



Applies to purchase orders dated on or after July 1, 2024. For purchase orders dated prior, refer to the original document.

1. **ACCEPTANCE.** By shipping the goods specified in the Purchase Order (defined below), Supplier accepts the Purchase Order and agrees to be bound by the terms and conditions provided herein.
2. **INCONSISTENT PROVISIONS.** Acceptance of the Purchase Order to which these Purchase Order Terms and Conditions are attached or referenced (the "Purchase Order") is limited to the terms hereof, expressed or implied, and any additional or different terms or conditions in any written acceptance are proposals which do not become a part hereof unless Cutsforth, Inc. ("Buyer") consents thereto in writing. Any different or additional terms contained in Supplier's acceptance of the Purchase Order are hereby objected to and are superseded in their entirety by these Purchase Order Terms and Conditions.
3. **PURCHASE PRICE.** The purchase price(s) specified in the Purchase Order ("Purchase Price") shall not be subject to change without the prior written approval of Buyer. If no purchase price is specified herein, it is agreed that the Purchase Price will be the lowest purchase price for like goods of like quality charged by Supplier from the date hereof until the date of delivery and in no event will the Purchase Price be higher than last previously quoted or charged to Buyer.
4. **INVOICING AND PAYMENT.** Invoices shall be sent immediately after each shipment to: Cutsforth, Inc., Accounting Department, at the email address shown on the face of the Purchase Order. Delays in receiving invoices, errors or omissions on invoices or lack of supporting documentation will be cause for Buyer withholding payment without losing discount privileges. Payment for the items delivered under the Purchase Order will be made in accordance with the terms contained within the Purchase Order, following receipt of a valid invoice, or acceptance of such delivered items, whichever is later.
5. **QUANTITY.** The Purchase Order states item quantities required by Buyer. Buyer reserves the right to totally or partially reject any shipment from Supplier that does not contain the exact quantity of items ordered for that shipment.
6. **TAXES.** Unless otherwise stated in the Purchase Order, the Purchase Price shall be net of any and all domestic or foreign taxes, charges or other assessments of any kind of any government authority (including, without limitation, withholding taxes, sales tax, value added taxes, use taxes, export duties and import duties, any interest, fines or penalties therein) (collectively, the "Taxes") levied, directly or indirectly, regardless of whether such Taxes are levied against Supplier, Buyer or any other person.
7. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**
 - (a) **Representations and Warranties** – In addition to all express warranties set forth in the Purchase Order and all warranties implied in fact or law, Supplier expressly represents and warrants that all goods, products and services covered, sold, transferred or otherwise provided by Supplier to Buyer pursuant to the Purchase Order (collectively, the "Products") shall: (1) be of good quality and workmanship and free from all defects; (2) conform to and perform in accordance with all requirements of the Purchase Order, including, without limitation, all specifications, drawings and descriptions in the Purchase Order (collectively, the "Specifications") and all samples approved by Buyer (collectively, the "Samples"); (3) be merchantable and fit for the particular purpose for which Buyer has informed Supplier the Products are to be used; (4) comply with all applicable laws applicable to the Products when and where delivered ; and (5) not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party . Acceptance of or payment for the Products shall not constitute a waiver of warranties.



Buyer's approval of Samples furnished for inspection is to assist Supplier and does not relieve Supplier from responsibility to deliver goods conforming to all Specifications and all Samples.

- (b) **Covenants** – Supplier hereby agrees to: (1) maintain an organization with adequately trained personnel reasonably necessary to ensure that all Products comply to and perform in accordance with all requirements of the Purchase Order, including, without limitation, all Specifications; (2) maintain a suitable quality management system to ensure that all Products comply to and perform in accordance with all requirements of the Purchase Order, including, without limitation, all Specifications; (3) acquire, maintain and utilize within its organization the latest applicable industry-recognized standards as specified in the Purchase Order; and (4) ensure compliance with all Product acceptance and Product test sample requirements specified in the Purchase Order.
- 8. **INDEMNIFICATION.** Supplier agrees to promptly indemnify, defend and hold harmless Buyer and its affiliates and their respective directors, officers, employees, shareholders, agents, successors and assigns (collectively, "Indemnitees") from and against any and all claims, losses, costs, judgments, deficiencies, obligations, liabilities, payments, charges, fines, penalties, damages and expenses, including, without limitation, injury to or death of any person or any property damage, and further including, without limitation, reasonable attorneys' fees and disbursements, of any kind, including, without limitation, any special, incidental, consequential, punitive or other indirect damages, including, without limitation, loss of profits, loss of revenues, loss of use, interest or carrying charges on investment, expenses arising from cost of capital, under-utilization of labor, equipment or facilities or other indirect commercial loss or damage, (collectively, the "Claims") arising out of, relating to or resulting from: (a) any breach of or default in the observance or performance of any agreement made by Supplier in the Purchase Order; (b) Supplier's failure to fulfill any other obligation which Supplier is required to perform or observe pursuant to the Purchase Order; (c) any inaccuracy in any, breach of any, or false or fraudulent, representation or warranty made by Supplier in the Purchase Order; or (d) the investigation or defense of any Claims for indemnification which are made or brought by Indemnitees against Supplier.
- 9. **INTELLECTUAL PROPERTY INFRINGEMENT.** Supplier agrees to promptly indemnify, defend and hold harmless all Indemnitees from and against any and all Claims arising out of the use of any of the Products, relating to or resulting from infringement of any: (a) patents, either in the United States of America or any foreign countries; (b) trademarks or any other proprietary rights in the United States of America or any foreign countries; or (c) similar rights.
- 10. **WORK PRODUCT.** All development or other tangible material created in the performance of the Services, including any ideas, designs, concepts, techniques, research, innovations, inventions, discoveries, improvements, product development, documentation, original works of authorship and any other work products discovered, in any medium, prepared or developed by Contractor or its employees or agents, or employees or agents of its sub-subcontractors, in the course of or as a result of the Services (the "Work Product") shall be promptly disclosed and furnished to Cutsforth. All right, title and interest in and to the Work Product shall vest in Cutsforth and shall be deemed to be works made for hire, and to the extent they may not be considered works made for hire Contractor assigns to Cutsforth all rights, title and interest in and to the Work Product, including rights to copyrights in all copyright materials and in and to all patents that may be issued thereon. If the Work Product includes items previously developed or copyrighted by Contractor, Contractor must provide written notice to Cutsforth of all previously developed or copyrighted materials, and Contractor hereby grants to Cutsforth an unrestricted, royalty-free, perpetual, irrevocable license to copy, use, modify, distribute, prepare derivative works, perform,



display, disclose and sublicense such copyrighted work or other materials for any lawful purpose. Contractor represents and warrants that it has all necessary agreements with its employees and agents in order to convey the rights of ownership and title stated herein. Upon request from time to time, and without charge, Contractor and its employees and agents agree to reasonably assist Cutsforth and its nominees to obtain patents for any Work Product anywhere in the world. Contractor and its employees and agents agree to execute all papers (including assignments) and do all things required in order to protect the rights of Cutsforth and vest in it or its nominees all right, title and interest in and to the Work Product, patent applications, and patents.

11. ACCEPTANCE AND REJECTION. Buyer will have the right to accept delivered items or give Supplier notice of rejection or revocation of acceptance, regardless of any prior payment, test, inspection, or passage of title. No inspection, test, delay, or failure to inspect, test or discover any defect or other nonconformance will relieve Supplier of any obligations under the Purchase Order or impair any rights or remedies of Buyer. If specific Buyer, Buyer's customer or government agency tests, acceptance tests, inspection and/or witness points are included in the Purchase Order, the Products shall not be shipped without an inspector's release or a written waiver of test/inspection/witness with respect to each such point; however, Buyer shall not be permitted to unreasonably delay shipment; and Supplier shall notify Buyer in writing at least Twenty (20) days prior to each of Supplier's scheduled final and, if applicable, intermediate test/inspection/witness points. Buyer's failure to inspect, accept, reject or detect defects by inspection shall neither relieve Supplier from responsibility for such Products as are not in accordance with the requirements of the Purchase Order or these Purchase Order Terms and Conditions, nor impose any liabilities on Buyer. Buyer's final inspection and acceptance of any Product(s) does not preclude subsequent rejection or the waiver of any rights by Buyer due to a rejection of such Product(s) by Buyer's customer and/or any government entity or agency. If Supplier delivers non-conforming items or items subsequent to delivery through no fault of Buyer become non-conforming, Buyer may, at its option and at Supplier's expense: (i) return the items for credit or refund; (ii) require Supplier to promptly correct or replace the items; (iii) correct the items; or (iv) obtain replacement items from another source. Supplier will not redeliver corrected or rejected items without disclosing the former rejection or requirement for correction. Supplier will disclose any corrective action taken. Repair, replacement and other correction and redelivery will be completed within the original delivery schedule or such later time as Buyer's authorized purchasing department representative may reasonably direct. All costs, expenses and loss of value incurred as a result of or in connection with the nonconformance and repair, replacement or other correction may be recovered from Supplier by equitable price reduction or credit against any amounts that may be owed to Supplier under the Purchase Order or otherwise.

12. TERMINATION FOR CONVENIENCE.

(a) Buyer may, at any time by written notice to Supplier, terminate all or any part of the Purchase Order for Buyer's convenience, in which event Supplier agrees to stop work immediately as to the terminated portion of the Purchase Order and to notify subcontractor(s) to stop work, and protect and preserve property in its possession in which Buyer has an interest. If the Purchase Order is terminated, in whole or in part, for Buyer's convenience, Supplier shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Supplier's actual performance of work under the Purchase Order to the effective date of termination, plus a reasonable profit thereon provided that no amount shall be paid to Supplier for (i) any anticipatory profits related to work under the Purchase Order not yet performed, or (ii) costs incurred due to Supplier's failure to terminate work as ordered on the effective date of termination. Buyer shall have no



obligation to make any of the aforementioned payments to Supplier, either for completed items or in connection with terminated work in process, unless Supplier shall establish to Buyer's satisfaction that such completed items, or the work in process, including materials, are unusable in connection with Supplier's other business. In no event shall the termination charges and all previous payments made under the Purchase Order exceed the total Purchase Order value shown on the face of the Purchase Order.

- (b) Supplier shall submit to Buyer all claims resulting from such termination within sixty (60) days after Supplier's receipt of Buyer's notice of termination. Buyer shall have, upon reasonable advanced notice, the right to inspect Supplier's records, facilities, work, and materials relating to performance of the Purchase Order for purposes of evaluating Supplier's claim.

13. TERMINATION FOR DEFAULT.

- (a) Buyer may, by written notice, terminate this entire Purchase Order or any part of the Purchase Order for default in the following circumstances:
 - (i) Supplier fails to deliver the items or perform the services required by the Purchase Order and these Purchase Order Terms and Conditions within the time specified in the Purchase Order, or any extension granted by Buyer in writing; or
 - (ii) Supplier fails to perform under any of the other provisions of the Purchase Order and these Purchase Order Terms and Conditions or fails to make progress so as to endanger performance of the Purchase Order in accordance with its terms and Supplier does not cure, or submit to Buyer a plan to cure, such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying the failure; or
 - (iii) Supplier becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or reorganization, or pursues any other remedy under any other law relating to relief for debtors, Buyer deems that Supplier is insolvent or in the event a trustee or receiver is appointed for Supplier's property or business.
- (b) If the Purchase Order is entirely or partially terminated by Buyer under this provision, Buyer may procure, upon such terms and in such manner, as Buyer may deem appropriate, items or services similar to those terminated. Supplier will be liable to Buyer for any and all re-procurement costs for similar items or services, including any price for similar items or services that is higher than the price applicable to the Purchase Order; provided, however, that Supplier will continue the performance of the Purchase Order to the extent not terminated. Supplier will not be liable for any additional costs if Supplier notifies Buyer in writing within ten (10) days of the existence of the cause that Supplier's failure to perform the Purchase Order arises out of causes beyond the control and without the fault or negligence of Supplier. These causes may include, but are not restricted to, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or
- (c) If the Purchase Order is entirely or partially terminated under this section, Buyer, in addition to any other rights, may require Supplier to:
 - (i) Transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any completed items and any partially completed items and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, software, and contract rights (hereinafter called "Contract Materials") as the Supplier has specifically



produced or acquired for the performance of the part of the Purchase Order that has been terminated; and/or

- (ii) Protect and preserve property in the possession of Supplier in which Buyer has an interest.
- (d) Payment for completed items delivered to and accepted by Buyer, and for the protection and preservation of property, will be in an amount agreed upon by Supplier and Buyer. Buyer may withhold from amounts otherwise due Supplier for such completed items or Contract Materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims; and/or
- (e) If, after notice of termination under this section, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to the section entitled "Termination for Convenience."

14. SEPARATE LOTS. If the Purchase Order requires or authorizes the delivery of Products in separate lots to be separately accepted and if any Products do not conform hereto, Buyer may reject any or all Products affected or the entire installment and any undelivered installments. Supplier hereby agrees: (a) not to ship to Buyer any Product not conforming to the requirements of the Purchase Order, including, without limitation, all Specifications, without Buyer's prior written consent (in Buyer's sole discretion); and (b) to inform Buyer in writing of any such non-conforming Product already delivered to Buyer that becomes known to Supplier after shipment to be non-conforming.

15. TIME OF DELIVERY. Time is of the essence. If Supplier suspects or determines that deliveries will not be made on time, Supplier will advise Buyer of the possible delay, the cause and the proposed recovery schedule as soon as possible. Delivery delays may be cause for termination for default or equitable adjustment of the terms or conditions of the Purchase Order, as determined by Buyer. In addition to all other remedies available to Buyer, Supplier shall reimburse Buyer for all costs incurred by Buyer as a result of late deliveries on the part of Supplier, including, without limitation, the amount of any penalties assessed by Buyer's customers based on Supplier's unexcused delay.

16. PACKING AND SHIPMENT.

- (a) Seller shall not ship in advance of schedule or make partial shipment unless otherwise agreed in writing by Buyer. Delivery according to schedule is a material condition of this purchase order.
- (b) Risk of loss shall be retained by Seller until delivery of the Deliverables at the location specified on this purchase order.
- (c) Deliveries shall be made as specified without additional charge for boxing, crating or storage. Unless otherwise specified by Buyer, an article shall be suitably packed to secure the lowest transportation cost in accordance with the requirements of common carriers.
- (d) Material shall be described in bills of lading in accordance with current national mode of freight or uniform freight classification, whichever is applicable.
- (e) Buyer's order numbers and symbols, and identification numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment showing Buyer's order number and symbol item number and description materials.
- (f) Buyer's count or weight shall be conclusive on shipments not accompanied by packing lists.



(g) Shipping receipts or bills of lading shall be sent to Buyer on the date material is shipped. Articles shall be packed to assure against damage from weather or transportation.

17. COMPLIANCE WITH LAW. Supplier represents and warrants that in its performance hereunder it will comply with all applicable federal, state, local and foreign laws, rules, regulations, administrative and executive orders, and pertinent governmental procurement regulations.

18. SUBCONTRACTORS. Any agreement or relationship entered into by Supplier with any subcontractor or other person or entity with respect to the provision of any Product or any component thereof shall: (a) be in writing; and (b) include all related duties, obligations and requirements of Supplier in the Purchase Order.

19. PARTS. If any of the Products furnished under the Purchase Order are composed of more than one part, Supplier shall furnish Buyer such quantity of component parts as Buyer may order at prices in proportion to the prices specified for the complete unit, notwithstanding such parts are ordered after the Purchase Order has been otherwise performed.

20. INSURANCE.

- (a) Whenever Supplier shall, by virtue hereof, have in its possession property of Buyer, Supplier shall be deemed as insurer thereof and shall be responsible for its safe return to Buyer.
- (b) If Supplier is to perform any services for Buyer on any premises owned or controlled by Buyer or elsewhere, Supplier agrees to: (1) keep the premises and work free and clear of all mechanic's liens, and furnish to Buyer proper affidavits and/or waivers certifying thereto; (2) perform such services at Supplier's sole risk prior to its written acceptance by Buyer and replace at Supplier's sole expense all property damaged or destroyed by any cause whatsoever; (3) carry workmen's compensation insurance covering all employees to be used by Supplier in connection with such services and public liability insurance covering Supplier's liability hereunder; and (4) prior to commencing the performance of any services hereunder, furnish to Buyer certificates of its insurance carrier showing that such workmen's compensation and liability and property damage insurance is in force.
- (c) All shipments shall be insured for full value of goods therein. This insurance shall include value of any materials furnished by Buyer whether or not these materials have been altered by Supplier. Supplier accepts full responsibility for financial reimbursement to Buyer for all materials, lost or damaged and not insured.

21. ARBITRATION. Any dispute or claim arising out of or pursuant to the Purchase Order shall be submitted to final and binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") by one arbitrator appointed in accordance with the Rules. The site of such arbitration proceedings shall be in Minneapolis, MN. Judgment upon any award rendered in such arbitration may be entered in any court of competent jurisdiction. This provision shall not limit either Supplier's or Buyer's right to obtain any provisional or equitable remedy, including, without limitation, injunctive relief from any court of competent jurisdiction, as may be necessary in the sole judgment of Supplier or Buyer, as the case may be, to protect its rights hereunder.

22. FOREIGN CORRUPT PRACTICES ACT [FCPA]. In addition to other representations, warranties and covenants made by Contractor, in other provisions of this Agreement, Contractor does hereby represent, warrant, and covenant that: (a) No owner, shareholder (direct or beneficial), officer, director, employee, agent, third party representative, subcontractor, contractor or other individual with any direct or indirect beneficial interest in Contractor or Contractor's payments under this Agreement, or any immediate family relation of any such person (collectively, "Interested Persons"), is a foreign Public Official or Entity. A "Public Official



or Entity" means (i) an officer, employee, agent, contractor or representative of any government or military, including, but not limited to, a customs official; (ii) any department, agency, corporate entity, instrumentality or political subdivision of any government or military; (iii) any person or commercial entity acting in an official capacity for or on behalf of any government or military; (iv) any candidate for political office, any political party or any official of a political party; or (v) any officer, employee, agent, contractor or representative of any public international organization, including, but not limited to, the United Nations and World Bank. Contractor shall notify the Company immediately if it learns at any time during the term of this Agreement that (i) an Interested Person becomes a foreign Public Official or Entity, or (ii) a foreign Public Official or Entity acquires an ownership, voting, or economic interest in Contractor or a legal or beneficial interest in Contractor's payments under this Agreement. (b) To Contractor's knowledge, no Interested Person is listed in the following: (i) List of Specially Designated Nationals & Blocked Persons, Office of Foreign Assets Control, U.S. Treasury Department; (ii) List of Debarred Parties, Directorate of Defense Trade Controls, U.S. State Department; (iii) Denied Persons List, Bureau of Industry and Security, U.S. Department of Commerce; (iv) Entity List, Bureau of Industry and Security, U.S. Department of Commerce; or (v) Unverified List, Bureau of Industry and Security, U.S. Department of Commerce (collectively, the "Lists"). Contractor shall notify the Company immediately if, during the term of this Agreement, it learns that (a) any Interested Person appears in the Lists, or (b) any person included in the Lists acquires a legal or beneficial interest in Contractor or in Contractor's payments to be received under this Agreement. (c) Contractor acknowledges and confirms its understanding of the Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.) as amended (the "FCPA"). (d) Contractor shall comply with Anti-Corruption Laws (defined below) and shall not cause the Company, its subsidiaries or affiliates (collectively, "Affiliates") to be in violation of any Anti-Corruption Law. "Anti-Corruption Laws" mean collectively: (i) the FCPA; (ii) any applicable legislation or regulation implementing the Organization for Economic Cooperation and Development Convention Against Bribery of Foreign Public Officials in International Business Transactions; and (iii) all other applicable laws, regulations, orders, judicial decisions, conventions and international financial institution rules regarding domestic or international corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses to public officials and private persons, agency relationships, commissions, lobbying, books and records, and financial controls. (e) There have been no accusations, allegations, claims, investigations, informal inquiries, indictments, prosecutions, charges, or other enforcement actions against Contractor relating to bribery, corruption, money laundering, fraud, obstruction of justice, racketeering, or any other legal or ethical violation. Contractor and, to its knowledge, its employees, directors, owners, contractors, and agents have never violated any Anti-Corruption Law or caused any other party to be in violation of any Anti-Corruption Law. (f) Contractor and its owners, directors, officers, agents, employees, and contractors will not, directly or indirectly through third parties, pay, promise or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value, to a Public Official or Entity for purposes of corruptly obtaining or retaining business for or with, or directing business to, any person, including, without limitation, the Company or its Affiliates, by (i) influencing any official act, decision or omission of such Public Official or Entity; (ii) inducing such Public Official or Entity to do or omit to do any act in violation of the lawful duty of such Public Official or Entity; (iii) securing any improper advantage; or (iv) inducing such Public Official or Entity to affect or influence any act or decision of another Public Official or Entity. (g) Contractor shall ensure that no part of any payment, compensation, reimbursement, or fee paid by the Company to Contractor pursuant to this Agreement or otherwise will be used directly or indirectly as a corrupt payment, gratuity, emolument, bribe, kickback or other improper benefit to a Public Official or Entity.



23. EXPORT OF ARTICLES AND TECHNOLOGY.

(a) Definitions. i. "Technology" means Assistance, Technical Data, or any Work Product(s) required for the Development, Production or Use of any Article delivered or disclosed as part of the Work, provided that: (a) "Development" includes, without limitation: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts; (b) "Production" means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance; and (c) "Use" means operation, installation (including on-Site installation), maintenance (checking), repair, overhaul, or refurbishing. ii. "Article," for purposes of this Section, means any commodity, material, supply, facility, Site, or physical item subject to Export Control Laws. iii. "Assistance" means assistance in such forms as instruction, skills, training, working knowledge, consulting services, or any other assistance as determined by a U.S. federal Governmental Authority, and may include the transfer of Technical Data. iv. "Foreign National" means any person or entity defined as a Foreign National or Foreign Person under the Export Control Laws. v. "Technical Data" means information in any form that provides or reflects the Development, Production, or Use of products, services, or information as defined in any applicable Export Control Laws, including Derived Technical Data. vi. "Derived Technical Data" means information or Work Products in any form that is or was derived from or developed using Technical Data. vii. "Export Control Laws" means any Applicable Laws that govern the transfer of Articles and Technology, including but not limited to: the (i) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 et. seq; (ii) the U.S. Department of Commerce's Export Administration Regulations ("EAR"), 15 C.F.R. Parts 730-774; (iii) Arms Export Control Act, 22 U.S.C. § 2778a; (iv) International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. Parts 120-130; (v) U.S. Atomic Energy Act, 42 U.S.C. §§ 2011 et. seq.; (vi) U.S. Department of Energy's export regulations, 10 C.F.R. Part 810; (vii) U.S. Nuclear Regulatory Commission's export and import regulations, 10 C.F.R. Part 110; (viii) analogous export control laws of non-U.S. countries, to the extent applicable to either party or the Work; and (ix) all applicable licenses and authorizations issued thereunder. (b) Handling of Export Controlled Articles and Technology. i. Contractor shall not disclose, export, re-export, transfer, or otherwise provide physical or electronic access to Articles or Technology, to or by any Foreign National (including, but not limited to, its employees within the United States, or Technology service providers), except in compliance with the Export Control Laws. Contractor shall indemnify and hold Cutsforth harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees and all other expenses arising from its failure to comply with this Section b.1. Contractor also shall not modify for, or divert such Technology to, any military or unauthorized application, or other end-use or end-user, prohibited by Export Control Laws. ii. Contractor shall develop and implement Technology security procedures to ensure that Technology is accessible only by authorized Foreign Nationals. Contractor must include in any subcontracts for the manufacture of Articles or provision of Technology under this Contract: (a) all the restrictions and limitations stated in this Section, and (b) a requirement that Contractor's Subcontractors comply with all Export Control Laws. iii. Export Licensing Responsibility. If Contractor's performance of Work requires it to obtain one or more export licenses or authorizations from a Governmental Authority (an "Export License"), then it must acquire such license or approval prior to performance of or actions in support of the Work that require the Export License. The parties shall cooperate with each other and provide all reasonably-requested information to support the timely acquisition of the Export License. However, Contractor is responsible for its own compliance with all Export Licenses, including without limitation, ensuring that all export-related paperwork and documentation are properly completed and timely filed, as well as all Record-keeping requirements. iv. Export Classification. The parties must establish and agree on



accurate export classification information for Articles or Technology provided under this Contract. Once established, such classification applies to all such Articles and Technology, and Contractor shall not use or seek approval from a Governmental Authority for alternative export classification(s). v. Destruction of Export Controlled Articles & Technology. Upon completion of performance of Work (or support of Work) and expiration of obligation(s) to preserve Records, Contractor shall destroy, or return to CUTSFORTH all physical and electronic copies of Technology, including archived copies. Destruction shall include permanently deleting any electronic copies from all servers, systems, and local devices. vi. Notice. Contractor promptly shall notify CUTSFORTH in writing if it becomes aware of a violation of Export Control Laws, as applicable to Articles or Technology delivered to CUTSFORTH, and shall cooperate fully and promptly with any internal investigation by either party, or investigation by any Governmental Authority, of such failure to comply. (c) U.S. Trade Control Screening. i. Each Party represents and warrants that neither itself nor its personnel (including its employees, contractors, Contractor's Subcontractors, officers, directors and principal owners) are included on the Consolidated Screening List (CSL) of parties for which U.S. Governmental Authorities maintain restrictions, including on certain exports, re-exports, or transfers of Articles and Technology, as such CSL (currently available at <https://2016.export.gov/ecr>) is updated or revised. ii. Each Party shall screen, against the CSL, its own personnel as well as third parties (including Contractor's Subcontractors and suppliers) that perform or are solicited to perform Work under or related to this Contract. This screening requirement is intended to ensure that any person or entity that is ineligible to perform under this Contract, because of, for example, an embargo, sanction, debarment, or denied party designation, is identified and excluded from performing or supporting Work under this Contract. A party shall notify the other party immediately, in writing, if any of its personnel, Contractor's Subcontractors, or a third-party, performing or supporting Work under this Contract, is on or has been added to the CSL. iii. Each party shall re-screen the personnel and entities subject to this Section on no less than an annual basis. Contractor shall maintain records of its CSL screening as Records for not less than five years following completion of screening and make such Records available to CUTSFORTH upon request. iv. Each party shall incorporate the screening requirements stated in this subsection in all subcontracts with Contractor's Subcontractors, its suppliers and independent contractors that perform or support Work under this Contract. v. The obligations stated in this Section will survive so long as the relevant Export Control Laws are in effect.

24. **ENTIRE AGREEMENT.** The Purchase Order along with these Purchase Order Terms and Conditions constitutes the entire agreement by and between the parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreements by and between Supplier and Buyer, whether written or oral, with respect to such subject matter.
25. **NOTICES.** All notices required or permitted hereunder shall be in writing and shall be: (a) sent by e-mail or facsimile transmission (effective when receipt is acknowledged unless sent on a non-business day or after 5:00 p.m. on any business day, in which event notice shall be deemed received on the next business day); (b) personally delivered (effective upon personal delivery); (c) sent by certified mail, return receipt requested, postage prepaid (effective upon receipt by addressee); or (d) sent by a nationally recognized, commercial overnight delivery service with provisions for a receipt, delivery charges prepaid (effective upon receipt by addressee), and shall be addressed to the party, to the addresses, email address and facsimile numbers set forth in or on the face of the Purchase Order. Notwithstanding anything to the contrary contained in this Section 22, notice of change of address shall be given in accordance with the terms of this Section 22 and shall be effective only upon receipt.



26. AMENDMENT. The Purchase Order may not be amended, modified or otherwise supplemented unless such amendment, modification or supplement is in writing and signed by both Supplier and Buyer. Furthermore, Supplier and Buyer expressly agree that the terms and conditions of the Purchase Order cannot be altered or amended by parole evidence of course of performance, course of dealing or usage of trade.

27. DISCLOSURE OF SUPPLIER'S CONFIDENTIAL INFORMATION. Any unpatented knowledge, information or documents concerning Supplier's products, methods or manufacturing processes, including, without limitation, specifications or samples, which Supplier may disclose to Buyer shall, unless otherwise specifically agreed in writing signed by Supplier and Buyer, be deemed to have been disclosed as a part of the Purchase Price and Supplier shall not assert any claim against Buyer as the result of Buyer's use thereof.

28. BUYER'S CONFIDENTIAL INFORMATION. All Specifications or Samples furnished by Buyer to Supplier for rendering or production or any other purposes, shall be considered proprietary and confidential information of Buyer. Supplier shall not publish or disclose in any way any of Buyer's confidential information to any third party, or use any of Buyer's confidential information for any purpose other than for the purpose as contemplated by the Purchase Order. All of Buyer's confidential information and all copies thereof (including, without limitation, all materials containing or embodying any of Buyer's confidential information) are and shall remain the sole property of Buyer and shall be returned promptly to Buyer upon completion or termination of the activity for which Supplier has obtained such confidential information.

29. CHANGES.

- (a) **Specifications** – Buyer reserves the right to make such changes in Specifications as may be necessary or desirable, in Buyer's sole discretion, after the Purchase Order and these Purchase Order Terms and Conditions are accepted by Supplier. Any difference in Purchase Price shall be subject to the written agreement of Supplier and Buyer.
- (b) **Raw Materials/Manufacturing Processes** – Supplier shall be required to: (1) notify Buyer in writing of any proposed material change to any Product raw material or manufacturing process; and (2) obtain Buyer's prior written approval, in Buyer's sole discretion, prior to implementing any such proposed change.

30. DIES, TOOLS, JIGS AND PATTERNS. Unless specifically called out as a sales order line expense, dies, tools, jigs and patterns used in the manufacture of the Products to be furnished hereunder shall be supplied by and at the expense of Supplier and shall be kept in good condition and shall be replaced when necessary by Supplier without expense to Buyer. Buyer has the option at any time to reimburse Supplier for the costs of the whole or any part of said dies, tools, jigs and patterns and become the sole owner and shall be entitled to the immediate possession of same. Supplier shall be responsible for the proper maintenance and safe delivery to Buyer of all die, tools, jigs and patterns paid for or supplied by Buyer and the same shall be subject to removal from Supplier's plant and delivery to Buyer on Buyer's written notice.

31. RIGHT OF ACCESS. All goods and materials related in any way to the Products (including, without limitation, raw materials, components, intermediate assemblies, work in process, tools and end products) and all related books and records shall be subject to inspection and test (upon reasonable notice) by Buyer, its customers and any government agencies having jurisdiction, upon execution of reasonably requested confidentiality agreements, at all times and places, including sites where the Products are created or performed, whether they be at premises of Supplier, Supplier's suppliers or elsewhere, to assess: 1) work quality; 2) conformance with all requirements of the Purchase Order, including, without limitation, all Specifications; and 3) conformance with Supplier's representations, warranties and covenants.



If any inspection or test is made on Supplier's or its supplier's premises, Supplier, without additional charge, shall provide all reasonable access and assistance for the safety and convenience of the inspectors. Supplier shall provide and maintain an inspection and process control system acceptable to Buyer and its customer covering the Products and shall keep complete records available to Buyer, its customers and all government agencies having jurisdiction for seven (7) years after completion of the Purchase Order or such longer period as may be provided for by the specific Purchase Order (which shall include, without limitation, any longer period provided for pursuant to any quality clauses included in the Purchase Order or any specific program requirements to which the purchase order may relate).

32. **DEMAND FOR ASSURANCES.** Whenever Buyer has the right to demand of Supplier adequate assurance of due performance, Buyer shall be the sole judge of the adequacy of assurance given by Supplier.
33. **ASSIGNABILITY.** Supplier shall not assign any right or delegate any duty arising hereunder and any such attempted assignment or delegation shall be null and void.
34. **PRIOR DEALINGS/USAGE OF TRADE.** No course of prior dealings between Buyer and Supplier and no usage of the trade shall be relevant to supplement or explain the Purchase Order.
35. **GRATUITIES.** Supplier warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for purposes of securing the purchase order or securing favorable treatment under the Purchase Order. If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Supplier, or any agent or representative of Supplier, to any employee of Buyer or its agents or representatives with a view toward securing favorable treatment with respect to the awarding or performing of any purchase order issued by Buyer to Supplier, Buyer may, by written notice to Supplier, terminate the Purchase Order in accordance with Section 12, Termination for Default, in addition to the exercise of any other rights or remedies provided to Buyer by law or in equity.
36. **OMISSION.** No delay or omission by Buyer in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy.
37. **CUMULATIVE REMEDIES.** All rights and remedies of Buyer hereunder are cumulative.
38. **GOVERNING LAW. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THE PURCHASE ORDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, BUT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA, UNITED STATES OF AMERICA, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS, INCLUDING, WITHOUT LIMITATION, THE UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF MINNESOTA.**
39. **GOVERNMENT CONTRACTS.** For purchase orders placed by Buyer in support of and/or relating to a U.S. Government Contract: (i) the Federal Acquisition Regulation ("FAR") and, as applicable, the Defense Federal Acquisition Regulation Supplement ("DFARS") clauses identified on Appendix A are incorporated by reference as set forth at length herein; (ii) any appendices to the Purchase Order that may include additional FAR and/or DFARS clauses shall also be incorporated by reference as if set forth at length herein; and, (iii) references to the terms "Government" and "Contractor" contained in the FAR and DFARS clauses shall be deemed revised to include Buyer and Supplier, respectively.



40. COUNTERFEIT ELECTRONIC WORK.

- (a) For purposes of this Section 37, "Electronic Work" consists of those electronic parts delivered under the Purchase Order that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly. "Counterfeit Electronic Work" means Electronic Work that is or contains an item that is an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. "Suspect Counterfeit Electronic Work" means Electronic Work that is or contains an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.
- (b) Supplier shall not deliver Counterfeit Electronic Work or Suspect Counterfeit Electronic Work to Buyer under the Purchase Order.
- (c) Supplier shall only purchase products to be delivered or incorporated as Electronic Work to Buyer directly from the original manufacturer, or sources with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources. Electronic Work shall not be acquired from any other sources, including, without limitation, independent distributors or brokers, unless approved in advance in writing by Buyer.
- (d) Supplier shall immediately notify Buyer with the pertinent facts if Supplier becomes aware or suspects that it has furnished Counterfeit Electronic Work or Suspect Counterfeit Electronic Work. When requested by Buyer, Supplier shall provide documentation that authenticates traceability and enables tracking of the affected items through the supply chain back to the original manufacturer, whether the Electronic Work is supplied as discrete electronic parts or are contained in assemblies.
- (e) This clause applies in addition to any quality provision, specification, statement of work or other provision included in the Purchase Order addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- (f) In the event that Electronic Work delivered under the Purchase Order constitutes or includes Counterfeit Electronic Work, Supplier shall, at its expense, promptly replace such Counterfeit Electronic Work with genuine Electronic Work conforming to the requirements of the Purchase Order. Notwithstanding any other provision in the Purchase Order, Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Electronic Work, including without limitation Buyer's costs of removing Counterfeit Electronic Work, of installing replacement Electronic Work and of any testing necessitated by the reinstallation of Electronic Work after Counterfeit Electronic Work has been exchanged. In the event that Electronic Work delivered under the Purchase Order constitutes or includes Suspect Counterfeit Electronic Work, Supplier shall, at its expense, promptly prove that such Suspect Counterfeit Electronic Work is authentic. If Supplier is unable to prove such authenticity to Buyer's sole satisfaction, the provisions of this section regarding Counterfeit Electronic Work shall apply. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of the Purchase Order.



- (g) At the request of Buyer, Supplier shall provide a certification that the Electronic Work provided to Buyer does not contain any Counterfeit Electronic Work or Suspect Counterfeit Electronic Work. Certification may also include or require the submission of an original certificate of conformance, original test reports, or other data traceable to approved labs or other entities to ensure an item is as claimed. Buyer may request clear identification of the name and location of supply chain intermediaries from the manufacturer to the direct source of the Electronic Work for Supplier; and where available, the manufacturer's batch identification for the electronic part(s), such as date codes, lot codes, or serial numbers.
- (h) Supplier shall include paragraphs (a) through (e) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Electronic Work to Buyer.

41. ORDER OF PRECEDENCE. The various documents constituting the Purchase Order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of the Purchase Order, such conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items: (a) provisions required by statute, regulation or Government contract; (b) provisions set forth on the face page of the Purchase Order form, including, without limitation, any Quality Clauses applicable hereto; (c) this Terms and Conditions document; (d) the Statement of Work attached hereto, if any; (e) Specifications specifically approved in writing by Buyer; and (f) Drawing(s) specifically approved in writing by Buyer.

42. EQUAL OPPORTUNITY. During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (b) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.



- (d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (i) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]