



TERMS AND CONDITIONS OF PURCHASE  
HENDRICKSON MEDINA, LLC DBA BRUNNER

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**1. Application.** These Terms and Conditions of Purchase apply to any and all agreements for the purchase and delivery of Goods and/or Services (as defined below) to Buyer.

**2. Definitions.** The definitions stated below are incorporated in and made a part of these Terms and Conditions of Purchase.

- "Buyer" means Hendrickson Medina, LLC dba Brunner which purchases, receives, or distributes the Goods and/or Services identified on a Purchase Order.
- "Customer" means the party or parties who will purchase goods and/or services from Buyer which incorporates or involves the Goods and/or Services.
- "Goods" has the meaning in the Uniform Commercial Code, including but not limited to, any parts, systems, components, equipment, machines, materials, supplies, drawings, data, or raw material that Buyer orders and the Seller supplies to Buyer, including those goods that Seller obtains from third parties.
- "Indemnified Parties" means Hendrickson Medina, LLC dba Brunner, its parents and affiliates, and their officers, directors, members, managers, employees, successors, assigns and customers.
- "Purchase Order" means a document in paper or electronic form issued by Buyer to Seller for the purchase of Goods and/or Services, and includes the Terms and Conditions and any and all associated agreements, releases against the Purchase Order, warranty agreements between Buyer and Seller, cover sheets, specifications, drawings, attached exhibits and schedules prepared by Buyer, pursuant to which the Seller is to provide the Goods and/or perform the Services. If the Purchase Order is issued as a blanket purchase, the total blanket purchase quantity is an estimated volume and not a commitment to purchase. Only written or electronic releases by Buyer identifying the specific quantities to be purchased and the delivery date(s) will be considered binding orders. Buyer's Purchase Order will be deemed accepted by Seller if not confirmed by Seller within one (1) week from date of receipt.
- "Seller" means the party identified on the Purchase Order that supplies or is intended to supply Goods and/or Services to Buyer.
- "Services" means any work performed by or to be performed by Seller or Seller's employee, agent, representative, or subcontractor, including but not limited to design, engineering, manufacturing, assembling, packing, delivery, distribution, installation, inspection, testing, or other operation or services covered by the Purchase Order. If the Purchase Order contains consulting services, engineering services and/or similar services including any services that would be classified or characterized as a work made for hire project under laws applicable to work made for hire projects (including but not limited to writing, providing or customizing software code), additional terms may apply, and Buyer may require Seller to sign a separate document which incorporates the additional terms.
- "Supplier Portal" means the website maintained by Hendrickson USA, L.L.C. which is accessible to Seller at <https://www.hendrickson-intl.com/suppliers>.
- "Terms and Conditions" means the terms and conditions included in this document, in the Purchase Order, and published on the Supplier Portal.

**3. Buyer's Form Controls.** The Purchase Order will constitute an offer by Buyer to purchase the Goods and/or Services specified upon the Terms and Conditions, quantity, price(s), and delivery date(s) stated in the Purchase Order and is not an acceptance of any offer by Seller to sell. Any other different terms and conditions of Seller that may be contained in any proposal, quotation, acknowledgment, invoice, delivery receipt or other Seller form are hereby rejected. Buyer's act of accepting or paying for any shipment does not constitute acceptance of any of Seller's terms or conditions. This statement constitutes notice to this effect pursuant to Section 2-207 of the Uniform Commercial Code. Seller acknowledges it has read and understands the Terms and Conditions. Seller agrees that Seller's shipment of Goods or commencement of any Services under a Purchase Order, or receipt of payment from Buyer relating to a Purchase Order, will constitute Seller's acceptance of these Terms and Conditions only. No changes or additions to the Terms and Conditions will be binding on Buyer unless expressly accepted in writing by Buyer.

**4. Warranty.**

(A) Seller warrants that the Goods will:

- (i) be free from all liens and defects of title, design, manufacture, workmanship and material;

- (ii) conform to descriptions, specifications, drawings, data and samples provided by or referred to by Buyer;
- (iii) be new and of the best quality and merchantable, safe and fit for the intended purpose under the conditions made known by Buyer or reasonably to be inferred;
- (iv) conform to any statements made on the container, labels or in advertisements;
- (v) conform in all respects with samples supplied by Seller and with any applicable quality manual, standards, procedures and requirements furnished by Buyer or Customer;
- (vi) be adequately contained, packaged, marked and labeled;
- (vii) comply with national and industry codes and standards; and
- (viii) in the case of software, not contain or include a virus, malware, freeware, shareware, keystroke logger, secretive monitoring or access spy system, or any program or subroutine that places restrictions on Buyer's ability to use and freely transfer.

Seller warrants that the Goods will meet performance requirements including length of service and mileage warranties, and that when applicable, all facilities where the Goods are produced are currently certified and will remain certified during the term of the Purchase Order under IATF16949/ISO9001:2015, TS16949, ISO9000 and any other applicable standard specified in the Purchase Order or otherwise communicated by Buyer to Seller, unless exempted in accordance with Buyer's procedures.

Without limiting the preceding paragraph, Buyer will, in accordance with IATF16949/ISO9001:2015, communicate to Seller certain requirements, including without limitation, applicable statutory and regulatory requirements and/or special product and process characteristics, to be observed, adhered to or performed by Seller in the course of Seller's providing the Goods or Services. Seller shall promptly communicate those same requirements, as applicable, to all of Seller's suppliers or subcontractors who are contributing to the Goods or Services. Seller shall also include in its agreements with its suppliers and subcontractors, a paragraph that is substantially the same as this paragraph so that Seller's suppliers and subcontractors will be similarly bound to communicate all requirements to their respective suppliers and subcontractors, and so on. Buyer is deemed to be a third-party beneficiary of these provisions.

(B) The warranty period for the Goods, except with respect to liens, title, or latent defects or unless otherwise specified in the Purchase Order, will be one (1) year from the date the Goods are placed in operation. With respect to liens, title, or latent defects in the Goods, the warranty period will be the useful or expected life of the Goods as determined by Buyer. If at any time prior to the expiration of the warranty period it appears that the Goods, or any part thereof, do not conform to the warranties set forth in this Article, Seller will, at Buyer's option and at Seller's sole cost and expense, promptly repair or replace the Goods to Buyer's satisfaction at the delivery point specified in the Purchase Order. If the Goods are replaced or repaired, the warranty period for the Goods will be one (1) year from the date the Goods are replaced or repaired to Buyer's satisfaction and placed in operation.

(C) Seller's liability hereunder will extend to any services, operations or labor and the repair or replacement of all or any part of any Goods covered by the Purchase Order and will include all damages proximately caused by the breach of any of the foregoing warranties, including but not limited to, all costs arising out of disassembly, removal, re-inspection, re-installation, re-testing, transportation and/or warehousing. If Seller does not remedy the nonconformity to Buyer's satisfaction within a reasonable time after notice, or it is impractical for Buyer to provide notice to Seller, Buyer may exercise certain remedies. The remedies available to Buyer at its sole option include, but are not limited to:

- (i) remedy such nonconformity by itself or through others and Seller will reimburse Buyer for the reasonable expense of remedy;
- (ii) retain the nonconforming Goods and make an equitable adjustment reducing the Purchase Order price to reflect the diminished value;
- (iii) reject or revoke acceptance of the Goods, and cover by making any reasonable purchase of Goods in substitution, and Seller will be liable for all costs of cover; or
- (iv) reject or revoke acceptance of the Goods, and demand prompt refund of the Purchase Order price in full and Seller will be liable for Buyer's costs, including but not limited to, costs incurred for transporting the nonconforming Goods to and from the delivery point.

Any action on the part of Buyer or Customer under this Article will not relieve Seller of any responsibility or liability with respect to such Goods.

(D) If Seller provides Services to Buyer, Seller warrants that all Services and all Goods, parts and components supplied or utilized in the Services will meet the terms described in (A), (B) and (C) above. Seller further warrants that the Services will conform to descriptions, specifications, drawings, and data presented by Seller and accepted by Buyer. In all Services, Seller will employ good, sound procedures, skill, care and judgment. All Services will be performed in accordance with all local, state and national laws, regulations, codes and standards applicable to such Services. In addition, if any Services are to be performed on Buyer's premises, Seller and their employees, agents, representatives and subcontractors will fully comply with Buyer's site policies, practices and rules, including the Global Vendor Code of Conduct published on the Supplier Portal. If Buyer requires the services of a supervisor, expert, or other employee connected with or employed by Seller (a "Service Employee") for the installation of the Goods, and Seller agrees to furnish a Service Employee to perform the installation services either with or without charge, such Service Employee shall not be deemed to be an agent or employee of Buyer. Seller assumes full responsibility for the Service Employee's acts and omissions, and exclusive liability for any and all payroll taxes or contributions imposed by any federal, state, or local law.

(E) The warranties described in (A), (B), (C) and (D) above will be in addition to any warranties, express or implied, extended to Buyer by Seller, or implied or provided by law, and in the event of any default under or breach of this warranty or any other provision of the Purchase Order by Seller, Buyer will be entitled to all damages, including incidental, special, indirect, and consequential damages. Seller agrees that the aforesaid warranties will survive inspection and acceptance of the Goods and/or Services and will run to Buyer and to Customer and their dealers, customers and users of the Goods and/or Services.

**5. Inspection.** All Goods (including but not limited to raw materials, work in process and finished products wherever located, including at Seller's suppliers' shops) will be subject to inspection and test by Buyer or Customer or its designee at all times through the manufacturing process, the time of shipment and a reasonable time after arrival at the final destination. Buyer and Customer will be entitled, after prior notice to Seller, to take samples and carry out any other necessary investigations and tests with respect to the manufacture of Goods for Buyer and Customer. Final inspection and acceptance by Buyer will be at Buyer's premises. Defective Goods or Goods not in conformance with Buyer's or Customer's specifications or other requirements will be held at Seller's risk, and, if Seller so requests, may be returned at Seller's expense. Payment for Goods prior to inspection will not constitute acceptance of the Goods, nor constitute a waiver of Buyer's rights. Returned Goods will be deducted from total shipments, and Buyer will be entitled to full reimbursement or credit for returned Goods.

**6. Shipment and Delivery.** Seller will suitably pack, mark, and ship the Goods in accordance with Buyer's instructions, if any, and all applicable requirements of law and common carriers necessary to secure the lowest transportation costs. Seller is liable for any difference in freight charges or damage to the Goods by its failure to comply with these shipping requirements. If Seller does not send Buyer a notice of shipment as soon as the Goods are forwarded, giving the order number, car number, and initials, if any, and a condensed description of the Goods, Seller is liable for any demurrage charges incurred by Buyer. The Goods and/or Services will be delivered in accordance with the delivery terms set forth on the Purchase Order. Goods will normally be routed to provide the most economical transportation rates. Seller will not give any other customer of Seller any priority over Buyer in the allocation of Seller's production, time of delivery being of the essence. If any Goods and/or Services are not delivered within the time specified in the Purchase Order or within a reasonable time if no time is so specified, Buyer may either:

- (i) refuse to accept such Goods and/or Services and terminate the Purchase Order with no cost to Buyer;
- (ii) cause Seller to ship the Goods by the most expeditious means of transportation and any additional transportation charges in excess of those which would apply for the usual means of transportation will be paid by Seller; or
- (iii) accept the Goods and/or Services and Seller will be liable for all damages including incidental, indirect, consequential and special damages caused by failure to meet delivery specifications.

**7. Title and Risk of Loss.** If Buyer makes progress payments to Seller under the Purchase Order, title to the Goods will pass to Buyer at the time that Seller identifies the Goods to a Purchase Order, otherwise title to the Goods and all components thereof will pass to Buyer upon the earlier of payment or delivery. Regardless of delivery point or delivery terms, risk of loss of Goods will not pass to Buyer until the Goods are received, inspected and accepted by Buyer or the Customer at the delivery destination.

**8. Pricing and Payment.** Terms of payment for all Seller invoices will be forty-five (45) days from the date of invoice unless the Purchase Order specifies different terms. Unless Buyer consents in writing, a Purchase Order may not be filled at a price higher than that set out on the Purchase Order, or in the absence of a stated price, at a higher price than that previously quoted in writing by Seller or paid by Buyer. At all times while performing pursuant to the Purchase Order, Seller will be competitive in price, quality, delivery, technology and service with respect to the Goods and/or Services. Any reduction in Seller's costs resulting from refunds, rebates, reductions or drawbacks of freight rates, customs duties (including antidumping and countervailing duties), import taxes, excise taxes and/or sales taxes from those in force on the date hereof, is to be paid to Buyer by Seller in reduction of the price of the Goods and/or Services ordered herein. Buyer may withhold or off-set any payment due under any Purchase Order between Buyer and Seller. If Seller's invoice is not received by Buyer within one-hundred fifty (150) days of shipment of the Goods, or within one-hundred fifty (150) days of completion of the Services, as applicable, then Seller waives all claims against Buyer for payment for such Goods or Services.

**9. Changes.** Buyer reserves the right to change specifications, engineering drawings, and/or change other requirements on reasonable notice to Seller. Any differences in price, delivery, or warranty resulting from such changes will be equitably adjusted, and Buyer will modify the Purchase Order in writing. Any claim by Seller for adjustment will be deemed waived and denied unless Buyer agrees in writing within thirty (30) calendar days from receipt of Seller's claim. Price increases and/or extensions of time for delivery or completion will not be binding on Buyer unless evidenced by a change order issued and signed by an authorized representative of Buyer and accepted by Seller. Seller will provide no less than one hundred eighty (180) days' written notice of any proposed change in manufacturing location, manufacturing or quality process, or form, fit and function of a supplied Good, and will not implement such change without a written change order from an authorized Buyer representative.

**10. Termination.** Buyer may, at any time, terminate a Purchase Order in whole or in part, or suspend, delay or interrupt all or any part of the Goods and/or Services hereunder by written or oral notice confirmed in writing within thirty (30) days. If Buyer terminates for convenience, Buyer will reimburse Seller for only those completed Services and for Goods delivered or in transit, but in any case, not in excess of the Purchase Order price. If the delivery of the Goods and/or Services are suspended, delayed or interrupted by Buyer, and if Seller is authorized by Buyer to resume the delivery of the Goods and/or Services, an equitable adjustment of not more than ten percent (10%) of the price of such Goods and/or Services may be made to the Purchase Order price, and/or completion and delivery schedule will be equitably adjusted, but only to the extent that Buyer was the direct cause of the delay or interruption. **IN NO EVENT WILL THE BUYER BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OVERHEAD OR OTHER DIRECT OR INDIRECT COSTS, UNAMORTIZED DEPRECIATION, LOSS OF USE OR LOST PROFITS OR REVENUE ARISING OUT OF OR RELATED TO ANY PURCHASE ORDER.**

**11. Confidential Information.** Seller may gain access or knowledge through its business relationship with Buyer to proprietary information about Buyer's or Customer's operations and business information, including but not limited to plans, finances, products,

processes, equipment, know-how and technical documentation, marketing information, databases and customers (collectively "Confidential Information"). Seller will keep all Confidential Information confidential, including its business relationship with Buyer and the terms of the Purchase Order, and will not disclose any such information to others except as authorized in advance by Buyer in a signed writing. In addition, Seller agrees that, without limitation, all patterns, dies or other tools, printing plates, jigs, fixtures, forms, electronic control devices, software, firmware, programs, algorithms and the like in whatever medium, and any other devices, and specifications, drawings, and blueprints, whether prepared by Seller or furnished by or paid for by Buyer will:

- (i) be considered Confidential Information;
- (ii) remain Buyer's sole property without limitation or restriction on Buyer's use or transferability;
- (iii) be safely stored, maintained and held at Seller's risk and insured at Seller's expense;
- (iv) wherever possible be clearly marked as the property of Buyer;
- (v) be used only in the performance of Purchase Orders from Buyer; and
- (vi) together with all copies thereof, be delivered to Buyer or destroyed by Seller, as Buyer specifies.

Confidential Information will not be used by Seller for the production and/or supply of any goods or services to any other party. If Buyer compensates Seller for development or design work initiated by Buyer for Goods and/or Services, any intellectual property rights, including but not limited to inventions, discoveries, techniques and processes, arising from such work will accrue to Buyer, and Seller hereby assigns to Buyer all of its right, title, and interest in the intellectual property. Neither the supply of Goods nor the performance of Services under a Purchase Order grants any rights under Buyer's intellectual property rights to Seller, other than to supply Goods or perform Services. Seller acknowledges that any sale of Goods bearing the Buyer's or Customer's trade name and/or trademarks to other than Buyer is an infringement of the Buyer's or Customer's proprietary rights in its trade name and/or trademarks. Seller grants to Buyer a non-exclusive, worldwide right and license under the intellectual property rights of Seller (including but not limited to, patents (either utility or design), copyrights, mask work rights, Confidential Information (including but not limited to, trade secrets, software, firmware and know how), to make, have made, use, import, market, sell, transfer, repair or reconstruct any Goods or Services which are the subject matter of this Purchase Order, together with the right to sublicense others to do so for Buyer. Seller grants such license provided that Buyer will exercise this license only if Seller is in default of any Purchase Order, or Seller terminates a Purchase Order other than for the default of Buyer, and that when exercised, such license will be fully paid-up and no royalty due to Seller. Should Buyer's exercise of the license be judicially determined to be without justification, then Seller's damages will be limited to a reasonable royalty for any products produced by or for Buyer under such license, less any damages caused by Seller's conduct.

**12. Taxes and Duties.** The prices for the Goods and/or Services include all federal, state and local taxes from which Seller cannot obtain exemption. The amounts of any non-exempted taxes will be shown separately on Seller's invoice. Any additional or increased tax, public charge, freight rate, tariff or duty levied on or imposed upon the Goods and/or Services or the manufacture or sale thereof after the date of a Purchase Order will be paid by Seller. Any reduction in Seller's cost resulting from a reduction in any tax, public charge, freight rate, tariff or duty from that in force on the date of the Purchase Order will reduce the price for the Goods and/or Services ordered in a like amount. Seller will cooperate with Buyer and Customer in obtaining these credits. Seller will furnish Buyer and its designees with documentation establishing the country of origin and value of the Goods as Buyer or Customer may request, including, as applicable, affidavits of manufacture and an accurate and complete certificate of origin.

**13. Compliance with Laws; Buyer's Right to Audit.** Seller hereby certifies and agrees that Seller and Seller's Goods and/or Services will comply with all applicable state, federal and local laws, rules, regulations, directives, ordinances, executive orders and statutes, and any amendments to such matters ("Laws") applicable to the country or countries of manufacture, sale, purchase and use. These Laws include, but are not limited to, Federal Motor Vehicle Safety Standards and regulations issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 and any amendments thereto, Occupational Safety and Health Act, International Traffic in Arms Regulations and the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, Environmental Protection Act, Toxic Substances Control Act, Fair Labor Standards Act, and those that require affirmative action and prohibit discrimination, the U.S. Foreign Corrupt Practices Act, and any applicable anti-bribery Laws of other countries. If the export or use of Seller's Goods and/or Services outside of the United States of America can be considered restricted because of national export or other regulations, Seller is obliged to inform Buyer in writing of such fact and of the consequences of the restrictions. Seller will also inform Buyer promptly of any changes in export regulations covering Seller's Goods and/or Services. Seller represents and warrants that it shall not provide to Buyer any Goods or components of Goods that contain conflict minerals as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Upon Buyer's request, Seller will permit Buyer and its authorized representatives, accountants and attorneys (and Seller will obtain a similar right from any permitted subcontractors), access to all of Seller's books and records wherever such books and records may be located, in order to assess Seller's compliance with the requirements of this Article 13. Buyer will bear the cost of the audit, provided, however, if the audit reveals a material non-compliance by Seller, then Seller will bear the cost of the audit. Buyer will conduct the audit during Seller's regular business hours and upon at least five (5) business days prior notice.

**14. Insolvency.** Buyer may cancel any Purchase Order when Buyer deems itself insecure due to threatened or actual bankruptcy or insolvency of Seller, the filing of any petition in bankruptcy, the appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors.

**15. Seller Indemnification.**

(A) Seller will indemnify, defend and hold harmless the Indemnified Parties, from any and all actions, claims, demands, suits, liabilities, losses, obligations, damages (including but not limited to actual, incidental, indirect, special or consequential damages), judgments, settlements, costs and other expenses (including reasonable legal and attorneys' fees), whether any act, error or omission or negligence of Buyer or Customer contributed thereto, which relate to, or arise out of any actual or alleged:

- (i) actions or inactions of Seller, including its employees, representatives, agents and/or subcontractors, relating to the Goods and/or Services provided under the Purchase Order;
- (ii) breach of Seller's representations, warranties or obligations;
- (iii) claim or finding the Goods and/or Services caused or contributed to death, bodily injury, illness or personal injury of any person or damage to property, including loss of use;
- (iv) except Goods for which Buyer provided and controlled the designs, direct or contributory infringement of, or inducement to infringe, any patent, trademark, copyright, trade secret or other proprietary right by reason of manufacture, use or sale of the Goods and/or Services, or for actual or alleged misuse or misappropriation of a trade secret resulting from actions or inactions of Seller or its employees, representatives, agents and/or subcontractors;
- (v) Seller's failure to comply with and observe local, state and federal laws and regulations and international treaties or agreements applicable to Seller's business or the Goods and/or Services, including but not limited to, federal motor vehicle regulations and safety standards;
- (vi) product liability, tort, contractual or other claims relating to the Goods and/or Services; and
- (vii) inaccuracy or invalidity of, or defect in, any certificate of origin furnished by Seller to Buyer.

(B) If any Goods and/or Services create, cause or contribute to a vehicle or other product repair campaign or recall, Seller will indemnify as described in (A) above and will pay all costs of recall, repair, and correction, including but not limited to, labor, administrative costs, internal costs, reasonable attorneys' fees and expenses, and any actual, incidental, indirect, special and consequential damages including loss of use incurred by the Indemnified Parties, Customers and their dealers, and users of the Goods and/or Services. The remedies provided in this paragraph will be cumulative and will not limit Seller's liability.

(C) With respect to infringement claims pursuant to Section 15(A)(iv) above, Seller, at its expense, will assume the defense of Buyer provided that Buyer promptly notifies Seller of any actual charge of infringement and furnishes Seller, at Seller's request and expense, all assistance and information available to Buyer pertinent to the charge of infringement. Buyer has the right to be represented in such matters by counsel of Buyer's own selection acting at Buyer's own expense. Seller will, at no expense to Buyer, at any time and within ninety (90) days after Buyer is enjoined from using such Goods or Services, minimize Buyer's damage or liability by (a) altering the Goods or Services to make them non-infringing, provided that such altered non-infringing Goods or Services will fulfill substantially the same function as they fulfilled prior to alteration, (b) exchanging the Goods or Services for non-infringing Goods or Services which will fulfill substantially the same function as the infringing Goods or Services, which automatically become Seller's property, or (c) by obtaining a settlement or license permitting Buyer's use of any infringing Goods or Services.

**16. Seller Insurance.** Seller will maintain Commercial General Liability insurance with a combined single limit of \$5,000,000 per occurrence for bodily injury, property damage and personal injury, protecting the Indemnified Parties, Customer(s), the affiliates of each, and their respective employees, agents, directors, officers, members, managers, and representatives against claims of bodily injury, including death, personal injury, and property damage, including loss of use, arising out of or attributed or related to the Goods and/or Services. The Commercial General Liability insurance will provide coverage including but not limited to products liability, contractual, completed operations, broad form property damage, personal and advertising injury, and will expressly cover the contractual liability assumed by Seller under Article 15. Where necessary to obtain coverage by policy endorsement or a separate policy insuring a required risk, Seller will do so at its expense. The pollution exclusion, if any, in the Commercial General Liability insurance will not apply to pollution which arises out of the products/completed operations hazards. In addition, if any Services are to be performed on Buyer's premises, Seller will maintain the following minimum insurance coverages in addition to those referenced above:

- (i) workers' compensation insurance meeting statutory requirements;
- (ii) employer's liability insurance with no less than \$1,000,000 limits; and
- (iii) auto liability insurance with not less than \$1,000,000 combined single limit covering owned, non-owned and hired autos.

The workers' compensation and employer's liability policies will provide a waiver of subrogation in favor of the Indemnified Parties. In addition, the Indemnified Parties are to be named as additional insureds on Seller's General Liability and Automobile Liability policies. Seller will keep in force the insurance required by this Article for the duration of performance under the Purchase Order, and after the last shipment, for at least as long as the warranty period described above in Article 4. Such insurance will be primary and noncontributory with respect to any insurance maintained by Buyer. Seller will maintain all required policies of insurance with insurers having a minimum AM Best rating of at least A X. Seller will furnish Buyer with certificates evidencing such insurance coverage. If the policy does not provide for notice directly to Buyer, Seller will immediately notify Buyer if Seller receives any notice from any carrier providing the coverage required by these terms of the cancellation or modification of any insurance referenced therein. Neither the foregoing insurance nor the certificate will be construed in any way as a limitation on Seller's liability under a Purchase Order.

**17. Governing Law and Choice of Forum.** The validity, interpretation, construction, performance, enforcement and remedies of or relating to this Purchase Order, and the rights and obligations of the Buyer and Seller hereunder, will be governed by and construed in accordance with the substantive laws of the State of New York, without regard to the conflict of law principles, rules or statutes of any jurisdiction. Any legal proceeding arising out of or in connection with this Purchase Order will be brought in the New York State Supreme Court, Erie County, or the United States District Court for the Western District of New York. Buyer and Seller consent to the exclusive jurisdiction and venue of the courts set forth herein. The Purchase Order will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**18. Change of Terms.** As permitted by law, Buyer has the right to change any term or part of the Purchase Order.

**19. Force Majeure.** Neither party will be liable for any delay or failure to perform where the delay or failure is directly caused by causes beyond its control, including but not limited to: Acts of God, acts of governmental, quasi-governmental, civil or military authority; refusal or delay in granting necessary licenses; fires, floods, earthquakes or other natural disaster; riot, insurrection, or acts of terrorism or the effects thereof; the inability to obtain necessary labor, materials or manufacturing; accident or wrecks in transport, or suspension of any mode of transport. In the event of such delay, the affected party shall give the other party prompt notice, and the delivery date will be extended for a period equal to the time lost by reason of the delay, or where necessary to overcome the direct effects of the force majeure event. If production of the Goods ordered is curtailed for any of the above reasons such that Seller cannot deliver the full amount ordered, Seller may allocate deliveries among its various customers then under contract for similar goods. The allocation will be made in a commercially fair and reasonable manner, treating all customers equally, except for orders subject to governmental priority as required by law. When allocation has been made, Buyer will be notified of the estimated quota made available. Notwithstanding the foregoing, if the effects of a force majeure event continue for more than thirty (30) days, Buyer may terminate the Purchase Order.

**20. General.** The provisions of the Global Vendor Code of Conduct published on the Supplier Portal are incorporated by reference into these Terms and Conditions, and any violation by Seller of the Global Vendor Code of Conduct will be considered a default under these Terms and Conditions. The rights and remedies of Buyer hereunder will be cumulative and in addition to all Buyer's other rights and remedies in law or equity. Buyer's failure to insist on strict performance of any Terms and Conditions, or failure or delay to exercise any rights or remedies provided in these Terms and Conditions or by law, or to properly notify Seller in the event of a breach, or the acceptance of or payment for any Goods or Services, or approval of designs, will not release Seller of any of the warranties or obligations in these Terms and Conditions, and will not be deemed a waiver of any rights or remedies that the Buyer will have, and will not be deemed a waiver of any subsequent default of the Terms and Conditions. Any provision of the Terms and Conditions that is prohibited by law, regulation or ordinance will be ineffective to the extent of such prohibition without invalidating the remaining provisions. Each of the provisions of the Purchase Order will extend to and will, as the case may require: (i) bind Buyer and Seller and their respective successors, heirs and assigns; and (ii) inure to the benefit not only of the Buyer and Seller but also to the Customer and to each of their respective successors, heirs and assigns. This clause will not permit any assignment of the Purchase Order by Seller without the prior written consent of Buyer. Except for Customer, Buyer and Seller agree that the Purchase Order is not intended by either party to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation (other than a party or its permitted assignee) as a third-party beneficiary or otherwise under any theory of law. Seller will maintain, and make available to Buyer, adequate records of its activities under any Purchase Order, for a period equal to the duration of the Purchase Order and for ten (10) years following final shipment. Upon reasonable notice, Buyer or its representatives will have the right to review and audit the records of Seller relating to the performance of a Purchase Order, the prices contained in any Purchase Order or change order, or any other matter relating to the performance or default under a Purchase Order. The provisions of Articles 4, Warranty; 11, Confidential Information; 15, Seller Indemnification; 16, Seller Insurance; and 17, Governing Law and Choice of Forum will survive any termination of any Purchase Order.

**21. Government Contracts.** Goods and/or Services may be used by Buyer in fulfilling a U.S. government prime contract or subcontract and may, therefore, be subject to applicable U.S. government procurement regulations in effect at the time of accepting the Purchase Order. If the Purchase Order contains a U.S. Government Prime Contract Number and involves the supply of a commercial product as defined under FAR 2.101 (48 CFR 2.101), the provisions of the Government Contract Supplement on the Supplier Portal shall apply and are incorporated into and made a part of these Terms and Conditions. For Purchase Orders not involving the supply of a commercial product, the parties will negotiate in good faith the FARS and/or DFARS provisions to apply to the Purchase Order but will include at least all such provisions as are made mandatory flow-downs in any contract with the third party performing a Prime Contract.