

## BOYD GENERAL TERMS AND CONDITIONS OF PURCHASE FOR SUPPLIERS

LTI Holdings, Inc. (d/b/a Boyd Corporation) and its subsidiaries strive for an open and long-term relationship with each of their suppliers. In order to achieve this, it is important to understand the “terms of business” that underpin Buyer’s purchase of the Products from Seller and where Seller and Buyer stand with regard to their legal relationship. These Boyd General Terms and Conditions of Purchase for Suppliers (these “Terms”) are incorporated into and form a part of this contract for the purchase of the Products (the “Order”), which includes the electronic or written purchase order, any amended purchase order, releases issued by Buyer and any documents or provisions incorporated by reference under Section 31(a) below. The term “Buyer” refers to LTI Holdings, Inc. (d/b/a Boyd Corporation) or its subsidiary buying entity at the “ship to” location designated on the Order (“Delivery Location”) and “Seller” refers to the entity designated as such on the Order. “Products” refers to the goods and/or services covered by an Order and, as to products, includes all parts (including service or replacement parts), components, modules, systems, prototypes, software, drawings, repairs, and substitutions.

### 1. OFFER/ACCEPTANCE; FORMATION OF CONTRACT.

(a) This Order is an offer by Buyer to purchase the Products from Seller limited to these Terms and those terms reflected on the face of Buyer’s Order. The Order is effective, and a binding contract is formed, when Seller accepts Buyer’s offer. Buyer may rescind any Order at any time prior to Seller’s acceptance. Seller will be deemed to have accepted the Order in its entirety without modification or addition, notwithstanding any prior dealings or usage of trade, upon the earliest of: (i) five (5) business days after Seller’s receipt of the Order, unless otherwise rejected by Seller via electronic mail or Buyer’s enterprise resource planning system (“ERP”); (ii) Seller commencing work or performance with respect to any part of the Order; (iii) Seller delivering written acceptance of the Order to Buyer; (iv) shipment of Products or performance of services; or (v) any conduct by Seller that fairly recognizes the existence of a contract for Buyer’s purchase and Seller’s sale of the Products. The Order is limited to and conditioned upon Seller’s acceptance of the terms of the Order. Any additional or different terms or conditions proposed by Seller, whether in Seller’s quotation, acknowledgement, invoice, or otherwise, are deemed material and unacceptable to, and are rejected by, Buyer.

(b) The Order does not constitute an acceptance of any offer, quote, or proposal made by Seller, and Seller acknowledges and agrees that unless otherwise set forth in writing: (a) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (b) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. Any reference in the Order to Seller’s quote or other prior communication will not imply acceptance of any term, condition, or instruction but is solely to incorporate the description or specifications of the Products, to the extent that such description or specifications are not in conflict with the description and specifications in the Order. If Buyer’s Order is found to be an acceptance of Seller’s prior offer, then Buyer’s issuance of an Order will constitute an acceptance of such offer subject to the express condition that Seller agrees to these Terms even if additional to or different from any terms and conditions in Seller’s offer.

(c) No purported acceptance of any Order on terms and conditions which modify, supersede, supplement, or otherwise alter these Terms will be binding upon Buyer, and such terms and conditions will be deemed rejected and replaced by these Terms unless Seller’s proffered terms or conditions are accepted in a signed writing by a Buyer VP, notwithstanding Buyer’s acceptance of or payment for any shipment of Products or similar act of Buyer.

### 2. PRICING AND PAYMENT.

(a) **Pricing.** Prices for Products shall be specified in the applicable Order (the “Pricing”). Unless an Order specifically states otherwise, all payments for Products shall be made in the local currency of Buyer. Seller shall be solely responsible for fluctuations in currency, tariffs, raw material costs and labor costs.

(b) **Revisions.** Any revisions to the Pricing shall require the prior written approval of an authorized representative of Buyer. Seller may not refuse to sell Products to Buyer to force any modifications to the Pricing.

In the event Buyer agrees in writing to a revision in the Pricing, said adjustment shall become effective immediately and shall be applied to all Products scheduled to be shipped after the date of such written agreement between the parties. Seller agrees that it will not withhold or threaten to withhold the supply of Products at any time. Seller acknowledges that the supply of Products is critical to the operations of Buyer and/or Buyer's customers and agrees that Buyer will be entitled to equitable remedies, including without limitation, injunctive relief, without the requirement to post a bond or prove inadequacy or insufficiency of money damages.

(c) **Invoices.** Original invoices and packing lists shall be submitted by Seller and shall include: order number, line item number, part number, description of goods, unit price, quantities, complete bill-to address, extended totals and any applicable tax or other charges agreed to as set forth in the Order. Lot shipments will be invoiced on a pro rata basis.

(d) **Taxes; Duties.** Unless otherwise stated in the Order, the Pricing includes all duties, tariffs and applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

(e) **Most Favored Cost.** The Pricing for any Products shall always be the lowest price charged by Seller to any third party for that equivalent Product, regardless of any special terms, conditions, rebates or allowances of any nature. In the event Seller offers a lower price than that provided to Buyer, either as a general price reduction or only to some customer(s), Seller shall immediately inform Buyer and price protect Buyer's Products inventory by rebating to Buyer an amount equal to the difference in the price paid by Buyer and the lower price for all such Products ordered by Buyer retroactive to the date Seller first sold the similar product at the lower price.

(f) **Payment.** Unless otherwise mutually agreed upon by the parties in writing, the payment terms for all Products supplied hereunder shall be 90 days from the later of (i) the receipt of an acceptable invoice or (ii) the date of delivery of conforming Products to the Delivery Location. Buyer reserves the right to change payment terms from time to time to adjust to industry practices. Seller shall send such invoices by electronic mail or Buyer's ERP. Buyer is not required to pay any invoice submitted more than 180 days after delivery of conforming Products to the Delivery Location. In addition to any right of setoff provided by law, Buyer shall have the right to set off amounts Buyer owes to Seller (or any of its affiliates) against any amounts Seller (or any of its affiliates) owes to Buyer, however and wherever arising.

### 3. **CHANGES.**

(a) Buyer may, in its sole discretion, from time to time, by notice to Seller, make reasonable changes, or direct Seller to make changes, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or otherwise reasonably change the scope of work prescribed in the Order. At Seller's request, with appropriate supporting documentation, Buyer will make an equitable adjustment to the Order Pricing and/or times for performance as a result of Buyer's changes. No claim by Seller for a price/timing adjustment will be considered unless made in writing within ten (10) days from the date notice of any such change is received by Seller.

(b) Order changes must be in writing signed by Buyer's authorized representative. Seller shall not change the design of the Products, sub-suppliers, or change or relocate (from the facilities approved by Buyer) the production, tooling, equipment, manufacture or assembly of the Products, or change the location from which the Products are shipped, without the written consent of an authorized representative of Buyer.

(c) Nothing in this Section will excuse Seller from proceeding with performance of the Order as changed. No price increases, costs, charges or other amounts, extensions of time for delivery, or other changes will be binding on Buyer unless evidenced by an amended Purchase Order issued by Buyer or in a writing signed by a Buyer VP.

#### 4. **SCHEDULING; QUANTITIES.**

(a) **Scheduling.** Time is of the essence, and deliveries must be made both in quantities, at the times and at the Delivery Location specified in the Order or Buyer's Releases (as defined hereinafter). Any additional forecasts or volumes provided by Buyer are for planning and capacity purposes only and do not constitute a binding Release or other commitment by Buyer. If Seller's acts or omissions, including but not limited to quality and/or delivery issues, result in Seller's failure to meet Buyer's delivery requirements or result in Buyer's inability to meet any of its customers' delivery requirements, and Buyer requires a more expeditious method of transportation of the Products than the transportation method originally specified by Buyer, Seller shall, at Buyer's option and in addition to any cost damages or claims from Buyer's customer(s): (i) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method of transportation; (ii) allow Buyer to reduce its payment of Seller's invoices by such difference; or (iii) ship the Products as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

(b) **Quantities.** If an Order states that it is a "blanket" order or does not specify quantity or delivery dates (such order is referred to herein as a "Blanket Order"), then Seller shall procure materials and manufacture and/or assemble and ship Products only as authorized by and in accordance with a Release issued by Buyer from time to time. For purposes of these Terms, a "Release" shall be a contractually binding order for Seller to ship a definite quantity of Products in accordance with a specified schedule. Any excess or obsolete inventory due to Seller's decision to produce Products above any Release shall be the sole responsibility of Seller. The quantities shown on a Blanket Order shall only be estimates of annual requirements and shall not constitute a minimum order from Buyer unless the Order expressly so states on its face. An Order shall not obligate Buyer to purchase a particular quantity or percentage of its requirements of the subject product from Seller, or prohibit Buyer from purchasing the same or similar parts from other suppliers, unless the Order expressly so states on its face.

(c) **Customs.** Where applicable and upon Buyer's request, Seller will promptly provide Buyer with a statement of origin for all Products and with applicable customs documentation for Products wholly or partially manufactured outside of the country of import.

#### 5. **PACKAGING AND SHIPPING.**

(a) **Packaging.** Seller shall be responsible for all costs to handle, package, store and transport the Products in accordance with the specifications or instructions set forth in the Order to the Delivery Location, and Seller shall provide all packing slips, bills of lading and other shipping documents with each shipment of Products. Unless otherwise stated in the Order, Products shall be delivered internationally by ocean, FOB to the Delivery Location in accordance with Incoterms 2020, and internationally and domestically by all other forms of transportation, FCA to the Delivery Location in accordance with Incoterms 2020.

(b) **Shipping.** Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller shall comply, in all respects, with Buyer's instructions and requirements, as amended or updated from time to time and as incorporated in the Order by reference, including delivery, logistics, packaging, labeling and hazardous materials instructions and requirements. For any cross-border transactions, Seller shall be the importer and/or exporter of record for Products.

(c) **Hazardous Materials.** Prior to and with the shipment of the Products purchased hereunder, Seller shall furnish to Buyer sufficient warning and notice in writing (including appropriate labels on Products, containers and packing) of any Hazardous Material which is an ingredient or a part of any of the Products, together with such special handling instructions as may be necessary to advise Buyer and Buyer's carriers of how to exercise the measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Products, containers and packing shipped to Buyer, including any obligations concerning Conflict Minerals. For purposes of these Terms, "Hazardous Materials" are, or contain dangerous items, chemicals, contaminants, substances, pollutants, or any materials that are defined as hazardous or prohibited by relevant local, state, national, or international law, regulations and standards.

6. **INSPECTION.** At all reasonable times, Buyer and/or its customer may, but will be under no obligation to, inspect and/or test the Products to be furnished under the Order at the locations where the Products are being manufactured or work is being performed, including those of Seller's suppliers. Buyer is not required to inspect Products delivered and no inspection or failure to inspect will reduce or alter Seller's obligations under the Order. Payment for nonconforming Products will not constitute an acceptance of them, limit or impair Buyer's right to assert any legal or equitable remedy or relieve Seller's responsibility for latent defects. Products rejected by Buyer as not conforming to the relevant Order or specified quality requirements may be returned to Seller at Seller's own expense. At Buyer's sole discretion and request, such Products shall immediately be reworked or replaced at Seller's expense. Seller shall be responsible for all costs associated with the rejected Products, including without limitation premium freight for replacement Products, as well as other actual damages.

7. **CAPACITY.** Seller shall have available upside capacity of fifteen percent (15.0%) in excess of any estimated volume provided by Buyer. Nothing herein shall constitute a commitment by Buyer to purchase a certain quantity of Products beyond the quantity specified in an Order or a Release.

8. **TITLE; RISK OF LOSS.** Title to, and risk of loss, injury or destruction from any cause whatsoever, of any Products furnished by Seller shall pass to Buyer upon delivery of the Products to the Delivery Location.

9. **TOOLING.**

(a) **Buyer Owned Tooling.** All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items (together with all related information, software and materials) furnished by Buyer, either directly or indirectly, to Seller under the Order, or for which Seller has been reimbursed, shall be and remain the property of Buyer, including any replacement parts or other modifications or improvements ("Buyer Property"). If title in any Buyer Property has not otherwise passed to Buyer, title will pass to Buyer immediately upon the date Buyer first makes any payment to Seller relating to such Buyer Property. Seller shall bear the risk of loss of and damage to Buyer Property maintained at Seller's premises. Buyer Property shall at all times be properly housed and maintained by Seller, shall not be used by Seller for any purpose other than on behalf of Buyer, shall be deemed to be personalty, shall be conspicuously marked "*Property of LTI Holdings, Inc.*" by Seller, shall not be commingled with the property of Seller or with that of a third party, and shall not be moved from Seller's premises without Buyer's prior written approval. Upon request by Buyer, such Buyer Property shall be immediately released to Buyer or delivered to Buyer by Seller, (i) for United States-based suppliers, FCA transport equipment at Seller's premises, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer Property, (ii) for non-United States based suppliers, FCA or FOB (*Incoterms 2020*) Seller's premises (depending on the mode of transportation, as stated in Section 5(a)), properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer Property, or (iii) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable cost of delivering such Buyer Property to such location. To the fullest extent permitted by law, Seller waives any liens, claims, encumbrances, interests or other rights that Seller might otherwise have or assert on or with respect to any Buyer Property for work performed on such Buyer Property or otherwise. To the extent any Intellectual Property (as defined in Section 18(a)) owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Buyer Property, Seller hereby grants to Buyer a fully paid, irrevocable, non-exclusive, worldwide, perpetual (to the maximum extent permitted by law), royalty-free license, with the right to grant sublicenses as necessary for any use of Buyer Property, to use such Intellectual Property.

(b) **Seller Owned Tooling.** Seller shall at its own expense furnish, maintain in good condition and replace when necessary, all tools, jigs, dies, gauges, fixtures, molds and patterns, and any other equipment (collectively "Seller Property") necessary for the production of the Products. The cost of changes to Seller Property necessary to make design and specification changes authorized by Buyer shall be paid for by Buyer. Seller grants Buyer an irrevocable option to take possession of any Seller Property that is special for the production of the Products upon payment to Seller of the book value thereof less any amounts which Buyer has previously paid to Seller for the cost of such Seller Property.

10. **SUBCONTRACTING.** Seller shall not subcontract any of its obligations under an Order without the written consent of an authorized representative of Buyer. Seller shall be responsible for and hold Buyer harmless from any payment to any of Seller's vendors or approved subcontractors utilized hereunder. If Seller is authorized to use subcontractors, Seller will obtain from each subcontractor rights and obligations no less favorable to Buyer than the provisions of the relevant Order.

11. **CONTENTS.** If requested by Buyer or whenever required by law, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (i) current material safety data sheets for the Products purchased hereunder; (ii) the amount of one or more ingredients; and (iii) information concerning any changes in or additions to such ingredients.

12. **SERVICE AND REPLACEMENT PARTS.** Seller shall maintain any tooling required to produce the Products, and provide Products to Buyer at the Pricing, to fulfill any service and replacement obligations of Buyer's customers, for any specified periods following the end of serial production. If the Products are systems, Seller will sell the components, parts, or sub-assemblies that comprise the system at prices that will not, in the aggregate, exceed the Pricing of the system, less assembly costs.

13. **WARRANTIES.**

(a) **General.** Unless otherwise specified elsewhere in the Order, the "Warranty Period" is the period for which Buyer's customer warrants the Products to end users. During the Warranty Period, Seller warrants to Buyer that any Products supplied hereunder shall (i) be free from defects in design (to the extent Seller is design responsible), workmanship and materials; (ii) conform to Buyer's specifications, drawings, samples, performance requirements and quality requirements, and all industry and manufacturing standards, laws, and regulations in force in countries where the Products or products incorporating the Products are to be sold; (iii) be merchantable and fit and sufficient for the particular purposes intended by Buyer, which purposes Seller acknowledges are known to it; and (iv) not, and have not been claimed to, violate any patent, trademark or copyright, and may be properly imported into the United States or any other country of delivery. Seller further warrants that all services provided by Seller will be performed in a competent, timely, professional, and workmanlike manner, consistent with all requirements, statements of work, and specifications required by Buyer and prevailing industry standards, by employees and agents with the proper skill, training, and background, and where applicable, will be certified, licensed, or otherwise authorized as necessary to perform the services. All warranties provided hereunder are in addition to any other express or implied warranties provided at law. Buyer's approval of any design, drawing, material, process, or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranties in this Section 13 are intended to and will provide Buyer with protection from any and all warranty claims brought against Buyer by Buyer's customer and their respective customers, successors, and assigns, relating in any manner to the Products.

(b) **Title.** Seller represents and warrants that (i) the Products shall be free from any security interest or other lien or encumbrance at the time of delivery; (ii) Seller has or will obtain good title and rights to the Products and related obligations under the Order; (iii) Seller neither knows nor has reason to know of any outstanding title or claim of title hostile to Seller's rights in the Products; and (iv) Seller has the right to assign, sell, and convey unto Buyer such Products.

(c) **Claims.** In the event a Product fails to comply with Seller's warranty obligations hereunder, including without limitation, quality, product recalls, multiple field failures, or any other failures of a Product to comply with the Seller's warranty, Seller shall be responsible to Buyer for one hundred percent (100%) of the costs incurred by Buyer related to such failures which Buyer has determined are attributable to Seller.

14. **RECALL.** If Buyer or Buyer's customer determines that a voluntary or legally required recall, field modification, correction or removal ("Remedial Action") involving a Product purchased under this Order or a Buyer product incorporating a Product was caused by a defect, non-conformance or non-compliance which is the responsibility of Seller, Seller shall indemnify and hold harmless Buyer from all Buyer's reasonable costs and expenses incurred in connection with any Remedial Action, including all costs related to: (i) investigating and/or

inspecting the affected Products; (ii) notifying Buyer's customers or, if required, end users; (iii) repairing, or where repair of the Products is impracticable or impossible, repurchasing or replacing the recalled Products; (iv) packing and shipping the recalled Products; (v) reinstalling repaired Products and/or installing repurchased or replaced Products; and (vi) media notification. Each party shall consult the other before making any statements to the public or a governmental agency relating to such Remedial Action or potential safety hazards, except where such consultation would prevent timely notification required by law.

15. **CONTINUOUS IMPROVEMENT.** The parties shall work together to continually improve the manufacturing and delivery of the Products to maximize efficiency and cost-effectiveness. To the extent Buyer or Seller desires to undergo a continuous improvement project or where either party has a suggestion designed to improve the quality of the Products or the efficiency, cost and/or effectiveness of Seller's activities, the parties shall work together in good faith to implement such projects or suggestions. Subject to Buyer's sole discretion and prior approval, the parties shall evenly share cost savings (50/50) at Buyer's discretion in the event a change in design, layout, cost structure or any other factor results in a lower cost of labor, overhead, general and administrative costs or any other costs which factor into the determination of the Pricing. Buyer's 50% portion of the cost savings shall be reflected by an immediate reduction to the Pricing per piece of the Products. Each party shall bear its own costs and expenses in carrying out the activities contemplated by this Section 15.

16. **INSURANCE.** Unless expressly waived in writing by Buyer, Seller shall maintain, and require its suppliers and subcontractors to maintain, the following policies throughout the Term, and name Buyer as an additional insured: (i) comprehensive General Liability insurance covering bodily injury, property damage, contractual liability, products liability and completed operations in an amount of no less than five-million U.S. Dollars (\$5,000,000.00 USD); (ii) all risk property perils insurance covering the full replacement value of Buyer Property while in Seller's care, custody or control and naming Buyer as loss payee; (iii) worker's compensation insurance with coverage limits as required by applicable law; (iv) Employer's Liability Insurance in the amount of no less than one-million U.S. Dollars (\$1,000,000.00 USD) for each accident, injury or disease; (v) Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles used in the performance of this Order in the amount of no less than one-million U.S. Dollars (\$1,000,000.00 USD) combined single limit each occurrence, (vi) Errors and Omissions/Cyber Liability Insurance each in an amount of no less than five-million U.S. Dollars (\$5,000,000.00 USD); and (vii) Product Recall Insurance in an amount of no less than five-million U.S. Dollars (\$5,000,000.00 USD). Seller's purchase of appropriate insurance coverage or the furnishing of certificates shall not release Seller of its obligations or liabilities under the Order. If requested, Seller shall send a "Certificate of Insurance" evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this Section shall not be considered primary with respect to the interest of Buyer and is not contributory with any insurance which Buyer may carry. Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or on Seller's behalf shall have no claim, right of action or right of subrogation against Buyer and its customers based on any loss or liability insured against under the foregoing insurance. The amount of insurance required by Buyer, and maintained by Seller, shall not constitute a limitation of liability or release in respect to Seller's obligations or liabilities under the Order. The above-referenced insurance limits can be met via each policy or via a combination of these policies and an excess/umbrella liability insurance. Seller must maintain continuity of coverage for three (3) years following termination, expiration and/or completion of the Order.

17. **CONFIDENTIALITY.**

(a) **Confidential Information.** As used herein, "Confidential Information" means confidential information of a party or its customers relating to any designs, know-how, inventions, technical data, ideas, uses, processes, methods, formulae, research and development activities, work in process, or any scientific, engineering, manufacturing, marketing, business plan, financial or personnel matter relating to the disclosing party, its present or future products, sales, suppliers, customers, employees, investors or business, whether in oral, written, graphic or electronic form, which, given the circumstances surrounding such disclosure, would be considered confidential. Confidential Information shall not include any information that: (i) either party knows about the other prior to entering into the Order, except any information which is the subject of unexpired confidentiality obligations; (ii) is publicly known, or becomes publicly known, through no breach by the receiving party; (iii) is rightfully obtained by either party from any third party who has no duty of confidentiality; (iv) is independently developed

by or for a receiving party completely apart from the disclosures hereunder; (v) is released pursuant to a binding court order or government regulation, provided that the receiving party timely delivers a copy of such order or action to the disclosing party and reasonably cooperates with the disclosing party if it elects to contest such disclosure or seek an appropriate remedy such as a protective order; (vi) is necessary for Buyer to file or prosecute patent applications; or (vii) is otherwise necessary to disclose in order to prosecute or defend litigation or comply with applicable law, including regulatory filings, or otherwise establish rights or enforce obligations hereunder, but only to the extent that any such disclosure is reasonably necessary.

(b) **Non-Disclosure.** During the course of this business relationship, the parties may have or may be provided access to each other's Confidential Information. Additionally, Seller may be engaged to develop new information for Buyer, or may develop such information during the production of the Products, which information will become, upon creation, Buyer's Confidential Information unless otherwise expressly agreed in writing. Each party agrees to maintain such Confidential Information in accordance with these Terms and the terms of any non-disclosure agreement between the parties, but for at least a period of five (5) years after the expiration or termination of this Order. The parties mutually agree to take all reasonably necessary steps, and to prepare and execute all necessary documents, to protect and prohibit the disclosure of all Confidential Information using the care used by such party to protect its own Confidential Information. Each party will immediately notify the other party of any information that comes to its attention which might indicate that there has been a loss of confidentiality with respect to such other party's Confidential Information.

(c) **Remedies.** In the event of a breach or threatened breach by either party of such party's confidentiality obligations hereunder, the parties acknowledge and agree that it would be difficult to measure the damage to the non-breaching party from such breach, that injury to such non-breaching party from such breach might be difficult to calculate and that money damages could therefore be an inadequate remedy for such breach. Accordingly, in the event of a breach or threatened breach, the non-breaching party, in addition to any and all other rights and/or remedies which may be available at law, including without limitation any and all appropriate equitable remedies to restrain any such breach or threatened breach, shall be entitled to seek injunctive relief against the threatened or continued breach by the breaching party, without the necessity of proving actual damages or posting a bond.

(d) **Return of Property.** Upon request, each party shall immediately return to the other any and all Confidential Information of the other party, whether in written, printed or other tangible form, including any and all originals, copies thereof and samples, materials, notes and/or other materials derived from such Confidential Information.

## 18. **INTELLECTUAL PROPERTY.**

(a) **Intellectual Property Defined.** As used herein, the term "Intellectual Property" refers to all legally-recognized rights that result from or are derived from Seller's past or present work product made for Buyer in the course of any activity relating to the Products, including but not limited to all work product relating to or resulting from Seller's development of Products for Buyer, or made with knowledge, use or incorporation of Buyer's Confidential Information. Intellectual Property includes, but is not limited to, works of authorship, developments, inventions, innovations, designs, drawings, blueprints, discoveries, improvements, trade secrets, applications, techniques, know-how and ideas, whether patentable or copyrightable, and trademarks, patents, copyrights, and applications for patents or copyrights or revisions thereof conceived or made or developed by Seller (solely or in cooperation with others) during the Term of the Order.

(b) **Ownership.** Seller acknowledges and agrees that all right, title and interest in and to all Intellectual Property shall be owned exclusively by Buyer and all ownership rights thereto of any nature shall belong to Buyer, except where Products have been designed solely by Seller prior to any relationship with Buyer and are an off-the-shelf commodity not exclusive to usage by Buyer. To the extent that the preceding sentence does not convey all right, title and interest in and to the Intellectual Property to Buyer, Seller shall irrevocably assign, and hereby does irrevocably assign to Buyer, Seller's entire right, title and interest in and to all Intellectual Property. Seller agrees to take all action and execute all documents necessary to perfect Buyer's ownership of all

Intellectual Property, as Buyer may request from time to time. Buyer shall retain any and all rights to current and future revisions, modifications and/or improvements made by either party to the Intellectual Property. Upon termination of this Order or upon request by Buyer, Seller shall deliver to Buyer all Intellectual Property and copies thereof, then in Seller's possession or under Seller's control.

(c) **Seller Intellectual Property.** To the extent any Intellectual Property owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Products, Buyer shall have an unrestricted, irrevocable, fully paid up, royalty-free worldwide license (and right to sublicense) to use, have used, modify, have modified, make, have made, distribute, have distributed, sell, and have sold all Products purchased under this Order with the Seller Intellectual Property. Seller shall not assert any Seller Intellectual Property claims against Buyer and its affiliates, or any of their customers or suppliers, in any Products furnished under an Order, or the repair or refurbishment of any Products furnished under an Order.

(d) **Copying of Works.** Seller and its officers, employees, contractors, agents and the like shall not reproduce, distribute, display publicly, perform publicly the Intellectual Property, or have a derivative work created based upon the Intellectual Property, alone or in combination with any other work.

19. **ADVERTISING.** Neither party may use the other party's name or trademarks (or those of Buyer's customers) in any type of advertisement materials, web sites, press releases, interviews, articles, brochures, business cards, project reference or client listings, without the other's written consent.

20. **RECORD RETENTION; AUDIT; FINANCIAL CONDITION.**

(a) **Records.** Seller shall maintain records with respect to all activities and expenses related to the supply of Products ("Records") for a period of ten (10) years following the expiration or termination of the Order, unless a longer record retention period is set forth therein or required by law. Such Records shall be made available by Seller upon reasonable advance notice during reasonable business hours for examination by Buyer or Buyer's independent public accountants, for the sole purpose of verifying for Buyer the correctness of calculations of the cost of Products, other expenses or payments under the Order and compliance with the Order. If material discrepancies do result, Seller shall bear the accounting expense and reimburse Buyer the cost discrepancies plus interest. Any Records received from Seller shall be Confidential Information, as defined within these Terms but may be shared with Buyer's relevant customer if so requested.

(b) **Inspections.** Buyer and its designees shall have reasonable access to observe and inspect Seller's manufacturing facilities and procedures, including manufacturing operations, at reasonable intervals, during working hours and upon reasonable notice to Seller. Seller shall maintain proper and accurate documentation of all manufacturing steps, processes, quality assurance and quality control procedures and will provide reasonable access to Buyer from time to time at reasonable intervals and upon Buyer's reasonable request.

(c) **Financial Condition.** At any time upon the request of Buyer, Seller shall provide Buyer with further assurances and copies of its financial statements (including balance sheet, income statement and cashflow) as evidence of financial robustness and viability.

21. **INDEMNIFICATION.**

(a) **General.** Seller shall indemnify, defend and hold harmless Buyer and Buyer's affiliates and shareholders and their respective directors, officers, employees and agents, and any third party Buyer is required to indemnify with respect to the Products, from and against any and all claims, losses, actions, investigations, costs, settlements, damages, and expenses (including but not limited to fees and expenses of lawyers and other professionals incurred in investigating or defending the same and any cost of a product recall or other Remedial Action) (collectively, "Damages") arising out of or related to: (i) any breach by Seller of any covenant, obligation, representation, or warranty contained in the Order, (ii) any negligent performance or failure or delay in performance of this Order by Seller, its employees, agents or subcontractors, (iii) any willful omission or act of Seller, its employees, agents or subcontractors, (iv) any Products provided under the Order (v) the performance



by Seller or any of Seller's employees, agents or subcontractors of any service, whether on the property of Buyer, Seller, or any third party, and (vi) any violation of law by Seller or any of Seller's employees, agents or subcontractors.

(b) **Intellectual Property.** Seller shall indemnify, defend and hold harmless Buyer and Buyer's affiliates and shareholders, and their respective directors, officers, employees, agents and customers from and against any and all Damages incurred in connection with investigating, defending or asserting any claim, action, or suit related to alleged infringement of any third party's intellectual property rights in connection with the manufacture or design (where Seller is wholly or partially design responsible) of the Products.

(c) **Claims.** In the event of any claim subject to indemnification hereunder (a "Claim"), Buyer may, at its sole option (i) tender such Claim to Seller to defend using lawyers and other professionals acceptable to Buyer in its discretion, or (ii) defend such Claim by counsel of Buyer's choosing and have Seller reimburse Buyer for all reasonable costs of such defense, and in either case Seller shall indemnify and hold Buyer harmless from and against all Damages arising out of or relating to such Claim. If Buyer tenders the defense of a Claim to Seller and Seller accepts such defense, then Seller shall be conclusively deemed to have agreed that such Claim is subject to indemnification hereunder and that Seller has no claim or counterclaim against Buyer, all of which shall be deemed to have been waived. If Seller assumes the defense of a Claim and thereafter fails to vigorously defend such Claim, Buyer shall have the right at its option to assume the defense of such Claim and Seller shall remain obligated to indemnify Buyer hereunder. If Seller assumes the defense of a Claim, it will not settle or compromise such Claim without the prior written consent of Buyer.

22. **DISPUTE RESOLUTION, GOVERNING LAW AND FORUM.** Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under these Terms or with respect to the Products. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties. The cost of the mediation shall be borne equally by the parties. If the parties have not resolved the dispute within forty-five (45) days after the appointment of a mediator, or within such other time as may be agreed to by the parties in writing, either party may initiate legal action subject to the provisions set forth in this Section 22 below.

(a) Unless Buyer exercises its right to arbitration set forth in Subsection (b) below, any dispute arising out of or relating to the Order not settled by the parties through the negotiation or mediation procedures set forth above shall be subject to venue and jurisdiction as follows:

- i. If Buyer is an American entity (North, Central or South America), the Order shall be governed by the laws of the state of Delaware, U.S.A., without reference to its choice or conflict of laws principles. The parties agree to submit to the exclusive jurisdiction of the federal and state courts of the state of Delaware for all actions arising in connection herewith.
- ii. If Buyer is an entity located in the EMEA region, the Order shall be governed by the laws of England, without reference to its choice or conflict of laws principles. The parties agree to submit to the exclusive jurisdiction of the courts of the country of England located in London for all actions arising in connection herewith.
- iii. If Buyer is an entity located in the APAC region, the Order shall be governed by the laws of Singapore, without reference to its choice of laws principles (except in cases where both Buyer and Seller are located in the Peoples Republic of China ("PRC"), in which case the laws of the PRC will apply without reference to its choice of law principles). In the event of a dispute between the parties which cannot be resolved by negotiations, the parties agree to submit the dispute to the exclusive jurisdiction of the courts located in Singapore, except that any dispute between entities both located within the PRC will be resolved by arbitration conducted before the Singapore International Arbitration Centre in accordance with its arbitration rules. The seat of arbitration shall be Singapore and the language of the arbitration shall be English. The arbitral award shall be final and binding on the parties.

(b) Notwithstanding the provisions of Subsection (a) above, Buyer shall have the sole right to initiate binding arbitration in lieu of legal action. In the event that Seller or Buyer has already initiated legal action, Buyer may, at its sole option, elect to have the dispute resolved through binding arbitration instead, provided Buyer submits notice of this election in writing to Seller within sixty (60) days following the date service of process was initially served by one party on the other in the legal proceeding. Each party shall be responsible for its own expenses in connection with an arbitration. The arbitration award shall be final and binding, and judgment over the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party and its assets.

## 23. REMEDIES.

(a) The rights and remedies reserved to Buyer in this Order are cumulative with, and in addition to, all other rights and remedies of Buyer under applicable law or in equity. Without limiting the foregoing, in the event that any Products fail to conform to the warranties set forth in the Order or the product specifications incorporated by reference in the Order, or if Seller otherwise breaches any of its obligations under the Order, Buyer will be entitled to recover from Seller any and all damages, including, without limitation, any direct, indirect, incidental and consequential damages and all legal and other professional fees and costs plus interest incurred by Buyer as a result of such breach or failure, including, without limitation, costs, expenses and losses incurred by Buyer (i) in inspecting, sorting, testing, repairing or replacing nonconforming goods or nonconforming deliveries; (ii) resulting from production interruptions; (iii) in conducting recall campaigns or other Remedial Actions; and (iv) resulting from personal injury, including death, and property damage.

(b) Any action by Seller under the Order must be commenced within one (1) year after the Products are delivered to Buyer, regardless of Seller's lack of knowledge of the nonpayment or other event giving rise to such action. With respect to a claim of Seller arising out of or in connection with any Order, Seller's damages, if any, will be limited to the amounts Seller would be entitled to receive if Buyer had terminated for convenience regardless of the legal or equitable theory on which the claim is based. In no event will Buyer be liable for interest, loss of anticipated profits, penalties, incidental, consequential, special, punitive, exemplary, or other damages or liabilities in connection with the Order, whether for breach of contract, late payment, property damage, personal injury, illness, death, or otherwise, beyond the amount determined in Section 24(b) or, if not applicable, the price for conforming Products accepted by Buyer.

## 24. TERM AND TERMINATION.

(a) **Term.** The Order shall be in full force and effect from the date of acceptance (as set forth in Section 1) for such period of time set forth on the most recent Order (the "Term"). In the event no effective term is set forth on the Order, the effective term of the Order shall be for the life of the program for which such Products are applied, unless otherwise terminated per these Terms.

(b) **Termination for Cause.** Buyer may terminate immediately all or any part of the Order, without liability to Seller, if Seller (i) fails to perform any obligation under the Order and, if Buyer, in its sole discretion, determines the non-performance can be cured, fails to cure the non-performance within ten (10) business days (or such shorter period as is reasonable in the circumstances) after notice from Buyer specifying the non-performance; (ii) states its intention not to perform or otherwise rejects its obligations under the Order; (iii) fails to make progress in performance so as to endanger timely delivery of Products under this Order; (iv) fails to provide timely and adequate assurance of performance under the Order per Section 24(d) below; (v) commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors; or (vi) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within thirty (30) days after commencement. In addition, Buyer may terminate this Order immediately, without liability to Seller, if a direct or indirect change in control or ownership of Seller occurs without Buyer's prior written consent. In the event of termination for breach by Seller, Buyer shall have full access to Seller's sub-suppliers, including without limitation suppliers for subassemblies, components and raw materials.

(c) **Termination for Convenience.** In addition to any other rights of Buyer to terminate this Order, Buyer may, at its option, terminate all or any part of the Order at any time and for any reason, by giving at least thirty (30) days' written notice to Seller (or such shorter termination notice period as Buyer may have been given by Buyer's customer). In the event Buyer exercises its right to terminate for convenience under this Section, Buyer will pay to Seller only the following amounts, without duplication: (i) the contract Pricing for all Products that have been completed in accordance with the Order and not previously paid for; and (ii) the actual costs of work-in-process and raw materials incurred by Seller in relation to unfinished Products, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the Order; less, however, the sum of the reasonable value or cost (whichever is higher) of any Products or materials used or sold by Seller to third parties with Buyer's written consent and the cost of any damaged or destroyed Products or material. Seller will promptly make available for delivery to Buyer, as specified by Buyer, any Products completed but not delivered as of the time of Buyer's termination hereunder and work-in-process and raw materials paid for per this Section. Any request for payment submitted to Buyer under this Section must be in writing and include sufficient supporting data to permit an audit by Buyer, including, without limitation, such supplemental and supporting information as Buyer may request. Notwithstanding any other provision of the Order, Buyer will make no payments under this Section for finished Products, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's Orders or Releases. Except as expressly provided in this Section, Buyer will not be liable and will not make any payments to Seller for claims of Seller's subcontractors, loss of anticipated profits, overhead costs, interest, development and engineering costs, facilities and equipment costs, depreciation costs, or general and administrative burden charges related to termination for Buyer's convenience. Further, any payments made under this Section will not exceed the aggregate price payable by Buyer for finished Products that would have been produced or performed by Seller under Buyer's Orders or Releases outstanding at the date of termination.

(d) **Seller's Assurance of Performance.** In the event that Buyer has reasonable grounds for insecurity with respect to Seller's continued performance under this Order, Buyer may, in writing, demand adequate assurance of such performance from Seller. After receipt of such demand, Seller's failure, within a reasonable period of time under the circumstances (not to exceed 20 days), to provide assurances adequate under the circumstances will be deemed a breach of this Order by Seller.

(e) **Seller's Obligations on Termination.** Upon Seller's receipt of a notice of termination of this Order, Seller shall promptly: (i) stop work as directed in the notice; (ii) place no further subcontracts/orders related to the terminated portion of the Order, (iii) terminate, or if requested by Buyer, assign all subcontracts/orders to the extent they relate to work terminated; (iv) deliver all completed work, work in process, designs, drawings, specifications, documentation and material required and or produced in connection with such work; and (v) provide any further supplier transition support reasonably requested by Buyer.

## 25. COMPLIANCE WITH LAWS.

(a) **General.** Seller acknowledges and warrants that the production of all Products shall comply with all applicable federal, state and local laws, rules, regulations and ordinances during its performance hereunder. Further, Seller acknowledges and warrants that any subcontractors are also in compliance with all applicable laws.

(b) **Export Controls.** Seller agrees to comply with all applicable export control and sanctions laws and regulations of the United States of America, and, if different, of the country of the Buyer, the export country of the Seller, and any other relevant country, regarding the export, re-export, resale, shipment or diversion of items including, but not limited to, where applicable, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) (the "Export Control Laws"). Seller represents and warrants that, unless otherwise authorized by law or regulation, any Products delivered to Buyer will not contain any part or material that originated from a U.S. sanctioned party (including but not limited to a U.S. Department of Treasury, Office of Foreign Assets Control, or Specially Designated National) or from a U.S. sanctioned country, including without limitation and as amended, Cuba, Iran, North Korea, Russia, Sudan, Syria or the Crimea, Donetsk, and Luhansk Regions of Ukraine, as the same shall be amended from time to time. Seller shall indemnify, defend, and hold harmless Buyer (including its shareholders, directors, officers, employees, customers, contractors, agents and

other representatives) from and against any and all potential demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses (including fees and disbursements of counsel) of every kind which arise out of any actual or alleged sanctioned party or country content in any of the Products or Seller's noncompliance or alleged noncompliance with this Section. Seller shall be responsible for the control, disclosure of and access to technical data, information and other items received in connection with the Order. Seller shall further assist Buyer with any requests for information, certifications, or other similar documents as Buyer may reasonably request to ensure compliance of the Products and Seller with this Section and shall notify Buyer promptly upon discovering or having reason to believe that any Products fail to comply with the representations and warranties in this Section. Licenses or other authorizations required for the export of Products will be the responsibility of Seller unless otherwise indicated in the Order, in which event Seller will provide such information as may be requested by Buyer to enable Buyer to obtain such licenses or authorizations. Neither Seller nor any of its sub-suppliers will export/re-export any technical data, process, product, or service, directly or indirectly (including the release of controlled technology to foreign nationals from controlled countries), to any country for which the United States government or any agency thereof requires an export license or other government approval without first obtaining such license or approval. For employment in the U.S., Seller agrees not to provide foreign nationals (non-U.S. citizens or U.S. permanent residents) as employees or contractors for work at any Buyer site unless that foreign national is covered under a valid U.S. export license or is not exposed to controlled technology. In addition, for employment outside of the U.S. Seller agrees not to provide foreign nationals as employees or contractors for work at any Buyer site unless that foreign national is a citizen of the country of that Buyer site and/or is covered under a valid U.S. export license or is not exposed to controlled technology.

(c) **FLSA Certification.** All United States-based invoices from Seller must include a certification that all Products were produced in compliance with the applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued in connection therewith.

(d) **Hazardous Substances.** Seller shall comply with all applicable environmental requirements for the disclosure labeling and/or elimination of hazardous substances, including without limitation, those in the various evolving global RoHS (Restriction of Hazardous Substances) and RoHS II, REACH (Registration, Evaluation and Authorization of Chemicals), and the California Safe Drinking Water & Toxic Enforcement Act ("Prop 65") regulations.

(e) **Conflict Minerals.** Seller shall disclose to Buyer any materials or minerals used in the production of the Products which are sourced from conflict areas, as defined under Section 1502 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act, the European Union (EU) Conflict Minerals Regulation, or other applicable law (commonly referred to as "Conflict Minerals") as may be amended from time to time. Products provided hereunder should be sourced only from mines and smelters which have been certified by an independent third party as "conflict free". Seller shall adopt policies and management systems with respect to Conflict Minerals, establish due diligence frameworks according to OECD guidelines, implement management systems to support compliance with their Conflict Minerals policy and drive those efforts throughout their supply chain. Seller shall complete any required survey or reporting and supply all other reasonable support of this initiative, as requested by Buyer, including, without limitation, the measures taken to identify the source and chain of custody of any such Conflict Minerals used in its Products.

26. **CONDUCT AND SOCIAL RESPONSIBILITY.** Seller warrants, and it is a condition of the Order, that all performance hereunder shall be at the highest levels of ethical standards and in accordance with the Boyd Supplier Code of Conduct (available at <https://info.boydcorp.com/hubfs/Company/Partnerships/Boyd-Supplier-Code-of-Conduct.pdf> or via the Boyd Suppliers section of Buyer's public website at [www.boydcorp.com](http://www.boydcorp.com)), which requirements are made a part of this Order. Seller shall contribute to the safety and conformity of high reliability applications, such as medical, aerospace, or defense applications, as applicable. Seller shall ensure that all of its sub-suppliers adhere to these same requirements.

27. **GOVERNMENT CONTRACTS OR SUBCONTRACTS.** Where applicable, the Boyd Government Orders Addendum shall apply hereunder (available at <https://info.boydcorp.com/hubfs/Company/Boyd-Government-Subcontract-Addendum.pdf> or via the Boyd Suppliers section of Buyer's public website at [www.boydcorp.com](http://www.boydcorp.com)), which requirements are made a party of this Order.

28. **INCORPORATION BY REFERENCE.** There are also incorporated by reference and made a part hereof all other clauses which Buyer is required by law, regulations or applicable government contracts or subcontracts to insert into its subcontracts or orders, and other clauses of standard government contract forms to the extent the same are applicable to Buyer's operations requiring the purchased Products.

29. **PROTECTION AGAINST LABOR DISRUPTIONS.** Seller will, at Seller's expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Products to Buyer for not less than 30 days during any foreseeable or anticipated labor disruption and/or the expiration of any of Seller's labor contracts. This Section shall not constitute a waiver of and is without prejudice to, any and all of Buyer's other rights and remedies under this Order or applicable law, each of which are hereby reserved.

30. **EXCUSE OF PERFORMANCE.** A party shall not be responsible if and to the extent such party (the "Affected Party") fails to perform under this Order due to causes beyond its reasonable control (each, a "Force Majeure Event"). Force Majeure Events shall include but not be restricted to storms, floods, earthquakes, acts of God, acts of civil or military authority, riots, fires, lock-outs, explosions and bombings, acts of war and terrorism or any other cause or causes beyond the reasonable control of the party seeking to be excused from performance. However, Force Majeure Events shall not include (a) the change in cost or availability of raw materials, components, or services based on market conditions, supplier actions, or contract disputes; (b) Seller's financial distress or economic hardship in buying materials or processing necessary for manufacture of the Products; (c) Seller's bankruptcy or insolvency of one or more of the Affected Party's suppliers; (d) any pandemic, government imposed import duties, tariffs or regulatory changes, labor strike or other labor disruption applicable to the Affected Party or to any of its subcontractors or suppliers; or (e) any Force Majeure Event that Buyer's customer does not recognize as excusing Buyer's performance. Upon an occurrence of a Force Majeure Event in which Seller is the Affected Party, Seller shall notify Buyer in writing no later than two (2) business days thereafter, and Seller, at its cost, shall use its best efforts to mitigate any impact or damages to Buyer. In no event, shall Seller be entitled to price adjustment, compensation or other financial relief under this Order as a result of a Force Majeure Event. Buyer may, without liability to Seller, purchase Products from other sources and reduce its orders. If the delay lasts more than thirty (30) days, or if Seller does not provide adequate assurances that the delay will cease within thirty (30) days, Buyer may terminate the affected Order(s) or this Order upon written notice and Buyer shall have no liability related to such termination.

31. **ENTIRE AGREEMENT.**

(a) In addition to the Terms, the following documents are incorporated into and will be part of the Order: (i) any executed supply agreement, award letter, directed buy, service, or other signed agreement between Buyer and Seller that states it is part of the Order; (ii) Releases issued by Buyer to Seller under the Order; (iii) prints and specifications for the Products; and (iv) Buyer's policies, manuals, and guidelines, as revised by Buyer from time to time.

(b) In the event of any ambiguities, express conflicts, or discrepancies in the specification, drawings, or any other documents which are part of the Order, Seller will immediately submit the matter to Buyer for its determination. In the event of an express conflict between an executed supply, service or other agreement, or an Order, on the one hand, and these Terms, on the other hand, the provisions of any such agreement will be construed, to the extent possible, as consistent with these Terms and as cumulative; provided, however, if such construction is unreasonable, the terms and conditions of any such other agreement will control unless otherwise set forth on the face of the Order or in a writing signed by the parties.

(c) The Order is the entire agreement between the parties respecting the Products and supersedes any prior agreements, negotiations, or understandings of the parties respecting the Products, whether written or oral,

except as may expressly be incorporated into this Order under Section 31(a). This Order may only be modified by: (a) a written amendment signed by authorized representatives of each party; or (b) by Buyer by an amendment to the Order issued by Buyer or (c) by Buyer from time to time by posting revised Terms to Buyer's website. Such revised Terms will apply to all Order revisions/amendments and new Orders issued on or after the effective date thereof. Seller will be responsible to review Buyer's website periodically.

32. **BUSINESS RELATIONSHIP.** Nothing herein shall be construed to place the parties in a relationship of partners or joint ventures. Buyer and Seller are neither the agent nor legal representative of the other for any purpose whatsoever. No representation shall be made by either party that would create an apparent agency, employment, partnership or joint venture. Neither party shall have the authority, expressed or implied, to bind the other in any manner whatsoever except as set forth herein.

33. **SEVERABILITY.** This Order will be subject to and interpreted so as to comply with all applicable law. If any provision of the Order, or portion of any provision, is declared or found to be unenforceable under applicable law, such provision will, if possible, be interpreted in a manner so as to be enforceable to the greatest extent possible under applicable law. The balance of the Order will be interpreted as if the unenforceable provision or portion was interpreted according to the preceding sentence or, if such interpretation is not possible under applicable law, as if the unenforceable provision or portion had never been a part hereof.

34. **NO WAIVER.** The failure of either party at any time to require performance by the other party of any provision of the Order, or any delay in the enforcement thereof, shall in no way affect the right to require such timely performance at any time thereafter, nor shall the waiver by either party of a breach of any provisions of the Order constitute a waiver of any succeeding breach of the same or any other provision.

35. **HEADINGS.** The headings used herein are for convenience of reference only, shall not be deemed to be a part of any agreement between the parties and shall not be referred to in connection with the construction or interpretation of any agreement.

36. **CONFLICTS.** The English language version of these Terms will control in the event of any disagreement over the meaning or construction of any provision in any translation. Any translations are provided for the convenience of Seller and are for informational purposes only. No provision may be construed against Buyer as the drafting party.

37. **SURVIVAL.** The obligations of the Buyer and Seller hereunder, which by their nature would continue beyond the termination, cancellation or expiration of the Order, shall survive the termination, cancellation or expiration of the Order, including without limitation, the provisions of Sections 13 (Warranties), 17 (Confidentiality), 18 (Intellectual Property), 20 (Record Retention and Audit), and 21 (Indemnification).

38. **ASSIGNMENT OF AGREEMENT AND BINDING EFFECT.** Buyer may assign the Order or any of its rights or obligations without Seller's consent. Buyer and its affiliates assign to each other the right to any payment from Seller and its affiliates, and each such Buyer affiliate is entitled to collect each amount owed from Seller to Buyer or its affiliates. Seller agrees not: (a) assign the Order; (b) subcontract the performance of its duties; or (c) enter or offer to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of the Products or a merger, sale, or exchange of stock or other equity interests that would result in a change of control of Seller, without the prior written consent of an authorized representative of Buyer.