



STANDARD TERMS AND CONDITIONS OF SUPPLY

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1. ACCEPTANCE.

Seller, including its affiliates and subsidiaries (collectively referred to as "Seller") confirms that these Standard Terms and Conditions of Supply ("Standard Terms") are expressly incorporated into Seller's Contract (as defined below) with Wolf Steel Ltd. ("Napoleon"), including its affiliates and subsidiaries (collectively referred to as "Buyer"), for the goods and services (collectively, the "Supplies") to be provided by Seller. Seller confirms that it has read, understands and agrees with these Standard Terms. Each PO, release, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange, relating to the Supplies (such items are collectively referred to as the "Contract"), constitutes an offer by Buyer to purchase the Supplies identified on the Contract's face or otherwise identified in any attachments, schedules, exhibits, requests for quotations, designs or drawings provided to Seller.

Seller will be deemed to have accepted each Contract on the Contract's terms and conditions by Seller's: (i) shipment or provision of any Supplies, performance of any services, or commencement of any work or services in any way related to the subject of the Contract, (ii) written acknowledgement, or (iii) other conduct that recognizes the existence of a contract pertaining to the subject matter of the Contract.

Seller will also be deemed to have accepted each Contract on the Contract's terms and conditions if Seller fails to object to such Contract within five (5) business days after Buyer delivers the Contract to Seller. Seller's acceptance of any Contract is limited to acceptance of the express terms and conditions set forth in the Contract and in these Standard Terms.

Notwithstanding Buyer's acceptance of or payment for any shipment or provision of Supplies, or similar Buyer's act, Buyer will not be bound by any terms and conditions which modify, supersede, supplement or otherwise alter the Contract or these Standard Terms, and such terms and conditions shall be deemed rejected and replaced by the Contract, including these Standard Terms, unless Seller's terms or conditions are expressly accepted by the Buyer, in writing.

The parties have agreed, and it is their intent that the battle of the forms described in Section 2-207 of the *Uniform Commercial Code* ("UCC") will not apply to these Standard Terms or to any invoice or acceptance

form of Seller relating to these Standard Terms or any Contract. The parties intend that these Standard Terms shall exclusively control the relationship, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these Terms, these Standard Terms will prevail. Unless stated otherwise on the face of the Contract, the duration of each Contract (the "Term") shall be the life of the product line(s) into which the Supplies ultimately are incorporated, plus, the period of applicable service and replacement parts requirements.

If the Supplies are not utilized by Buyer for the production of parts or systems of the Buyer, the Contract will be binding for one (1) year from the date the Contract is transmitted to Seller; in such case only, the Contract will automatically renew for successive one (1) year periods after the initial term unless either party provides written notice no less than one-hundred and twenty (120) days prior to the end of the current Term of its desire that the Contract not be renewed. Seller acknowledges, however, that this provision does not affect or otherwise change Buyer's termination rights herein. When any Contract expires, Seller will cooperate with Buyer and provide all reasonably requested support and information Buyer requires to facilitate Buyer's sourcing of the Supplies from a replacement supplier.

From time-to-time Buyer may administer purchasing for its affiliates and subsidiaries and issue Contracts employing one of Buyer's logos but identifying a different related or affiliated entity as buyer. Seller acknowledges and agrees that no such act of administration or any Contract resulting therefrom shall constitute or be interpreted as Buyer's guaranty of any obligations or liabilities of the entity identified as the buyer on the Contract. Seller will look only to the buyer entity identified in the Contract for performance thereunder.

2. DELIVERY & BILLING.

2.1. Shipping.

All shipments must be suitably packed, marked and shipped in accordance with all common carrier shipment requirements and in a manner which secures the lowest transportation cost (unless otherwise noted on the Contract), and must comply with any additional shipping requirements set forth in the Contract or releases. Seller will bear all costs, insurance and freight, (including expenses of boxing,



packaging, and crating) to Buyer's "ship to" location set forth in the Contract, unless specifically indicated otherwise in

the Contract. Seller will (a) properly pack, mark and, ship Supplies in the manner instructed by Buyer or any carriers and in accordance with all laws or regulations, (b) route shipments as Buyer instructs, (c) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in the Contract, (d) provide packing slips with each shipment that identifies Buyer's contract and release number and the date of the shipment, and (e) promptly forward the original bill of lading or other shipping receipt with respect to each shipment as Buyer instructs. On bills of lading or other shipping receipts, Seller will include the correct classification identification of the Supplies shipped as Buyer or the carrier requires. The marks on each package and identification of the Supplies on packing slips, bills of lading, and invoices must enable Buyer to identify the Supplies easily.

Seller shall reimburse Buyer for all expenses, including damage to the Supplies, incurred due to improper packing, marking, loading or routing. The risk of loss or damage in transit shall be upon Seller, except where shipment is by Buyer's vehicle, in which case the risk of loss or damage shall pass to Buyer upon completion of loading. Upon submission of proper invoices, Buyer shall process such invoices for payment. All cash discounts will be computed from the date of receipt by Buyer of a final invoice or receipt of the Supplies, whichever occurs later. Cash discounts will be based on the full amount of invoice, less freight charges and taxes if itemized separately on the invoice.

2.2. Billing.

Seller will (a) issue invoice to Buyer for Supplies and (b) accept payment by electronic funds transfer. If the payment due date is not otherwise specified in the Contract, the payment due date will be the later of net sixty (60) days following the date Buyer: i) receives the Supplies; or ii) receives the invoice for such Supplies. Buyer may withhold payment for any Supplies until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances, and claims on such Supplies.

2.3. Taxes.

Unless prohibited by law, Seller will pay all federal, state or local tax, transportation tax, or other tax, including but not limited to customs duties and tariffs, which is required to be imposed upon the Supplies ordered, or because of their sale or delivery. Unless otherwise stated in the Contract, the price includes all applicable federal, state, provincial, regional and local taxes other than sales, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, or similar turnover taxes or charges that Seller is required by law to collect from Buyer. Seller will provide Buyer with whatever information and documentation that is required under local law in order to enable Buyer to recover any sales, or similar turnover taxes or charges. Invoices shall also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by the Buyer.

2.4. Buyer's Withholding of Taxes.

If Buyer is legally required to make any deduction or withholding from any sum otherwise payable to Seller under the Contract, Buyer will be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Upon receipt of Seller's request, Buyer will provide official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish the payment of any taxes that have been withheld.

2.5. Delivery Schedules.

Seller will make deliveries in the quantities, on the dates, and at the times Buyer specifies in the Contract or any subsequent delivery releases or instructions which Buyer issues under the Contract. Time and quantity of delivery are of the essence with respect to all delivery schedules Buyer establishes. Seller bears the risk of loss of all Supplies performed or delivered in advance of the delivery date. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Buyer until the Supplies have been delivered to Buyer's facility and have been accepted at that facility. However, under no circumstances shall Buyer be liable for any premium shipping expenses that Buyer has not pre-approved in writing. If Buyer's customers' requirements or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary



suspension of scheduled shipments without entitling Seller to any price adjustment or other compensation.

2.6 Payment

Payment terms will be two percent (2%) net ten (10) days / net sixty (60) days unless otherwise agreed to in writing by the Buyer, invoices will be emailed to: apinvoices@napoleon.com

Napoleon's purchase order ("PO") number will appear on all packages, packing slips, invoices, correspondence, customs documentation, bills of lading, and other associated transportation documentation. If a PO number is not present, the Buyer shall not be obligated to make payment to Seller.

3. SUBSTITUTIONS, CHANGES TO CONTRACT.

No changes, alterations or substitutions for the Supplies or amendment to the Contract may be made without prior written approval from Buyer.

4. QUALITY AND INSPECTION.

Seller will participate and comply in Buyer's supplier quality and development program(s). If any Supplies are defective in material or workmanship or otherwise not in conformity with the requirements of any Contract, Buyer shall have the right, notwithstanding payment, any prior inspection or test, custom or usage of trade, to either reject the Supplies or to require the Supplies to be corrected by Seller and/or at Seller's expense, promptly after notice. Seller will immediately provide all reasonable support Buyer requests to address and correct concerns regarding the quality of Supplies provided. Seller will provide additional resources, as necessary and as identified by Buyer, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Supplies or of the program.

Seller represents that its overall equipment (shared and specific) and plant capacity are adequate to meet Buyer's needs. Seller is also responsible for the due and timely performance of all sub-tier providers of materials or services involved in the Supplies. Seller must maintain adequate development, validation, launch and ongoing supervision to assure that all Supplies provided to Buyer conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function, and appearance, under the Contract. Seller must also

comply with all terms of Buyer's Supplier Quality Manual, a current copy of which Buyer will provide upon request from Seller. In the event that there is any direct conflict between a term contained in these Standard Terms and a term contained in the Supplier Quality Manual, the term of these Standard Terms prevail.

5. BASIC WORKING CONDITIONS AND EMPLOYMENT STATUS.

5.1. Basic Working Conditions.

Seller represents and warrants that it does not: (i) use forced labour, regardless of its form, (ii) employ any person below the age of 15, unless it is part of a government approved job training, apprenticeship or other like program that would be clearly beneficial to its participants; or (iii) engage in physically abusive disciplinary practice or corrupt business practice. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labour in the supply of Supplies.

5.2. Subcontractors.

Where Seller retains subcontractors who are involved in Seller's provision of the Supplies, Seller represents and warrants that it uses only subcontractors that adhere to this Section's requirements and Seller monitors all subcontractors' compliance with this Section.

5.3. Social and Ethical Responsibility.

Buyer adheres to a code of social principles that includes the requirements of this Section and other workplace practices such as fair and equitable business practices; no association with terrorist groups or other organized crime. Buyer's code applies to all Buyer operations. Seller represents and warrants that it currently has, or will adopt, maintain and reinforce a similar code of practice and ensure that its subcontractors will do so.

5.4. Sustainability.

As part of Napoleon's commitment to our collective global responsibility, it asks that all Sellers have initiatives to drive greater efficiency from renewable resources to reduce our carbon and ecological footprint. Seller to ensure environmental regulations are met and achieved throughout the tiers of supply chain. Efforts to reduce, reuse and recycle must be demonstrated.

5.5. Compliance Certificate.

When it delivers Supplies, Seller will be deemed to repeat each representation in this Section. Buyer may



retain an independent third party, or request Seller to retain one reasonably acceptable to Buyer, to: (i) audit Seller's compliance with the requirements of this Section; and (ii) provide Seller and Buyer with written certification of Seller's compliance, including areas for potential improvement.

5.6. Cost of Audit.

Seller shall bear the cost of any third party audit and certification related to this Section, regardless of which party retained the auditor. Buyer, at its option, may accept an audit certification by Seller in lieu of a third party certification.

6. NON-CONFORMING SUPPLIES.

Buyer need not perform incoming inspections of any Supplies, and Seller waives any right to require Buyer to conduct any such inspections. Seller will not substitute any supplies for the Supplies covered by the Contract without Buyer's prior written consent. If Buyer rejects any Supplies as non-conforming, Buyer may, at its option: (a) reduce the quantities of Supplies ordered under the Contract by the quantity of non-conforming Supplies, (b) require Seller to replace the non-conforming Supplies, and/or (c) exercise any other applicable rights or remedies. Seller must notify the Buyer, in writing, within forty-eight (48) hours of Seller's receipt of Buyer's notice of rejection of non-conforming Supplies, as to the manner in which Seller desires that Buyer dispose of non-conforming Supplies, failing which Buyer will be entitled to dispose of the non-conforming Supplies without any liability to Seller, provided, however, that in any event, Buyer may elect at Seller's expense to arrange for the shipment of any non-conforming Supplies back to Seller. Seller will bear all risk of loss with respect to all non-conforming Supplies and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming Supplies. Buyer's payment for any non-conforming Supplies will not constitute acceptance by Buyer, limit, or impair Buyer's right to exercise any rights, remedies, or relieve Seller of responsibility for non-conforming Supplies. Seller shall not sell or dispose of, as scrap or otherwise, any completed or partially completed or non-conforming Supplies manufactured hereunder without defacing or rendering them unsuitable for use.

7. FORCE MAJEURE.

If as a result of an event or occurrence beyond the reasonable control of the affected party and without

such party's fault or negligence: (A) Seller is unable to produce, sell or deliver any Supplies covered by the Contract, or (B) Buyer is unable to accept delivery, buy or use any Supplies covered by the Contract, then any delay or failure to perform under the Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues, provided, however, that the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such events and occurrences may include, without limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), equipment breakdowns and power failures. Seller acknowledges and agrees that the following events will not excuse Seller's performance under theories of *force majeure*, commercial impracticability or otherwise and Seller expressly assumes these risks: (i) change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes; and (ii) failure of Seller's internal business systems related to the proper processing of information that results in any defect or failure in products or services, deliveries, or any other aspect of performance by Seller or its subcontractors.

During any delay or failure to perform by Seller, Buyer may (i) purchase substitute Supplies from other available sources, without any liability to Seller, in which case the quantities under the Contract will be reduced by the quantities of such substitute Supplies and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute Supplies compared to the prices set forth in the Contract and/or (ii) direct Seller to provide substitute Supplies from other available sources in quantities and at times Buyer requests and at the prices set forth in the Contract. If Seller fails to provide adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts more than thirty (30) days, Buyer may (in its sole discretion) terminate the Contract, and all outstanding releases without any liability to Seller or obligation to purchase raw materials, work-in-process or finished Supplies not yet delivered.



8. LABOUR DISPUTES.

Before any of Seller's labour contracts expire and as soon as Seller anticipates or learns of any impending strike, labour dispute, work stoppage or other disruption at Seller's facilities that might adversely affect the delivery of Supplies to Buyer, Seller will produce (and locate in an area that will not be affected by any such disruption) a finished inventory of Supplies in quantities sufficient to ensure the supply of Supplies to Buyer for at least thirty (30) days after such disruption commences. Seller will notify Buyer in writing of any actual or potential labour dispute delaying or threatening to delay timely performance of the Contract. Seller will notify Buyer in writing six (6) months in advance of the expiration of any current labour contracts.

9. WARRANTIES.

9.1. Supplier's Warranties.

Seller represents to Buyer, its successors, assigns and applicable customers that the Supplies covered by the Contract will: (a) strictly conform to the then current release/revision level (based on date Buyer's release is issued to Seller) of Buyer's applicable specifications and drawings; (b) conform to all samples, descriptions, brochures and manuals furnished by Seller or Buyer; (c) be merchantable; (d) be of good material and workmanship; (e) be free from defects in design, material and workmanship and shall be new and of the highest quality, (f) be fit and sufficient for the particular purposes intended by Buyer and any customer of Buyer, which purposes Seller acknowledges are known to it; (g) strictly conform with all industry standards, laws and regulations in force in countries where such Supplies are to be sold; (h) do not, and are not claimed to, violate any patent, trademark, copyright, or other proprietary right, and may be properly imported into the Canada or any other country; (i) shall be free and clear of all liens, claims or other encumbrances, and that Seller is conveying good title to Buyer; (j) shall be adequately contained, packaged, marked and labeled; (k) in the case of services, all services performed on behalf of Buyer shall be performed in a competent, workmanlike manner; and (l) the Supplies shall be manufactured in accordance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing approval or certification requirements in Canada or any other country where the Supplies will

be sold or used. These representations and warranties will survive Buyer's inspection, test, delivery, acceptance, use and payment and shall ensure to the benefit of Buyer, its successors, assigns, applicable customers, and the end users of Buyer's goods and services.

Seller waives any claim against Buyer and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for breach of warranty, infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Buyer. If Buyer requests, Seller will enter into a separate agreement for the administration or processing of warranty charge backs for non-conforming Supplies. All inventory, supplies and materials supplied by Buyer to Seller ("Inventory") and tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, and related drawings on technical information and other items furnished by Buyer to Seller including such items owned by Buyer's customers which Buyer (or Buyer's customer) furnishes, either directly or indirectly, to Seller or which Buyer buys from, or gives reimbursement to, Seller in whole or in part ("Tools") for use in manufacturing Supplies, or for which Seller has been reimbursed by Buyer (or Buyer's customers), shall be and remain the property of Buyer, any and all of which shall collectively be the "Buyer's Property"), which shall be held by the Seller on a bailment basis, as outlined in Section 20.2..

9.2. Durations of Seller's Warranties.

In the case of Supplies supplied for use as, or incorporation into, parts, components or systems for Napoleon products or other finished products, the period for each of the representations and covenants in Section 9.1 above will commence upon Seller's delivery of Supplies to Buyer, and end on the later of: (i) sixty (60) months following the date the finished product on which such parts, components or systems are installed is first sold and delivered or otherwise utilized for consumer or commercial purposes; (ii) the period provided under applicable law; and (iii) if the Supplies are utilized for new products, the same period as the new product warranty period offered to retail buyers in the country in which the product incorporating the Supplies are sold, (the "Warranty



Period), provided, however, that if Buyer offers and provides a longer warranty to its customers with respect to any such parts, components or systems, then such longer warranty period will apply to the Supplies. In the case of Supplies supplied for other uses, the Warranty Period for each of the foregoing warranties will be that provided by applicable law unless otherwise expressly agreed in writing by the Buyer.

Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the Supplies, or a defect is discovered which, in Buyer's reasonable opinion, constitutes a threat of damage to property or to the health and safety of any person.

9.3. Buyer's Remedies and Damages.

If Buyer experiences any breaches, Buyer will have the right, in addition to exercising all other rights Buyer may have under any applicable statutes or law, to take the following actions, at Buyer's option: (i) retain the non-conforming goods supplied in whole or in part with an appropriate adjustment in the price for such goods; (ii) require Seller to repair or replace the non-conforming Supplies in whole or in part at Seller's sole expense, including all freight (including expenses of boxing, packing and crating), insurance, and installation costs; (iii) correct or replace the non-conforming Supplies with similar items and recover the total cost relating thereto, including the cost of product recalls from Seller; or (iv) reject the non-conforming Supplies.

Without limiting the generality of the foregoing, if any Supplies are reasonably determined to fail to conform to the warranties set forth in Section 9.1, Buyer shall notify Seller, and Seller shall reimburse Buyer for all losses, costs and damages caused by such non-conforming Supplies. Such costs and damages may include, without limitation, costs, legal and expert or professional fees and disbursements (collectively, the "Fees"), expenses and losses of Buyer and/or its customers arising from (i) inspection, sorting, testing, repair or replacement of any non-conforming Supplies or any system or component that incorporates such non-conforming Supplies, (ii) production interruptions or slowdowns, (iii) off-lining of products, (iv) field service campaigns and other corrective service actions, including, without

limitation, the amounts paid to distributors and/or dealers for materials and replacement parts (including reasonable mark-up to recover administrative costs or other capital expenses) and the labor costs to perform such work, and (v) claims for personal injury (including death) or property damage caused by such non-conforming Supplies.

10. INGREDIENTS AND HAZARDOUS MATERIALS.

At Buyer's request, Seller will promptly furnish to Buyer, in such form and detail as Buyer directs: (a) a list of all ingredients in the Supplies, (b) the amount of all ingredients, and (c) information concerning any changes in or additions to the Suppliers design, materials, or specifications. . Prior to, and together with, the shipment of the Supplies, Seller will furnish to Buyer and all carriers sufficient written warning and notice (including appropriate labels on the Supplies, containers and packing) of any hazardous material that is an ingredient or a part of any of the Supplies, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Buyer and all carriers of any applicable legal requirements and to best allow Buyer and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Supplies, containers and packing. All purchased materials used in manufacture of the Supplies shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. Prior to shipment, Seller will furnish applicable Material Safety Data Sheets as well as information on the safe use and hazards associated with use of the Supplies. At all times, Seller will comply with ISO 14001, TS 16949 and ELV or their successors, as amended, replaced or substituted, from time to time.

11. SELLER'S FINANCIAL AND OPERATIONAL CONDITION.

Seller represents to Buyer as of the date of each Contract or release that: (i) it is not insolvent and is paying all debts as they become due; and that it is in compliance with all loan covenants and other obligations; (ii) all Seller financial information which Seller has provided Buyer is true and accurate; (iii) such financial information fairly represents Seller's financial condition; and (iv) all Seller's financial



statements have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

Upon Buyer's request, Seller will provide copies of its quarterly and/or annual financial statements, Seller will permit Buyer and its representatives to review Seller's books and records concerning compliance with each Contract and Seller's overall financial condition, and Seller will also provide Buyer with full and complete access to all such books and records for such purpose. Seller agrees that, if Seller experiences any delivery or operational problems, Buyer may designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Buyer provides Seller with any accommodations (financial or other, including providing designated representatives as set forth above) that are necessary for Seller to fulfill its obligations under any Contract, Seller shall reimburse Buyer for the reasonable amount of all costs, including all Fees incurred by Buyer in connection with such accommodation and will grant Buyer a right of access to use Seller's premises, machinery, equipment and other property necessary for the production of Supplies covered by such Contract (and a lien to secure the access right) under an access and security agreement. Seller will provide Buyer prompt written notice of Seller's impending or threatened insolvency.

12. SELLER'S INSOLVENCY.

In any of the following events or any similar or comparable event, Buyer may immediately terminate the Contract and any outstanding release(s) without any liability to Seller or obligation to purchase raw materials, work-in-process or finished Supplies not yet delivered: (a) Seller repudiates, breaches, or threatens to breach any of the terms of the Contract, including Seller's representations, (b) Seller fails to perform or threatens not to perform services or deliver Supplies in accordance with the Contract; (c) Seller fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under the Contract, including, without limitation, proper completion or delivery of Supplies; or (d) Seller fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support, (e) insolvency or financial difficulties of Seller, (f) filing of a voluntary or involuntary petition in bankruptcy by

Seller, (g) appointment of a receiver or trustee for Seller, (h) execution of an assignment for the benefit of creditors by Seller, (i) any accommodation by Buyer, financial or otherwise, not contemplated by the Contract, that are necessary for Seller to meet its obligations under the Contract, or (j) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under the Contract. Seller will reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not the Contract is terminated, including, but not limited to, all Fees.

13. TERMINATION.

Buyer may immediately terminate all or any part of the Contract, at any time and for any reason, by notifying Seller in writing. Buyer may terminate all or any part of the Contract without any liability to Seller or any obligation to purchase raw materials, work-in process or finished Supplies if Seller (a) repudiates, breaches, or threatens to breach any of the terms of the Contract, including Seller's representations, (b) fails to perform or threatens not to perform services or deliver Supplies in accordance with the Contract; (c) fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under the Contract, including, without limitation, proper completion of or delivery of Supplies; or (d) fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support.

13.1. Seller's Obligations Upon Termination.

Upon receipt of notice of termination (or in the case Seller fails to give notice) Seller will (i) immediately terminate all work under the Contract; (ii) promptly settle all claims by subcontractors approved by Buyer on the face of the Contract or Contract amendment or in a signed writing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (iii) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest and (iv) upon Buyer's request, cooperate with Buyer in effecting the sourcing of the Supplies from an alternative supplier designated by Buyer.

13.2. Buyer's Obligations Upon Termination.

Upon termination by Buyer, Buyer shall pay to Seller the following amounts without duplication: (i) the Contract price for all accepted Supplies that conform



to the requirements of the Contract and for which payment has not been made; and (ii) the fair market value or actual cost, whichever is less, of raw material procured by Seller specifically for fabrication of Supplies.

13.3. Buyer's Option to Purchase.

Upon termination by Buyer, Buyer may, at its option, purchase from Seller any or all raw materials, work-in-process and finished Supplies inventory related to the Supplies under the Contract which are useable and in a merchantable condition. The purchase price for such finished Supplies, raw materials and work-in-process, and Seller's sole and exclusive recovery from Buyer on account of such termination, will be (a) the contract price for all Supplies that as of termination date have been completed in accordance with the Contract and delivered and accepted by Buyer and not previously paid for, plus (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the Supplies under the Contract to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the Contract less (c) the reasonable value or cost (whichever is higher) of any Supplies or materials used or sold by Seller with Buyer's written consent. In no event will Buyer be required to pay for finished Supplies, work-in-process or raw materials which Seller fabricates or procures in amounts that exceed those Buyer authorizes in delivery releases nor will Buyer be required to pay for any Supplies or materials that are in Seller's standard stock or that are readily marketable.

13.4. Termination Claim.

Within sixty (60) days after the effective date of termination, Seller will furnish Buyer with its comprehensive termination claim, together with all supporting data that will consist exclusively of the items of Buyer's obligation to Seller that are listed in the Contract, and will thereafter promptly furnish any supplemental and supporting information Buyer requests. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. If Seller fails to submit a termination claim in strict accordance with this Section, then Seller's claims shall be deemed invalid thereafter waived and of no further force or effect.

14. SUPPLY TRANSITION AT END OR TERMINATION OF CONTRACT.

Upon the expiration or termination by Buyer of any Contract for whatever reason, Seller will take all actions necessary in order to ensure that there is no interruption in the supply of Supplies to Buyer. Among other things, Seller will take such actions as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative seller, including without limitation, the following: (a) Seller will provide all necessary or desirable notices for Buyer to resource the Contract to an alternative seller; (b) Seller will provide a sufficient bank of Supplies covered by the Contract to ensure the orderly transition to any alternative seller chosen by Buyer; and (c) Seller shall provide to Buyer all of Buyer's Property in as good a condition as when received by Seller, reasonable wear and tear excepted; (d) Buyer, or the alternative seller as Buyer may designate, reserves the right to access and actively participate during the disconnect or disassemble process for the Buyer's Property, and Buyer alone will determine the location, time and date of the removal; and (e) at Buyer's sole option, Seller will: (i) assign to Buyer any or all supply contracts or Contracts for raw material or components relating to the Contract; (ii) sell to Buyer, at Seller's cost or fair market value, whichever is less, any or all perishable tooling and Inventory relating to the Contract; and/or (iii) sell to Buyer any of Seller's property relating to the Contract, at a price equal to the unamortized portion of the cost of such items less any amounts Buyer previously has paid to Seller for the cost of such items. Seller will provide documentation supporting the original cost of any unamortized items.

15. TECHNICAL INFORMATION.

15.1. Information Disclosed by Seller.

Seller will create, maintain, update, and provide to Buyer, all technical information about the Supplies and their manufacture which is reasonably necessary or Buyer requests in connection with its use of the Supplies, including, without limitation, the engineering validation and qualification of the Supplies for Napoleon products and other applications and compliance with any legal or regulatory requirements. Such technical information will not be subject to any use or disclosure restrictions.



15.2. Waiver of Claims.

Seller will not assert any claim (other than a claim for patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any technical information that Seller shall have disclosed, or may hereafter disclose, in connection with the Supplies covered by the Contract.

15.3. Software and Written Works.

Seller grants to Buyer a permanent, paid-up license to use, repair, modify and sell any operating software incorporated in the Supplies in conjunction with the use or sale of the Supplies. In addition, all works of authorship, including without limitation, software, computer programs and databases (including object code, micro code, source code and data structures), and all enhancements, modifications and updates thereof and all other written work products or materials, which are created in the course of performing the Contract, separately or as part of any Supplies and components, are "works made for hire" and are Buyer's sole property. To the extent that such works of authorship do not qualify under applicable law as works made for hire, Seller hereby assigns to Buyer all Seller's right, title and interest in any intellectual property rights in such works of authorship. If such assignment is not possible under any applicable law, Seller hereby grants Buyer an exclusive, royalty-free, fully paid-up perpetual license with respect to such works of authorship.

15.4. Development, Engineering and Consulting Services.

Engineering, consulting or development services ("Development Services") funded under the Contracts that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property ("IP") shall be the sole property of Buyer. Seller will assign to Buyer all right, title and interest in and to IP which results from Development Services ("Developed IP"). Seller will notify Buyer of the existence of Developed IP and assist Buyer in every reasonable way to perfect Buyer's right, title and interest in Developed IP, such as by executing and delivering all additional documents Buyer reasonably requests in order to perfect, register, and/or enforce the same, and Buyer will reimburse Seller for the actual amount of reasonably incurred out-of-pocket which Seller incurs in providing such assistance.

15.5. Confidentiality.

Seller shall keep confidential, not disclose to any person or entity and not use for any purpose other than fulfilling its obligations under the Contract, any product technology, trade secrets, process advancements, drawings, plans, specification, blueprints, equipment designs, tests or test results, experimentation, prototypes, models or any other proprietary information, Buyer's Information, as defined below, or information that the Seller should reasonably expect the Buyer wish be kept confidential ("Confidential Information") that Buyer provides to Seller under the Contract. By accepting the Contract, Buyer grants Seller a limited, terminable at-will license to use the Confidential Information for the sole purpose of performing under the Contract and not for use in providing goods or services to other customers and not to directly or indirectly compete with Buyer. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without Buyer's prior written authorization, which Buyer may arbitrarily withhold or delay. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Seller agrees that it will not use Buyer's or Buyer's customer's name or the fact that Seller is selling or providing Supplies to Buyer in any press releases, media statements or public communications or otherwise publicize the Contract without Buyer's prior written consent. Seller also agrees that it will not use any of Buyer's names, logos, trademarks, service marks, or trade names in any way without Buyer's prior written consent, and by entering into the Contract, Buyer shall not be deemed to have granted Seller a license of, or any rights in, any of the foregoing. Seller waives the right to assert any claims against Buyer, other than for patent infringement, arising out of any Confidential Information that Seller discloses to Buyer in connection with the Contract. The provisions of this Section shall survive the termination, cancellation or expiration of the Contract. At Buyer's request, Seller will return all materials (in any form) that include, incorporate, or otherwise reference Buyer's Confidential Information.

16. INDEMNIFICATION.

16.1. Infringement.



Seller will defend, hold harmless and indemnify Buyer and its customers, and their respective successors and assigns, against any claims of infringement (including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secret) and resulting damages and expenses (including, without limitation, all Fees relating to the Supplies covered by the Contract, including any claims in circumstances where Seller has provided only part of the Supplies. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications.

16.2. Activities on Buyer's Premises.

Seller will defend, hold harmless, and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable Fees) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors on Buyer's or Buyer's customer's premises or the use of Buyer's premises or that of any customer of Buyer, except to the extent such liability arises out of Buyer's or Buyer's customer's gross negligence or willful misconduct.

16.3. Product Liability and Recalls.

Seller will defend, hold harmless, and indemnify Buyer, and their respective successors and assigns, from and against any liability and expenses (including, without limitation, all Fees) arising from or in connection with any third party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of Supplies (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories), except to the extent such injury, damage or loss results from Buyer's specifications as to design or materials or from alteration or improper repair, maintenance or installation by any party other than Seller.

Seller will defend, indemnify and hold harmless Buyer under the Contract, and their respective successors, against all damages, losses, claims, liabilities and expenses (including reasonable Fees, settlements and judgments) arising out of or resulting from any non-conforming Supplies, or from any negligent or wrongful act or omission of Seller or any breach or failure by Seller to comply with any of Seller's

warranties hereunder, including without limitation the cost of recall campaigns, Buyer field service actions or other corrective service actions that, in Buyer's reasonable judgment, are required because of defects, deficiencies, non-conformities or non-compliances in some or all of the Supplies provided by Seller.

16.4. Seller's Obligation to Defend.

Within a reasonable time of becoming aware of any actual or potential liabilities, claims, demands, damages, costs or expenses (collectively, "Liabilities"), Buyer will notify Seller. Seller, at Buyer's option and at Seller's expense, will undertake defense of such actual or potential Liabilities through counsel approved by Buyer. Provided, however, that Seller shall first obtain authorization from Buyer before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect Buyer, including any terms which admit the existence of a defect in Supplies or Buyer's failure to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such Liabilities to the extent asserted against Buyer, and Seller shall reimburse Buyer on monthly basis for all expenses, Fees and other costs incurred by Buyer.

17. COMPLIANCE WITH LAWS.

Seller and all Supplies will comply with all applicable laws, rules, regulations, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Supplies, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and each Contract shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, rules, regulations and ordinances. Seller will defend, hold harmless and indemnify Buyer and its customers, and their respective successors and assigns from and against any liability, claims, demands, damages or expenses (including reasonable or other Fees) arising from or relating to Seller's non-compliance with this Section. Without restricting the above, if Seller's shipment contains any wood packing material, Seller represents and warrants that the material is: (i) made entirely of



Canadian origin wood or U.S. origin wood; (ii) derived totally from trees harvested in Canada or the United States or (iii) treated in compliance with the *International Standard for Phytosanitary Measures on Wood Packaging* (ISPM No. 15) adopted by the *International Plant Protection Convention* in March, 2002, as amended from time to time.

18. INSURANCE.

Seller will maintain insurance coverage as required by applicable law or as reasonably requested by Buyer in amounts and with carriers reasonably acceptable to Buyer, naming Buyer as an additional insured, and covering general liability, public liability, product liability, product recall, completed operations, contractor's liability, worker's compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including all Fees). With respect to any such insurance coverage, Seller will furnish to Buyer either a certificate evidencing satisfaction of the abovementioned insurance requirements under the Contract or certified copies of all insurance policies within ten (10) days after receipt of Buyer's written request. The insurer must provide written assurance that Buyer will receive not less than thirty (30) days' prior written notice from the insurer of any termination or reduction in the amount or scope of coverage.

Seller will provide evidence of and maintain a technology/professional liability insurance policy, including coverage for network security/data protection liability insurance (also called "cyber liability") covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology/professional services or in connection with the Contract. Coverage will include violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, data theft, damage, unauthorized disclosure, destruction, or corruption, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems, breach response costs including notification costs, forensics, credit protection services, call centre services, and public relation services. The minimum limit will be three million dollars (\$3,000,000) for each claim and in the aggregate. Seller's insurer will have a

Best rating of A- and a minimum A.M. Best Financial Size Rating of "VIII". The policy must be kept in force during the life of the Contract and for a minimum of three (3) years (either as a policy in force or extended reporting period) after the end of the Term, or earlier termination of the Contract in accordance with these Terms, and will provide additional insured status for Buyer, limited to Seller's negligent acts, errors or omissions, misstatement or misleading statements by Seller its agents or other employees in the performance of contracted technology/professional services.

19. SELLER'S EQUIPMENT.

Seller, at its expense, will furnish, keep in good condition, and replace when necessary all of its machinery and equipment, including related tooling, jigs, dies, gauges, fixtures, molds, patterns, fixtures and other accessories, required for the production of Supplies (collectively, "Seller's Equipment"). Seller will insure Seller's Equipment with fire and extended coverage insurance for its full replacement value.

Seller grants Buyer an irrevocable option to take possession of, and title to, all or part of Seller's Equipment that is specially designed or outfitted for the production of Supplies, in which event Buyer will, within forty-five (45) days following delivery of such Seller's Equipment to Buyer, pay to Seller the lesser of: (i) the net book value of such Seller's Equipment (*i.e.*, actual cost, less amortization); and (ii) the then current fair market value of such Seller's Equipment, in each case less any amounts that Buyer has previously paid to Seller on account of such Seller's Equipment. The foregoing option will not apply to the extent that Seller uses Seller's Equipment to produce Supplies that are Seller's standard stock and are then being sold by Seller to other customers. Buyer's right to exercise the foregoing option is not conditioned on Seller's breach or Buyer's termination of the Contract or upon payment of any other amounts due under the Contract.

20. BUYER'S PROPERTY AND INFORMATION

20.1. Acquisition of Tools.

To the extent that the Contract covers Buyer's purchase of, or reimbursement to Seller for, any Tools to be used in connection with Seller's actual or anticipated supply of goods to Buyer, Seller will acquire such Tools as Buyer's agent and Buyer shall pay to or reimburse Seller the lower of (i) the amount specified in the Contract for such Tools or (ii) Seller's



actual out-of-pocket cost to acquire the Tools or materials from an unrelated third party or, if the Tools are constructed or fabricated by Seller or any affiliate of Seller, the actual direct costs for materials, labor and overhead associated with such construction and fabrication. Seller assigns to Buyer any contract rights or claims in which Seller has an interest with respect to such Tools. Seller will establish and maintain a reasonable and customary accounting system that readily enables the identification of Seller's costs as described above. Buyer or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any such Tools. All right, title, and interest in and to any part of Buyer's Property shall immediately vest in the Buyer as soon as they are acquired or fabricated on the Buyer's behalf and such Buyer's Property shall be held by Seller on a bailment basis, as outlined below. For clarity, no such Buyer's Property shall not be deemed a fixture or a part of Seller's real property.

20.2. Bailment of Buyer's Property.

All Buyer's Property will be and shall remain the property of Buyer and be held by Seller on a bailment basis. Title to all replacement parts, additions, improvements and accessories purchased by Seller will vest in Buyer immediately upon replacement, attachment to or incorporation into Buyer's Property. Title to any modifications, changes or accessions to Tools shall vest in Buyer regardless of whether Buyer has reimbursed Seller for such replacement part, addition, improvement or accessory. Seller expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other liens, including but not limited to equitable or other liens, including but not limited to any molder liens, tool liens, builder liens and the like, that Seller has or might have on or in connection with the Buyer's Property for all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Buyer's Property. Seller hereby agrees to indemnify, defend and hold harmless Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all Fees and all other cost of litigation that are in any way related to releasing, terminating or otherwise removing all

such liens placed on the Buyer's Property. Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property. Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Buyer's Property.

20.3. Seller's Duties Concerning Buyer's Property.

While Buyer's Property is in Seller's possession and until Seller delivers Buyer's Property back to Buyer, Seller bears the risk of loss, theft and damage to Buyer's Property. Excluding normal wear and tear, Seller will be responsible for the cost of repairing or replacing Buyer's Property if it is stolen, damaged or destroyed regardless of cause or fault. At Seller's expense, Seller shall: (1) inspect and approve all Buyer's Property prior to use; (2) properly house the Buyer's Property on Seller's premises; (3) maintain the Buyer's Property in good condition. (4) use the Buyer's Property only for performance under the Contract and not for production or services for any third party; (5) to the extent practicable, prominently mark the Buyer's Property as property of Buyer or Buyer's customer, as applicable; (6) refrain from commingling the Buyer's Property with Seller's or any third party's property; (7) adequately insure the Buyer's Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured; (8) take reasonable steps to ensure that the Buyer's Property do not become subject to any liens or other claims; and (9) not move the Tools or Inventory to a location other than that set forth in the Contract without Buyer's prior written consent. Seller shall cooperate with Buyer's removal of the Buyer's Property from Seller's premises.

Seller expressly waives any lien or security interest which Seller might otherwise have on any Buyer's Property for any amounts owing by Buyer or Buyer's customer, including for Services shipped or provided by Seller for work done or value added to the Tools or Inventory. The previous waiver includes but is not limited to molders', builders' and artisans' liens, and applies regardless of whether such liens arise by statute, regulation or common law, and as such, the Seller will take such steps as may be necessary to immediately discharge all liens. Buyer does not guarantee the performance of any Tools or the suitability of Inventory it furnishes to Seller. Upon



Buyer's request, Seller will provide Buyer with a listing of all Buyer's Property in Seller's possession or control, showing Buyer's part number(s) for Supplies made using Buyer's property, the location(s) of the Buyer's Property and a certification acknowledging ownership of the Buyer's Property.

Buyer will have the right to enter Seller's premises at during regular operating hours to inspect Buyer's Property and Seller's records. Seller will not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of Buyer's Property. Furthermore, Seller will not assert, or permit any person claiming an interest through Seller to assert any claims of ownership to or any other interest in Buyer's Property.

Seller will indemnify Buyer against any claim adverse to Buyer's ownership of or interest in the Tools, except as such claims may result from any acts or omissions of Buyer. To the extent permitted by law, Seller waives its right to object to the repossession of the Tools by Buyer in the event Seller is involved in bankruptcy or insolvency proceedings. All repaired or replaced Tools shall be the property of Buyer. Wear and repair of the Tools is Seller's responsibility. Seller will keep such records in relation to the Tools as Buyer may reasonably require. Seller's responsibility continues beyond the expiry date of the related parts Contract.

If the Tools are not utilized to produce any Supplies for a period of two (2) years, Seller shall notify Buyer and request instruction as to the disposition of the Tools. If Seller subcontracts all or any portion of the manufacture of the Tools, Seller shall notify Buyer in advance and obtain for Buyer all of the rights from each subcontractor retained or used by Seller.

Seller authorizes Buyer to file a financing statement or equivalent document with the appropriate filing authority to give notice of Buyer's ownership interest in the Buyer's Property. Failure to file a financing statement will not alter or amend Buyer's ownership rights to the Buyer's Property

20.4. Return of Buyer's Property.

Seller agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer's Property. Without further notice or court hearings, which rights, if any, are hereby waived by Seller, and Buyer or its designee(s) will have the right to enter Seller's premises and take possession of any of Buyer's

Property. Upon Buyer's request and in accordance with Buyer's instructions, Buyer's Property will be immediately released to Buyer or delivered to Buyer by Seller, either (i) Ex Works (Incoterms 2020) at Seller's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Seller the reasonable costs of delivering Buyer's Property to the location Buyer designates. If Seller does not release and deliver any Buyer's Property in accordance with this Section, Buyer may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property.

20.5. Disclaimer of Warranties.

Seller acknowledges and agrees that (i) Buyer is not the manufacturer of Buyer's Property nor the manufacturer's agent nor a dealer therein, (ii) Buyer is bailing Buyer's Property to Seller for Seller's benefit, (iii) Seller has inspected the Buyer's Property and is satisfied that Buyer's Property is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

20.6. Use of Buyer's Information.

Seller will (i) keep all Buyer's Information (as defined below) confidential and disclose it only to its employees who need to know such Buyer's Information in order for Seller to supplying Supplies under the Contract and (ii) use the Buyer's Information solely for the purpose of supplying Supplies to Buyer. Supplies manufactured based on Buyer's Information may not

be used for Seller's own use or sold by Seller to third parties without prior express written consent from an authorized employee of Buyer. "Buyer's Information" means all information provided to Seller by Buyer or its representatives or subcontractors in connection with the business, programs, Supplies covered by the Contract, including, without limitation, pricing, pricing adjustments, multi-year commercial arrangements and other terms of the Contract,



specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test products, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code). Buyer's Information also includes any materials or information that contains or are based on, any Buyer's Information, whether prepared by Buyer, Seller or any other person.

21. SERVICE AND REPLACEMENT PARTS.

During the term of the Contract, Seller will sell to Buyer all Supplies necessary to fulfill Buyer's service and replacement parts requirements to Buyer's customers at the then current production price(s) under the Contract. If the Supplies are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. If the Contract is in effect at the end of the production program into which the Supplies covered by the Contract are incorporated, Seller will also sell Supplies to Buyer to fulfill Buyer's and its customers' service and replacement parts requirements during the fifteen (15) year period following the end of such production program and the Contract will automatically remain in effect. During the initial five (5) years of service, the price(s) for such Supplies will be the production price(s) which were in effect at the commencement of the Service Period. For the remainder of the Service Period, the price(s) for such Supplies will be as reasonably agreed to by the parties. If a dispute arises between Seller and Buyer regarding the price of service or replacement parts under this paragraph, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production prices set forth in the Contract pending resolution of such dispute. If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities.

22. REMEDIES AND INJUNCTIVE RELIEF.

The rights and remedies reserved to Buyer in the Contract are cumulative with, and in addition to, all other or further remedies provided in law or equity. To the extent that the Contract is for the supply of Supplies for use as, or fabrication into, parts, components or systems, Seller acknowledges and agrees that money damages would not be a sufficient

remedy for any actual, anticipatory or threatened breach of the Contract by Seller with respect to its delivery of Supplies to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

The cost of a plant shutdown may generate substantial costs and damage to Buyer's relationship with Buyer's customer through potential loss of business, and other damages which are difficult to calculate but should be considered. Because of these risks, in the event of a breach or threatened breach by Seller of any of Seller's representations, warranties or covenants, Buyer may, without notice to Seller, resource the production of Supplies from Seller to another supplier or dual source any of the Supplies covered by the Contract (*i.e.*, have another supplier produce or be prepared to produce Supplies being produced by Seller), to protect Buyer and its customers. This

process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by a breach or threatened breach by Seller of any of Seller's representations, warranties or covenants, Buyer is justified in initiating and transferring business without prior notice to Seller.

Further, in the event of any breach of the Contract by Seller, Buyer shall be entitled to recover all actual, special, incidental and consequential damages caused by the breach, including, but not limited to, costs, expenses and losses incurred by Buyer (i) in inspecting, sorting, testing, repairing or replacing such non-conforming Supplies; (ii) resulting from production interruptions, (iii) in conducting remedial actions, and (iv) in connection with claims for personal injury (including death) or property damage caused by such breach. If requested by Buyer, Seller shall, without charge to Buyer, administer and process warranty chargebacks for non-conforming Supplies in accordance with Buyer's directions. Notwithstanding anything to the contrary contained in any Contract, Buyer does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Contract or any breach or anticipatory breach of the Contract or any other contract between Buyer and Seller (even if that



contract relates to other services or products). All payments by Buyer to Seller under the Contract are without prejudice to Buyer's claims, rights, or remedies. Buyer will not be liable to Seller for any lost profits or for any incidental, consequential, special, exemplary, or punitive damages. Without limiting the foregoing, the parties further agree that: (i) with respect to a claim arising out of or in connection with the termination of any Contract, Seller's damages, and (ii) with respect to all other claims, Seller's damages shall be limited to the lesser of: (A) the value of Supplies purchased by Buyer from Seller in the three (3) months immediately preceding the alleged breach; or (B) ten-thousand dollars (\$10,000). Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontracts, for any other alleged losses or costs, including but not limited to loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment acquisition or relocation costs or rental, unamortized depreciation costs, ancillary exit charges (including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, material costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), Fees or collection costs, or general and administrative burden charges resulting from termination of the Contract, alleged breach of the Contract, or for any other reason. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

23 CUSTOMS AND EXPORT CONTROLS.

23.1. Credits and Refunds.

Transferable credits or benefits associated with or arising from Supplies purchased under the Contract, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits, or rights.

Seller will, at its expense, provide Buyer with all information, documentation, and electronic transaction records relating to the Supplies necessary

for Buyer to fulfill any customs related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for Supplies eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Supplies to be covered by any duty deferral or free trade zone program(s) of the country.

of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the Supplies to be exported and obtain all export licenses or authorizations necessary for the export of the Supplies unless otherwise indicated in the Contract, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s).

23.2. Customs-Trade Partnership Against Terrorism.

If any Supplies covered by the Contract are to be imported into Canada and/or the United States of America, Seller shall comply with all applicable recommendations or requirements of the United States Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative and Canada Border Services Agency's Partners in Protection ("PIP") program. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative and/or PIP program.

24. SETOFF/RECOUPMENT

In addition to any right of setoff or recoupment allowed by law, all amounts due to Seller shall be considered net of indebtedness or obligations of Seller to Buyer and Buyer may set off against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Buyer however and whenever arising, including the Buyer's Fees and costs of enforcement. In the event that Buyer reasonably feels at risk, Buyer may withhold and recoup a corresponding amount due to Seller to protect against such risk.

If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if the Contract between Buyer and Seller has not been assumed, then Buyer may defer payment to Seller, via an



administrative hold or otherwise, for Supplies against potential rejection and other damages.

In the event that Seller becomes insolvent as described in Section 12 of these Standard Terms, Buyer also may set off, recoup, and/or withhold from amounts due to Seller any amounts that Seller is obligated to indemnify Buyer pursuant to the Contract, regardless of whether such amounts become due before or after the filing of a petition for bankruptcy protection by Seller.

25. NO IMPLIED WAIVER.

The failure of either party at any time to require performance by the other party of any provision of the Contract will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of the Contract constitute a waiver of any succeeding breach of the same or any other provision.

No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Contract.

26. ASSIGNMENT.

The Contract is made with the Seller in reliance upon Seller's personal performance of the duties imposed. Buyer may assign its rights and obligations under the Contract without Seller's prior written consent. Seller may not assign or delegate its rights or obligations under the Contract without prior written consent from Buyer. Buyer may elect, at its sole option, to terminate the Contract if any such assignment or delegation is made by the Seller without Buyer's prior written consent.

27. RELATIONSHIP OF PARTIES.

Seller and Buyer are independent contracting parties. Nothing in the Contract makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party.

28. GOVERNING LAW AND JURISDICTION.

28.1. Canadian Contracts.

If (i) the Contract is issued by Buyer from a location within Canada (as shown by the issuing address of Buyer), (ii) the Contract is issued, in whole or part, for Supplies to be shipped to a Buyer location within Canada (as shown by the ship to or receiving address

of Buyer) or (iii) Seller's applicable shipping location is within Canada (as shown by the shipping address of Seller), then: (a) the Contract is to be construed according to the laws of Canada and the Province of Ontario, excluding the provisions of the *United Nations Convention on Contracts for the International Sale of Goods* and any choice of law provisions that require application of any other law, and (b) each party hereby agrees that the venue for any legal or equitable action or proceeding arising out of, or in connection with, the Contract will be conducted by a court of competent jurisdiction in the Province of Ontario and specifically waives all objections to such jurisdiction and venue.

28.2. Non-Canadian Contracts.

In all cases not covered by Section 29.1 above, (a) the Contract is to be construed according to the laws of the country (and state or province, if applicable) where Buyer's receiving location is located (as shown by the ship to or receiving address of Buyer), excluding the provisions of the *United Nations Convention on Contracts for the International Sale of Goods* and any choice of law provisions that require application of any other law; (b) any legal or equitable action or proceedings by Buyer against Seller arising out of, or in connection with, the Contract may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any court(s) having jurisdiction over Buyer's receiving location, in which event Seller consents to such jurisdiction and venue, including service of process in accordance with applicable procedures; and (c) any legal or equitable actions or proceedings by Seller against Buyer arising out of, or in connection with, the Contract may be brought by Seller only in the court(s) having jurisdiction over the Buyer's receiving location.

29. SELLER CLAIMS.

Any action by Seller under any Order must be commenced within one (1) year after the breach or other event giving rise to Seller's claim occurs, regardless of Seller's lack of knowledge of the breach or other event giving rise to such claim. No action for any such claim may be brought thereafter.

30. SEVERABILITY.

If any provision of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to



comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract will remain in full force and effect.

31. RIGHT TO AUDIT AND INSPECT.

Buyer, at its expense, has the right to audit and review all relevant books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, as well as all materials, equipment, tooling and Supplies in the possession or under the control of Seller relating to any of Seller's obligations under the Contract, in order to (i) substantiate any charges and other matters under the Contract and (ii) assess Seller's ongoing ability to perform its obligations under the production Contract. Seller will maintain and preserve all such documents for a period of four (4) years following final payment under the Contract. Seller will provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Buyer.

32. ENTIRE AGREEMENT.

The Contract, together with the attachments, schedules, exhibits, supplements or other terms of Buyer specifically referenced in the Contract, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Contract and supersedes all prior oral or written representations and agreements. Buyer may modify these Standard Terms from time to time by posting notice of such modified Standard Terms through links provided on Buyer's web site at least ten (10) days prior to the modified Standard Terms becoming effective. Seller acknowledges it has reviewed the current Standard Terms and will periodically review Buyer's web site and the Standard Terms. Seller's continued performance under the Contract without providing written notice to Buyer detailing Seller's objection to any modified Standard Terms prior to the effective date of such modified Standard Terms will be subject to and will constitute Seller's acceptance of such modified Standard Terms.

33. TRANSLATIONS.

Buyer may provide various translated versions of these Standard Terms for informational purposes only. However, the original English language version of these Standard Terms will apply in the event of any

disagreement over the meaning or construction of any provisions of these Standard Terms.

34. NO CHALLENGE TO THESE STANDARD TERMS.

The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party's right to enter into and enforce these Standard Terms.

35. EXTENSION OF TIME.

Time shall always be of the essence of these Standard Terms. Any time limits specified in these Standard Terms may be extended with the Buyer's prior written consent, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of these Standard Terms notwithstanding any extension of any time limit.

36. INTERPRETATION OF AGREEMENT.

Any determination to be made with respect to the interpretation of these Standard Terms shall have regard to and be determined in accordance with the following: (a) the section numbers and headings, subheadings, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of these Standard Terms; (b) these Standard Terms shall be construed with all changes in number and gender as may be required by the context; (c) every provision of these Standard Terms by which the Seller is obligated in any way shall be deemed to include the words "at the expense of the Seller" unless the context otherwise requires, including the payment of any applicable taxes; (d) references herein to any statute, regulation or any provision thereof include such statute or provision thereof as amended, replaced, revised, re-enacted and/or consolidated from time to time and any successor statute thereto; (e) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants; and (f) whenever a statement or provision in these Standard Terms is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.