

# PACIFIC AVIATION & LEASE MANAGEMENT INC

## MASTER TERMS AGREEMENT

**This Master Terms Agreement**, (herein after referred to as “Agreement”), is entered into as of the issuance of a Task Order or Purchase Order by and between Pacific Aviation and Lease Management Incorporated (PALM), a California company (hereinafter collectively referred to as “Buyer”) and the Company to which the Buyer’s Task Order or Purchase Order is issued to (hereinafter referred to as Seller). All documents in this Agreement shall be read so as to be consistent. This Agreement shall be valid from the time of issuance of the Task Order or Purchase Order until terminated per the Termination clause contained herein.

This Agreement supersedes all prior offers, negotiations, and agreements, express or implied, pertaining to the subject matter herein and constitutes the final, entire, and complete agreement between the parties.

Both parties do hereby bind their respective companies to the duties and responsibilities of performance required hereunder.

The Buyer and Seller accept the rights and obligations of their respective parties and shall be subject to and governed by the Terms and Conditions contained herein. This Agreement, as described, shall constitute the entire agreement between the parties hereto and any terms or conditions offered by the Seller in addition to or in any way different from those set forth herein are objected to by Buyer. This Agreement is comprised of this document and the following attachments listed herein:

Attachment A	Purchase Order(s)/Task Order(s)
Attachment B	CERTIFICATIONS AND REPRESENTATIONS

### ORDER OF PRECEDENCE

The rights and obligations of the parties to this Agreement shall be subject to and governed by:

- 1) The Task Order or Purchase Order which defines the Deliverables, Quality requirements, schedule, pricing and additional provisions under this Agreement.
- 2) This Agreement which is the Master Agreement and contains the General Provisions.
- 3) Remaining Attachments as stated applicable by the Buyer.

# **GENERAL PROVISIONS**

## **DEFINITIONS**

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "Task Order", "Purchase Order", "Contract", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Contract or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "Buyer" means Pacific Aviation and Lease Management Incorporated, PALM.
- (c) "Buyer's Procurement Representative" means a person authorized by Buyer's recognized procurement organization to administer and/or execute this Contract.
- (d) "Seller" means the Party identified on the face of the Contract with whom Buyer is contracting.
- (e) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.
- (f) "Task Order", "Purchase Order" means work authorizations issued against this Agreement which defines Deliverables, Statement of Work (SOW), Quality Requirements, Schedule, Pricing, Customer Requirements and any other pertinent information of tasks to be performed under the auspices of the Agreement.

## **ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

- (a) This Agreement integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Agreement.
- (c) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby objected to by Buyer and have no effect unless expressly accepted in writing by Buyer.

## **ANTICIPATION OF DELIVERY SCHEDULE**

Unless otherwise agreed to in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet schedules that are within lead time. It is Seller's responsibility to comply with its scheduled lead times but not to anticipate Buyer's requirements. Goods shipped to Buyer in advance of scheduled lead times may be returned to Seller at Seller's expense.

## **ASSIGNMENT AND SUBCONTRACTING**

- (a) Any purported assignment or subcontracting of Seller's contract rights or delegation of duties shall be void, unless prior written consent is given by Buyer. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in price without notice to the assignee.
- (b) If a third party submits a solicited or unsolicited offer to Seller that would result in a Change of Ownership or Control of Seller, as defined below, Seller shall give notice of such offer to Buyer as

early as commercially practical following Seller's receipt of the offer. The notice shall include the identity of the offeror, the date and time of the offer and the conditions of the offer. Before Seller accepts the offer, it shall give Buyer an opportunity, within a reasonable time, to advise Seller of its objection to the offer. If despite Buyer's objections, the Change in Ownership and Control occurs, Buyer has the right at its discretion to terminate this Agreement for default at no cost to Buyer. In the event of such termination, Seller agrees to render full cooperation to Buyer in order to minimize disruption to the Buyer's program. Pending termination or in lieu of termination, Buyer may require Seller to provide adequate assurance of performance, including, but not limited to the institution of special controls regarding the protection of Buyer's proprietary information.

For purposes of this sub-paragraph (b), the terms "Change in Ownership or Control" shall mean any of the following: i) the sale of equity shares controlling 20% or more of the voting rights in Seller or Seller's parent, ii) the sale, lease, transfer or other disposition of substantially all of the assets of Seller or Seller's parent, iii) a merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation or dissolution or similar transaction, iv) a tender offer or exchange offer for any of the outstanding shares of capital stock of Seller or Seller's parent, v) a sale by Seller of the assets relating to the product Seller produces or will produce for Buyer, or vi) any public disclosure of a proposal or plan or intention to do any of the foregoing.

#### **BUYER DIRECTION**

- (a) Only the Buyer's Procurement Representative has authority to change this Agreement. Such changes must be in writing.
- (b) Buyer engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Agreement and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Buyer's Procurement Representative.

#### **BUYER'S PROPERTY**

- (a) Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Agreement.
- (b) Title to Furnished Property shall remain in Buyer or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. Such Furnished property while in Seller's custody or control shall be held at Seller's risk and shall be insured by Seller for replacement cost with loss payable to Buyer.
- (d) At Buyer's request, and/or upon completion of this Agreement the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.
- (e) Work made in accordance with Buyer's specifications, drawings and other proprietary information shall not be furnished or disclosed to any other person or concern without Buyer's written consent.
- (f) Any invention or other intellectual property first made, conceived or recorded by Seller in the performance of this Agreement or which is derived from or based on the use of confidential information supplied by Buyer shall be considered as being a "work made for hire" and shall be and become the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto.

- (g) Where Work is manufactured from material supplied by Buyer, unless agreed otherwise, replacements for any spoiled or lost material shall be ordered from Buyer at Seller's liability and expense. If the Seller for whatever reason scraps material or components supplied "free issue" by Buyer, the Seller shall be responsible for all costs previously incurred by Buyer including but not limited to material cost and added value.
- (h) Buyer hereby grants Seller a license to use the tools, drawings, specifications, processes, procedures, process parameters, computer software, and other data (hereinafter collectively referred to as "Data") furnished by the Buyer, or by Buyer's affiliates, subsidiaries or contractors, or paid for in whole or in part by Buyer hereunder for the sole purpose of performing this Agreement for Buyer. All Data is the property of Buyer and shall not be used, disclosed to others or reproduced for any purpose, including, but not limited to, the design, manufacture or repair of parts or to obtain FAA or other Government approval to do so; provided; however, Seller may provide Data furnished or paid for in whole or in part by Buyer hereunder to Seller's contractors for the sole purpose of enabling Seller's contractors to assist Seller in performing this Agreement for Buyer and on condition that Seller's contractors agree in writing for Buyer's benefit to the terms of this General Provision, General Provision "INFORMATION OF SELLER" and General Provision "INTELLECTUAL PROPERTY" hereof. This license is non-assignable, and this license is terminable with or without cause by Buyer at any time. All Data furnished or paid for by Buyer shall be deemed to be proprietary property to Buyer, whether or not it is marked with any restrictive legend.

## **CHANGES**

- (a) The Buyer's Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make "Changes" within the general scope of this Agreement in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, performance, or point of delivery; (iv) delivery schedule; (v) description of services to be performed; and (vi) time of performance of Work (i.e., hours of the day, days of the week, etc.). Changes may only be made in writing by the Buyer's Procurement Representative.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Agreement, Buyer shall make an equitable adjustment in the price and/or delivery schedule, and modify the Agreement; Task Order or Purchase Order accordingly.
- (c) Any claim for an equitable adjustment by Seller must be submitted in writing to Buyer within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. Buyer may audit any of Seller's books and records in connection with any equitable adjustment proposal. Seller shall provide Buyer with access to such premises, documents, personnel and facilities as may be reasonably necessary to allow Buyer or its representative(s) to carry out such audit(s).
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Agreement. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of the Changes as requested.

## **CONFLICT OF INTEREST**

The Seller agrees that by entering into this agreement the Seller will be exposed to the Buyer's technology and technical production knowledge about the Airbus A320 and A321 passenger to cargo conversion capability. Therefore the Seller is restricted from participating with any other company other than the Buyer in the Airbus A320 and A321 passenger to cargo conversion for the life of this Agreement.

## **DEFAULT**

- (a) Buyer, by written notice, may terminate this Agreement for default, in whole or in part, if Seller fails to comply with any of the terms of this Agreement, fails to make progress as to endanger performance of this Agreement, or fails to provide adequate assurance of future performance. Seller shall have five (5) days (or such longer period as Buyer may authorize in writing) to cure any such failure after receipt of notice from Buyer. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) Buyer shall not be liable for any Work not accepted; however, Buyer may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement. Buyer and Seller shall agree on the amount of payment for these other deliverables.
- (c) In the event of termination, in whole or in part, Buyer may acquire, under terms Buyer considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to Buyer for any excess costs of those supplies or services, including any incidental costs Buyer incurs through re-procurement.
- (d) Seller shall continue all Work not terminated.
- (d) If after termination under sub-paragraph a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.

## **DELAY AND DEFAULT**

In the event Seller for any reason anticipates any difficulty in complying with the required delivery date or any of the other requirements of this Agreement, Seller shall promptly notify Buyer in writing or by electronic mail system. In the event of a delivery delay, non-delivery or any other default by Seller in meeting the requirements of this Agreement, Buyer may terminate this Agreement without further compensation to Seller, and Buyer's rights will be as specified in the California Uniform Commercial Code.

## **DISPUTE RESOLUTION**

- (a) Except as specifically provided for in paragraph (h) below, the parties intend to forsake litigation and resolve with finality any and all disputes arising under or related to this Agreement exclusively by the process identified in this General Provision. This General Provision shall remain effective in the event that a petition in bankruptcy is filed by or against a party to this Agreement; Task Order or Purchase Order, or if a party makes an assignment for the benefit of creditors, or if any other insolvency proceeding is commenced against a party. Invocation of this paragraph shall not relieve either party of any obligation, right or duty of performance arising under or related to any Task Order or Purchase Order.
- (b) Any and all disputes, controversies or claims arising under or relating to this Agreement or the breach, termination or invalidation thereof shall, upon written notice, be referred to a senior management representative from each of the parties who will confer in good faith to attempt to resolve the matter. The party sending the first written notice (the "Initial Notice") shall (1) set forth in detail all of its claims or issues in dispute and (2) designate its representative. The other party shall have 5 business days to designate its representative and add any other issues or claims for resolution not identified in the Initial Notice. The representatives shall have 30 days from the date of the Initial Notice to resolve the issues identified in the notices. Such mediation shall be started within 30 days from the date of referral, and the mediation process must be concluded within 30 days from the start date.
- (c) If the dispute or claim is not fully resolved pursuant to paragraph b, either party may after 90 days, but not later than 120 days from the date of the initial notice, make a written demand for binding arbitration to be administered by the American Arbitration Association (AAA) by one arbitrator in accordance with its commercial arbitration rules. A party's failure to make a timely demand for

arbitration shall result in the forfeiture of all the claims and issues that party identified in its written notice.

- (d) The arbitration proceedings shall be conducted in San Diego CA, and the Agreement; Task Order and Purchase Order shall be interpreted and applied in accordance with the laws of the state of California without regard to California's choice of law provisions. No discovery shall be conducted except by the written agreement of both parties. All fees and expenses of the arbitration shall be shared equally by the parties. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs. The arbitrator shall have no authority to award punitive or other damages beyond the prevailing party's actual damages and shall not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of the Agreement; Task Order and Purchase Order. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. Judgment on the award rendered may be entered in any court of competent jurisdiction, and in connection with enforcing arbitration awards Seller hereby consents and submits to jurisdiction of the Courts of the State of California and the U.S. Federal Courts in the District of Southern California over any action at law, suit in equity or other proceeding that may arise out of this Agreement.
- (e) Either party may at any time, without inconsistency with this Agreement, seek from a court of competent jurisdiction located in San Diego California, any equitable, interim or provisional relief to avoid irreparable injury, or to vindicate an executing party's intellectual property rights, including, without limitation, the recovery of damages for infringement or other misappropriation.
- (f) The parties intend all statements made and documents provided or exchanged in connection with this dispute resolution process to be confidential and neither party shall disclose the existence or content of the dispute or claim, or the results of any dispute resolution process, to third parties other than outside counsel, except with the prior written consent of the other party or pursuant to legal process.
- (g) The parties may by written mutual consent agree to dates and times other than those set forth in this General Provision.
- (h) The provisions of this General Provision shall not modify or displace the procedures specified in the "TERMINATION" General Provision. In addition, this General Provision shall not apply to and will not bar litigation regarding any claims related to a party's proprietary or intellectual property rights.

#### **ENGLISH LANGUAGE.**

Except as the parties may otherwise agree, this Agreement, data, notices, shipping invoices, correspondence and other writings shall be written in the English language. In the event of any inconsistency between any terms of this Agreement and any translation thereof into another language, the English language meaning shall control.

#### **EXPORT/IMPORT CONTROL**

- (a) Seller agrees to comply with all applicable export and import control laws and regulations of Seller's and Buyer's country, and with all applicable export or import authorizations and their provisos. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier Sellers, without the authority of an Export License or applicable license exemption or exception.
- (b) Where Work is to be delivered or provided to a Buyer business unit in the United States:
  - (i) Seller agrees to notify Buyer of the US Munitions List Classification or US Export Commodity Classification Number of each deliverable under this Agreement.
  - (ii) Seller shall provide to Buyer all information necessary to support any export or import authorization requirements by Buyer for items ordered hereunder.

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- (iii) Seller shall immediately notify the Buyer's Procurement Representative if Seller is listed in any Denied Parties List, has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR §120.27, is ineligible to contract with, or to receive a license or other approval to export or import articles or services, from any agency of the U.S. Government, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U. S. Government entity or agency.
  - (iv) Seller acknowledges that if it engages in the United States in the business of either manufacturing or exporting defense articles or defense services, as defined in 22 CFR §§120.6, 120.9, then Seller is required to register with the U.S. Department of State, Office of Defense Trade Controls.
- (c) Where Work is to be delivered to a Buyer business unit in the United Kingdom:  
Seller shall be responsible for obtaining any required licenses to export the Work and associated technical data to Buyer. Seller certifies that the Work supplied to Buyer is not subject to the International Traffic in Arms Regulations (ITAR) (22 CFR Part 120-130) or Export Administration Regulations (EAR) (15 CFR Parts 730-774). Seller shall obtain Buyer's prior written approval prior to incorporating any item, technology or software that is subject to the ITAR or EAR into the Work. Seller shall complete Buyer's Export Seller Certification Form providing required export classification information (e.g., U.S. Commerce Control List, United States Munitions List category or UK Control List category, Harmonized Tariff Schedule, Country of Origin, etc. as well as copies of relevant export authorizations permitting export or re-export to Buyer or Buyer's designated end user.
- (d) With respect to defense articles and defense services (as defined in Sections 120.6 and 120.9 of the ITAR) furnished hereunder, Seller certifies that it has not paid, offered or agreed to pay, and agrees that it shall not pay, offer or agree to pay, for the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of an international organization or non-U.S. Country, any (i) fee, commission, loan, gift, donation or other payment of \$1,000 or more, whether in cash or in kind, or (ii) political contribution (including any loan, gift, donation, rebate, payment of expenses or other payment) to or for the benefit of, or at the direction of, any foreign person or entity (including any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof).

Notwithstanding the foregoing, in the event Seller pays, offers or agrees to pay any such fee, commission, loan, gift, donation, political contribution or other payment with respect to such defense articles or defense services, Seller shall provide to the Buyer, in a timely manner and not later than 20 days after such an event, full disclosure of all information necessary for the Buyer to comply fully with Sections 130.9 and 130.10 of the ITAR.)

- (e) **CITIZENSHIP STATUS:** Unless otherwise permitted under U.S. export regulations, only U.S. Persons as defined herein shall be permitted to work on Buyer's Task Orders or Purchase Orders. The term "U.S. Person" means any natural person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, trust, society or any other entity or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity.
- (f) With regard to all technical data exported to Seller under the authority of a valid export license granted pursuant to 22 CFR 124.13 (Procurement by U.S. persons in foreign countries--Offshore Procurement), Seller agrees to the following:

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- (i) The use of the technical data is limited to the manufacture of the defense articles required by this Agreement; Task Order or Purchase Order only; and
  - (ii) Disclosure of the technical data is prohibited to any other person except subcontractors within the same country; and
  - (iii) Acquisition of any rights in the data by any foreign person is prohibited; and
  - (iv) Any subcontract(s) between the Seller and other foreign persons in the approved country for manufacture of equipment for delivery pursuant to the Agreement; Task Order or Purchase Order contain all the limitations of this paragraph F; and
  - (v) Seller, including subcontractors, shall destroy or return to the Buyer in the United States all of the technical data exported pursuant to this Agreement; Task Order or Purchase Order upon fulfillment of their terms; and
  - (vi) Delivery of the defense articles manufactured abroad must be made only to the Buyer in the United States or to an agency of the U.S. Government as directed by Buyer.
- (g) The United States of America prohibits the importation of Work from certain countries. No Work from prohibited countries may be used directly or indirectly in the design, manufacture, test, or other methods of providing any of the items covered by this Agreement. The list of prohibited countries can change from time to time and it is Seller's responsibility to ensure compliance with such list at all times. Current information can be obtained by accessing the Internet at URL <http://www.treas.gov/ofac/>
- (h) Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses, including attorney fees that may be imposed on or incurred by Buyer in connection with any violations of laws and/or regulations by Seller.

#### **EXTRAS**

Work shall not be supplied in excess of quantities specified in the Agreement; Task Order or Purchase Order. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

#### **GENERAL INDEMNIFICATION**

Seller agrees to indemnify, save harmless and defend Buyer and its directors, officers, employees, agents, successors, and assigns from and against any and all liabilities, claims, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it or they may hereafter incur, become responsible for, or pay out as a result of, or arising out of, Seller's breach of any of its duties or obligations under the Agreement. Seller shall include this clause in all subcontracts at any tier, involving the performance of this Agreement.

#### **GOVERNING LAW**

This Agreement shall be governed by the Laws of the State of California, notwithstanding its conflict of laws rules.

#### **GRATUITIES/KICKBACKS**

Any officers, employees or agents of Buyer, or Buyer's customers, are prohibited from soliciting or accepting entertainment, gifts, gratuities, compensation or favors from Seller. Seller shall at all times comply with the requirements of this policy.

For violation of this General Provision by Seller, this Agreement may be terminated in whole or in part. Buyer may also require Seller to provide proof that it has implemented internal management controls sufficient to prevent future violations. These rights and remedies of Buyer are not exclusive and are in addition to any other rights and remedies provided to Buyer under this Agreement or by law.

#### **INDEPENDENT CONTRACTOR RELATIONSHIP**

- (a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Agreement shall be Seller's employees exclusively without any relation whatsoever to Buyer.
- (b) Seller shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, Sellers, or subcontractors at any tier, in the performance of any of its obligations under this Agreement.
- (c) Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership between the parties, or shall constitute either party as the agent, employee or representative of the other.

#### **INFORMATION OF BUYER**

Information, including but not limited to technical and business information, provided by Buyer to Seller remains the property of Buyer. Seller agrees to comply with the terms of any Non Disclosure Agreement (or equivalent non-disclosure agreement) with Buyer and to comply with all Proprietary Information markings and Restrictive Legends applied by Buyer to anything provided hereunder to Seller. Seller agrees not to use any Buyer provided information for any purpose except to perform this Agreement and agrees not to disclose such information to third parties without the prior written consent of Buyer.

#### **INFORMATION OF SELLER**

- (a) Notwithstanding any document marking to the contrary, any information, knowledge or data which Seller has disclosed or may hereafter disclose to Buyer, or Buyer's affiliates, subsidiaries or contractors, incident to the placing and filling of this Agreement shall not be deemed to be confidential or proprietary information. Accordingly Buyer shall not be liable for any use or disclosure thereof.
- (b) With respect to any information, knowledge or data disclosed to Buyer, or Buyer's affiliates, subsidiaries or contractors, by Seller, Seller warrants that it has the full and unrestricted right to disclose the same to Buyer, or Buyer's affiliates, subsidiaries or contractors, without incurring legal liability to others, and that Buyer, and Buyer's affiliates, subsidiaries or contractors, shall have full and unrestricted right to use and disclose the same as it may deem fit. Seller warrants that in the conduct of work under the Agreement, Seller shall not use confidential or proprietary information of any third party for which Seller does not have transferable license rights and if such information is in, or comes into, Seller's possession, during the term of the Agreement, Seller shall not communicate or otherwise disclose such confidential or proprietary information to Buyer, or Buyer's affiliates, subsidiaries or contractors.
- (c) Except as otherwise agreed in writing with Buyer, Seller warrants that it is not the proprietor of any intellectual property rights (including copyright, trade secret, patent, application for patent, invention or license right) which would impair or restrict the freedom of Buyer, or Buyer's subsidiaries and affiliates, and their respective vendors and customers, to make use of the service rendered, work product called for or produced under this Agreement. In the event that this situation changes, Seller hereby agrees not to assert any such intellectual property rights against Buyer, Buyer's subsidiaries and affiliates, and their respective vendors and customers, on account of any use made of such work product (or derivatives or improvements thereof) by any of them.

- (d) Seller agrees to obtain the same warranty and commitment contained in this General Provision running in favor of Buyer, Buyer's subsidiaries and affiliates and their respective vendors and customers from each of Seller's subcontractors.

### **INSPECTION AND ACCEPTANCE**

- (a) Notwithstanding (i) payment; (ii) passage of title; (iii) prior inspection or test, or (iv) execution of an acceptance document, Buyer and its customer may inspect all Work , products or services, prior to acceptance or rejection at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Agreement. Buyer's final inspection and acceptance shall be at the delivery location specified by Buyer
- (c) unless otherwise designated by Buyer.
- (d) Seller shall provide and maintain a test and inspection system acceptable to Buyer and its customers, if required.
- (e) If Seller delivers non-conforming Work, Buyer may; (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Agreement requirements. Seller shall be liable to Buyer for any cost Buyer incurred to ensure such compliance.

Seller shall not re-tender rejected Work without disclosing the corrective action taken.

### **INSURANCE/INDEMNIFICATION**

- (a) Seller will maintain and provide evidence of General Liability, Property Damage, Product Liability, Aviation Products Liability (where, Products are intended for use on aircraft), Employer's Liability and Comprehensive Insurance as Buyer from time to time determines to be adequate. Seller shall provide Buyer with a certificate of insurance evidencing that the required minimum coverage are in effect and that Buyer, its directors, officers, employees, agents and representatives are named as additional insureds, provide a waiver of subrogation clause in favor of the additional insureds, and provide that all coverage provided by the Seller shall be primary. Such insurance shall also cover the actions of a subcontractor that Seller may utilize under this Agreement. Such insurance shall require the underwriters to provide Buyer thirty (30) days advance written notice of any cancellation or adverse material change with respect to any of the policies. If Seller fails to procure or maintain in force the insurance specified herein, Buyer may secure such insurance and the cost thereof shall be borne by Seller. It is understood and agreed that the insurance provided by Seller hereunder shall operate independent and apart from any obligations imposed upon Seller under the indemnity provisions of this Agreement.

Seller shall maintain, for the duration of this Agreement, insurance policies with policy limits not less than those indicated. Such insurance shall be issued by solvent and responsible insurance companies (rating of at least A- by A.M. Best).

Seller, and any lower tier subcontractor, shall furnish Buyer with a Certificate of Insurance evidencing the insurance coverage required in this Agreement, naming Buyer as Certificate Holder, and stating that the underwriters agree to provide Buyer with at least thirty (30) days prior written notice of any cancellation or material change in the coverage.

Coverage required shall be:

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Workers' Compensation and Employers Liability - Statutory coverage as required by the applicable jurisdictions. Employers Liability limit no less than \$100,000 each accident, \$100,000 disease each employee and \$500,000 disease policy limit.

Commercial General Liability - \$1,000,000 each occurrence including Personal & Advertising Injury and Products & Completed Operations.

Commercial Auto Liability - Combined single limit \$1,000,000 including Bodily Injury and Property Damage.

- (b) Seller shall without limitation as to time indemnify and save Buyer harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's compensation or Occupational Disease laws and from all claims from injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer negligence.
- (c) Seller does hereby irrevocably indemnify and agree to defend any claim or litigation, or to pay or reimburse any judgment and all loss and expense costs (including reasonable attorney fees) incurred in connection with any claim or litigation which asserts or is based upon any alleged design or manufacturing defect, negligence, failure to warn, or breach of warranty related to Seller's product(s) (including parts and components thereof purchased by Seller from its Sellers), delivered to Buyer, or breach of, or non-compliance with, any provision of this Agreement.
- (d) Seller warrants materials furnished pursuant to this Agreement shall be free from asbestos containing materials.
- (e) Seller shall indemnify Buyer against all claims, proceedings, damage, loss, expenditure, costs, and liability which may be made or brought against Buyer or which Buyer may sustain or incur under product liability laws or otherwise in respect or relation to or in connection with the Work whether or not the Work have been incorporated into other equipment or goods. For manufactured Work Seller shall maintain product liability insurance in an amount of not less than \$2,000,000.00 or its equivalent in terms satisfactory to Buyer. Seller shall provide to Buyer a copy of the policy and evidence of payment of the premium thereof.

## **INTELLECTUAL PROPERTY**

- (a) Seller agrees that Buyer shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Agreement by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Buyer's request and expense, all documentation necessary to perfect title therein in Buyer. Seller agrees that it will maintain and disclose to Buyer written records of, and otherwise provide Buyer with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Buyer and subject to the protection provisions of the clause entitled "Information of Buyer". Seller agrees to assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.
- (b) The Seller agrees to promptly disclose any such data, information, invention or discovery to Buyer. With respect to any such invention or discovery, the Seller further agrees that it will cooperate with Buyer, its officers and agents, in obtaining, at the expense of Buyer with respect to the prosecution thereof, patents on such inventions or discoveries in the name of and for the benefit of Buyer in the United States and/or foreign countries to the extent that Buyer may consider desirable. Seller will procure from its employees, without charge to Buyer, the execution of all patent applications,

- assignments and other instruments necessary to the procurement of such patents and to the vesting of title thereto in Buyer. Any compensation due Seller's employees shall be paid solely by Seller.
- (c) Buyer shall become the sole owner of any and all notes, reports, memoranda, and any other information (regardless of the media of expression) made or prepared in connection with any order placed by Buyer. Seller will not use any material developed by Seller under any order placed by Buyer without first obtaining the written consent of Buyer. All such materials, irrespective of the media of expression, shall be deemed to be works for hire and shall belong exclusively to Buyer. If by operation of law any of the material is not work made for hire, then Seller agrees to assign, and hereby assigns, to Buyer the ownership of such material including all copyrights thereto. Buyer may obtain and hold in its own name copyrights, registrations, and other protection that may be available in such material and Seller shall provide any assistance required to perfect such protection.
  - (d) If Seller is a non-profit institution, and if the work being done hereunder is pursuant to a contract with the U.S. Government which contains provisions regarding retention of intellectual property rights of the Seller, Seller shall retain ownership of inventions and Seller hereby grants and agrees to grant to Buyer an irrevocable, fully paid license under any patents covering inventions conceived and/or reduced to practice in the course of this Agreement, to make, have made, use and sell such inventions with the right to extend such license to Buyer's customers, including the U.S. Government, and to any of Buyer's licensees or co-producers of Buyer's or Buyer's affiliates, subsidiaries or contractors products.
  - (e) Seller agrees that it will cause its employees to execute contracts of employment or other agreements assuring the Seller the ability to comply fully with the provisions of this clause (a)-(e).
  - (f) Seller warrants that the Work performed and delivered under this Agreement will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless Buyer and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Agreement infringes or otherwise violates the intellectual property rights of any person or entity.
  - (g) Any compensation which may be claimed by or due to any Seller employee or any Seller's Contractor's employee in connection with any information, invention or patent or other intellectual property or intellectual property right, whether by agreement, statute, regulation or otherwise, shall be paid solely by Seller, and Seller shall indemnify and hold Buyer and Buyer's subsidiaries and affiliates, and their respective vendors and customers, harmless from and against any expense or liability, including costs, fees and all damages, arising out of all such claims, suits or proceedings therefore. If an injunction should issue, Seller shall procure for Buyer, and Buyer's subsidiaries and affiliates, and their respective vendors and customers, the rights to continue using the Goods and/or Services supplied by the Seller.

#### **LIMITATION OF LIABILITY**

**BUYER SHALL NOT BE LIABLE FOR ANY INDIRECT DAMAGES INCLUDING SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR LOST PROFITS.**

#### **NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

## **OBSOLESCENCE PLAN**

The Seller shall prepare and submit Obsolescence Management Plan to address and minimize the impact of parts obsolescence or Diminishing Manufacturing Sources (DMS) to the Buyer. The Seller shall identify parts which are at a risk of becoming obsolete at the outset of the program and update the plan periodically to include a current assessment of parts which risk becoming obsolete. The Buyer shall approve the plan and the Seller shall adhere to the approved plan. The Seller assumes responsibility for all obsolescence costs as a result of not following the approved obsolescence plan.

## **PACKING, TITLE, TRANSPORTATION**

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice. Buyer may direct specific terms or requirements for packaging.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer Task Order or Purchase Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Task Order or Purchase Order number.
- (c) Seller agrees to comply with U.S. Guidelines for Regulating Wood Packaging Materials in International Trade, 7 CFR Part 319, and shall indemnify Buyer for any fees, costs or penalties assessed by the U.S. Animal and Plant Health Inspection Service, USDA, or any other governmental agency, for noncompliance with these regulations.
- (d) Unless otherwise stipulated on the face of this Agreement, Work shall be shipped "F.O.B. Seller's Plant," as defined by the California Uniform Commercial Code ("CAUCC"). If Work is to be delivered "F.O.B. Destination," as defined by the CAUCC, transportation charges must be prepaid by Seller. In any event, title to said Work shall pass to Buyer on the title passage date (earlier of the Manufacturing Required Date (MRD) or the use date, unless Goods are delinquent to the MRD, in which case title passage shall occur upon arrival of such Work at the specified delivery location). Buyer insures all Work for which it accepts risk of loss while such Work is in transit. Therefore, Seller shall not declare any insurance value on such Work shipped via any carrier.
- (e) Seller shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. No charges for unauthorized transportation will be paid by Buyer. Any unauthorized shipment which results in excess transportation charges must be fully prepaid by the Seller. If Seller does not comply with the stated delivery schedule, Buyer may, in addition to any other right which Buyer may have, require delivery by fastest way. The charges resulting from this mode of transportation must be fully prepaid and the full cost of the shipment must be absorbed by the Seller.

## **PAYMENTS**

- (a) Buyer's standard terms of settlement shall be issuance of United States Dollars of the full or partial allowable invoiced amount to Seller after forty five (45) days.
- (b) Buyer shall be entitled to set off any amount owing from Seller to Buyer or to any of Buyer's affiliated companies against any amount payable under this Agreement.
- (c) Invoices shall be presented in the month following the preceding month in which the work was performed. Terms of the payment shall be net 30 days upon receipt of a proper invoice. Invoices may be in Sellers format that is acceptable to the Buyer. Any taxes arising out of the work performed under this Agreement other than those on Buyers net income shall be the responsibility of the Seller. Invoices shall be sent via email and a copy mailed to:

PACAVI Group, Inc  
Attn: Accounts Payable  
1620 Fifth Ave. Suite 500  
San Diego CA 92101

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- (d) Charges for Services will be billed by Seller on an hourly basis per the appropriate rate(s). Out of pocket expenses (including mileage, lodging, per diem and other incidental expenses) will be billed at the actual costs incurred (excluding fee or profit) and shall be reasonable and allowable expenses.

## **PERSONAL DATA PROTECTION**

(a) "BUYER Personal Data" includes any information relating to an identifiable natural person that is obtained by Seller from BUYER; "Processing" of Personal Data includes any operation performed upon Personal Data, such as collection, recording, organization, storage, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, blocking, erasure or destruction. (b) Seller, including its staff, shall view and Process BUYER Personal Data only on a need-to-know basis and only to the extent necessary to perform this Agreement. (c) Seller shall, to the extent allowable under its current technical and organizational measures, ensure the security and confidentiality of BUYER Personal Data in order to prevent, among other things, accidental, unauthorized or unlawful destruction, modification, disclosure, or loss. Seller shall immediately inform BUYER of any breach of this security and confidentiality undertaking. (d) Upon termination of this Agreement, for whatever reason, Seller shall take all reasonable efforts to stop the Processing of BUYER Personal Data. (e) These undertakings remain in force even after termination of this Agreement for whatever reason. (f) Seller understands and agrees that BUYER may use any "Contact Information" (such as name, address, telephone number, e-mail address) provided by Seller, or any of its representatives, for purposes reasonably related to the performance of this Agreement, including but not limited to supplier and payment administration, and that such information may be transferred to and stored in a BUYER global database. Seller agrees that it will comply with all legal requirements prior to the transfer of any of its customer, employee, or third-party Personal Data to BUYER. This Personal Data will not be shared beyond BUYER, its Affiliates and their contractors. BUYER will take appropriate measures to ensure that Contact Information is processed in conformity with applicable data protection laws.

## **PRODUCT SUPPORT**

At Buyer's request Seller agrees to negotiate a product support agreement with Buyer, enabling Buyer to meet all its product support requirements for the Work. Until the precise product support requirements are defined the Seller agrees to provide at no additional charge to the Buyer.

## **QUALITY CONTROL SYSTEM**

- (a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Agreement and acceptable to the Buyer. Such Quality requirements are to include, but not limited to:
- Federal Aviations Regulations
  - SAE AS 9100
  - ISO 9000
  - FAR Part 145
  - FAR Part 135
  - FAR Part 121
- (b) Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.
- (c) Seller agrees that it is subject to whichever quality assurance conditions are specified on the face of the Task Order or Purchase Order.

## **RECORD RETENTION REQUIREMENTS**

Seller shall maintain, for four (4) years, Contract files for supplies, equipment, material, or services including supporting documentation and back-up files including, but not limited to, invoices and

memoranda, e.g., memoranda of negotiations showing the principal elements of price negotiations. Product acceptance records, including inspection records, material certifications, and acceptance test records.

### **RELEASE OF INFORMATION**

Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for manufacture and assembly of goods), or release any information concerning this Agreement or any part thereof or with respect to its business relationship with Buyer, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative Contract, without Buyer's prior written consent. Buyer's written approval, if granted, will be subject to any "Sponsorship" clause in Buyer's Government Prime Contract, if applicable. Further, Seller or its agents shall not use Buyer's name, photographs, logo, trademark, or other identifying characteristics or that of any of its subsidiaries or Affiliates without Buyer's prior written approval.

### **REMOVALS OR REPLACEMENTS OF PRODUCTS OR RE-PERFORMANCE OF SERVICES**

Seller agrees that, notwithstanding the provisions of any warranties, expressed or otherwise, negotiated with respect to Goods or Services purchased from Seller by Buyer or Buyer's customer, Seller shall reimburse Buyer for labor and material cost, including overhead and general and administrative (G&A) expense reasonably incurred by Buyer in connection with:

- (a) The unscheduled removal and/or replacement of such Goods or components thereof from a higher level assembly due to failure of such Goods to conform to requirements of this Agreement or defective material, workmanship or design; or
- (b) Any such removal of said Goods at Seller's request; or
- (c) Any such removal of said Goods required due to any previously required changes to said Goods that Seller has failed to incorporate.
- (d) Re performance of any services which are not acceptable to Buyer or its Customer.

This remedy is not exclusive and shall not be in lieu of any other remedy available at law, in equity or under this Agreement.

### **SEVERABILITY**

Each paragraph and provision of this Agreement is severable, and if one or more paragraphs or provisions are declared invalid it shall be given no effect and shall be deemed to be excluded from this Agreement, but the remaining provisions of this Agreement will remain in full force and effect. The parties shall use all reasonable endeavors to replace the invalid or unenforceable provision by a valid provision, the effect of which is as close as possible to the intended effect of the invalid provision.

### **STOP WORK ORDER**

- (a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as the Parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Agreement during the period of Work stoppage.
- (b) Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

## **SUPPLIER SECURITY AND CRISIS MANAGEMENT POLICY/C-TPAT**

Seller shall have and comply with a company security and crisis management policy. Upon Buyer's request, Seller shall provide Buyer a copy thereof and certification (in a form acceptable to Buyer) of Seller's compliance with this General Provision. Seller shall revise and maintain the policy proactively, and as may be requested by Buyer, in anticipation of security and crisis risks relevant to the Seller's business. Seller's policy, at a minimum, shall identify, and require the taking, by Seller's management and employees, of the measures necessary to do the following:

- (a) provide for the physical security of the people working on Seller's premises and others working for or on behalf of Seller;
- (b) provide for the physical security of Seller's facilities and physical assets related to the performance of work, including, in particular, the protection of Seller's mission critical equipment and assets;
- (c) protect from the loss of, misappropriation of, corruption of, and/or other damage to software related to the performance of work;
- (d) protect from the loss of, misappropriation of, corruption of, and/or other damage to Buyer's and Seller's drawings, technical data, and other proprietary information related to the performance of work;
- (e) provide for the prompt recovery – including through preparation, adoption, and maintenance of a disaster recovery plan – of facilities, physical assets, software, drawings, technical data, other intellectual property, and the Seller's business operations in the event of a security breach, incident, crisis or other disruption of Seller's ability to use the necessary facilities, physical assets, software, drawings, technical data, or other intellectual property or to continue operations;
- (f) for any deliveries of Work originating outside of the United States for delivery to the United States, review by Seller of the requirements of the Customs-Trade Partnership Against Terrorism ("C-TPAT") for Air Carriers, Rail Carriers, Sea Carriers and Highway Carriers comply with the security procedures outlined by the United States Customs Service at <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism> ;
- (g) identify an individual contact (name, title, location and email/telephone/fax numbers) responsible for Seller's facility, personnel, and shipment security measures.

Buyer reserves the right to inspect Seller's policy and to conduct on-site audits of Seller's facility and practices to determine whether Seller's policy and Seller's implementation of the policy are reasonably sufficient to protect Buyer's interests. If Buyer reasonably determines that Seller's policy and/or policy implementation is/are insufficient to protect Buyer's property and interests, Buyer may give Seller notice of such determination. Upon receiving such notice, Seller shall have forty-five (45) days thereafter to make the policy changes and take the implementation actions reasonably requested by Buyer. Seller's failure to take such actions shall give Buyer the right to terminate this Agreement immediately without further compensation to Seller.

Seller agrees that it will make reasonable efforts to become a member of C-TPAT in a timely manner, if it is eligible to do so. At Buyer's request, Seller shall inform Buyer of Seller's C-TPAT membership status and its anticipated schedule for participation in C-TPAT. Where Seller does not exercise control of manufacturing or transportation of Goods destined for delivery to Buyer or its customers in the United States, Seller agrees to communicate C-TPAT security recommendations to its suppliers and transportation providers and to condition its relationship to those entities on their implementation of such recommendations, unless Seller is using such supplier and transportation provider at Buyer's request.

## **SURVIVABILITY**

If this Agreement expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:

- Dispute Resolution
- Export/Import Control
- Governing Law
- Independent Contractor Relationship
- Information of Buyer
- Insurance/Indemnification
- Intellectual Property
- Release of Information
- Warranty

## **TERMINATION**

- (a) Buyer may terminate all or any part of a Task Order and or Purchase Order for convenience at any time. Buyer shall terminate by delivery to Seller of a notice of termination specifying the extent of termination and the effective date.

After receipt of a notice of termination, and except as directed by Buyer, Seller shall immediately: (1) stop work as directed in the notice; (2) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Task Order or Purchase Order and/or; and (3) terminate all Subcontracts to the extent they relate to work terminated. After termination, Seller shall submit a final termination settlement to Buyer in the form and in the manner prescribed by Buyer.

In the event that Buyer wrongfully terminates this Agreement for default, in whole or in part, such termination becomes a Termination for Convenience under this General Provision.

Seller agrees to waive any claim when a reduction in the quantity on Task Order or Purchase Order and/or has a value which is under \$1,000.00.

When a change in requirements results in a quantity reduction those quantities will be deleted from the schedule on the basis that any quantity with incurred cost will be consumed by future releases. Should the quantity with incurred cost not be consumed, this General Provision applies.

- (b) In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (c) Seller shall continue all Work not terminated.
- (e) To the extent permitted by law, either Seller or Buyer may terminate this Agreement effective immediately and without liability upon written notice to the other party if any one of the following events occurs: (a) the other party files a voluntary petition in bankruptcy or otherwise seeks protection under any law for the protection of debtors; (b) a proceeding is instituted against the other party under any provision of the bankruptcy law which is not dismissed within sixty (60) days; (c) the other party is judged bankrupt; (d) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other party; (e) the other party becomes insolvent or suspends business; or (f) the other party makes an assignment of its assets for the benefit of its creditors.

## **TIMELY PERFORMANCE**

- (a) Seller's timely performance is a critical element of this Agreement. Time is of the essence.
- (b) Unless advance shipment has been authorized in writing by Buyer, Buyer may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If Seller becomes aware of difficulty in performing the Work, Seller shall give timely written notice to Buyer, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Buyer.

## **WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by Buyer to enforce any of the provision(s) of this Agreement shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of Buyer thereafter to enforce each and every such provision(s).
- (b) The rights and remedies of Buyer in this Agreement are cumulative and in addition to any other rights and remedies provided by law or in equity.

## **WARRANTY**

Seller warrants that all Work, products or services, furnished pursuant to this Agreement shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Agreement and be free from defects in design, material and workmanship. Seller further warrants and represents that the Work performed hereunder is merchantable and fit for use for the particular purpose described in this Agreement. The warranty shall begin upon final acceptance and extend for a period not less than twenty-four (24) months, the period agreed by the parties if longer than twenty-four (24) months, or the manufacturer's warranty period, whichever is longer. If any non-conformity with Work appears within that time, Seller, at Buyer's option, shall promptly repair, replace, or re-perform the Work and hold Buyer harmless from any loss, damage or expense that Buyer may suffer from the breach of this warranty. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense. If repair or replacement or re-performance of Work is not timely, Buyer may elect to return the non-conforming Work or repair or replace Work or re-procure the Work at Seller's expense. All warranties shall be for the benefit of Buyer and its customers. At all times during the performance of this Agreement, Buyer shall have the right to inspect Work performed by Seller.

**END OF DOCUMENT**