

**BOYD GENERAL TERMS AND CONDITIONS  
OF PURCHASE FOR SUPPLIERS**

**1. CONTRACT AND ACCEPTANCE.**

These Boyd General Terms and Conditions of Purchase for Suppliers shall be applicable to each electronic or written purchase order (“Order”) issued by LTI Holdings, Inc. (dba Boyd Corporation) or one of its subsidiary companies (each, a “Buyer”). Such Order is Buyer’s offer to purchase the goods and/or any related services (collectively, the “Goods”) identified in that Order. Seller will be deemed to have accepted an Order as issued upon the first to occur of: (i) five (5) business days after Seller’s receipt of the Order, unless otherwise rejected by Seller via electronic mail or other form of writing; or (ii) Seller’s commencement of any work or service under this Contract. Unless specifically agreed to in writing by an authorized representative of Buyer, any proposal for additional or different terms or any attempt by Seller to vary in any way any of the terms of this offer or the Contract is not binding on Buyer and is expressly rejected. Upon acceptance, the Order together with these General Terms and Conditions, and any other documents specifically incorporated in the Order or separately agreed to in writing, such as specifications, drawings, requirements of Buyer’s customer, or quality requirements, will become a binding contract between Buyer and Seller (collectively, the “Contract”). Seller acknowledges that it has read and understands this Contract.

**2. REQUIREMENTS.** During the Term (as defined hereinafter) of the Contract, Seller shall make Goods covered by the Contract available to Buyer to meet Buyer’s current-model production requirements at the Pricing (as defined hereinafter).

**3. PRICING AND PAYMENT.**

**(a) Pricing.** Prices for Goods provided hereunder shall be specified in the Contract (the “Pricing”). Unless otherwise stated in the Contract, the Pricing includes all tariffs, duties 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. Unless an Order specifically states otherwise, all payments for Goods shall be made in the local currency of the Seller’s manufacturing location for the Goods or in the case of services, in the local currency of Buyer’s location that receives the services. Seller shall be solely responsible for fluctuations in currency and raw material 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 Goods to Buyer, nor may Buyer refuse to purchase Goods from Seller, 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 Goods purchased hereunder that have not left the point of manufacture at the time of agreement.

**(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. Lot shipments will be invoiced on a pro rata basis. Minor inadvertent administrative errors contained in an invoice are subject to correction and shall not constitute reason for untimely payment.

**(d) Taxes; Duties.** Unless otherwise stated in the Contract, 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 Good or Services shall always be the lowest price charged by Seller to any third party for that equivalent good or service, 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 of this price and price protect Buyer’s Goods inventory or past Services by rebating to Buyer an amount equal to the difference in the price paid by Buyer and the lower price for all such Goods ordered by Buyer or Services performed retroactive to the date Seller first sold the similar good or service at the lower price.

**(f) Payment.** Unless otherwise mutually agreed upon by the Parties in the Contract, the payment terms for all Goods supplied hereunder shall be 60 days from the date of the receipt of invoice, unless otherwise set forth on the Contract. Seller will have the right to send such invoices by electronic mail, provided that it follows up with a hard copy immediately thereafter. In addition to any right of setoff provided by law, Buyer shall have the right to set off amounts Buyer (or any of its affiliates) owes to Seller (or any of its affiliates) against any amounts Seller (or any of its affiliates) owes to Buyer (or any of its affiliates), regardless of whether it relates to transactions arising hereunder.

**4. CHANGES.** Buyer may 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 Contract. At Seller’s request with appropriate supporting documentation, the Parties will agree upon an equitable adjustment to the Contract prices and times for performance as a result of Buyer’s changes. Contract changes must be in writing signed by Buyer’s authorized representative, and Buyer will not unreasonably withhold or delay consent to a Contract change proposed by Seller. Seller shall not change the design of the Goods, sub-suppliers, or change or relocate (from the facilities approved by Buyer) the production, tooling, equipment, manufacture or assembly of the Goods, or change the location from which the Goods are shipped, without the written consent of an authorized representative of Buyer.

**5. SCHEDULING; QUANTITIES**

**(a) Scheduling.** Time is of the essence, and deliveries must be made both in quantities and at times specified in Buyer’s Releases. 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 customer’s delivery requirements, and Buyer requires a more expeditious method of transportation of the Goods 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 Goods 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 (in any such case 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 from Buyer from time to time. For purposes of this

Contract, a “Release” shall be a contractually binding order for Seller to ship a definite quantity of Goods, or to provide the Services, to a specified schedule. Any excess or obsolete inventory due to Seller’s decision to produce Goods 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 or service 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 Goods and with applicable customs documentation for Goods wholly or partially manufactured outside of the country of import.

#### 6. **PACKAGING AND SHIPPING.**

(a) **Packaging.** Seller shall be responsible for all costs to handle, package, store and transport the goods to the delivery location set forth on the Order (the “Delivery Location”), and Seller shall provide all packing slips, bills of lading and other shipping documents with each shipment of goods. Unless otherwise stated in the Contract, Goods shall be delivered F.O.B. to the Delivery Location in accordance with Incoterms 2010.

(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 this Contract by reference, including delivery, logistics, packaging, labeling and hazardous materials instructions and requirements.

(c) **Hazardous Materials.** Prior to and with the shipment of the Goods purchased hereunder, Seller shall furnish to Buyer sufficient warning and notice in writing (including appropriate labels on Goods, containers and packing) of any Hazardous Material which is an ingredient or a part of any of the Goods, 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 Goods, containers and packing shipped to Buyer. For purposes of these terms and conditions, “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. Upon the request by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct, a list of ingredients in the Goods purchased hereunder.

7. **INSPECTION.** Buyer is not required to inspect Goods delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller’s obligations under the Contract. Payment for nonconforming Goods 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. Goods rejected by Buyer as not conforming to the relevant Order or specified quality requirements may be returned to Seller at Seller’s own expense and, at Buyer’s sole discretion and request, shall immediately be reworked or replaced at Seller’s own expense. Seller shall be responsible for

all collateral expenses that may result from rejected Goods, including without limitation premium freight for Goods.

8. **CAPACITY.** Seller shall have available upside capacity of fifteen percent (15.0%) in excess of any such estimated volume provided by Buyer. Nothing herein shall constitute a commitment by Buyer to purchase a certain quantity of Goods beyond a Release.

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

#### 10. **TOOLING.**

(a) **Buyer Owned Tooling.** All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished by Buyer, either directly or indirectly, to Seller under the Contract, or for which Seller has been reimbursed by Buyer, shall be and remain the property of Buyer (“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 property. Seller shall bear the risk of loss of and damage to Buyer Property. 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 the request of Buyer, such Buyer Property shall be immediately released to Buyer or delivered to Buyer by Seller, either (i) for United States-based suppliers, F.O.B. transport equipment at Seller’s plant, 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 (*Incoterms 2010*) Seller’s plant, 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 of Buyer Property for work performed on such property or otherwise. To the extent any Intellectual Property Rights 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 Rights.

(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 (collectively “Seller Property”) necessary for the production of the Goods purchased hereunder. The cost of changes to the Seller Property necessary to make design and specification changes authorized by the Buyer shall be paid for by Buyer. Cost of changes shall be reasonable, mutually agreed and documented in writing signed by both Parties before commencement of any work. Seller grants Buyer an irrevocable option to take possession of any Seller Property that is special for the production of the Goods 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; provided, however, that this option shall not apply if such Seller

Property issued 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.

11. **SUBCONTRACTING.** Seller shall not subcontract any of its obligations hereunder without the written consent of an authorized representative of Buyer. Seller shall be responsible for and hold Buyer harmless for any payment to any Seller's vendors or approved subcontractors utilized hereunder.
12. **CONTENTS.** If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (i) a list of all ingredients in the Goods purchased hereunder; (ii) the amount of one or more ingredients; and (iii) information concerning any changes in or additions to such ingredients.
13. **SERVICE AND REPLACEMENT PARTS.** Seller shall maintain any tooling required to produce the Goods, and provide Goods to Buyer at the Pricing to fulfill any service and replacement obligations of Buyer's customers, including for any specified periods following the end of serial production.
14. **WARRANTIES.**
  - (a) **General.** Unless otherwise specified in the Contract, the "Warranty Period" is the period for which Buyer's customer warrants the Goods to end users. During the Warranty Period, Seller warrants to Buyer that any Goods 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 (iii) shall be merchantable and fit and sufficient for the particular purposes. All warranties provided hereunder are in addition to any other express or implied warranties provided at law.
  - (b) **Title.** Seller represents and warrants that (i) the Goods 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 Goods and related obligations under the Contract; (iii) Seller neither knows nor has reason to know of any outstanding title or claim of title hostile to Seller's rights in the Goods; and (iv) Seller has the right to assign, sell, and convey unto Buyer such Goods.
  - (c) **Claims.** In the event a Good fails to comply with Seller's warranty obligations hereunder, including without limitation, quality, product recalls, multiple field failures, or any other failures of a Good 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.
15. **CONTINUOUS IMPROVEMENT.** The Parties shall work together to continually improve the manufacturing and delivering of the Goods to maximize efficiency and cost-effectiveness. To the extent Buyer or Seller desire to undergo a continuous improvement project or where either Party has a suggestion designed to improve the quality of the Goods 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 part piece price. Buyer's 50% portion of the cost savings shall be reflected by an immediate reduction to the piece price of the Goods in an amount designated by Buyer for the total cost savings per unit. Each party shall bear its own costs and expenses in carrying out the activities contemplated by this Section.
16. **INSURANCE.** Unless expressly waived in writing by Buyer and for the Term, Seller shall maintain: (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) and naming Buyer as an additional insured; (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; and (iii) *Worker's Compensation* insurance; and *Employer's Liability* insurance with coverage limits as required by applicable law. Seller's purchase of appropriate insurance coverage or the furnishing of certificates shall not release Seller of its obligations or liabilities under this order. Upon entering into the Contract, Seller shall provide evidence of such insurance coverage to Buyer. 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 with which Buyer may carry. Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or in Seller's behalf shall 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. Purchaser shall be included as an additional insured on Seller's liability insurance policies. Amount of insurance required by Buyer, and maintained by Seller, shall not constitute a limitation of liability.

#### 17. **CONFIDENTIALITY**

(a) **Confidential Information.** As used herein, "Confidential Information" means confidential information of a Party 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 (i) information that either Party knows about the other prior to entering into the relevant agreement, except any information which is the subject of unexpired confidentiality obligations; (ii) information that is publicly known, or becomes publicly known, through no breach by either Party; (iii) information that is rightfully obtained by either Party from any third party who has no duty of confidentiality hereunder; (iv) information that is independently developed by or for a receiving Party completely apart from the disclosures hereunder; (v) information that is released pursuant to a binding court order or government regulation, provided that the receiving party delivers a copy of such order or action to the other Party and reasonably cooperates with the other Party if it elects to contest such disclosure or seek an appropriate remedy such as a protective order or (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 the 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 Goods or performance of the Services, which information will become, upon creation, Buyer's Confidential Information unless otherwise agreed in writing. Each Party agrees to maintain such

information in accordance with the terms of any applicable agreement between the Parties, including without limitation a non-disclosure agreement. 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 in this Section, 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, 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.

**(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 Goods, including but not limited to all work product relating to or resulting from Seller's development of Goods for or to Buyer, or made with knowledge, use or incorporation of 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 Contract.

**(b) Ownership.** Seller acknowledges and agrees that all right, title and interest in and to all Intellectual Property shall be owned by Buyer and all ownership rights thereto of any nature shall belong to Buyer, except where Goods 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 Agreement 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) Copying of Works.** Seller and its officers, employees, 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 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 Goods ("Records") for a period of ten (10) years following the expiration or termination of the Contract, unless a longer record retention period is set forth therein. 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 Goods, and other expenses or payments under the Contract. 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 hereinafter. The terms of this Section shall survive any termination or expiration of the Contract for a period of three years.

**(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 from and against any and all claims, losses, actions, investigations, costs, damages, expenses and (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) (collectively, "Damages") arising out of or related to any Goods provided under an Order or any breach of an Order. The Parties shall work collaboratively to determine the most cost-effective method of modifying or replacing the Goods or the end customer application, as required, in order to remedy the alleged defect or non-compliance.

**(b) Intellectual Property.** Seller shall indemnify, defend and hold harmless Buyer and each of its directors, officers, employees, agents and customers from and against any and all claims, actions, costs, damages, expenses or judgments incurred in connection with investigating, defending or asserting any claim, action, suit related to alleged infringement for the manufacture or design (solely where Seller has primary design responsibility) of the Goods upon any third party's intellectual property, including without limitation patents, trademarks and copyrights.

**(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 Seller shall 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.** Prior to undertaking any legal action to enforce any provision herein, the parties shall attempt to settle any and all claims or disputes arising in connection herewith by good faith negotiations by senior management of each party. Any claim or dispute in connection with the Contract, except for a breach of the Confidentiality provisions in Section 18, shall be referred to and finally resolved by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce then in effect, by three (3) independent and impartial arbitrators. Upon such submission, the Parties shall each select an arbitrator who shall mutually select a third independent and impartial arbitrator who shall preside over the arbitration panel thus constituted. The place of arbitration shall New York, New York, U.S.A., and the arbitration shall be conducted in the English language. The fees, costs and expenses of the arbitrators under this provision shall be borne equally by the Parties, provided that each Party shall bear its own cost of representation.
- 23. REMEDIES.** The rights and remedies reserved to Buyer in this Contract are cumulative with, and additional to, all other rights and remedies of Buyer under applicable law or in equity. Without limiting the foregoing, in the event that any goods fail to conform to the warranties set forth in this Contract or the product specifications incorporated by reference in this Contract, or if Seller otherwise breaches any of its obligations under this Contract, 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 incurred by Buyer as a result of such breach or failure, including, without limitation, costs, expenses and losses incurred by Buyer (a) in inspecting, sorting, testing, repairing or replacing nonconforming goods or nonconforming deliveries; (b) resulting from production interruptions; (c) in conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury, including death, or property damage. Additionally, any action by Seller for nonpayment of Goods under any Contract must be commenced within one (1) year after the Goods are delivered to Buyer, regardless of Seller's lack of knowledge of the nonpayment or other event giving rise to such action.
- 24. TERM AND TERMINATION.**
- (a) Term.** The Contract 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 Order (the "Term"). In the event no effective term is set forth on the Order, the effective term of the Contract shall be for the life of the program for which such Goods or applied, unless otherwise terminated per the terms and conditions herein.

**(b) Termination for Cause.** Buyer may terminate all or any part of this Contract, without liability to Seller, if Seller (i) fails to perform any obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within ten (10) business days after notice from Buyer specifying the non-performance; (ii) states its intention not to perform or otherwise rejects its obligations under this Contract; (iii) fails to make progress in performance so as to endanger timely and delivery of Goods under this Contract; (iv) fails to provide timely adequate assurance of performance under the Contract per Section 25(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 Contract upon giving at least sixty (60) days' notice to Seller, 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 Contract, Buyer may, at its option, terminate all or any part of this Contract before the expiration date set forth in this Contract, at any time and for any reason, by giving at least ninety (90) days written notice to Seller. 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 price for all Goods that have been completed in accordance with this Contract and not previously paid for; and (ii) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the Goods, 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 this Contract; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Seller will promptly make available for delivery to Buyer, as specified by Buyer, any goods completed but not delivered as of the time of Buyer's termination hereunder. 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 this Contract, Buyer will make no payments under this Section for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's Releases. Further, any payments made under this Section will not exceed the aggregate price payable by Buyer for finished Goods that would have been produced or performed by Seller under Buyer's delivery schedules 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 Contract, 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 Contract by Seller.

**25. GOVERNING LAW.** This Contract and any claims relating to the Goods provided under this Contract will be governed by the laws of the country (and state/province, if applicable) of Buyer's location as shown by the address of Buyer as set forth in this Contract ("Buyer's Location"), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), as amended, and any conflict of law provisions that would require application of another choice of law. Any action or proceedings by Buyer against Seller may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the court(s) having jurisdiction over Buyer's Location, in which event Seller consents to such jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer may be brought by Seller only in the court(s) having jurisdiction over Buyer's Location.

**26. COMPLIANCE WITH LAWS.**

**(a) General.** Seller shall be responsible for complying with all applicable federal, state and local laws, rules, regulations and ordinances during its performance hereunder. In the United States, these may include, but are not limited to, Department of Commerce including U. S. Export Administration regulations, Securities Exchange Commission, Environmental Protection Agency, Customs-Trade Partnership Against Terrorism, and Department of Transportation regulations applicable to Hazardous Materials. 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. 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 on 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 on 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. The Parties hereto acknowledge that the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply hereunder.

**(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) (the "Export Control Laws"). Seller represents and warrants that, unless otherwise authorized by law or regulation, any Goods 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, Cuba, Iran, North Korea, Sudan, Syria or the geographic area of Crimea. 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 Good's actual or alleged sanctioned party or country content or Seller's noncompliance with this Section. Seller shall be responsible for the control, disclosure of and access to technical data, information and other items received hereunder. Seller shall further assist Buyer with any requests for information, certifications, or other similar documents as Buyer may reasonably request to ensure the compliance of the Goods and Seller with this Section and shall notify Buyer promptly upon discovering or having reason to believe that any Goods fail to comply with the representation and warranty in this Section. Licenses or other authorizations required for the export of Goods will be the responsibility of Seller unless otherwise indicated in this Contract, in which event Seller will provide such information as may be requested by Buyer to enable Buyer to obtain such licenses or authorizations.

**(c) FLSA Certification.** All United States-based Sellers' invoices must include a certification that all Goods 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) Equal Opportunity and Affirmative Action.** Seller certifies that it is in compliance with Executive Order 11246 and implementing Equal Employment Opportunity regulations, the Vietnam Era Veterans' Readjustment Assistance Act as amended by the Veterans Employment Opportunities Act of 1998 (to include: Vietnam-era Veterans and other Veterans who served on active duty during a war or campaign or expedition for which a campaign badge has been authorized), and the Immigration Act of 1987, unless exempted or inapplicable.

**(e) Non-Discrimination.** Seller shall comply with all applicable laws regarding non-discrimination in terms and conditions of employment, payment of minimum wage and legally mandated employee benefits and compliance with mandated work hours.

**(f) Hazardous Substances.** Suppliers to 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.

**(g) Conflict Minerals.** Seller shall disclose to Buyer any materials or minerals used in the production of the Goods 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"). Goods 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 Goods.

**(h) Anti-Corruption.** Seller acknowledges and shall at all times comply with international anticorruption and anti-bribery laws,

including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. In compliance with such international anticorruption laws, Seller shall not provide any direct or indirect payment of money or anything of value to any government official, international organization, political party, party official or candidate for political office, or private individual or Buyer employee for the purpose of obtaining, retaining, or directing business or securing any improper advantage.

(i) **Human Trafficking.** Buyer is committed to social responsibility and firmly opposes slavery and the trafficking of humans. Seller certifies that: (i) Seller's policies and practices prohibit engaging in the trafficking of persons, the use of forced labor, or the procuring of commercial sex acts; (ii) to the best of its knowledge and belief, neither Seller nor any of its subcontractors, has engaged in any such activities, or if abuses have been found, Seller has taken the appropriate prompt remedial and referral actions; and (iii) for aerospace, military and defense applications, Seller is in compliance with FAR 52.222-50 and Executive Order 13627 and the proposed FAR and DFARS amendments strengthening protections against human trafficking set forth in 78 FR 59312 and 78 FR 59325, respectively.

(j) **Child Labor.** Seller shall comply with all applicable laws regarding employment of underage or child labor and shall not employ children under the age of sixteen (16).

27. **CONDUCT AND SOCIAL RESPONSIBILITY.** Seller warrants, and it is a condition of this Order or Contract, that all performance hereunder shall be at the highest levels of ethical standards and in accordance with the *Boyd Supplier Code of Conduct*, a copy of which is available upon request or via the supplier portal of Buyer's public website at [www.boydcorp.com](http://www.boydcorp.com). 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.
28. **GOVERNMENT CONTRACTS OR SUBCONTRACTS.** Where applicable, the [Boyd Government Contract Addendum](#) shall apply hereunder, a copy of which is available upon request or via the supplier portal of Buyer's public website at [www.boydcorp.com](http://www.boydcorp.com).
29. **INCORPORATION BY REFERENCE.** There are also incorporated by reference and made a part hereof all other clauses with 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 Goods.
30. **PROTECTION AGAINST LABOR DISRUPTIONS.** Seller will, at Seller's expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Goods 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 Contract or applicable law, each of which are hereby reserved.
31. **FORCE MAJEURE.** The Parties shall not be responsible for any failure to perform under this Contract due to causes beyond their 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, commercial impossibility, 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 labor disputes or strikes. Upon an occurrence of a Force Majeure Event, Seller shall notify Buyer in writing no later than five (5) business days thereafter, and Seller shall take best efforts to mitigate any impact or damages to Buyer.

32. **ENTIRE AGREEMENT.** The Contract constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and shall supersede all prior written or oral agreements, representations, and understandings, including without limitation, Buyer's request for quote and Seller's quote. This Contract may only be modified by an Order amendment or alteration issued by an authorized representative of Buyer.
33. **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. The Parties further agree that 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 beyond those contained herein.
34. **SEVERABILITY.** The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision contained herein, and the remaining provisions of this Contract shall remain in full force and effect.
35. **NO WAIVER.** The failure of either Party at any time to require performance by the other Party of any provision of this Contract shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either Party of a breach of any provisions of Order constitute a waiver of any succeeding breach of the same or any other provision.
36. **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.
37. **CONSTRUCTION.** In the interpretation and construction of these provisions, the Parties acknowledge that the terms hereof shall not be deemed, for the purpose of construction and interpretation, to have been drafted by either Party.
38. **CONFLICTS.** In the event the Parties have entered into a Master Supply Agreement ("**MSA**") and a conflict arises between the MSA and this Contract, the terms and conditions of the MSA shall take precedence.
39. **SURVIVAL.** The obligations of the Buyer and Seller hereunder, which by their nature would continue beyond the termination, cancellation or expiration of the Order or Contract, shall survive the termination, cancellation or expiration of the Order or Contract, including without limitation, the provisions of Sections 14 (Warranties), 17 (Confidentiality), 18 (Intellectual Property) and 20 (Record Retention and Audit).
40. **ASSIGNMENT OF AGREEMENT AND BINDING EFFECT.** Seller shall not assign or delegate its obligations hereunder or without the prior express written consent of Buyer. The rights and obligations of Seller hereunder shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of Seller and any third party who acquires the business or assets of the Seller to which these provisions relate by the sale or any other transfer thereof.