

**EBARA ELLIOTT ENERGY**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE**  
**(The Americas Region)**

Throughout these Ebara Elliott Energy Standard Terms and Conditions of Purchase (these “Terms and Conditions”), the following definitions apply:

BUYER shall mean Ebara Elliott Energy entities, comprised of Elliott Company, and all of its direct and indirect subsidiaries and affiliates, and Ebara Elliott Turbomachinery Corporation, and all of its direct and indirect subsidiaries and affiliates.

SELLER shall mean the entity referenced as seller, supplier, vendor, licensor, or similar reference in the attached Purchase Order or other document(s) attached to these Terms and Conditions.

PARTIES shall mean collectively, BUYER and SELLER.

1. **AGREEMENT**. The attached Purchase Order together with these Terms and Conditions and any attachments, exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the “Agreement”) are intended to be a legally binding contract between BUYER and SELLER with respect to SELLER’S sale to BUYER and BUYER’S purchase from SELLER of the goods, materials, and/or services in the attached Purchase Order (collectively, the “Goods” and/or “Services,” as applicable).

To the extent that there is a conflict between the terms of these Terms and Conditions and the attached Purchase Order, these Terms and Conditions shall prevail. The order of precedence shall be as follows: these Terms and Conditions, followed by the attached Purchase Order, and any appendices and attachments directly relating to the Purchase Order thereafter, all of which shall prevail over all other purchasing documentation issued by SELLER.

SELLER’S acknowledgement, electronic acceptance, execution, or commencement of performance of the attached Purchase Order, or any other conduct of SELLER indicating SELLER’S recognition of the existence of an agreement between PARTIES pertaining to the subject matter hereof, shall constitute SELLER’S acceptance of the attached Purchase Order and these Terms and Conditions. Any terms proposed by SELLER which are additional to or different than the terms of the attached Purchase Order and these Terms and Conditions shall be deemed to be a counter offer, shall be void and not form part of the Agreement (unless expressly agreed to in writing by BUYER). Failure or delay by BUYER in responding to any such terms by SELLER shall not be deemed or construed to be BUYER’S acceptance or approval thereof.

Any implied terms by course of dealing between the PARTIES, trade, custom, practice and usage are specifically excluded and no course of dealing between the PARTIES nor any industry trade or custom, practice, or usage shall be relevant to supplement or explain any of the terms hereof.

2. **PRICE PROTECTION.** SELLER represents and warrants that the price(s) set forth in the attached Purchase Order are equal to or less than the lowest net price, and the commercial terms and conditions of sale are as favorable, as the price(s), and the terms and conditions afforded by SELLER to any other current customer of SELLER for comparable goods or services in similar or lesser quantities as offered by SELLER within a period of twelve (12) months prior thereto. Should BUYER be able to purchase comparable goods or services from another source at a lower net price than in effect hereunder, and BUYER provides SELLER written notice thereof, BUYER may purchase such goods or services from such other source at such lower price unless, within fifteen (15) days of receipt by SELLER of said notice, SELLER has met such lower price. Any quantity of goods or amount of services so purchased from another source by BUYER which is less than the total quantity or the amount purchased pursuant to the attached Purchase Order shall be deducted from such total quantity or amount. For completeness, the remaining terms of the Purchase Order shall remain unchanged.
  
3. **TITLE; RISK OF LOSS.** SELLER warrants good title to all Goods furnished by it hereunder. Title to all Goods and materials for which payment has been made, whether or not the same has been incorporated into the Goods, and title to all completed Goods, whether paid for or not, shall vest in BUYER, and in any case shall not be part of the SELLER'S property or estate in the event SELLER is adjudged insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of SELLER'S insolvency, or if the Purchase Order is terminated. Notwithstanding the foregoing, title and risk of loss with respect to the Goods shall not pass to BUYER until delivery of the Goods to BUYER'S facility or as directed by BUYER on the face of the Purchase Order. If BUYER makes any payment to SELLER prior to such delivery of Goods, then title to said Goods shall pass to BUYER at the time of such payment, but the risk of loss shall remain with the SELLER until delivery of the Goods to BUYER.
  
4. **PACKING AND CARTAGE.** SELLER shall provide safe and adequate packing which conforms to the requirements of carriers' tariffs, to protect the Goods and Services from loss or damage in accordance with best commercial practices and any written specifications of BUYER set forth on the face of the attached Purchase Order or in an attachment thereto. SELLER agrees that no charge will be made to BUYER for packing, boxing, or cartage, unless agreed upon at the time of purchase. Damage to any Goods not packed to insure proper protection to same will be charged to SELLER. BUYER'S purchase order number, part number, and quantity shipped will be marked or tagged on each package and bill of lading or other delivery document. BUYER'S count will be accepted as final and conclusive on any shipment not accompanied by an itemized packing slip.
  
5. **DELIVERY, INSPECTION, AND ACCEPTANCE.** SELLER shall, upon BUYER'S request, permit BUYER, BUYER'S customers or end users, to inspect the Goods at SELLER'S facility or otherwise prior to delivery. All Goods shall be marked or tagged per BUYER'S instructions. Any equipment or materials delivered or Services performed in excess of the Purchase Order quantity may, at BUYER'S option, be rejected and any excess Goods returned to SELLER at SELLER'S expense. Any Goods delivered or Services performed prior to the delivery or due date set forth on the Purchase Order may, at BUYER'S option, be rejected and returned to SELLER and at SELLER'S expense.

SELLER shall obtain BUYER'S approval in writing of any samples required by the terms of the attached Purchase Order prior to shipment of the Goods. BUYER shall have a reasonable time after receipt of the Goods or performance of the Services to inspect such Goods or Services and to reject any which fail to conform with applicable specifications or are otherwise defective. BUYER's payment to SELLER for any Goods and Services prior to BUYER's timely rejection of such Goods and Services as non-conforming shall not be deemed as acceptance by BUYER.

Goods so rejected shall, upon written notice to SELLER, be returned to SELLER at SELLER'S expense, and BUYER may further cancel any unshipped portion of the Purchase Order. Upon such return and/or cancellation, BUYER may purchase like goods and services elsewhere and SELLER shall pay BUYER the amount of any increased cost or loss incurred. BUYER'S payment for Goods or Services prior to inspection shall not constitute acceptance thereof. SELLER shall be liable for any defect in the Goods pursuant to Section 8. Neither BUYER'S inspection nor the fact that SELLER has sent drawings, samples, or Goods for BUYER'S inspection limit SELLER'S responsibility for ensuring that the Goods are in compliance with the contractual requirements. BUYER may revoke BUYER'S initial acceptance to the extent such Goods are nonconforming and such nonconformity could not have been reasonably determined upon inspection. Any inspection or other action by BUYER under this Section 5 shall not reduce or otherwise affect SELLER'S obligations under the attached Purchase Order and these Terms and Conditions, and BUYER shall have the right to conduct further inspections after SELLER has carried out its remedial actions.

In the event SELLER fails to take any action required herein in a reasonably timely fashion, or if, in BUYER'S sole discretion, SELLER will be unable to take any action required in order for BUYER to meet its contractual obligations with its customers and end users, BUYER shall be entitled to take such action or to have such action taken to make such alterations, repairs, replacement or any other necessary action that BUYER deems appropriate, and to recover from SELLER the costs and expenses incurred by BUYER therefore and relating thereto.

Shipment should only be released upon receipt of correct Purchase Order by BUYER. Amendment requests will not be accepted once Goods have been shipped and received at BUYER'S location. Shipping without a correct Purchase Order is at the SELLER'S risk of non-payment or short payment. Purchase Order corrections/revisions cannot be made after receipt of Goods.

Delivery of Goods or performance of Services must be made within the time specified in the Purchase Order (or applicable change order as the case may be). In the event SELLER, for any reason, anticipates difficulty in complying with the required delivery and/or performance date, or in meeting any of BUYER'S other requirements, SELLER shall promptly notify BUYER in writing. BUYER'S acceptance of SELLER'S notice will not constitute BUYER'S waiver of any of SELLER'S obligations. SELLER shall be responsible for paying all additional costs as a result of late delivery or performance. If SELLER does not comply with BUYER'S delivery schedule, BUYER may require delivery by fastest way and charges resulting from the expedited transportation must be fully prepaid and absorbed by SELLER. Otherwise, BUYER may reject such Goods

delivered and Services performed after the delivery and/or performance date. **TIME IS OF THE ESSENCE IN THE SELLER'S PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT AND ALL PURCHASE ORDERS.**

6. **PAYMENTS; INVOICES.** SELLER shall submit correct invoices to BUYER in a reasonably timely manner, but in no event longer than one hundred twenty (120) days after SELLER'S delivery of Goods or the conclusion of the Services. Payment due dates will be calculated from dates of receipt by BUYER of correct invoices with bills of lading or other delivery documentation attached. Payment of said invoices will be made within one hundred twenty (120) days of receipt thereof, except for any amounts disputed by BUYER in good faith. All taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts, and government-imposed surcharges which SELLER is required by law to collect from BUYER shall be included in the price(s) for the Goods or Services stated in the attached Purchase Order. SELLER shall use its best efforts to assist BUYER in minimizing the taxes resulting from the performance of any Purchase Order. SELLER shall separately state on its invoices to BUYER hereunder any and all charges to be paid by BUYER including, without limitation, charges for installation, handling fees, or taxes, whether sales, use, or otherwise. SELLER acknowledges that BUYER shall have the right to withhold ten percent (10%) of the Purchase Order amount until all documents and drawings have been provided by SELLER in an acceptable format to BUYER and BUYER'S customers and/or end users. In the event of a payment dispute, BUYER shall deliver a written statement to SELLER no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 6. The PARTIES shall seek to resolve all such disputes expeditiously and in good faith. SELLER shall continue performing its obligations under the applicable Purchase Order notwithstanding any such dispute. Payment will be in the currency of the country in which the BUYER entity or affiliate identified in the Purchase Order is located, or as otherwise determined, notified or instructed by the BUYER.
  
7. **LIENS.** SELLER shall at all times keep free of liens and shall obtain releases of liens, claims, and encumbrances in form and substance acceptable to BUYER, executed by all persons or entities (including SELLER) who by reason of furnishing materials, equipment, labor, or other services under the attached Purchase Order, as revised or amended by both PARTIES in accordance with terms hereof, are or may be actual or potential lien holders and claimants, and BUYER may withhold payment hereunder until SELLER provides such releases to BUYER.

If SELLER shall default in discharging any lien(s), claim(s), or encumbrance(s) upon the materials and equipment to be provided hereunder, or the facilities, structures, or the premises upon which they are located arising out of the performance of this Purchase Order by SELLER or its subcontractors, BUYER shall promptly notify SELLER in writing and give SELLER an opportunity to satisfy, remove, discharge, or defend any such lien(s), claim(s), or encumbrance(s). If SELLER either does not promptly satisfy such lien(s), claim(s), or encumbrance(s), BUYER shall have the right, at its option, after written notification to SELLER, to settle by agreement or otherwise provide for the discharge of such lien(s), claim(s), or encumbrance(s), and SELLER shall reimburse

BUYER for all costs incurred by BUYER necessary to discharge such lien(s), claim(s), or encumbrance(s), including administrative costs, attorneys' fees, and any other related expenses.

8. **WARRANTIES AND LATENT DEFECTS.** SELLER warrants to BUYER that the Goods and/or Services furnished hereunder are: (a) free from defects in design, workmanship, and materials and are performed in a good and workmanlike manner; (b) in conformity with any and all specifications, plans, drawings, samples, and other descriptions set forth herein with respect to kind, quantity, quality, and capability; (c) made, sold, priced, delivered, and performed in compliance with all applicable federal or national, state, and municipal laws, regulations, and ordinances; (d) free of any claims, liens, or other encumbrances of whatever nature; (e) not infringing on any valid patent, copyright, trademark, trade secret, or other intellectual property rights, right of publicity or privacy, breach of confidence, or any other proprietary rights, whether contractual, statutory, or common law; and (f) fit for their intended purpose and operate as intended.

SELLER warrants to BUYER that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under the attached Purchase Order and these Terms and Conditions.

Each of the PARTIES warrant and represent that it has the full power to enter into the Agreement and to perform its obligations under the Agreement.

SELLER shall repair or replace, at SELLER'S own cost and expense, any Goods supplied hereunder which shall be found defective within twenty-four (24) months of delivery or twelve (12) months after being placed into normal operation, whichever occurs earlier. SELLER agrees to provide BUYER with a warranty bond, if requested. SELLER shall re-perform, at SELLER'S own cost and expense, any Services performed hereunder which shall be found defective within twelve (12) months of completion hereof. BUYER shall provide SELLER with prompt advice of such defective Goods. In connection with the Goods purchased or Services provided, SELLER guarantees and warrants all materials and equipment fabricated by it against defects and agrees to repair or replace any such material or equipment which may become defective within twelve (12) months from date of start-up or use or twenty-four (24) months from date of shipment, whichever comes last. SELLER shall pay for all related expenses, including storage and transportation charges for the return of the defective and nonconforming goods to SELLER, the delivery of repaired or replacement Goods to BUYER, and/or the field supervision and field labor required to remove and replace such repaired or replaced Goods.

In the event that SELLER fails to take any action required herein in a timely fashion, or if, in BUYER'S sole discretion, SELLER will be unable to take any action required in order for BUYER to meet its contractual obligations with its customers and end users, BUYER shall be entitled to take such action or to have such action taken to make such alterations, repairs, and replacement and to recover from SELLER the costs and expenses incurred by BUYER therefore and relating thereto.

The warranty period of parts for Goods replaced under the warranty hereof shall be renewed from the date of such replacement.

All warranties provided by SELLER to the BUYER hereunder shall survive delivery, inspection, acceptance and payment and shall run to the BUYER, BUYER'S customers, and/or end users of the Goods and Services and shall not be deemed to be the exclusive rights of the BUYER, but shall be in addition to the other rights of the BUYER under law, the attached Purchase Order, and these Terms and Conditions.

SELLER further warrants that Goods are free from Latent Defects for a further period of sixty (60) months after the expiry of the warranty period. "Latent Defects" shall mean those defects that:

A. have not been disclosed during the warranty period by either a reasonable examination or through the proper operational use of the Goods or works related to the Services, as applicable; and

B. are of such an inherent kind as a conscientious contractor would regard as being harmful to the fitness for the purpose intended for the Goods as set out in the specification, or works related to the Services, as applicable.

Notwithstanding the issue of a final acceptance certificate, SELLER shall remedy any Latent Defect at no cost to the BUYER notified to SELLER at any time during the Latent Defect period as noted above.

The warranties set forth in this Section 8, and all other rights and remedies in the Agreement, are cumulative and in addition to any other warranty provided by law and equity.

## **9. BUYER'S OPTION TO CHANGE OR TERMINATE.**

### **A. CHANGE ORDERS**

BUYER reserves the right to modify the specifications, delivery date(s), and the terms set forth in the attached Purchase Order upon prior written notice to SELLER. If SELLER determines a change in price specified in the attached Purchase Order or change in delivery dates due to such modification, SELLER must notify and present such changes to BUYER within ten (10) days of notification of modification by BUYER. In no case shall any change in Purchase Order price or delivery be effective until agreed to by BUYER in writing in the form of a Purchase Order change order issued by BUYER.

Upon receipt of such notice of modification or termination, SELLER shall immediately comply with BUYER'S instructions concerning SELLER'S performance hereunder and the disposition of completed and partially completed items, works in progress, Goods, and materials acquired pursuant to the attached Purchase Order. PARTIES shall negotiate in good faith an amendment to the applicable Purchase Order to incorporate the change order providing for an equitable adjustment to the price, time for performance, or both. SELLER will proceed

with the changes as directed, notwithstanding that PARTIES have not negotiated the amendment to the Agreement or the applicable Purchase Order to incorporate the equitable adjustment.

## B. TERMINATION

BUYER has the right to terminate the attached Purchase Order (or any part thereof) at any time, for no reason, upon providing fourteen (14) days prior written notice to SELLER and nothing in these Terms and Conditions will limit or affect such right. Upon receipt of notice of such termination, SELLER will inform BUYER of the extent to which it has completed performance as of the date of the notice, and SELLER will collect and deliver to BUYER whatever Goods and Services then exist. BUYER will pay SELLER for all Goods and Services performed and accepted through the effective date of the termination, provided that BUYER will not be obligated to pay any more than the payment that would have become due had SELLER completed and BUYER accepted the Goods and Services. BUYER will have no further payment obligation in connection with any termination.

(a) In addition to any remedies that may be provided under these Terms and Conditions, BUYER may terminate the attached Purchase Order (or any part thereof) with immediate effect upon written notice to the SELLER, either before or after the acceptance of the Goods or the SELLER'S delivery or performance of the Services,

- i. if SELLER breaches any material term of the attached Purchase Order or these Terms and Conditions;
- ii. if, in the reasonable opinion of BUYER, SELLER fails to make progress or fails to provide reasonable assurances of the same, thereby endangering timely delivery;
- iii. in case of any proceeding by or against SELLER in bankruptcy, insolvency, dissolution, reorganization or restructuring, appointment of receiver or trustee, or assignment for the benefit of creditors, then in any such events BUYER may cancel the attached Purchase Order in whole or in part by written notice to SELLER, and BUYER shall have no liability or obligation whatsoever to SELLER by reason of or resulting from such termination;
- iv. if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods;
- v. any change of control and/or ownership of SELLER; or
- vi. in the event BUYER or BUYER'S customer or end user experiences a Force Majeure Event (as defined in Section 12).

(b) In addition to, and without prejudice to, the right to terminate under the preceding paragraphs, PARTIES agree that:

- i. If the Purchase Order covers Goods manufactured or fabricated to BUYER'S specifications or specifications especially prepared by SELLER for BUYER, then at any time prior to delivery of all Goods, BUYER may terminate the attached Purchase Order in whole or in part by written notice to SELLER, and in such event the following provisions apply:

1. Immediately upon receipt of such notice of termination or upon such other date as may be specified on said notice, SELLER shall stop all work in connection with the attached Purchase Order except as otherwise directed by BUYER.
  2. The Goods or uncompleted portions of the Goods shall be property of BUYER, and SELLER shall safely hold the same for a reasonable time, not to exceed ninety (90) days, subject to receipt of BUYER'S written shipping or other disposition instructions.
  3. BUYER shall make an equitable price adjustment for materials or components procured, Goods fabricated, and Services performed prior to such notice. However, any such payment under this Section 9 shall not exceed any price specified herein for the item(s) which are the subject of the termination. SELLER shall advise BUYER, in writing, of SELLER'S claim, if any, for such termination costs fifteen (15) days after receipt of the notice of termination.
- ii. If the Goods covered by the attached Purchase Order are standard stock merchandise, BUYER may terminate all or any part of the unshipped portion of the attached Purchase Order at any time by written notice to SELLER, and in such event BUYER shall have no obligations for termination, restocking, or other charges or otherwise except to make payment for the Goods actually shipped and in transit prior to such termination.

BUYER shall have no further payment obligation to SELLER under any change order or terminated Purchase Order if BUYER terminates the Purchase Order under this Section 9. In the event of any change or termination under this Section 9, SELLER agrees that BUYER shall not be liable for any consequential, incidental, punitive, special, exemplary, or indirect damages or expenses (including, without limitation, lost profits or other economic loss, lost reimbursements, or lost savings). Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

- 10. INDEMNIFICATION.** To the fullest extent permitted by law, SELLER shall defend (at SELLER'S sole expense), indemnify, and hold harmless BUYER, its partners, representatives, designees, affiliates, successors, assigns and their respective directors, officers, equity holders, and employees (collectively, "Indemnitees") from and against any and all claims, including those for bodily injury, death, damage to property, demands, loss, damage, and any liabilities, actions, causes of action, deficiency, suit, judgments, obligations, interest, award, penalty, fine, cost, and expense, including but not limited to reasonable attorneys' or expert or professional fees and other expenses incident thereto, arising out of, relating to, or in connection with, the Events (as defined below) and/or SELLER'S work performed, materials, supplies or Goods furnished, or Services provided which are the subject of the attached Purchase Order (together with any exhibits and attachments thereto). "Events", whether groundless or not, include, but are not limited to:
- A. defects in the manufacture of the Goods and materials supplied hereunder;

- B. any breach or alleged breach by SELLER of any representation, warranty, covenant or other provision of these Terms and Conditions and the attached Purchase Order (together with any exhibits and attachments thereto);
- C. damage to or loss of BUYER'S tangible and/or intangible property;
- D. damage to the property or violation of rights of third parties (whether under contract, statutory, or common law);
- E. personal injuries or death suffered by any person which may result from the installation, operation, or use of the Goods and materials furnished hereunder;
- F. non-payment of SELLER'S subcontractors and suppliers;
- G. any Security Incident (as defined in Section 14);
- H. alleged or actual failure to comply with applicable laws, regulations, ordinances, rules, or executive or court orders;
- I. infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property right of any third party;
- J. liens or other encumbrances filed and/or made in connection with the Goods and/or Services;
- K. SELLER'S bankruptcy, insolvency, appointment of receiver or trustee, or assignment for benefit of creditors; or
- L. SELLER'S negligence or willful misconduct.

The indemnity and defense obligations pursuant to this Section 10, shall apply to any acts, omissions, negligence, or willful misconduct of SELLER, its employees or agents, SELLER'S suppliers and subcontractors.

If a third party enjoins or interferes with BUYER'S use of any Goods or Services, then in addition to SELLER'S obligations above, SELLER will use its best efforts to (i) obtain any licenses necessary to permit BUYER to continue to use any Goods or Services; (ii) replace or modify any Goods or Services (or part thereof) as necessary to permit BUYER to continue use of any Goods or Services (or part thereof); or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to BUYER the amount paid for any Goods or Services (or part thereof) for which a third party enjoins or interferes with BUYER'S use.

**11. INSURANCE.** SELLER shall have in place commercial general liability, auto liability and workers' compensation insurance for its employees in accordance with applicable law. All such insurance shall be on a primary and non-contributory basis with respect to any other insurance afforded to BUYER. Coverage shall be placed with insurance carriers with A.M. Best Rating of "A-" or better and financial rating VIII or higher. General liability and auto liability shall include BUYER, its subsidiaries and affiliates, as an additional insured on either a schedule or automatic by contract basis; general liability additional insured should be endorsed for both ongoing and completed operations. General liability, auto liability, and workers' compensation shall include waiver of subrogation endorsement in favor of BUYER. The insurance (U.S. dollars or foreign currency equivalent) amounts required are set forth below:

- A. Workers' Compensation in the statutory limits required by law where work is performed and Employers' Liability with limits of US\$1,000,000 Bodily Injury by Accident;

US\$1,000,000 Bodily Injury by Disease Policy Limit; US\$1,000,000 Bodily Injury by Disease Each Employee;

- B. Commercial General Liability on occurrence form basis, with minimum limits of US\$2,000,000 each occurrence for bodily injury and property damage, US\$4,000,000 general aggregate, and US\$4,000,000 products and completed operations aggregate, to include tort liability of another assumed in a business contract;
- C. Automobile Liability with combined single limits of not less than US\$1,000,000 any one accident or loss for bodily injury and property damage, including all owned, hired, and non-owned autos;
- D. Excess liability insurance with minimum limits of US\$5,000,000 per occurrence and aggregate; for Purchase Orders over US\$5,000,000, minimum limits increase to US\$10,000,000 per occurrence and for Purchase Orders over US\$10,000,000, minimum limits increase to US\$20,000,000 per occurrence; Excess is to follow form on Employers' Liability, General Liability, and Auto Liability;
- E. Professional Liability, if applicable, with minimum limits of US\$1,000,000 per occurrence and aggregate; and
- F. Pollution Legal Liability (Contractor's Pollution Liability), for all SELLERS performing contracting, remediation, or installation Services, with minimum limits of US\$2,000,000 per occurrence and aggregate.

No such insurance amounts shall limit in any way SELLER'S liability to BUYER hereunder, and BUYER reserves any and all subrogation rights under these policies. SELLER shall provide BUYER with an appropriate certificate evidencing such insurance and additional insured status.

Insurance Requirements for Subcontractors: SELLER shall ensure that all subcontractors maintain insurance in like form and amounts, including the Additional Insured and Waiver of Subrogation requirements in favor of BUYER. Each subcontractor shall provide Certificates of Insurance to the SELLER prior to the start of the SELLER'S execution of agreement with BUYER or at any time during the term of Purchase Order attached to these Terms and Conditions on the BUYER'S request.

**12. FORCE MAJEURE.** Either of the PARTIES may suspend performance under the attached Purchase Order without liability therefor to the extent such suspension is caused by or results from the following force majeure events affecting SELLER, BUYER or any of BUYER'S customers ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts; (d) government orders, sanctions, laws, or actions; (e) embargoes or blockades in effect on or after the date of the attached Purchase Order; (f) national emergency, including pandemics and epidemics; and (g) strikes or labor stoppages. Such affected party shall invoke this provision by notifying the other party of the cause within five (5) days of the occurrence of the nature and expected duration of such suspension. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

In the event SELLER'S performance is, or is likely to be, suspended for more than sixty (60) days, BUYER may terminate the attached Purchase Order upon written notice to SELLER. Upon such termination, BUYER may, by written notice to SELLER and upon making equitable payment therefor, require SELLER to deliver and pass title to the Goods in SELLER'S possession and any parts, raw material, or work-in-progress related to such Goods.

**13. CONFIDENTIAL INFORMATION AND PUBLICITY.** In accordance with the terms and conditions of a Confidentiality Agreement executed by and between the PARTIES, SELLER shall treat as proprietary and confidential all specifications, designs, plans, data, drawings, blueprints, nomenclature, samples, models, software, the terms of the Agreement and other information supplied by BUYER hereunder, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential". If the term of the Confidentiality Agreement expires before the expiration or termination of the Purchase Order, then the term of the Confidentiality Agreement shall be automatically extended for the duration of the Purchase Order. Without the prior written consent of BUYER, SELLER shall not in any manner disclose, advertise, publish or release for publication any statement mentioning the fact that SELLER has furnished or contracted to furnish to BUYER Goods and/or Services required by the attached Purchase Order. SELLER shall not disclose any information relating to the attached Purchase Order to any person not authorized by BUYER in writing to receive it. SELLER'S use of information supplied by BUYER, especially proprietary information, is strictly limited to its accomplishment of work covered by the attached Purchase Order and for no other purpose. SELLER grants BUYER, BUYER'S customer or end user an exclusive, unlimited, non-revocable, and sub-licensable license to use and access any and all copies of such drawings and other instruments of service that will be provided under the attached Purchase Order. Upon completion or termination of the attached Purchase Order, all information shall be promptly returned to BUYER. BUYER shall be entitled to injunctive relief for any violation of this Section 13.

**14. TOOLS, MATERIALS, AND DATA.** If the attached Purchase Order provides that any designs, sketches, drawings, blueprints, patterns, dies, molds, masks, software, models, tools, gauges, equipment, or special appliances be provided by BUYER to SELLER hereunder or paid for by BUYER but made or procured by SELLER especially for producing the Goods covered by the attached Purchase Order, then immediately upon BUYER'S provision thereof to SELLER or SELLER'S manufacture or procurement thereof, they shall remain or become the property of BUYER.

SELLER shall maintain a current inventory of the foregoing, which shall be: (a) identified as property of BUYER, (b) held by SELLER on consignment at SELLER'S risk, reasonable wear and tear excepted, (c) used exclusively in the production for BUYER of Goods under the attached Purchase Order, and (d) subject to BUYER'S direction concerning disposition, including return to BUYER. SELLER shall establish appropriate procedures for the adequate storage, maintenance, and inspection of the foregoing and shall maintain inspection and inventory records therefor available to BUYER upon request.

SELLER shall notify BUYER within forty-eight (48) hours of a discovery that an actual or suspected breach of its electronically stored information, including personal information as defined under applicable law (“ESI”), has, or may have, occurred (a “Security Incident”), and in addition to all the remedies available to BUYER pursuant to Section 10, shall further agree to reimburse BUYER for any and all damages, losses, fees, or costs (whether direct, indirect, special, or consequential) incurred by BUYER as a result of such Security Incident.

**15. GOVERNING LAW; JURISDICTION; DISPUTE RESOLUTION.** The Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania or, if BUYER is not located in the United States, the law of the place where BUYER is located, without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania, the U.N. Convention on Contracts for the International Sale of Goods or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. SELLER agrees it is subject to any court of competent jurisdiction located in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania or, if BUYER is not located in the United States, wherever BUYER is located, which place shall be the exclusive venue of adjudicating disputes arising out of the attached Purchase Order and these Terms and Conditions.

In any such litigation, the prevailing party shall have its reasonable attorney fees, expert fees, and other expenses incident to such adjudicatory proceeding paid for by the non-prevailing party.

**16. BUYER’S PERFORMANCE OF A PRIME OR SUB-CONTRACT.** In the event that the Goods or Services purchased hereunder are ordered by BUYER in connection with BUYER’S performance under a prime or sub-contract with a third party and such prime or sub-contract is referred to on the face of and incorporated by reference into the attached Purchase Order, SELLER shall provide such Goods or perform such Services in compliance with BUYER’S requirements thereunder. SELLER shall at all times ensure that the personnel, employees, agents, or consultants of such prime or sub-contract with a third party shall be suitably qualified, experienced and resourced, and shall exercise due skill, care and diligence. SELLER represents and warrants that such prime or sub-contract with a third party is aware of the SELLER’S obligations under the Agreement. SELLER shall be responsible for the work and activities of the employees, agents, and subcontractors of such prime or sub-contract with a third party, including compliance with the terms of the Agreement. SELLER shall be responsible for all payment for such prime or sub-contract with a third party. In no event shall any such prime or sub-contract with a third party release SELLER from its responsibility for its obligations under the Agreement and SELLER shall indemnify BUYER to the extent provided for in Section 10 arising out of or in connection with all acts and omissions of such prime or sub-contract with a third party. BUYER shall, upon execution of the attached Purchase Order, provide SELLER with a copy of the pertinent terms of such prime or sub-contract. To the extent that there is a conflict between the terms of the attached Purchase Order, these Terms and Conditions and the terms of such prime or subcontract, the terms of such prime or subcontract shall prevail. To the extent allowed by applicable law, no person who is not a party to Purchase

Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

- 17. COMPLIANCE WITH LAW.** SELLER shall, at all times and at its own expense, strictly comply with all applicable laws, regulations, and other requirements of every duly constituted governmental authority (national, provincial, municipal, local, or other governmental agency), agency or instrumentality, now or hereafter in effect, relating to the performance of the attached Purchase Order, including without limitation import and export control, environmental, conflict minerals, and occupational safety requirements and assume all liabilities or obligations imposed thereby with respect to SELLER'S performance under the attached Purchase Order. SELLER shall promptly provide necessary information, as requested by BUYER of confirmatory responses and documentation in this regard. Any clause required to be included in a purchase order of this type by any applicable law, rule, or regulation shall be deemed to be incorporated herein. SELLER agrees that at any time during the execution of the attached Purchase Order, if requested, it will promptly provide BUYER, BUYER'S customer, or end user with certificates confirming the origin for the Goods purchased under the attached Purchase Order in a form acceptable to BUYER, BUYER'S customer, or end user. SELLER agrees to maintain in full force and effect all licenses, permits, authorizations, registrations, certifications, and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder. In no event shall SELLER take any action or omit to take any action that would cause it to be in violation of any applicable law, including, without limitation, the U.S. Foreign Corrupt Practices Act, the Japanese equivalent titled the "Unfair Competition Prevention Law", the United Kingdom Bribery Act, and any other applicable anti-bribery and anti-corruption laws. SELLER'S failure to comply with such anti-bribery and anti-corruption laws shall constitute a material breach of the Agreement.

To be clear, the SELLER will cause its affiliates and sub-sellers, and their respective employees, officers, directors, or representatives not to make, offer to make, or agree to make, any loan, gift, donation, commission, kickback, bribe, or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (a) any governmental official, employee, or representative; (b) any employee, officer, director, or representative of the BUYER; or (c) any other person with respect to the negotiation, execution, or performance of the order.

Further, if the SELLER learns or has reason to know of any such payment, offer, or agreement described above to make any such loan, gift, donation, commission, kickback, bribe, or other payment or facility to any of the persons described above, it will immediately inform the BUYER in writing communicating to the BUYER all relevant information in respect of the above within the knowledge or possession of the SELLER. Without prejudice to the SELLER'S obligations as above, the SELLER agrees not to, and to cause its affiliates and sub-sellers not to, offer or give, or agree to give, to any employee, officer, director, or representative of the BUYER any consideration of any kind as an inducement or reward for doing, refraining from doing, or having done or refrained from doing, any act in relation to the obtaining or performance of the order, or for showing or refraining from showing favor to any person in relation to the order.

BUYER is firmly committed to adhering to all U.S. export controls, sanctions, and international trade laws and regulations including, but not limited to, the Export Administration Act (continued in effect under the International Emergency Economic Powers Act), the Export Administration Regulations (EAR), and the Foreign Trade Regulations (FTR). Accordingly, SELLER agrees (a) to provide the Export Control Classification (ECCN) and Schedule B number (or Harmonized Tariff Schedule code) for each item requested in the attached Purchase Order, and (b) to verify that all items requested in the attached Purchase Order have not been procured from any party designated as Specially Designated National (SDN) or their supply to BUYER is otherwise subject to economic sanctions in accordance with U.S. laws and regulations.

Additionally, provided SELLER is subject to the jurisdiction of the United States:

**This contractor and/or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a), said clauses being herewith incorporated into the attached Purchase Order by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.**

**18. ANTI-LOBBYING PROVISIONS.** BUYER, being an international purchaser and supplier of Goods, is often required to comply with Ex-Im Bank requirements. These requirements include the following provisions:

- A. No Federal appropriated funds have been paid, or will be paid, by or on the behalf of SELLER to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the SELLER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with instructions.
- C. The undersigned shall require that the language of this certification be included in the award of documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

SELLER shall comply with these Ex-Im Bank requirements and shall, upon request, promptly certify such compliance to BUYER and provide necessary information as requested by BUYER of confirmatory certification and documentation in this regard.

**19. AUDIT.** It is agreed that BUYER, BUYER'S customers, end users, or their designees, or any third party mutually agreed upon by BUYER and SELLER shall have the right, at all reasonable times during business hours, to inspect, audit, and copy the books, records, and accounts of SELLER with regard to its activities under the attached Purchase Order and/or these Terms and Conditions. SELLER shall make such books, records, and accounts immediately available for inspection, auditing, and copying upon request of BUYER. Further, BUYER reserves the right to audit SELLER from the date of the attached Purchase Order and for at least five (5) years following expiration or termination of the attached Purchase Order.

**20. ENTIRE AGREEMENT; WAIVER.** Except as set forth in Section 16 above, the attached Purchase Order and these Terms and Conditions shall constitute the complete, exclusive, and entire agreement between BUYER and SELLER and may not be amended or rescinded unless through a writing signed by the authorized representatives of the PARTIES. Should any part of the attached Purchase Order or these Terms and Conditions be found to be illegal, invalid or unenforceable by a court of law, that determination shall not automatically invalidate any other part of the attached Purchase Order or these Terms and Conditions and all remaining terms of the Agreement shall remain in full force and effect.

Failure by BUYER to insist upon strict performance of any of the terms hereof, or any failure or delay by BUYER in its exercise of any rights or remedies provided herein or by law, or failure by BUYER to properly notify SELLER in the event of breach, shall not release SELLER from any of the obligations of the attached Purchase Order or these Terms and Conditions and shall not be deemed a waiver of any rights of BUYER to insist upon strict performance of any of its rights or remedies hereunder.

**21. ASSIGNMENT.** Neither the attached Purchase Order, nor any right, responsibility, or obligation of SELLER hereunder, may be assigned, transferred (including by operation of law or otherwise), delegated, or subcontracted, in whole or in part, directly or indirectly, by SELLER without the prior consent of BUYER. Should SELLER use subcontractors to perform any or all of its work hereunder (upon BUYER'S prior consent), SELLER warrants that such subcontractors shall be subject to all applicable terms of the attached Purchase Order and these Terms and Conditions. Any purported assignment, transfer or delegation in violation of this Section 21 shall be null and void. Subject to the above, no assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or applicable Purchase Order unless the non-assigning party enters into a novation agreement releasing the party of its obligations under these Terms and Conditions and applicable Purchase Order. In the event that the Purchase Order is terminated in accordance with Section 9 above, SELLER agrees that any and all contracts and/or agreements that it holds with its subcontractors for work performed under the attached Purchase Order shall be freely assignable to BUYER, upon BUYER'S request. In the event that BUYER'S contract with its customer and/or end user is terminated, BUYER may assign or novate the attached Purchase Order to such customers and/or end users upon prior written notice to SELLER but without the need for SELLER'S prior consent.

**22. CHANGE OF CONTROL.** If SELLER undergoes any transaction or series of transactions with a competitor of BUYER (a) resulting in SELLER'S change of control or ownership, directly or indirectly, whether by merger, reorganization, or acquisition of (i) all or substantially all of the SELLER'S assets or business or (ii) more than fifty percent (50%) of the SELLER'S equity, or (b) whereby a business unit or other part of SELLER is divested, sold, transferred and no longer considered a part of SELLER or under SELLER's control or ownership (each such transaction or event, the "Qualifying Event"), then prior to the consummation of the Qualifying Event SELLER shall notify BUYER in writing of the Qualifying Event and upon BUYER'S request agree to continue to operate pursuant to the same terms of attached Purchase Order and/or any new Purchase Order incorporating the same terms of the attached Purchase Order for a period of no less than six (6) months after the termination of then current term of the applicable Purchase Order or the effective day of Qualifying Event, whichever occurs last.

**23. MISCELLANEOUS.** SELLER shall be deemed and treated hereunder as an independent contractor while providing the Goods or performing the Services herein. Nothing contained in the attached Purchase Order shall be construed to create the relationship for principal and agent or employer and employee between SELLER and BUYER. To the extent that SELLER performs Services hereunder on BUYER'S premises, SELLER shall comply with BUYER'S rules and regulations with respect thereto. SELLER agrees that it will require all of its staff members to participate in a safety orientation provided by BUYER. Proper PPE (personal protection equipment) must be worn by SELLER for all activities and safety glasses must be worn at all times while in BUYER'S plant operations areas, to be provided by BUYER. SELLER acknowledges the incorporation of all policies, practices, and requirements set forth in BUYER'S Supplier Handbook which can be accessed through this link: <http://www.elliott-turbo.com/Files/Admin/Suppliers/COR.1019.0316.D---Supplier-Handbook.pdf> as though fully set forth herein, and shall comply with any and all provisions contained therein.

Section headings herein are for purposes of clarity only and are not to be considered a part of the attached Purchase Order. Any and all notices, consents, approvals, requests, instructions, or the like required hereunder shall not be valid unless they are set forth in writing signed by an authorized representative of the party providing such direction and are e-mailed or mailed to the representatives of the other party hereto whose name, mailing address, and e-mail are set forth on the attached Purchase Order or an attachment thereto and deemed given and effective: (i) upon delivery if by personal delivery; (ii) three (3) days if by certified or registered mail, return receipt requested, postage prepaid; (iii) upon receipt after it is sent by a reputable international courier with tracking capabilities, postage or delivery fees prepaid; or (iv) at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal if by electronic mail.

Any Party may enter into the Agreement by signing such counterpart. Any such counterpart, to the extent delivered by means of an electronic device or by .pdf, .tif, .gif, .jpeg or other graphics format attached to electronic mail (any such delivery, an "Electronic Delivery") shall be treated in all manners and respects as an original executed

counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such Party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.

The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of the attached Purchase Order including, but not limited to, the following provisions: Section 10 (Indemnification), Section 11 (Insurance), Section 13 (Confidential Information and Publicity), Section 15 (Governing Law; Jurisdiction; Dispute Resolution), and Section 17 (Compliance with Laws).

**EBARA ELLIOTT ENERGY**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE**  
**(EMA Region)**

Throughout these Ebara Elliott Energy Standard Terms and Conditions of Purchase (these “Terms and Conditions”), the following definitions apply:

BUYER shall mean Ebara Elliott Energy entities, comprised of Elliott Company, and all of its direct and indirect subsidiaries and affiliates, and Ebara Elliott Turbomachinery Corporation, and all of its direct and indirect subsidiaries and affiliates.

SELLER shall mean the entity referenced as seller, supplier, vendor, licensor, or similar reference in the attached Purchase Order or other document(s) attached to these Terms and Conditions.

PARTIES shall mean collectively, BUYER and SELLER.

1. **AGREEMENT**. The attached Purchase Order together with these Terms and Conditions and any attachments, exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the “Agreement”) are intended to be a legally binding contract between BUYER and SELLER with respect to SELLER’S sale to BUYER and BUYER’S purchase from SELLER of the goods, materials, and/or services in the attached Purchase Order (collectively, the “Goods” and/or “Services,” as applicable).

To the extent that there is a conflict between the terms of these Terms and Conditions and the attached Purchase Order, these Terms and Conditions shall prevail. The order of precedence shall be as follows: these Terms and Conditions, followed by the attached Purchase Order, and any appendices and attachments directly relating to the Purchase Order thereafter, all of which shall prevail over all other purchasing documentation issued by SELLER.

SELLER’S acknowledgement, electronic acceptance, execution, or commencement of performance of the attached Purchase Order, or any other conduct of SELLER indicating SELLER’S recognition of the existence of an agreement between PARTIES pertaining to the subject matter hereof, shall constitute SELLER’S acceptance of the attached Purchase Order and these Terms and Conditions. Any terms proposed by SELLER which are additional to or different than the terms of the attached Purchase Order and these Terms and Conditions shall not form part of the Agreement and shall be void (unless expressly agreed to in writing by BUYER). Failure or delay by BUYER in responding to any such terms by SELLER shall not be deemed or construed to be BUYER’S acceptance or approval thereof.

Any implied terms by course of dealing between the PARTIES, trade, custom, practice and usage are specifically excluded and no course of dealing between the PARTIES nor

any industry trade or custom, practice, or usage shall be relevant to supplement or explain any of the terms hereof.

2. **PRICE PROTECTION.** SELLER represents and warrants that the price(s) set forth in the attached Purchase Order are equal to or less than the lowest net price, and the commercial terms and conditions of sale are as favorable, as the price(s) and the terms and conditions afforded by SELLER to any other current customer of SELLER for comparable goods or services in similar or lesser quantities as offered by SELLER within a period of twelve (12) months prior thereto. Should BUYER be able to purchase comparable goods or services from another source at a lower net price than in effect hereunder, and BUYER provides SELLER written notice thereof, BUYER may purchase such goods or services from such other source at such lower price unless, within fifteen (15) days of receipt by SELLER of said notice, SELLER has met such lower price. Any quantity of goods or amount of services so purchased from another source by BUYER which is less than the total quantity or the amount purchased pursuant to the attached Purchased Order shall be deducted from such total quantity or amount. For completeness, the remaining terms of the Purchase Order shall remain unchanged.
3. **TITLE; RISK OF LOSS.** SELLER sells all Goods sold hereunder with full title guarantee. Title and risk of loss with respect to the Goods shall pass to BUYER on delivery of the Goods to BUYER'S facility as named on the Purchase Order. If BUYER makes any payment to SELLER prior to such delivery of Goods, then title to said Goods shall pass to BUYER at the time of such payment, and title to completed Goods where BUYER has not made payment shall pass at the time of completion, but the risk of loss shall remain with the SELLER until delivery of the Goods to BUYER or as directed by BUYER on the face of the Purchaser. In no event following delivery of the Goods to the BUYER'S facility shall the SELLER retain title in any Goods nor shall any Goods form part of the SELLER'S property or estate, including (without limit) in the event SELLER is adjudged insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of SELLER'S insolvency, or if the Purchase Order is terminated.
4. **PACKING AND CARTAGE.** SELLER shall provide safe and adequate packing which conforms to the requirements of carriers' tariffs, to protect the Goods and Services from loss or damage in accordance with best commercial practices and any written specifications of BUYER set forth on the face of the attached Purchase Order or in an attachment thereto. SELLER agrees that no charge will be made to BUYER for packing, boxing, or cartage, unless agreed upon at the time of purchase. Damage to any Goods not packed to insure proper protection to same will be charged to SELLER. BUYER'S purchase order number, part number, and quantity shipped will be marked or tagged on each package and bill of lading or other delivery document. BUYER'S count will be accepted as final and conclusive on any shipment not accompanied by an itemized packing slip.
5. **DELIVERY, INSPECTION, AND ACCEPTANCE.** SELLER shall, upon BUYER'S request, permit BUYER, BUYER'S customers or end users, to inspect the Goods at SELLER'S facility or otherwise prior to delivery. All Goods shall be marked or tagged per

BUYER'S instructions. Any equipment or materials delivered or Services performed in excess of the Purchase Order quantity may, at BUYER'S option, be rejected and any excess Goods returned to SELLER at SELLER'S expense. Any Goods delivered or Services performed prior to the delivery or due date set forth on the Purchase Order may, at BUYER'S option, be rejected and returned to SELLER and at SELLER'S expense. SELLER shall obtain BUYER'S approval in writing of any samples required by the terms of the attached Purchase Order prior to shipment of the Goods.

BUYER shall have a reasonable time after delivery of the Goods or performance of the Services to inspect such Goods or Services and to reject any which fail to conform with applicable specifications, are otherwise defective or which (in the case of Services) have not been performed in accordance with the Agreement. BUYER'S payment to SELLER for any Goods and Services prior to BUYER'S timely rejection of such Goods and Services as non-conforming shall not be deemed as acceptance by BUYER. Goods so rejected may at the BUYER'S election, upon written notice to SELLER, be: (i) returned to SELLER at SELLER'S expense, and BUYER may further cancel any unshipped portion of the Purchase Order; or (ii) in the case of Goods and/or Services so rejected, resupplied or re-performed by the SELLER to the BUYER'S reasonable satisfaction and without additional charge. Without prejudice to any other right or remedy that may be available to the BUYER, upon any return and/or cancellation, BUYER may purchase like goods and services elsewhere and SELLER shall pay BUYER the amount of any increased cost and all other losses incurred as a consequence of BUYER'S rejection or cancellation. BUYER'S payment for Goods or Services prior to inspection shall not constitute acceptance thereof. SELLER shall be liable for any defect in the Goods pursuant to Section 8. Neither BUYER'S inspection nor the fact that SELLER has sent drawings, samples, or Goods for BUYER'S inspection limit SELLER'S responsibility for ensuring that the Goods are in compliance with the SELLER's obligations under these Terms and Conditions and the attached Purchase Order. BUYER may revoke BUYER'S initial acceptance to the extent such Goods are nonconforming and such nonconformity could not have been reasonably determined upon inspection. Any inspection or other action by BUYER under this Section 5 shall not reduce or otherwise affect SELLER'S obligations under the attached Purchase Order or these Terms and Conditions, and BUYER shall have the right to conduct further inspections after SELLER has carried out any remedial actions.

In the event SELLER fails to take any action required herein in a reasonably timely fashion, or if, in BUYER'S sole discretion SELLER will be unable to take any action required in order for BUYER to meet its contractual obligations with its customers and end users, BUYER shall be entitled to take such action or to have such action taken to make such alterations, repairs, replacement or any other necessary action that BUYER deems appropriate, and to recover from SELLER the costs and expenses incurred by BUYER therefore and relating thereto (and the SELLER irrevocably commits to pay the same on demand).

Shipment should only be released upon receipt of correct Purchase Order by BUYER. Amendment requests will not be accepted once Goods have been shipped and received at BUYER'S location. Shipping without a correct Purchase Order is at the SELLER'S risk

of non-payment or short payment. Purchase Order corrections/revisions cannot be made after receipt of Goods.

Delivery of Goods or performance of Services must be made within the time specified in the Purchase Order. SELLER shall be responsible for paying all additional costs as a result of late delivery or performance. In the event SELLER, for any reason, anticipates difficulty in complying with the required delivery and/or performance date, or in meeting any of BUYER'S other requirements, SELLER shall promptly notify BUYER in writing. BUYER'S acceptance of SELLER'S notice will not constitute BUYER'S waiver of any of SELLER'S obligations. SELLER shall be responsible for paying all additional costs as a result of late delivery or performance. If SELLER does not comply with BUYER'S delivery schedule, BUYER may require delivery by fastest way and charges resulting from the expedited transportation must be fully prepaid and absorbed by SELLER. Otherwise, BUYER may reject such Goods delivered and Services performed after the delivery and/or performance date. **TIME IS OF THE ESSENCE IN THE SELLER'S PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT AND ALL PURCHASE ORDERS.**

- 6. PAYMENTS; INVOICES.** SELLER shall submit correct invoices to BUYER in a reasonably timely manner, but in no event later than one hundred twenty (120) days after SELLER'S delivery of Goods or the conclusion of the Services. Payment due dates will be calculated from dates of receipt by BUYER of correct invoices with bills of lading or other applicable delivery documentation attached. Payment of said invoices will be made within one hundred twenty (120) days of receipt thereof, except for any amounts disputed by BUYER. All taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts, and government-imposed surcharges, which SELLER is required by law to collect from BUYER shall be included in the price(s) for the Goods or Services stated in the attached Purchase Order. SELLER shall use its best efforts to assist BUYER in minimizing the taxes resulting from the performance of any Purchase Order. SELLER shall separately state on its invoices to BUYER hereunder any and all charges to be paid by BUYER including, without limitation, charges for installation, handling fees, or taxes, whether sales, use, or otherwise. SELLER acknowledges that BUYER shall have the right to withhold ten percent (10%) of the Purchase Order amount until all documents and drawings have been provided by SELLER in an acceptable format to BUYER and BUYER'S customers and/or end users. In the event of a payment dispute, BUYER shall deliver a written statement to SELLER no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of why each item is disputed. Amounts not so disputed are deemed accepted and shall be payable, notwithstanding disputes on other items, within the period set forth in this Section 6. The PARTIES shall seek to resolve all such disputes expeditiously. SELLER shall continue performing its obligations under the applicable Purchase Order notwithstanding any such dispute. Payment will be in the currency of the country in which the BUYER entity or affiliate identified in the Purchase Order is located, or as otherwise determined, notified or instructed by the BUYER.

7. **LIENS.** SELLER shall at all times keep all Goods free of liens and shall at its own cost obtain any and all releases of liens, claims, and encumbrances in form and substance acceptable to BUYER, executed by all persons or entities (including SELLER) who by reason of furnishing materials, equipment, labor, or other services under the attached Purchase Order, as revised or amended by both PARTIES in accordance with terms hereof, are or may be actual or potential lien holders and claimants, and BUYER may withhold payment hereunder until SELLER provides such releases to BUYER.

If SELLER shall default in discharging any lien(s), claim(s), or encumbrance(s) upon the materials and equipment to be provided hereunder, or the facilities, structures, or the premises upon which they are located arising out of the performance of this Purchase Order by SELLER or its subcontractors, BUYER shall promptly notify SELLER in writing and give SELLER an opportunity to satisfy, remove, discharge, or defend any such lien(s), claim(s), or encumbrance(s). If SELLER either does not promptly satisfy such lien(s), claim(s), or encumbrance(s), BUYER shall have the right, at its option, after written notification to SELLER, to settle by agreement or otherwise provide for the discharge of such lien(s), claim(s), or encumbrance(s), and SELLER shall reimburse BUYER for all costs incurred by BUYER necessary to discharge such lien(s), claim(s), or encumbrance(s), including administrative costs, attorneys' fees, and any other related expenses.

8. **WARRANTIES AND LATENT DEFECTS.** SELLER warrants to BUYER that the Goods and/or Services furnished hereunder are: (a) free from defects in design, workmanship, and materials and are performed in a good and workmanlike manner; (b) in conformity with any and all specifications, plans, drawings, samples, and other descriptions set forth herein with respect to kind, quantity, quality, and capability; (c) made, sold, priced, delivered, and performed in compliance with all applicable federal or national, state, and municipal laws, regulations, and ordinances; (d) free of any claims, liens, or other encumbrances of whatever nature; (e) not infringing on any valid patent, copyright, trademark, trade secret, or other intellectual property rights, right of publicity or privacy, breach of confidence, or any other proprietary rights, whether contractual, statutory or common law; and (f) fit for their intended purpose and operate as intended.

SELLER warrants to BUYER that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under the attached Purchase Order and these Terms and Conditions.

Each of the PARTIES warrant and represent that it has the full power to enter into the Agreement and to perform its obligations under the Agreement.

SELLER shall repair or replace, at SELLER'S own cost and expense, any Goods supplied hereunder which shall be found defective within twenty-four (24) months of delivery or twelve (12) months after being placed into normal operation, whichever occurs earlier. SELLER agrees to provide BUYER with a warranty bond, if requested. SELLER shall re-

perform, at SELLER'S own cost and expense, any Services performed hereunder which shall be found defective within twelve (12) months of completion hereof. BUYER shall provide SELLER with prompt advice of such defective Goods. In connection with the Goods purchased or Services provided, SELLER guarantees and warrants all materials and equipment fabricated by it against defects and agrees to repair or replace any such material or equipment which may become defective within twelve (12) months from date of start-up or use or twenty-four (24) months from date of shipment, whichever comes last. SELLER shall pay for all related expenses, including storage and transportation charges for the return of the defective and nonconforming goods to SELLER, the delivery of repaired or replacement Goods to BUYER, and/or the field supervision and field labor required to remove and replace such repaired or replaced Goods.

In the event that SELLER fails to take any action required herein in a timely fashion, or if, in BUYER'S sole discretion, SELLER will be unable to take any action required in order for BUYER to meet its contractual obligations with its customers and end users, BUYER shall be entitled to take such action or to have such action taken to make such alterations, repairs, and replacement and to recover from SELLER the costs and expenses incurred by BUYER therefore and relating thereto.

The warranty period of parts for Goods replaced under the warranty hereof shall be renewed from the date of such replacement.

All warranties provided by SELLER to the BUYER hereunder shall survive delivery, inspection, acceptance and payment and shall run to the BUYER, BUYER'S customers, and/or end users of the Goods and Services and shall not be deemed to be the exclusive rights of the BUYER, but shall be in addition to the other rights of the BUYER under law, the attached Purchase Order, and these Terms and Conditions.

SELLER further warrants that Goods are free from Latent Defects for a further period of sixty (60) months after the expiry of the warranty period. "Latent Defects" shall mean those defects that:

- A. have not been disclosed during the warranty period by either a reasonable examination or through the proper operational use of the Goods or works related to the Services, as applicable; and
- B. are of such an inherent kind as a conscientious contractor would regard as being harmful to the fitness for the purpose intended for the Goods as set out in the specification, or works related to the Services, as applicable.

Notwithstanding the issue of a final acceptance certificate, SELLER shall remedy any Latent Defect at no cost to the BUYER notified to SELLER at any time during the Latent Defect period as noted above.

The warranties set forth in this Section 8, and all other rights and remedies in the Agreement, are cumulative and in addition to any other warranty provided by law and equity.

## **9. BUYER'S OPTION TO CHANGE OR TERMINATE.**

### **A. CHANGE ORDERS**

BUYER reserves the right to modify the specifications, delivery date(s), and the terms set forth in the attached Purchase Order upon prior written notice to SELLER. If SELLER determines a change in price specified in the attached Purchase Order or change in delivery dates due to such modification, SELLER must notify and present such changes to BUYER within ten (10) days of notification of modification by BUYER. In no case shall any change in Purchase Order price or delivery be effective until agreed to by BUYER in writing in the form of a Purchase Order change order issued by BUYER.

Upon receipt of such notice of modification or termination, SELLER shall immediately comply with BUYER'S instructions concerning SELLER'S performance hereunder and the disposition of completed and partially completed items, works in progress, Goods, and materials acquired pursuant to the attached Purchase Order. PARTIES shall negotiate in good faith an amendment to the applicable Purchase Order to incorporate the change order providing for an equitable adjustment to the price, time for performance, or both. SELLER will proceed with the changes as directed, notwithstanding that PARTIES have not negotiated the amendment to the Agreement or the applicable Purchase Order to incorporate the equitable adjustment.

### **B. TERMINATION**

BUYER has the right to terminate the attached Purchase Order (or any part thereof) at any time, for no reason, upon providing fourteen (14) days prior written notice to SELLER and nothing in these Terms and Conditions will limit or affect such right. Upon receipt of notice of such termination, SELLER will inform BUYER of the extent to which it has completed performance as of the date of the notice, and SELLER will collect and deliver to BUYER whatever Goods and Services then exist. BUYER will pay SELLER for all Goods and Services performed and accepted through the effective date of the termination, provided that BUYER will not be obligated to pay any more than the payment that would have become due had SELLER completed and BUYER accepted the Goods and Services. BUYER will have no further payment obligation in connection with any termination.

(a) In addition to any remedies that may be provided under these Terms and Conditions, BUYER may terminate the attached Purchase Order (or any part thereof) with immediate effect upon written notice to the SELLER, either before or after the acceptance of the Goods or the SELLER'S delivery or performance of the Services,

- i. if SELLER breaches any material term of the attached Purchase Order or these Terms and Conditions;
- ii. if, in the reasonable opinion of BUYER, SELLER fails to make progress or fails to provide reasonable assurances of the same, thereby endangering timely delivery;

- iii. in case of any proceeding by or against SELLER in bankruptcy, insolvency, dissolution, reorganization or restructuring, appointment of receiver or trustee, or assignment for the benefit of creditors, then in any such events BUYER may cancel the attached Purchase Order in whole or in part by written notice to SELLER, and BUYER shall have no liability or obligation whatsoever to SELLER by reason of or resulting from such termination;
- iv. if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods;
- v. any change of control and/or ownership of SELLER; or
- vi. in the event BUYER or BUYER'S customer or end user experiences a Force Majeure Event (as defined in Section 12).

(b) In addition to, and without prejudice to, the right to terminate under the preceding paragraphs, PARTIES agree that:

- i. If the Purchase Order covers Goods manufactured or fabricated to BUYER'S specifications or specifications especially prepared by SELLER for BUYER, then at any time prior to delivery of all Goods, BUYER may terminate the attached Purchase Order in whole or in part by written notice to SELLER, and in such event the following provisions apply:
  - 1. Immediately upon receipt of such notice of termination or upon such other date as may be specified on said notice, SELLER shall stop all work in connection with the attached Purchase Order except as otherwise directed by BUYER.
  - 2. The Goods or uncompleted portions of the Goods shall be property of BUYER, and SELLER shall safely hold the same for a reasonable time, not to exceed ninety (90) days, subject to receipt of BUYER'S written shipping or other disposition instructions.
  - 3. BUYER shall make an equitable price adjustment for materials or components procured, Goods fabricated, and Services performed prior to such notice. However, any such payment under this Section 9 shall not exceed any price specified herein for the item(s) which are the subject of the termination. SELLER shall advise BUYER, in writing, of SELLER'S claim, if any, for such termination costs fifteen (15) days after receipt of the notice of termination.
- ii. If the Goods covered by the attached Purchase Order are standard stock merchandise, BUYER may terminate all or any part of the unshipped portion of the attached Purchase Order at any time by written notice to SELLER, and in such event BUYER shall have no obligations for termination, restocking, or other charges or otherwise except to make payment for the Goods actually shipped and in transit prior to such termination.

BUYER shall have no further payment obligation to SELLER under any change order or terminated Purchase Order if BUYER terminates the Purchase Order under this Section 9. In the event of any change or termination under this Section 9, SELLER agrees that BUYER shall not be liable for any consequential, incidental, punitive, special, exemplary, or indirect damages or expenses (including, without limitation, lost profits or other economic loss, lost reimbursements, or lost savings). Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

**10. INDEMNIFICATION.** To the fullest extent permitted by law, SELLER shall defend (at SELLER'S sole expense), indemnify, and hold harmless BUYER, its partners, representatives, designees, affiliates, successors, assigns and their respective directors, officers, equity holders and employees (collectively, "Indemnitees") from and against any and all claims, including those for bodily injury, death, damage to property, demands, loss, damage, and any liabilities, actions, causes of action, deficiency, suit, judgments, obligations, interest, award, penalty, fine, cost, and expense, including but not limited to attorneys' or expert or professional fees and other expenses incident thereto, arising out of, relating to, or in connection with, the Events (as defined below) and/or SELLER'S work performed, materials, supplies or Goods furnished, or Services provided which are the subject of the attached Purchase Order (together with any exhibits and attachments thereto). "Events", whether groundless or not, include, but are not limited to:

- A. defects in the manufacture of the Goods and materials supplied hereunder;
- B. any breach or alleged breach by SELLER of any representation, warranty, covenant or other provision of these Terms and Conditions and the attached Purchase Order (together with any exhibits and attachments thereto);
- C. damage to or loss of BUYER'S tangible and/or intangible property;
- D. damage to the property or violation of rights of third parties (whether under contract, statutory, or common law);
- E. personal injuries or death suffered by any person which may result from the installation, operation, or use of the Goods and materials furnished hereunder;
- F. non-payment of SELLER'S subcontractors and suppliers;
- G. any Security Incident (as defined in Section 14);
- H. alleged or actual failure to comply with applicable laws, regulations, ordinances, rules, or executive or court orders;
- I. infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property right of any third party;
- J. liens or other encumbrances filed and/or made in connection with the Goods and/or Services;
- K. SELLER'S bankruptcy, insolvency, appointment of receiver or trustee, or assignment for benefit of creditors; or
- L. SELLER'S negligence or willful misconduct.

The indemnity and defense obligations pursuant to this Section 10, shall apply to any acts, omissions, negligence, or willful misconduct of SELLER, its employees or agents, SELLER'S suppliers and subcontractors.

If a third party enjoins or interferes with BUYER'S use of any Goods or Services, then in addition to SELLER'S obligations above, SELLER will use its best efforts to (i) obtain any licenses necessary to permit BUYER to continue to use any Goods or Services; (ii) replace or modify any Goods or Services (or part thereof) as necessary to permit BUYER to continue use of any Goods or Services (or part thereof); or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to BUYER the amount paid for any Goods or Services (or part thereof) for which a third party enjoins or interferes with BUYER'S use.

- 11. INSURANCE.** SELLER shall have in place commercial general liability, auto liability and workers' compensation insurance for its employees in accordance with applicable law. All such insurance shall be on a primary and non-contributory basis with respect to any other insurance afforded to BUYER. Coverage shall be placed with insurance carriers with A.M. Best Rating of "A-" or better and financial rating VIII or higher. General liability and auto liability shall include BUYER, its subsidiaries and affiliates, as an additional insured on either a schedule or automatic by contract basis; general liability additional insured should be endorsed for both ongoing and completed operations. General liability, auto liability, and workers' compensation shall include waiver of subrogation endorsement in favor of BUYER. The insurance (U.S. dollars or foreign currency equivalent) amounts required are set forth below:
- A. Workers' Compensation in the statutory limits required by law where work is performed and Employers' Liability with limits of US\$1,000,000 Bodily Injury by Accident; US\$1,000,000 Bodily Injury by Disease Policy Limit; US\$1,000,000 Bodily Injury by Disease Each Employee;
  - B. Commercial General Liability on occurrence form basis, with minimum limits of US\$2,000,000 each occurrence for bodily injury and property damage, US\$4,000,000 general aggregate, and US\$4,000,000 products and completed operations aggregate, to include tort liability of another assumed in a business contract;
  - C. Automobile Liability with combined single limits of not less than US\$1,000,000 any one accident or loss for bodily injury and property damage, including all owned, hired, and non-owned autos;
  - D. Excess liability insurance with minimum limits of US\$5,000,000 per occurrence and aggregate; for Purchase Orders over US\$5,000,000, minimum limits increase to US\$10,000,000 per occurrence and for Purchase Orders over US\$10,000,000, minimum limits increase to US\$20,000,000 per occurrence; Excess is to follow form on Employers' Liability, General Liability, and Auto Liability;
  - E. Professional Liability, if applicable, with minimum limits of US\$1,000,000 per occurrence and aggregate; and
  - F. Pollution Legal Liability (Contractor's Pollution Liability), for all SELLERS performing contracting, remediation, or installation Services, with minimum limits of US\$2,000,000 per occurrence and aggregate.

No such insurance amounts shall limit in any way SELLER'S liability to BUYER hereunder, and BUYER reserves any and all subrogation rights under these policies. SELLER shall

provide BUYER with an appropriate certificate evidencing such insurance and additional insured status.

Insurance Requirements for Subcontractors: SELLER shall ensure that all subcontractors maintain insurance in like form and amounts, including the Additional Insured and Waiver of Subrogation requirements in favor of BUYER. Each subcontractor shall provide Certificates of Insurance to the SELLER prior to the start of the SELLER'S execution of agreement with BUYER or at any time during the term of Purchase Order attached to these Terms and Conditions on the BUYER'S request.

- 12. FORCE MAJEURE**. Either of the PARTIES may suspend performance under the attached Purchase Order without liability therefor to the extent such suspension is caused by or results from the following force majeure events affecting SELLER, BUYER or any of BUYER'S customers ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts; (d) government orders, sanctions, laws, or actions; (e) embargoes or blockades in effect on or after the date of the attached Purchase Order; (f) national emergency, including pandemics and epidemics; and (g) strikes or labor stoppages. Such affected party shall invoke this provision by notifying the other party of the cause within five (5) days of the occurrence of the nature and expected duration of such suspension. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

In the event SELLER'S performance is, or is likely to be, suspended for more than sixty (60) days, BUYER may terminate the attached Purchase Order upon written notice to SELLER. Upon such termination, BUYER may, by written notice to SELLER and upon making equitable payment therefor, require SELLER to deliver and pass title to the Goods in SELLER'S possession and any parts, raw material, or work-in-progress related to such Goods.

- 13. CONFIDENTIAL INFORMATION AND PUBLICITY**. In accordance with the terms and conditions of a Confidentiality Agreement executed by and between the PARTIES, SELLER shall treat as proprietary and confidential all specifications, designs, plans, data, drawings, blueprints, nomenclature, samples, models, software, the terms of the Agreement and other information supplied by BUYER hereunder, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential". If the term of the Confidentiality Agreement expires before the expiration or termination of the Purchase Order, then the term of the Confidentiality Agreement shall be automatically extended for the duration of the Purchase Order. Without the prior written consent of BUYER, SELLER shall not in any manner disclose, advertise, publish or release for publication any statement mentioning the fact that SELLER has furnished or contracted to furnish to BUYER Goods and/or Services required by the attached Purchase Order. SELLER shall not disclose any information relating to the attached Purchase Order to any person not

authorized by BUYER in writing to receive it. SELLER'S use of information supplied by BUYER, especially proprietary information, is strictly limited to its accomplishment of work covered by the attached Purchase Order and for no other purpose. SELLER grants BUYER, BUYER'S customer or end user an exclusive, unlimited, non-revocable, and sub-licensable license to use and access any and all copies of such drawings and other instruments of service that will be provided under the attached Purchase Order. Upon completion or termination of the attached Purchase Order, all information shall be promptly returned to BUYER. BUYER shall be entitled to injunctive relief for any violation of this Section 13.

- 14. TOOLS, MATERIALS, AND DATA.** If the attached Purchase Order provides that any designs, sketches, drawings, blueprints, patterns, dies, molds, masks, software, models, tools, gauges, equipment, or special appliances be provided by BUYER to SELLER hereunder or paid for by BUYER but made or procured by SELLER especially for producing the Goods covered by the attached Purchase Order, then immediately upon BUYER'S provision thereof to SELLER or SELLER'S manufacture or procurement thereof, they shall remain or become the property of BUYER.

SELLER shall maintain a current inventory of the foregoing, which shall be: (a) identified as property of BUYER, (b) held by SELLER on consignment at SELLER'S risk, reasonable wear and tear excepted, (c) used exclusively in the production for BUYER of Goods under the attached Purchase Order, and (d) subject to BUYER'S direction concerning disposition, including return to BUYER. SELLER shall establish appropriate procedures for the adequate storage, maintenance, and inspection of the foregoing and shall maintain inspection and inventory records therefor available to BUYER upon request.

SELLER shall notify BUYER within forty-eight (48) hours of a discovery that an actual or suspected breach of its electronically stored information, including personal information as defined under applicable law ("ESI"), has, or may have, occurred (a "Security Incident"), and in addition to all the remedies available to BUYER pursuant to Section 10, shall further agree to reimburse BUYER for any and all damages, losses, fees, or costs (whether direct, indirect, special, or consequential) incurred by BUYER as a result of such Security Incident.

- 15. GOVERNING LAW; JURISDICTION; DISPUTE RESOLUTION.** The Agreement, and any dispute or claim arising out of or in connection with them or their subject matter or the formation of the contract between the PARTIES (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the attached Purchase Order, these Terms and Conditions or their subject matter or the formation of the contract between the PARTIES (including non-contractual disputes or claims).

In any such litigation, the prevailing party shall have its reasonable attorney fees, expert fees, and other expenses incident to such adjudicatory proceeding paid for by the non-prevailing party.

**16. BUYER'S PERFORMANCE OF A PRIME OR SUB-CONTRACT.** In the event that the Goods or Services purchased hereunder are ordered by BUYER in connection with BUYER'S performance under a prime or sub-contract with a third party and such prime or sub-contract is referred to on the face of and incorporated by reference into the attached Purchase Order, SELLER shall provide such Goods or perform such Services in compliance with BUYER'S requirements thereunder. SELLER shall at all times ensure that the personnel, employees, agents, or consultants of such prime or sub-contract with a third party shall be suitably qualified, experienced and resourced, and shall exercise due skill, care and diligence. SELLER represents and warrants that such prime or sub-contract with a third party is aware of the SELLER'S obligations under the Agreement. SELLER shall be responsible for the work and activities of the employees, agents, and subcontractors of such prime or sub-contract with a third party, including compliance with the terms of the Agreement. SELLER shall be responsible for all payment for such prime or sub-contract with a third party. In no event shall any such prime or sub-contract with a third party release SELLER from its responsibility for its obligations under the Agreement and SELLER shall indemnify BUYER to the extent provided for in Section 10 arising out of or in connection with all acts and omissions of such prime or sub-contract with a third party. BUYER shall, upon execution of the attached Purchase Order, provide SELLER with a copy of the pertinent terms of such prime or sub-contract. To the extent that there is a conflict between the terms of the attached Purchase Order, these Terms and Conditions and the terms of such prime or subcontract, the terms of such prime or subcontract shall prevail. To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

**17. COMPLIANCE WITH LAW.** SELLER shall, at all times and at its own expense, strictly comply with all applicable laws, regulations, and other requirements of every duly constituted governmental authority (national, provincial, municipal, local, or other governmental agency), agency or instrumentality, now or hereafter in effect, relating to the performance of the attached Purchase Order, including without limitation import and export control, environmental, conflict minerals, and occupational safety requirements and assume all liabilities or obligations imposed thereby with respect to SELLER'S performance under the attached Purchase Order. SELLER shall promptly provide necessary information, as requested by BUYER of confirmatory responses and documentation in this regard. Any clause required to be included in a purchase order of this type by any applicable law, rule, or regulation shall be deemed to be incorporated herein. SELLER agrees that at any time during the execution of the attached Purchase Order, if requested, it will promptly provide BUYER, BUYER'S customer, or end user with certificates confirming the origin for the Goods purchased under the attached Purchase Order in a form acceptable to BUYER, BUYER'S customer, or end user. SELLER agrees to maintain in full force and effect all licenses, permits, authorizations, registrations, certifications, and qualifications from all applicable governmental, departments, and agencies to the extent necessary to perform its

obligations hereunder. In no event shall SELLER take any action or omit to take any action that would cause it to be in violation of any applicable law, including, without limitation, the U.S. Foreign Corrupt Practices Act, the Japanese equivalent titled the “Unfair Competition Prevention Law”, the United Kingdom Modern Slavery Act, the United Kingdom Bribery Act, and any other applicable anti-bribery and anti-corruption laws. SELLER’S failure to comply with such anti-bribery and anti-corruption laws shall constitute a material breach of the Agreement.

To be clear, the SELLER will cause its affiliates and sub-sellers, and their respective employees, officers, directors, or representatives not to make, offer to make or agree to make, any loan, gift, donation, commission, kickback, bribe, or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (a) any governmental official, employee, or representative; (b) any employee, officer, director, or representative of the BUYER; or (c) any other person with respect to the negotiation, execution, or performance of the order.

Further, if the SELLER learns or has reason to know of any such payment, offer, or agreement described above to make any such loan, gift, donation, commission, kickback, bribe, or other payment or facility to any of the persons described above, it will immediately inform the BUYER in writing communicating to the BUYER all relevant information in respect of the above within the knowledge or possession of the SELLER. Without prejudice to the SELLER’S obligations as above, the SELLER agrees not to, and to cause its affiliates and sub-sellers not to, offer or give, or agree to give, to any employee, officer, director, or representative of the BUYER any consideration of any kind as an inducement or reward for doing, refraining from doing, or having done or refrained from doing, any act in relation to the obtaining or performance of the order, or for showing or refraining from showing favor to any person in relation to the order.

BUYER is firmly committed to adhering to all U.S. export controls, sanctions, and international trade laws and regulations including, but not limited to, the Export Administration Act (continued in effect under the International Emergency Economic Powers Act), the Export Administration Regulations (EAR), and the Foreign Trade Regulations (FTR). Accordingly, SELLER agrees (a) to provide the Export Control Classification (ECCN) and Schedule B number (or Harmonized Tariff Schedule code) for each item requested in the attached Purchase Order, and (b) to verify that all items requested in the attached Purchase Order have not been procured from any party designated as Specially Designated National (SDN) or their supply to BUYER is otherwise subject to economic sanctions in accordance with U.S. laws and regulations.

Additionally, provided SELLER is subject to the jurisdiction of the United States:

**This contractor and/or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), said clauses being herewith incorporated into the attached Purchase Order by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals**

**based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.**

**18. ANTI-LOBBYING PROVISIONS.** BUYER, being an international purchaser and supplier of Goods, is often required to comply with Ex-Im Bank requirements. These requirements include the following provisions:

A. No Federal appropriated funds have been paid, or will be paid, by or on the behalf of SELLER to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the SELLER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with instructions.

C. The undersigned shall require that the language of this certification be included in the award of documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

SELLER shall comply with these Ex-Im Bank requirements and shall, upon request, promptly certify such compliance to BUYER and provide necessary information as requested by BUYER of confirmatory certification and documentation in this regard.

**19. AUDIT.** It is agreed that BUYER, BUYER'S customers, end users, or their designees, or any third-party mutually agreed upon by BUYER and SELLER shall have the right, at all reasonable times during business hours, to inspect, audit, and copy the books, records, and accounts of SELLER with regard to its activities under the attached Purchase Order and/or these Terms and Conditions. SELLER shall make such books, records, and accounts immediately available for inspection, auditing, and copying upon request of BUYER. Further, BUYER reserves the right to audit SELLER from the date of the attached Purchase Order and for at least five (5) years following expiration or termination of the attached Purchase Order.

**20. ENTIRE AGREEMENT; WAIVER.** Except as set forth in Section 16 above, the attached Purchase Order and these Terms and Conditions shall constitute the complete, exclusive, and entire agreement between BUYER and SELLER and may not be amended

or rescinded unless through a writing signed by the authorized representatives of the PARTIES. Should any part of the attached Purchase Order or these Terms and Conditions be found to be illegal, invalid or unenforceable by a court of law, that determination shall not automatically invalidate any other part of the attached Purchase Order or these Terms and Conditions and all remaining terms of the Agreement shall remain in full force and effect.

Failure by BUYER to insist upon strict performance of any of the terms hereof, or any failure or delay by BUYER in its exercise of any rights or remedies provided herein or by law, or failure by BUYER to properly notify SELLER in the event of breach, shall not release SELLER from any of the obligations of the attached Purchase Order or these Terms and Conditions and shall not be deemed a waiver of any rights of BUYER to insist upon strict performance of any of its rights or remedies hereunder.

Save for members of the Ebara Elliott Energy Group who may enforce any terms of the Purchase Order or these Terms and Conditions (or any documents attached to either) that expressed to be in favour of the BUYER (to the extent determined by the BUYER in its absolute discretion from time to time) as if such terms were expressed to be for the benefit of the relevant Ebara Elliott Energy Group, no provision of the Purchase Order or these Terms and Conditions (or any documents attached to either) may be enforced by a person not a party to it.

21. **ASSIGNMENT.** Neither the attached Purchase Order, nor any right, responsibility, or obligation of SELLER hereunder, may be assigned, transferred (including by operation of law or otherwise), delegated, or subcontracted, in whole or in part, directly or indirectly, by SELLER without the prior consent of BUYER. Should SELLER use subcontractors to perform any or all of its work hereunder (upon BUYER'S prior consent), SELLER warrants that such subcontractors shall be subject to all applicable terms of the attached Purchase Order and these Terms and Conditions. Any purported assignment, transfer or delegation in violation of this Section 21 shall be null and void. Subject to the above, no assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or applicable Purchase Order unless the non-assigning party enters into a novation agreement releasing the party of its obligations under these Terms and Conditions and applicable Purchase Order. In the event that the Purchase Order is terminated in accordance with Section 9 above, SELLER agrees that any and all contracts and/or agreements that it holds with its subcontractors for work performed under the attached Purchase Order shall be freely assignable to BUYER, upon BUYER'S request. In the event that BUYER'S contract with its customer and/or end user is terminated, BUYER may assign or novate the attached Purchase Order to such customers and/or end users upon prior written notice to SELLER but without the need for SELLER'S prior consent.
22. **CHANGE OF CONTROL.** If SELLER undergoes any transaction or series of transactions with a competitor of BUYER (a) resulting in SELLER'S change of control or ownership, directly or indirectly, whether by merger, reorganization, or acquisition of (i) all or substantially all of the SELLER'S assets or business or (ii) more than fifty percent

(50%) of the SELLER'S equity, or (b) whereby a business unit or other part of SELLER is divested, sold, transferred and no longer considered a part of SELLER or under SELLER's control or ownership (each such transaction or event, the "Qualifying Event"), then prior to the consummation of the Qualifying Event SELLER shall notify BUYER in writing of the Qualifying Event and upon BUYER'S request agree to continue to operate pursuant to the same terms of attached Purchase Order and/or any new Purchase Order incorporating the same terms of the attached Purchase Order for a period of no less than six (6) months after the termination of then current term of the applicable Purchase Order or the effective day of Qualifying Event, whichever occurs last.

- 23. MISCELLANEOUS.** SELLER shall be deemed and treated hereunder as an independent contractor while providing the Goods or performing the Services herein. Nothing contained in the attached Purchase Order shall be construed to create the relationship for principal and agent or employer and employee between SELLER and BUYER. To the extent that SELLER performs Services hereunder on BUYER'S premises, SELLER shall comply with BUYER'S rules and regulations with respect thereto. SELLER agrees that it will require all of its staff members to participate in a safety orientation provided by BUYER. Proper PPE (personal protection equipment) must be worn by SELLER for all activities and safety glasses must be worn at all times while in BUYER'S plant operations areas, to be provided by BUYER. SELLER acknowledges the incorporation of all policies, practices, and requirements set forth in BUYER'S Supplier Handbook which can be accessed through this link: <http://www.elliott-turbo.com/Files/Admin/Suppliers/COR.1019.0316.D---Supplier-Handbook.pdf> as though fully set forth herein, and shall comply with any and all provisions contained therein.

Section headings herein are for purposes of clarity only and are not to be considered a part of the attached Purchase Order. Any and all notices, consents, approvals, requests, instructions, or the like required hereunder shall not be valid unless they are set forth in writing signed by an authorized representative of the party providing such direction and are e-mailed or mailed to the representatives of the other party hereto whose name, mailing address, and e-mail are set forth on the attached Purchase Order or an attachment thereto and deemed given and effective: (i) upon delivery if by personal delivery; (ii) three (3) days if by certified or registered mail, return receipt requested, postage prepaid; (iii) upon receipt after it is sent by a reputable international courier with tracking capabilities, postage or delivery fees prepaid; or (iv) at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal if by electronic mail.

Any Party may enter into the Agreement by signing such counterpart. Any such counterpart, to the extent delivered by means of an electronic device or by .pdf, .tif, .gif, .jpeg or other graphics format attached to electronic mail (any such delivery, an "Electronic Delivery") shall be treated in all manners and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defence to the formation of a

contract, and each such Party forever waives any such defence, except to the extent that such defence relates to lack of authenticity.

The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of the attached Purchase Order including, but not limited to, the following provisions: Section 10 (Indemnification), Section 11 (Insurance), Section 13 (Confidential Information and Publicity), Section 15 (Governing Law; Jurisdiction; Dispute Resolution), and Section 17 (Compliance with Laws).

**EBARA ELLIOTT ENERGY**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE**  
**(Asia Pacific Region)**

Throughout these Ebara Elliott Energy Standard Terms and Conditions of Purchase (these “Terms and Conditions”), the following definitions apply:

BUYER shall mean Ebara Elliott Energy entities, comprised of Elliott Company, and all of its direct and indirect subsidiaries and affiliates, and Ebara Elliott Turbomachinery Corporation, and all of its direct and indirect subsidiaries and affiliates.

SELLER shall mean the entity referenced as seller, supplier, vendor, licensor, or similar reference in the attached Purchase Order or other document(s) attached to these Terms and Conditions.

PARTIES shall mean collectively, BUYER and SELLER.

1. **AGREEMENT**. The attached Purchase Order together with these Terms and Conditions and any attachments, exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the “Agreement”) are intended to be a legally binding contract between BUYER and SELLER with respect to SELLER’S sale to BUYER and BUYER’S purchase from SELLER of the goods, materials, and/or services in the attached Purchase Order (collectively, the “Goods” and/or “Services,” as applicable).

To the extent that there is a conflict between the terms of these Terms and Conditions and the attached Purchase Order, these Terms and Conditions shall prevail. The order of precedence shall be as follows: these Terms and Conditions, followed by the attached Purchase Order, and any appendices and attachments directly relating to the Purchase Order thereafter, all of which shall prevail over all other purchasing documentation issued by SELLER.

SELLER’S acknowledgement, electronic acceptance, execution, or commencement of performance of the attached Purchase Order, or any other conduct of SELLER indicating SELLER’S recognition of the existence of an agreement between PARTIES pertaining to the subject matter hereof, shall constitute SELLER’S acceptance of the attached Purchase Order and these Terms and Conditions. Any terms proposed by SELLER which are additional to or different than the terms of the attached Purchase Order and these Terms and Conditions shall not form part of the Agreement and shall be void (unless expressly agreed to in writing by BUYER). Failure or delay by BUYER in responding to any such terms by SELLER shall not be deemed or construed to be BUYER’S acceptance or approval thereof.

Any implied terms by course of dealing between the PARTIES, trade, custom, practice and usage are specifically excluded and no course of dealing between the PARTIES nor any industry trade or custom, practice, or usage shall be relevant to supplement or explain any of the terms hereof.

2. **PRICE PROTECTION.** SELLER represents and warrants that the price(s) set forth in the attached Purchase Order are equal to or less than the lowest net price, and the commercial terms and conditions of sale are as favorable, as the price(s), and the terms and conditions afforded by SELLER to any other current customer of SELLER for comparable goods or services in similar or lesser quantities as offered by SELLER within a period of twelve (12) months prior thereto. Should BUYER be able to purchase comparable goods or services from another source at a lower net price than in effect hereunder, and BUYER provides SELLER written notice thereof, BUYER may purchase such goods or services from such other source at such lower price unless, within fifteen (15) days of receipt by SELLER of said notice, SELLER has met such lower price. Any quantity of goods or amount of services so purchased from another source by BUYER which is less than the total quantity or the amount purchased pursuant to the attached Purchase Order shall be deducted from such total quantity or amount. For completeness, the remaining terms of the Purchase Order shall remain unchanged.
  
3. **TITLE; RISK OF LOSS.** SELLER represents and warrants good title to all Goods furnished by it hereunder. Title to all Goods and materials for which payment has been made, whether or not the same has been incorporated into the Goods, and title to all completed Goods, whether paid for or not, shall vest in BUYER, and in any case shall not be part of the SELLER'S property or estate in the event SELLER is adjudged insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of SELLER'S insolvency, or if the Purchase Order is terminated. Notwithstanding the foregoing, title and risk of loss with respect to the Goods shall not pass to BUYER until delivery of the Goods to BUYER'S facility or as directed by BUYER on the face of the Purchase Order. If BUYER makes any payment to SELLER prior to such delivery of Goods, then title to said Goods shall pass to BUYER at the time of such payment, but the risk of loss shall remain with the SELLER until delivery of the Goods to BUYER.
  
4. **PACKING AND CARTAGE.** SELLER shall provide safe and adequate packing which conforms to the requirements of carriers' tariffs, to protect the Goods and Services from loss or damage in accordance with best commercial practices and any written specifications of BUYER set forth on the face of the attached Purchase Order or in an attachment thereto. SELLER agrees that no charge will be made to BUYER for packing, boxing, or cartage, unless agreed upon at the time of purchase. Damage to any Goods not packed to insure proper protection to same will be charged to SELLER. BUYER'S purchase order number, part number, and quantity shipped will be marked or tagged on each package and bill of lading or other delivery document. BUYER'S count will be accepted as final and conclusive on any shipment not accompanied by an itemized packing slip.
  
5. **DELIVERY, INSPECTION, AND ACCEPTANCE.** SELLER shall, upon BUYER'S request, permit BUYER, BUYER'S customers or end users, to inspect the Goods at SELLER'S facility or otherwise prior to delivery. All Goods shall be marked or tagged per BUYER'S instructions. Any equipment or materials delivered or Services performed in excess of the Purchase Order quantity may, at BUYER'S option, be rejected and any excess Goods returned to SELLER at SELLER'S expense. Any Goods delivered or Services performed prior to the delivery or due date set forth on the Purchase Order may, at BUYER'S option, be rejected and returned to SELLER and at SELLER'S expense.

SELLER shall obtain BUYER'S approval in writing of any samples required by the terms of the attached Purchase Order prior to shipment of the Goods. BUYER shall have a reasonable time after receipt of the Goods or performance of the Services to inspect such Goods or Services and to reject any which fail to conform with applicable specifications or are otherwise defective. BUYER's payment to SELLER for any Goods and Services prior to BUYER's timely rejection of such Goods and Services as non-conforming shall not be deemed as acceptance by BUYER.

Goods so rejected shall, upon written notice to SELLER, be returned to SELLER at SELLER'S expense, and BUYER may further cancel any unshipped portion of the Purchase Order. Upon such return and/or cancellation, BUYER may purchase like goods and services elsewhere and SELLER shall pay BUYER the amount of any increased cost or loss incurred. BUYER'S payment for Goods or Services prior to inspection shall not constitute acceptance thereof. SELLER shall be liable for any defect in the Goods pursuant to Section 8. Neither BUYER'S inspection nor the fact that SELLER has sent drawings, samples, or Goods for BUYER'S inspection limit SELLER'S responsibility for ensuring that the Goods are in compliance with the contractual requirements. BUYER may revoke BUYER'S initial acceptance to the extent such Goods are nonconforming and such nonconformity could not have been reasonably determined upon inspection. Any inspection or other action by BUYER under this Section 5 shall not reduce or otherwise affect SELLER'S obligations under the attached Purchase Order and these Terms and Conditions, and BUYER shall have the right to conduct further inspections after SELLER has carried out its remedial actions.

In the event SELLER fails to take any action required herein in a reasonably timely fashion, or if, in BUYER'S sole discretion, SELLER will be unable to take any action required in order for BUYER to meet its contractual obligations with its customers and end users, BUYER shall be entitled to take such action or to have such action taken to make such alterations, repairs, replacement or any other necessary action that BUYER deems appropriate, and to recover from SELLER the costs and expenses incurred by BUYER therefore and relating thereto.

Shipment should only be released upon receipt of correct Purchase Order by BUYER. Amendment requests will not be accepted once Goods have been shipped and received at BUYER'S location. Shipping without a correct Purchase Order is at the SELLER'S risk of non-payment or short payment. Purchase Order corrections/revisions cannot be made after receipt of Goods.

Delivery of Goods or performance of Services must be made within the time specified in the Purchase Order (or applicable change order as the case may be). In the event SELLER, for any reason, anticipates difficulty in complying with the required delivery and/or performance date, or in meeting any of BUYER'S other requirements, SELLER shall promptly notify BUYER in writing. BUYER'S acceptance of SELLER'S notice will not constitute BUYER'S waiver of any of SELLER'S obligations. SELLER shall be responsible for paying all additional costs as a result of late delivery or performance. If SELLER does not comply with BUYER'S delivery schedule, BUYER may require delivery by fastest way and charges resulting from the expedited transportation must be fully prepaid and absorbed by SELLER. Otherwise, BUYER may reject such Goods

delivered and Services performed after the delivery and/or performance date. **TIME IS OF THE ESSENCE IN THE SELLER'S PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT AND ALL PURCHASE ORDERS.**

6. **PAYMENTS; INVOICES.** SELLER shall submit correct invoices to BUYER in a reasonably timely manner, but in no event longer than one hundred twenty (120) days after SELLER'S delivery of Goods or the conclusion of the Services. Payment due dates will be calculated from dates of receipt by BUYER of correct invoices with bills of lading or other delivery documentation attached. Payment of said invoices will be made within one hundred twenty (120) days of receipt thereof, except for any amounts disputed by BUYER in good faith. All taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts, and government-imposed surcharges which SELLER is required by law to collect from BUYER shall be included in the price(s) for the Goods or Services stated in the attached Purchase Order. SELLER shall use its best efforts to assist BUYER in minimizing the taxes resulting from the performance of any Purchase Order. SELLER shall separately state on its invoices to BUYER hereunder any and all charges to be paid by BUYER including, without limitation, charges for installation, handling fees, or taxes, whether sales, use, or otherwise. SELLER acknowledges that BUYER shall have the right to withhold ten percent (10%) of the Purchase Order amount until all documents and drawings have been provided by SELLER in an acceptable format to BUYER and BUYER'S customers and/or end users. In the event of a payment dispute, BUYER shall deliver a written statement to SELLER no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 6. The PARTIES shall seek to resolve all such disputes expeditiously and in good faith. SELLER shall continue performing its obligations under the applicable Purchase Order notwithstanding any such dispute. Payment will be in the currency of the country in which the BUYER entity or affiliate identified in the Purchase Order is located, or as otherwise determined, notified or instructed by the BUYER.
  
7. **LIENS.** SELLER shall at all times keep free of liens and shall obtain releases of liens, claims, and encumbrances in form and substance acceptable to BUYER, executed by all persons or entities (including SELLER) who by reason of furnishing materials, equipment, labor, or other services under the attached Purchase Order, as revised or amended by both PARTIES in accordance with terms hereof, are or may be actual or potential lien holders and claimants, and BUYER may withhold payment hereunder until SELLER provides such releases to BUYER.

If SELLER shall default in discharging any lien(s), claim(s), or encumbrance(s) upon the materials and equipment to be provided hereunder, or the facilities, structures, or the premises upon which they are located arising out of the performance of this Purchase Order by SELLER or its subcontractors, BUYER shall promptly notify SELLER in writing and give SELLER an opportunity to satisfy, remove, discharge, or defend any such lien(s), claim(s), or encumbrance(s). If SELLER either does not promptly satisfy such lien(s), claim(s), or encumbrance(s), BUYER shall have the right, at its option, after written notification to SELLER, to settle by agreement or otherwise provide for the discharge of such lien(s), claim(s), or encumbrance(s), and SELLER shall reimburse

BUYER for all costs incurred by BUYER necessary to discharge such lien(s), claim(s), or encumbrance(s), including administrative costs, attorneys' fees, and any other related expenses.

8. **REPRESENTATIONS; WARRANTIES AND LATENT DEFECTS.** SELLER represents and warrants to BUYER that the Goods and/or Services furnished hereunder are: (a) free from defects in design, workmanship, and materials and are performed in a good and workmanlike manner; (b) in conformity with any and all specifications, plans, drawings, samples, and other descriptions set forth herein with respect to kind, quantity, quality, and capability; (c) made, sold, priced, delivered, and performed in compliance with all applicable federal or national, state, and municipal laws, regulations, and ordinances; (d) free of any claims, liens, or other encumbrances of whatever nature; (e) not infringing on any valid patent, copyright, trademark, trade secret, or other intellectual property rights, right of publicity or privacy, breach of confidence, or any other proprietary rights, whether contractual, statutory, or common law; and (f) fit for their intended purpose and operate as intended.

SELLER represents and warrants to BUYER that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under the attached Purchase Order and these Terms and Conditions.

Each of the PARTIES warrant and represent that it has the full power to enter into the Agreement and to perform its obligations under the Agreement.

SELLER shall repair or replace, at SELLER'S own cost and expense, any Goods supplied hereunder which shall be found defective within twenty-four (24) months of delivery or twelve (12) months after being placed into normal operation, whichever occurs earlier. SELLER agrees to provide BUYER with a warranty bond, if requested. SELLER shall re-perform, at SELLER'S own cost and expense, any Services performed hereunder which shall be found defective within twelve (12) months of completion hereof. BUYER shall provide SELLER with prompt advice of such defective Goods. In connection with the Goods purchased or Services provided, SELLER guarantees and warrants all materials and equipment fabricated by it against defects and agrees to repair or replace any such material or equipment which may become defective within twelve (12) months from date of start-up or use or twenty-four (24) months from date of shipment, whichever comes last. SELLER shall pay for all related expenses, including storage and transportation charges for the return of the defective and nonconforming goods to SELLER, the delivery of repaired or replacement Goods to BUYER, and/or the field supervision and field labor required to remove and replace such repaired or replaced Goods.

In the event that SELLER fails to take any action required herein in a timely fashion, or if, in BUYER'S sole discretion, SELLER will be unable to take any action required in order for BUYER to meet its contractual obligations with its customers and end users, BUYER shall be entitled to take such action or to have such action taken to make such

alterations, repairs, and replacement and to recover from SELLER the costs and expenses incurred by BUYER therefore and relating thereto.

The warranty period of parts for Goods replaced under the warranty hereof shall be renewed from the date of such replacement.

All warranties provided by SELLER to the BUYER hereunder shall survive delivery, inspection, acceptance and payment and shall run to the BUYER, BUYER'S customers, and/or end users of the Goods and Services and shall not be deemed to be the exclusive rights of the BUYER, but shall be in addition to the other rights of the BUYER under law, the attached Purchase Order, and these Terms and Conditions.

SELLER further represents and warrants that Goods are free from Latent Defects for a further period of sixty (60) months after the expiry of the warranty period. "Latent Defects" shall mean those defects that:

A. have not been disclosed during the warranty period by either a reasonable examination or through the proper operational use of the Goods or works related to the Services, as applicable; and

B. are of such an inherent kind as a conscientious contractor would regard as being harmful to the fitness for the purpose intended for the Goods as set out in the specification, or works related to the Services, as applicable.

Notwithstanding the issue of a final acceptance certificate, SELLER shall remedy any Latent Defect at no cost to the BUYER notified to SELLER at any time during the Latent Defect period as noted above.

The warranties set forth in this Section 8, and all other rights and remedies in the Agreement, are cumulative and in addition to any other warranty provided by law and equity.

## **9. BUYER'S OPTION TO CHANGE OR TERMINATE.**

### **A. CHANGE ORDERS**

BUYER reserves the right to modify the specifications, delivery date(s), and the terms set forth in the attached Purchase Order upon prior written notice to SELLER. If SELLER determines a change in price specified in the attached Purchase Order or change in delivery dates due to such modification, SELLER must notify and present such changes to BUYER within ten (10) days of notification of modification by BUYER. In no case shall any change in Purchase Order price or delivery be effective until agreed to by BUYER in writing in the form of a Purchase Order change order issued by BUYER.

Upon receipt of such notice of modification or termination, SELLER shall immediately comply with BUYER'S instructions concerning SELLER'S performance hereunder and the disposition of completed and partially completed items, works in progress, Goods, and

materials acquired pursuant to the attached Purchase Order. PARTIES shall negotiate in good faith an amendment to the applicable Purchase Order to incorporate the change order providing for an equitable adjustment to the price, time for performance, or both. SELLER will proceed with the changes as directed, notwithstanding that PARTIES have not negotiated the amendment to the Agreement or the applicable Purchase Order to incorporate the equitable adjustment.

## B. TERMINATION

BUYER has the right to terminate the attached Purchase Order (or any part thereof) at any time, for no reason, upon providing fourteen (14) days prior written notice to SELLER and nothing in these Terms and Conditions will limit or affect such right. Upon receipt of notice of such termination, SELLER will inform BUYER of the extent to which it has completed performance as of the date of the notice, and SELLER will collect and deliver to BUYER whatever Goods and Services then exist. BUYER will pay SELLER for all Goods and Services performed and accepted through the effective date of the termination, provided that BUYER will not be obligated to pay any more than the payment that would have become due had SELLER completed and BUYER accepted the Goods and Services. BUYER will have no further payment obligation in connection with any termination.

(a) In addition to any remedies that may be provided under these Terms and Conditions, BUYER may terminate the attached Purchase Order (or any part thereof) with immediate effect upon written notice to the SELLER, either before or after the acceptance of the Goods or the SELLER'S delivery or performance of the Services,

- i. if SELLER breaches any material term of the attached Purchase Order or these Terms and Conditions;
- ii. if, in the reasonable opinion of BUYER, SELLER fails to make progress or fails to provide reasonable assurances of the same, thereby endangering timely delivery;
- iii. in case of any proceeding by or against SELLER in bankruptcy, insolvency, dissolution, reorganization or restructuring, appointment of receiver or trustee, or assignment for the benefit of creditors, then in any such events BUYER may cancel the attached Purchase Order in whole or in part by written notice to SELLER, and BUYER shall have no liability or obligation whatsoever to SELLER by reason of or resulting from such termination;
- iv. if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods;
- v. any change of control and/or ownership of SELLER; or
- vi. in the event BUYER or BUYER'S customer or end user experiences a Force Majeure Event (as defined in Section 12).

(b) In addition to, and without prejudice to, the right to terminate under the preceding paragraphs, PARTIES agree that:

- i. If the Purchase Order covers Goods manufactured or fabricated to BUYER'S specifications or specifications especially prepared by SELLER for BUYER, then at any time prior to delivery of all Goods, BUYER may

terminate the attached Purchase Order in whole or in part by written notice to SELLER, and in such event the following provisions apply:

1. Immediately upon receipt of such notice of termination or upon such other date as may be specified on said notice, SELLER shall stop all work in connection with the attached Purchase Order except as otherwise directed by BUYER.
  2. The Goods or uncompleted portions of the Goods shall be property of BUYER, and SELLER shall safely hold the same for a reasonable time, not to exceed ninety (90) days, subject to receipt of BUYER'S written shipping or other disposition instructions.
  3. BUYER shall make an equitable price adjustment for materials or components procured, Goods fabricated, and Services performed prior to such notice. However, any such payment under this Section 9 shall not exceed any price specified herein for the item(s) which are the subject of the termination. SELLER shall advise BUYER, in writing, of SELLER'S claim, if any, for such termination costs fifteen (15) days after receipt of the notice of termination.
- ii. If the Goods covered by the attached Purchase Order are standard stock merchandise, BUYER may terminate all or any part of the unshipped portion of the attached Purchase Order at any time by written notice to SELLER, and in such event BUYER shall have no obligations for termination, restocking, or other charges or otherwise except to make payment for the Goods actually shipped and in transit prior to such termination.

BUYER shall have no further payment obligation to SELLER under any change order or terminated Purchase Order if BUYER terminates the Purchase Order under this Section 9. In the event of any change or termination under this Section 9, SELLER agrees that BUYER shall not be liable for any consequential, incidental, punitive, special, exemplary, or indirect damages or expenses (including, without limitation, lost profits or other economic loss, lost reimbursements, or lost savings). Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

**10. INDEMNIFICATION.** To the fullest extent permitted by law, SELLER shall defend (at SELLER'S sole expense), indemnify, and hold harmless BUYER, its partners, representatives, designees, affiliates, successors, assigns and their respective directors, officers, equity holders, and employees (collectively, "Indemnitees") from and against any and all claims, including those for bodily injury, death, damage to property, demands, loss, damage, and any liabilities, actions, causes of action, deficiency, suit, judgments, obligations, interest, award, penalty, fine, cost, and expense, including but not limited to reasonable attorneys' or expert or professional fees and other expenses incident thereto, arising out of, relating to, or in connection with, the Events (as defined below) and/or SELLER'S work performed, materials, supplies or Goods furnished, or Services provided which are the subject of the attached Purchase Order (together with any exhibits and attachments thereto). "Events", whether groundless or not, include, but are not limited to:

- A. defects in the manufacture of the Goods and materials supplied hereunder;
- B. any breach or alleged breach by SELLER of any representation, warranty, covenant or other provision of these Terms and Conditions and the attached Purchase Order (together with any exhibits and attachments thereto);
- C. damage to or loss of BUYER'S tangible and/or intangible property;
- D. damage to the property or violation of rights of third parties (whether under contract, statutory, or common law);
- E. personal injuries or death suffered by any person which may result from the installation, operation, or use of the Goods and materials furnished hereunder;
- F. non-payment of SELLER'S subcontractors and suppliers;
- G. any Security Incident (as defined in Section 14);
- H. alleged or actual failure to comply with applicable laws, regulations, ordinances, rules, or executive or court orders;
- I. infringement or misappropriation of any patent, copyright, trademark, trade secret, or other intellectual property right of any third party;
- J. liens or other encumbrances filed and/or made in connection with the Goods and/or Services;
- K. SELLER'S bankruptcy, insolvency, appointment of receiver or trustee, or assignment for benefit of creditors; or
- L. SELLER'S negligence or willful misconduct.

The indemnity and defense obligations pursuant to this Section 10, shall apply to any acts, omissions, negligence, or willful misconduct of SELLER, its employees or agents, SELLER'S suppliers and subcontractors.

If a third party enjoins or interferes with BUYER'S use of any Goods or Services, then in addition to SELLER'S obligations above, SELLER will use its best efforts to (i) obtain any licenses necessary to permit BUYER to continue to use any Goods or Services; (ii) replace or modify any Goods or Services (or part thereof) as necessary to permit BUYER to continue use of any Goods or Services (or part thereof); or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to BUYER the amount paid for any Goods or Services (or part thereof) for which a third party enjoins or interferes with BUYER'S use.

**11. INSURANCE.** SELLER shall have in place commercial general liability, auto liability and workers' compensation insurance for its employees in accordance with applicable law. All such insurance shall be on a primary and non-contributory basis with respect to any other insurance afforded to BUYER. Coverage shall be placed with insurance carriers with A.M. Best Rating of "A-" or better and financial rating VIII or higher. General liability and auto liability shall include BUYER, its subsidiaries and affiliates, as an additional insured on either a schedule or automatic by contract basis; general liability additional insured should be endorsed for both ongoing and completed operations. General liability, auto liability, and workers' compensation shall include waiver of subrogation endorsement in favor of BUYER. The insurance (U.S. dollars or foreign currency equivalent) amounts required are set forth below:

- A. Workers' Compensation in the statutory limits required by law where work is performed and Employers' Liability with limits of US\$1,000,000 Bodily Injury by Accident; US\$1,000,000 Bodily Injury by Disease Policy Limit; US\$1,000,000 Bodily Injury by Disease Each Employee;
- B. Commercial General Liability on occurrence form basis, with minimum limits of US\$2,000,000 each occurrence for bodily injury and property damage, US\$4,000,000 general aggregate, and US\$4,000,000 products and completed operations aggregate, to include tort liability of another assumed in a business contract;
- C. Automobile Liability with combined single limits of not less than US\$1,000,000 any one accident or loss for bodily injury and property damage, including all owned, hired, and non-owned autos;
- D. Excess liability insurance with minimum limits of US\$5,000,000 per occurrence and aggregate; for Purchase Orders over US\$5,000,000, minimum limits increase to US\$10,000,000 per occurrence and for Purchase Orders over US\$10,000,000, minimum limits increase to US\$20,000,000 per occurrence; Excess is to follow form on Employers' Liability, General Liability, and Auto Liability;
- E. Professional Liability, if applicable, with minimum limits of US\$1,000,000 per occurrence and aggregate; and
- F. Pollution Legal Liability (Contractor's Pollution Liability), for all SELLERS performing contracting, remediation, or installation Services, with minimum limits of US\$2,000,000 per occurrence and aggregate.

No such insurance amounts shall limit in any way SELLER'S liability to BUYER hereunder, and BUYER reserves any and all subrogation rights under these policies. SELLER shall provide BUYER with an appropriate certificate evidencing such insurance and additional insured status.

Insurance Requirements for Subcontractors: SELLER shall ensure that all subcontractors maintain insurance in like form and amounts, including the Additional Insured and Waiver of Subrogation requirements in favor of BUYER. Each subcontractor shall provide Certificates of Insurance to the SELLER prior to the start of the SELLER'S execution of agreement with BUYER or at any time during the term of Purchase Order attached to these Terms and Conditions on the BUYER'S request.

- 12. FORCE MAJEURE.** Either of the PARTIES may suspend performance under the attached Purchase Order without liability therefor to the extent such suspension is caused by or results from the following force majeure events affecting SELLER, BUYER or any of BUYER'S customers ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts; (d) government orders, sanctions, laws, or actions; (e) embargoes or blockades in effect on or after the date of the attached Purchase Order; (f) national emergency, including pandemics and epidemics; and (g) strikes or labor stoppages. Such affected party shall invoke this provision by notifying the other party of the cause within five (5) days of the occurrence of the nature and expected duration of such suspension. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted party shall resume the

performance of its obligations as soon as reasonably practicable after the removal of the cause.

In the event SELLER'S performance is, or is likely to be, suspended for more than sixty (60) days, BUYER may terminate the attached Purchase Order upon written notice to SELLER. Upon such termination, BUYER may, by written notice to SELLER and upon making equitable payment therefor, require SELLER to deliver and pass title to the Goods in SELLER'S possession and any parts, raw material, or work-in-progress related to such Goods.

**13. CONFIDENTIAL INFORMATION AND PUBLICITY.** In accordance with the terms and conditions of a Confidentiality Agreement executed by and between the PARTIES, SELLER shall treat as proprietary and confidential all specifications, designs, plans, data, drawings, blueprints, nomenclature, samples, models, software, the terms of the Agreement and other information supplied by BUYER hereunder, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential". If the term of the Confidentiality Agreement expires before the expiration or termination of the Purchase Order, then the term of the Confidentiality Agreement shall be automatically extended for the duration of the Purchase Order. Without the prior written consent of BUYER, SELLER shall not in any manner disclose, advertise, publish or release for publication any statement mentioning the fact that SELLER has furnished or contracted to furnish to BUYER Goods and/or Services required by the attached Purchase Order. SELLER shall not disclose any information relating to the attached Purchase Order to any person not authorized by BUYER in writing to receive it. SELLER'S use of information supplied by BUYER, especially proprietary information, is strictly limited to its accomplishment of work covered by the attached Purchase Order and for no other purpose. SELLER grants BUYER, BUYER'S customer, or end user an exclusive, unlimited, non-revocable, and sub-licensable license to use and access any and all copies of such drawings and other instruments of service that will be provided under the attached Purchase Order. Upon completion or termination of the attached Purchase Order, all information shall be promptly returned to BUYER. BUYER shall be entitled to injunctive relief for any violation of this Section 13.

**14. TOOLS, MATERIALS, AND DATA.** If the attached Purchase Order provides that any designs, sketches, drawings, blueprints, patterns, dies, molds, masks, software, models, tools, gauges, equipment, or special appliances be provided by BUYER to SELLER hereunder or paid for by BUYER but made or procured by SELLER especially for producing the Goods covered by the attached Purchase Order, then immediately upon BUYER'S provision thereof to SELLER or SELLER'S manufacture or procurement thereof, they shall remain or become the property of BUYER.

SELLER shall maintain a current inventory of the foregoing, which shall be: (a) identified as property of BUYER, (b) held by SELLER on consignment at SELLER'S risk, reasonable wear and tear excepted, (c) used exclusively in the production for BUYER of Goods under the attached Purchase Order, and (d) subject to BUYER'S direction concerning disposition, including return to BUYER. SELLER shall establish appropriate

procedures for the adequate storage, maintenance, and inspection of the foregoing and shall maintain inspection and inventory records therefor available to BUYER upon request.

SELLER shall notify BUYER within forty-eight (48) hours of a discovery that an actual or suspected breach of its electronically stored information, including personal information as defined under applicable law (“ESI”), has, or may have, occurred (a “Security Incident”), and in addition to all the remedies available to BUYER pursuant to Section 10, shall further agree to reimburse BUYER for any and all damages, losses, fees, or costs (whether direct, indirect, special, or consequential) incurred by BUYER as a result of such Security Incident.

- 15. GOVERNING LAW; JURISDICTION; DISPUTE RESOLUTION.** The Agreement shall be governed by and construed in accordance with the internal laws of the Republic of Singapore without giving effect to any choice or conflict of law provision or rule (whether of the U.N. Convention on Contracts for the International Sale of Goods, or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Republic of Singapore. SELLER agrees it is subject to any court of competent jurisdiction located in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania or, if BUYER is not located in the United States, wherever BUYER is located, which place shall be the exclusive venue of adjudicating disputes arising out of the attached Purchase Order and these Terms and Conditions.

In any such litigation, the prevailing party shall have its reasonable attorney fees, expert fees, and other expenses incident to such adjudicatory proceeding paid for by the non-prevailing party.

- 16. BUYER’S PERFORMANCE OF A PRIME OR SUB-CONTRACT.** In the event that the Goods or Services purchased hereunder are ordered by BUYER in connection with BUYER’S performance under a prime or sub-contract with a third party and such prime or sub-contract is referred to on the face of and incorporated by reference into the attached Purchase Order, SELLER shall provide such Goods or perform such Services in compliance with BUYER’S requirements thereunder. SELLER shall at all times ensure that the personnel, employees, agents, or consultants of such prime or sub-contract with a third party shall be suitably qualified, experienced and resourced, and shall exercise due skill, care and diligence. SELLER represents and warrants that such prime or sub-contract with a third party is aware of the SELLER’S obligations under the Agreement. SELLER shall be responsible for the work and activities of the employees, agents, and subcontractors of such prime or sub-contract with a third party, including compliance with the terms of the Agreement. SELLER shall be responsible for all payment for such prime or sub-contract with a third party. In no event shall any such prime or sub-contract with a third party release SELLER from its responsibility for its obligations under the Agreement and SELLER shall indemnify BUYER to the extent provided for in Section 10 arising out of or in connection with all acts and omissions of such prime or sub-contract with a third party. BUYER shall, upon execution of the attached Purchase Order, provide SELLER with a copy of the pertinent terms of such prime or sub-contract. To the extent that there

is a conflict between the terms of the attached Purchase Order, these Terms and Conditions and the terms of such prime or subcontract, the terms of such prime or subcontract shall prevail. To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

- 17. COMPLIANCE WITH LAW.** SELLER shall, at all times and at its own expense, strictly comply with all applicable laws, regulations, and other requirements of every duly constituted governmental authority (national, provincial, municipal, local, or other governmental agency), agency or instrumentality, now or hereafter in effect, relating to the performance of the attached Purchase Order, including without limitation import and export control, environmental, conflict minerals, and occupational safety requirements and assume all liabilities or obligations imposed thereby with respect to SELLER'S performance under the attached Purchase Order. SELLER shall promptly provide necessary information, as requested by BUYER of confirmatory responses and documentation in this regard. Any clause required to be included in a purchase order of this type by any applicable law, rule, or regulation shall be deemed to be incorporated herein. SELLER agrees that at any time during the execution of the attached Purchase Order, if requested, it will promptly provide BUYER, BUYER'S customer, or end user with certificates confirming the origin for the Goods purchased under the attached Purchase Order in a form acceptable to BUYER, BUYER'S customer, or end user. SELLER agrees to maintain in full force and effect all licenses, permits, authorizations, registrations, certifications, and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder. In no event shall SELLER take any action or omit to take any action that would cause it to be in violation of any applicable law, including, without limitation, the U.S. Foreign Corrupt Practices Act, the Japanese equivalent titled the "Unfair Competition Prevention Law", the United Kingdom Bribery Act, and any other applicable anti-bribery and anti-corruption laws. SELLER'S failure to comply with such anti-bribery and anti-corruption laws shall constitute a material breach of the Agreement.

To be clear, the SELLER will cause its affiliates and sub-sellers, and their respective employees, officers, directors, or representatives not to make, offer to make, or agree to make, any loan, gift, donation, commission, kickback, bribe, or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (a) any governmental official, employee, or representative; (b) any employee, officer, director, or representative of the BUYER; or (c) any other person with respect to the negotiation, execution, or performance of the order.

Further, if the SELLER learns or has reason to know of any such payment, offer, or agreement described above to make any such loan, gift, donation, commission, kickback, bribe, or other payment or facility to any of the persons described above, it will immediately inform the BUYER in writing communicating to the BUYER all relevant information in respect of the above within the knowledge or possession of the SELLER. Without prejudice to the SELLER'S obligations as above, the SELLER agrees not to, and to cause its affiliates and sub-sellers not to, offer or give, or agree to give, to any employee, officer, director, or representative of the BUYER any consideration of any kind as an inducement or reward for doing, refraining from doing, or having done or refrained from

doing, any act in relation to the obtaining or performance of the order, or for showing or refraining from showing favor to any person in relation to the order.

BUYER is firmly committed to adhering to all U.S. export controls, sanctions, and international trade laws and regulations including, but not limited to, the Export Administration Act (continued in effect under the International Emergency Economic Powers Act), the Export Administration Regulations (EAR), and the Foreign Trade Regulations (FTR). Accordingly, SELLER agrees (a) to provide the Export Control Classification (ECCN) and Schedule B number (or Harmonized Tariff Schedule code) for each item requested in the attached Purchase Order, and (b) to verify that all items requested in the attached Purchase Order have not been procured from any party designated as Specially Designated National (SDN) or their supply to BUYER is otherwise subject to economic sanctions in accordance with U.S. laws and regulations.

Additionally, provided SELLER is subject to the jurisdiction of the United States:

**This contractor and/or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a), said clauses being herewith incorporated into the attached Purchase Order by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.**

**18. ANTI-LOBBYING PROVISIONS.** BUYER, being an international purchaser and supplier of Goods, is often required to comply with Ex-Im Bank requirements. These requirements include the following provisions:

- A. No Federal appropriated funds have been paid, or will be paid, by or on the behalf of SELLER to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the SELLER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with instructions.
- C. The undersigned shall require that the language of this certification be included in the award of documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

SELLER shall comply with these Ex-Im Bank requirements and shall, upon request, promptly certify such compliance to BUYER and provide necessary information as requested by BUYER of confirmatory certification and documentation in this regard.

**19. AUDIT.** It is agreed that BUYER, BUYER'S customers, end users, or their designees, or any third-party mutually agreed upon by BUYER and SELLER shall have the right, at all reasonable times during business hours, to inspect, audit, and copy the books, records, and accounts of SELLER with regard to its activities under the attached Purchase Order and/or these Terms and Conditions. SELLER shall make such books, records, and accounts immediately available for inspection, auditing, and copying upon request of BUYER. Further, BUYER reserves the right to audit SELLER from the date of the attached Purchase Order and for at least five (5) years following expiration or termination of the attached Purchase Order.

**20. ENTIRE AGREEMENT; WAIVER.** Except as set forth in Section 16 above, the attached Purchase Order and these Terms and Conditions shall constitute the complete, exclusive, and entire agreement between BUYER and SELLER and may not be amended or rescinded unless through a writing signed by the authorized representatives of the PARTIES. Should any part of the attached Purchase Order or these Terms and Conditions be found to be illegal, invalid or unenforceable by a court of law, that determination shall not automatically invalidate any other part of the attached Purchase Order or these Terms and Conditions and all remaining terms of the Agreement shall remain in full force and effect.

Failure by BUYER to insist upon strict performance of any of the terms hereof, or any failure or delay by BUYER in its exercise of any rights or remedies provided herein or by law, or failure by BUYER to properly notify SELLER in the event of breach, shall not release SELLER from any of the obligations of the attached Purchase Order or these Terms and Conditions and shall not be deemed a waiver of any rights of BUYER to insist upon strict performance of any of its rights or remedies hereunder.

**21. ASSIGNMENT.** Neither the attached Purchase Order, nor any right, responsibility, or obligation of SELLER hereunder, may be assigned, transferred (including by operation of law or otherwise), delegated, or subcontracted, in whole or in part, directly or indirectly, by SELLER without the prior consent of BUYER. Should SELLER use subcontractors to perform any or all of its work hereunder (upon BUYER'S prior consent), SELLER warrants that such subcontractors shall be subject to all applicable terms of the attached Purchase Order and these Terms and Conditions. Any purported assignment, transfer or delegation in violation of this Section 21 shall be null and void. Subject to the above, no assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or applicable Purchase Order unless the non-assigning party enters into a novation agreement releasing the party of its obligations under these Terms and Conditions and applicable Purchase Order. In the event that the Purchase Order is terminated in accordance with Section 9 above, SELLER agrees that any and all contracts and/or agreements that it holds with its subcontractors for work performed under the attached Purchase Order shall be freely assignable to BUYER, upon BUYER'S request. In the event that BUYER'S contract with its customer and/or end user is terminated, BUYER may assign or novate the attached Purchase Order to such customers and/or end

users upon prior written notice to SELLER but without the need for SELLER'S prior consent.

**22. CHANGE OF CONTROL.** If SELLER undergoes any transaction or series of transactions with a competitor of BUYER (a) resulting in SELLER'S change of control or ownership, directly or indirectly, whether by merger, reorganization, or acquisition of (i) all or substantially all of the SELLER'S assets or business or (ii) more than fifty percent (50%) of the SELLER'S equity, or (b) whereby a business unit or other part of SELLER is divested, sold, transferred and no longer considered a part of SELLER or under SELLER'S control or ownership (each such transaction or event, the "Qualifying Event"), then prior to the consummation of the Qualifying Event SELLER shall notify BUYER in writing of the Qualifying Event and upon BUYER'S request agree to continue to operate pursuant to the same terms of attached Purchase Order and/or any new Purchase Order incorporating the same terms of the attached Purchase Order for a period of no less than six (6) months after the termination of then current term of the applicable Purchase Order or the effective day of Qualifying Event, whichever occurs last.

**23. MISCELLANEOUS.** SELLER shall be deemed and treated hereunder as an independent contractor while providing the Goods or performing the Services herein. Nothing contained in the attached Purchase Order shall be construed to create the relationship for principal and agent or employer and employee between SELLER and BUYER. To the extent that SELLER performs Services hereunder on BUYER'S premises, SELLER shall comply with BUYER'S rules and regulations with respect thereto. SELLER agrees that it will require all of its staff members to participate in a safety orientation provided by BUYER. Proper PPE (personal protection equipment) must be worn by SELLER for all activities and safety glasses must be worn at all times while in BUYER'S plant operations areas, to be provided by BUYER. SELLER acknowledges the incorporation of all policies, practices, and requirements set forth in BUYER'S Supplier Handbook which can be accessed through this link: <http://www.elliott-turbo.com/Files/Admin/Suppliers/COR.1019.0316.D---Supplier-Handbook.pdf> as though fully set forth herein, and shall comply with any and all provisions contained therein.

Section headings herein are for purposes of clarity only and are not to be considered a part of the attached Purchase Order. Any and all notices, consents, approvals, requests, instructions, or the like required hereunder shall not be valid unless they are set forth in writing signed by an authorized representative of the party providing such direction and are e-mailed or mailed to the representatives of the other party hereto whose name, mailing address, and e-mail are set forth on the attached Purchase Order or an attachment thereto and deemed given and effective: (i) upon delivery if by personal delivery; (ii) three (3) days if by certified or registered mail, return receipt requested, postage prepaid; (iii) upon receipt after it is sent by a reputable international courier with tracking capabilities, postage or delivery fees prepaid; or (iv) at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal if by electronic mail.

Any Party may enter into the Agreement by signing such counterpart. Any such counterpart, to the extent delivered by means of an electronic device or by .pdf, .tif, .gif,

.jpeg or other graphics format attached to electronic mail (any such delivery, an “Electronic Delivery”) shall be treated in all manners and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defence to the formation of a contract, and each such Party forever waives any such defence, except to the extent that such defence relates to lack of authenticity.

The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of the attached Purchase Order including, but not limited to, the following provisions: Section 10 (Indemnification), Section 11 (Insurance), Section 13 (Confidential Information and Publicity), Section 15 (Governing Law; Jurisdiction; Dispute Resolution), and Section 17 (Compliance with Laws).