection with this Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the applicable court closest to the place from which the Order was issued by Buyer, in which event Seller consents to the jurisdiction and venue of such court. Any request for injunctive relief against Buyer by Seller shall be brought only in the court(s) having jurisdiction over the location from which Hart & Cooley, LLC issued the Order.

35.3 **Legal Costs and Expenses.** If any action or legal proceeding is brought by either party to enforce any of the terms of this Agreement or any of its rights hereunder, the prevailing party in such action or proceeding shall be entitled to recover from the other party all of its reasonable costs and expenses incurred in such suit or legal proceeding, including reasonable attorneys' and experts' fees.

36. **Language; Severability; No Implied Waiver.** The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only and governed thereby. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect. The failure of either Party at any time to require performance by the other party of any provision of the Order will not affect the right to require performance at any later time, nor will the waiver of either party of a breach of any provision of the Order constitute a waiver of any later breach of the same or other provision of the Order.

37. **Survival.** The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.

38. **Entire Agreement; Modifications.** The Order, together with any related attachments, exhibits, supplements or other terms of Buyer specifically referenced therein, constitutes the entire agreement between Seller and Buyer with respect to the matters contained herein and in the Order. Seller acknowledges and agrees that only authorized senior managers of Buyer may enter into agreements on its behalf and that no other personnel may bind the company. In particular, no shrink-wrap, click-wrap, or other terms and conditions, privacy policies, or agreements ("Additional Terms") provided with any products, services, documentation or software, including any maintenance and support updates thereto, hereunder shall be binding on Buyer, even if use of such items requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by Buyer in their entirety. The Order may only be modified by a written amendment executed by authorized representatives of each party. Buyer may modify these Terms with respect to future Orders at any time by posting revised Terms to its web site at <https://www.hartandcooleyllc.com> and such revised Terms will apply to all Orders issued thereafter. By furnishing Product to Buyer, Seller acknowledges and agrees to be bound by these Terms and any future changes in them.

39. **Counterparts; Electronic Signatures.** This Agreement may be executed in multiple counterparts each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all other documents executed in connection herewith may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other Party and the receiving party may rely on the receipt of such document so executed and delivered by any electronic means as if the original had been received. The Parties may scan, fax, email, image, or otherwise convert this Agreement into an electronic format of any type or form, now known or developed in the future. Any unaltered or unadulterated copy of this Agreement produced from such an electronic format will be legally binding upon the Parties and equivalent to the original for all purposes. Seller acknowledges and agrees it will not contest the validity or enforceability of this Agreement and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form. Computer maintained records of a party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.