



## **Terms and Conditions of Sale**

These terms and conditions, as supplemented by the terms stated or referenced on the face of the Quote issued by Hebeler Process Solutions, LLC or any Hebeler Process Solutions, LLC affiliate receiving the order (hereinafter "Seller") shall be the exclusive statement of the agreement between Buyer and Seller. Buyer expressly accepts the Quote terms and conditions and agrees that any additional or different terms provided by Buyer (in an Order acknowledgment or otherwise) will be ineffective.

### **1. DEFINITIONS**

"Buyer" shall mean the company that issues the Order to Seller.

"Days" shall mean calendar days.

"Force Majeure Event(s)" shall mean acts of God or nature, acts of civil or military authority, fires, floods, epidemic, war, strikes or other labor troubles involving employees or subcontractors of either Party, or like occurrences that are beyond the control and without the fault of either Party and which can be demonstrated by the affected Party to have a direct effect on the performance of its obligations under the Order.

"Order" shall mean the purchase order issued by Buyer to Seller, and any attachments, drawings, specifications or other documents that are incorporated by reference, as it may be amended, modified or supplemented from time to time in accordance with the terms thereof. However, any attempted acknowledgement of the Quote or any invoice or Order containing terms inconsistent with or in addition to the terms of the Quote or these Terms is not binding unless specifically agreed by Seller in a separate writing.

"Order Price" shall mean the agreed price stated in the Order for the Work, including adjustments (if any) in accordance with the Terms.

"Parties" shall mean Buyer and Seller collectively and "Party" means either one of them.

"Quote" shall mean the quote issued from Seller to Buyer, and any attachments, drawings, specifications or other documents that are incorporated by reference, as it may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Seller" shall mean Hebeler Process Solutions, LLC or any Hebeler Process Solutions, LLC affiliate receiving the Order.

"Terms" shall refer to these terms and conditions.

"Work" shall mean labor, services, materials, supplies, products, equipment, information, software, systems, data, specifications, or reports furnished by Seller to Buyer in accordance with the Order.

### **2. ACCEPTANCE OF TERMS**

Parties agree to be bound by and to comply with all Terms set forth herein and in the Quote, to which these Terms are attached and are expressly incorporated by reference, including any amendments, supplements, specifications and other documents referred to in the Quote and agreed to by Seller. Acknowledgement of the Quote, including without limitation, by issuing an Order, shall be deemed acceptance of the Quote and these Terms. Reference in the Quote to any such offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of the Order. ANY ATTEMPTED ACKNOWLEDGMENT OF THE QUOTE OR ANY INVOICE OR ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THE QUOTE OR THESE TERMS AND CONDITIONS IS NOT BINDING UNLESS SPECIFICALLY AGREED BY SELLER IN A SEPARATE WRITING.

### **3. ELECTRONIC COMMERCE**

At Buyer's direction, Seller shall access and use Buyer's e-business website in connection with Seller's duties under the applicable Order and shall comply with all requirements therein which are consistent with the applicable Order provided that Buyer shall provide reasonable assistance to Seller in its use of the e-business website.

### **4. COMMUNICATIONS**

All written communications from Seller to Buyer must be directed to Buyer's purchasing representative, as identified in the Order or as otherwise designated in writing by Buyer. All written communications from Buyer to Seller must be directed to Seller's designated representative, as identified in the Quote. No adjustments to the Work shall be made unless authorized in writing by Buyer prior to implementation. Any such adjustment must be confirmed by a change notice to the Order executed by authorized representatives of both Parties.



## **5. MODIFICATIONS**

Buyer may at any time, by written notice to Seller, make changes within the general scope of the Order in any one or more of the following: a) drawings, designs, scope of supply, or specifications where the goods to be furnished are to be specially manufactured for Buyer; b) method of shipment or packing; c) place and time of delivery; d) amount of Buyer's furnished property; e) quality; f) quantity; or g) scope or schedule of the Items. If any changes cause an increase or decrease in the cost, or the time required for the performance of any work under the Order, a mutually agreed upon equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing. Any Seller claim for adjustment under this clause will be deemed waived unless asserted within sixty (60) Days from Seller's receipt of the change or suspension notification. During performance of the Order, Seller shall not make any changes in the design of Work to be furnished by Seller under the Order without advance written notification to and written approval of Buyer. The above requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

## **6. PAYMENT TERMS/PRICES**

Buyer will compensate Seller in accordance with the payment terms and prices set forth in the Order. If the Order is silent all payments are due with the Order. Any payment(s), including final payment, shall not relieve Seller from any of its obligations to Buyer under the Order. If payment is not received in the time period specified in the Order, Buyer agrees to pay interest at a rate of 1.5% per month or, if such rate is in excess of the rate allowed by law, then Buyer agrees to pay the highest rate allowed by law. In addition, Buyer agrees to pay all costs of collection, including the cost of litigation and reasonable attorney's fees. Further, Buyer agrees to, upon Seller's request, execute financing statements and other instruments needed for Seller to secure its interest in property delivered under the Order.

## **7. TAXES AND DUTIES**

The purchase price under this Quote does not include any applicable sales or use taxes. If sales or use taxes are applicable to the Work and Seller is required by applicable law to collect such taxes in the jurisdiction in which the delivery point is located (as identified in the Order), Seller shall add the applicable sales or use tax to its invoices (as a separate item) and Buyer will pay Seller as an addition to the purchase price upon its verification that such amount is due and payable. Seller shall contact Buyer's purchasing representative in the event: (1) the delivery point is not clearly specified; (2) Seller has reason to believe that tax information identified on the Order may be incorrect or no required tax information is specified; (3) Seller believes a tax exempt certificate or other applicable document is required from Buyer; or (4) Seller otherwise has any question regarding the issue of sales or use taxes.

## **8. DELIVERY**

A. The delivery terms for the Work shall be as set forth in the Quote. If no delivery terms are specified in the Quote, the terms shall be Ex-Works Seller's factory. Delivery, in whole or in part, shall not be made more than five (5) Days prior to the delivery date specified herein, unless agreed in writing by Buyer.

B. If liquidated damages for delay in delivery or completion are set forth in the Quote, Seller expressly agrees that (a) such liquidated damages were specifically negotiated by the Parties and are in lieu of Buyer's actual damages for delay, which both Parties agree such damages would be difficult or impossible to calculate, (b) such liquidated damages constitute a fair and reasonable estimate of the amount of damages that would be incurred by Buyer in the event of such delays in delivery or completion of the Work in light of anticipated harm, and the difficulties of proof of and inconvenience or nonfeasability of obtaining any adequate remedy, (c) such liquidated damages are not intended as and shall not be deemed or construed as penalties, and (d) it waives any right to contest the validity or enforceability of such liquidated damages. Notwithstanding any such payment of liquidated damages for late delivery, Seller shall remain obligated to meet the delivery terms. If liquidated damages are not set forth in the Quote, Seller expressly excludes and will not pay for liquidated damages.

C. Seller shall be responsible for packaging all equipment/materials and loading each shipment made under the Order on carrier's conveyance in accordance with packaging specifications and requirements stated in the Order. If the Order does not state packaging specifications and other related shipping requirements, Seller may, in its sole discretion, choose packing and arrange for loading on Buyer's conveyance.

D. Seller shall be responsible for marking all products provided as part of the Work to indicate the applicable country



of origin. Such marking shall be clear, conspicuous and permanent. If the product is not capable of being marked, the outer-most box or container shall be marked with the country of origin.

E. Seller shall provide all relevant documentation, as required by Buyer as stated in the Order.

F. If Buyer cannot take delivery in time, Buyer shall be charged for storage of the Work for any period longer than one (1) week.

#### **9. DELAYS AND FORCE MAJEURE**

A. Should a Force Majeure Event(s) prevent or delay the total or partial performance required under the Order, the Party claiming a Force Majeure Event(s) shall advise the other Party of the beginning and the expected period of such Force Majeure Event(s) with reasonable evidence within ten (10) days after the occurrence of such Force Majeure Event(s). Neither Party shall be considered to be in default or in breach of its obligations under the Order if and to the extent that its failure or delay in performance is actually caused by a Force Majeure Event(s). Any additional costs and expenses incurred by reason of a Force Majeure Event(s), with the exception of delay in delivery, shall be borne exclusively by the Party experiencing the Force Majeure Event(s).

B. The Parties must exercise their best efforts to mitigate the effect of such Force Majeure Event(s) on the performance of the Work. Any relief granted by either Party shall be limited to an extension of the time of performance to the extent caused by the Force Majeure Event(s). If any Force Majeure Event(s) or delay continues for more than ninety (90) Days, either Party shall have the right, but not the obligation, to terminate the Order.

#### **10. LABELING**

Packing, preservation and marking will be in accordance with the specification drawing or as specified on the Order, or if not specified, a commercially accepted practice will be used, which will be consistent with applicable law. All goods shall be packed in an appropriate manner, giving due consideration to the nature of the goods, with packaging suitable to protect the goods during transport from damage and otherwise to guarantee the integrity of the goods to destination. Goods that cannot be packed due to size or weight shall be loaded into suitable containers, pallets or crossbars thick enough to allow safe lifting and unloading. Seller shall place all markings in a conspicuous location as legibly, indelibly and permanently as the nature of the article or container will permit. Each package shall bear Buyer's order number and be accompanied by a readily accessible packing list detailing the contents and including the following information on each shipment under this Order: Buyer's order number; case number; routing center number (if provided by Buyer's routing center); country of manufacture; destination shipping address; commodity description; gross/net weight in kilograms and pounds; dimensions in centimeters and inches; center of gravity for items greater than one (1) ton; precautionary marks (e.g., fragile, glass, air ride only, do not stack, etc.), loading hook/lifting points and chain/securing locations where applicable to avoid damage and improper handling.

#### **11. QUALITY**

When requested by Buyer, Seller shall promptly submit real time production and process measurement and control data in the form and manner requested by Buyer. Seller shall provide and maintain an inspection, testing and process control system covering the goods and services provided hereunder that is acceptable to Buyer and its customer and complies with Buyer's quality requirements that are set forth on the Order or are otherwise agreed to in writing by the parties. Seller shall keep complete records relating to Seller's inspection, testing, and process control systems and shall make such records available to Buyer and its customer for: (a) three (3) years after completion of the Order; (b) such period as set forth in the specifications applicable to the Order; or (c) such period as required by applicable law, if specified by Buyer on the Order, whichever period is the longest.

#### **12. INSPECTION/TESTING**

In order to assess Seller's work quality, conformance with Buyer's specifications and compliance with the Order, including but not limited to Seller's representations, warranties, certifications and covenants under the Order, upon reasonable notice by Buyer, all: (a) goods, materials and services related in any way to the goods and services purchased hereunder (including without limitation raw materials, components, intermediate assemblies, work in process, tools and end products) shall be subject to inspection and test by Buyer and its customer or representative at all times and places, including sites where the goods and services are created or performed, whether they are at



premises of Seller, Seller's suppliers or elsewhere. If any inspection, test, audit or similar oversight activity is made on Seller's or its suppliers' premises, Seller shall, without additional charge: (i) provide all reasonable access and

assistance for the safety and convenience of the inspectors and (ii) take all necessary precautions and implement appropriate safety procedures for the safety of Buyer's personnel while they are present on such premises. If specific Buyer and/or Buyer's customer tests, inspection and/or witness points are included in the Order, Seller shall notify Buyer in writing at least five (5) Days prior to each of Seller's scheduled final and, if applicable, intermediate test/inspection/witness points. Inspections and tests by Buyer shall be performed in such a manner as to not unduly delay performance by Seller under the Order.

### **13. REJECTION**

If any of the goods and/or services furnished pursuant to the Order are found within a reasonable time, which in no event shall exceed 90 days, after delivery to be defective or otherwise not in conformity with the requirements of the Order, including any applicable drawings and specifications, then Buyer may, at Seller's expense request Seller to, in a reasonable period of time, inspect, adjust, and/or repair nonconforming (with respect to mechanical or electrical non-performance) goods and/or services with goods and/or services that conform to all requirements of the Order. If Seller is unable to take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with all requirements of the Order, Seller may find a third party to take such actions as required to cure all defects and/or bring the goods and/or services into conformity with all requirements of this order, with all associated costs and expenses (including, but not limited to, material, labor and handling costs and any required re-performance of value added machining or other service) being born by Seller. For any repairs or replacements, Seller shall perform any tests requested by Buyer to verify conformance to the Order.

### **14. TITLE PASSAGE**

A. Title to the Work shall pass to Buyer at the later of (a) final payment for such Work, or (b) receipt of the Work by Buyer per the delivery terms in the Order. In the event of advance or progress payments, Seller shall, to the extent feasible, identify or otherwise mark the Work as Buyer's property.

B. Unless otherwise specified in the Order, risk of loss for the Work or any portion thereof shall pass to Buyer upon shipment.

### **15. WARRANTIES**

For a period of twelve (12) months, from the date of delivery to Buyer, Seller warrants that the goods and services provided pursuant to the Order, whether provided by Seller or a direct or indirect supplier of Seller, will be (a) delivered free and clear of any liens or claims of any nature including without limitation title claims, and Seller will cause any lien or encumbrance asserted to be discharged, at its sole cost and expense, within thirty (30) Days of its assertion (provided such liens do not arise out of Buyer's failure to pay amounts not in dispute under the Order or an act or omission of Buyer); (b) new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by Buyer; (c) free from all defects in workmanship and material; and (d) provided in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements approved or adopted by Buyer as specified in the Order. Seller further warrants that all services will be performed in a competent and professional manner in accordance with Supplier's industry standards. **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 15 SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. FURTHER, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**



#### **16. COMPLIANCE WITH LAWS**

Seller represents, warrants, certifies and covenants (“Covenants”) that it will comply with all: (a) laws applicable to the goods, services and/or the activities contemplated or provided under the Order and (b) good industry practices,

including the exercise of that degree of skill, diligence, prudence and foresight, which can reasonably be expected from a competent seller who is engaged in the same type of service or manufacture under similar circumstances. Seller agrees to cooperate fully with Buyer’s audit and/or inspection efforts (including completing and returning questionnaires) intended to verify Seller’s compliance with this Section 16. Buyer shall have the right to audit all pertinent records of Seller, and to make reasonable inspections of Seller facilities, to verify compliance with this Section 16.

#### **17. DISPUTE RESOLUTION AND CHOICE OF LAW**

The Parties shall attempt to amicably resolve any dispute which arises under the Order by engaging the appropriate representatives within each Party’s company. The Order shall, in all respects, be interpreted, construed, and governed by and in accordance with the laws of the state of New York, disregarding any conflict of law provisions which may require the application of the laws of another jurisdiction. If Seller and Buyer have a controversy, the Parties consent to the exclusive jurisdiction and venue in any court of competent jurisdiction in the State of New York and/or the U.S. District Courts for the Western District of New York, and to service of process under the statutes of New York. The Parties submit to the jurisdiction of said courts and waive any defense of forum non conveniens. The Parties waive all rights to jury trials.

#### **18. RIGHTS AND REMEDIES OF THE PARTIES**

The rights and remedies of the Parties as set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay by either Party to exercise any rights or remedies under the Order shall not operate as a general waiver thereof.

#### **19. PROPER BUSINESS PRACTICES**

The Parties shall act in a manner consistent with all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with the Order. Further, in the execution of its obligations under the Order, the Parties shall take the necessary precautions to prevent any injury to persons or to property.

#### **20. BUYER’S PROPERTY**

The following additional provisions shall apply to any and all tools, patterns, equipment, material, or other property which is either (i) supplied to Seller by Buyer or (ii) purchased by or on behalf of Buyer to perform the work stipulated in the Order.

A. Seller shall not use property furnished by Buyer on any work other than the work specified in the Order without the prior written consent of Buyer.

B. Title and all rights to property furnished by Buyer to Seller under the Order shall remain with Buyer. Seller shall segregate and clearly mark property supplied by Buyer to Seller to show Buyer’s ownership and shall do all things necessary to preserve Buyer’s title thereto, free and clear of all encumbrances. Seller shall, if requested by Buyer, submit to Buyer an itemized inventory showing the description, location, and identifying marks of each item of property furnished by Buyer to Seller. Buyer shall have the right to enter Seller’s premises and inspect any and all property furnished by Buyer to Seller under the Order. Should Seller fail to perform the duties imposed upon it by this Section 20 or should Buyer at any time have reason to believe that its title to, or right to the possession of, any property furnished by Buyer to Seller is threatened, Buyer shall have the right to enter upon Seller’s premises upon twenty four (24) hours’ notice and remove any or all such property. Upon completion or termination of the Order, Seller shall segregate and collect in one location all property furnished by Buyer to Seller and shall dispose of the same as Buyer may direct, at Buyer’s expense. If, after sixty (60) Days after completion or termination of the Order, Buyer has not directed to Seller how Buyer would like Seller to dispose of property furnished by Buyer to Seller, Seller may dispose of property as it sees fit in its sole discretion with no recourse to Buyer for any expenses incurred or resulting from such disposition.





C. Unless otherwise approved by Buyer in writing, Seller shall, at Buyer's expense, perform all maintenance, repairs, and replacements necessary with respect to property furnished by Buyer to Seller so that the same may remain suitable for the use contemplated hereby and may, at the time required by the Order, be returned to Buyer in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.

D. Seller shall give Buyer prompt written notice of any property furnished by Buyer to Seller which upon delivery to Seller is found to be defective. The correction or replacement of such defective property furnished by Buyer to Seller shall be accomplished at a mutually agreed upon direction and expense.

E. Upon delivery, procurement or manufacture of any property furnished by Buyer to Seller, the risk of loss or damage shall be upon Seller. Risk of loss or damage shall transfer to Buyer when such property is returned to Buyer in the manner required hereunder.

#### **21. SELLER'S STATUS**

It is understood and agreed that Seller and/or its employees engaged in the performance of the Order by Seller are not employees of Buyer and are not entitled to Buyer employee benefits or privileges or any payment from Buyer (other than as expressly provided for in the Order) and the Seller shall pay the salaries or expenses, applicable taxes, including Social Security and unemployment benefits of said employees. Seller shall also pay any expenses normally paid by an employer in connection with its employees assigned to Buyer's account. Seller and its employees are and shall be deemed to be independent contractors at all times during its performance of the work specified in the Order.

#### **22. COMPLIANCE WITH LAW.**

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all of the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement and for the operation of Buyer's business. Buyer shall comply with all export and import laws of all countries involved in the goods and services provided by Seller under the Order. Buyer assumes all responsibility for shipments requiring import clearances. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on goods or services provided by Seller under the Order.

#### **23. MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

Parties shall keep confidential any: (a) any other tangible or intangible property furnished by any Party in connection with this Order, including any drawings, specifications, data, goods and/or information ("Disclosing Party"); any receiving party shall be hereafter referred to as ("Receiving Party") (b) technical, process, proprietary or economic information derived from drawings or 3D or other models owned or provided by Disclosing Party; and (c) any other tangible or intangible property furnished by Disclosing Party to Receiving Party in connection with this Order, including any drawings, specifications, data, goods and/or information (the "Confidential Information") and shall not divulge, directly or indirectly, the Confidential Information for the benefit of any other party without Disclosing Party's prior written consent. Confidential Information shall also include any notes, summaries, reports, analyses or other material derived by Receiving Party in whole or in part from the Confidential Information in whatever form maintained (collectively, "Notes"). Except as required for the efficient performance of this Order, Receiving Party shall not use or permit copies to be made of the Confidential Information without Disclosing Party's prior written consent. If any such reproduction is made with prior written consent, notice referring to the foregoing requirements shall be provided thereon. The restrictions in this Section regarding the Confidential Information shall be inoperative as to particular portions of the Confidential Information disclosed by Disclosing Party to Receiving Party if such information: (i) is or becomes generally available to the public other than as a result of disclosure; (ii) was available on a non-confidential basis prior to its disclosure; (iii) is or becomes available on a non-confidential basis from a source other than Disclosing Party when such source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation, or (iv) was independently developed by either Party, without reference to the Confidential Information, and Receiving Party can verify the development of such information by written documentation. Upon completion or termination of this Order, Receiving Party shall promptly return to Disclosing Party all Confidential Information, including any copies thereof, and shall destroy (with such destruction certified in writing by Receiving Party) all Notes and any copies thereof. Any knowledge or information, which either Party shall have disclosed or may hereafter disclose to Receiving Party and which in any way relates to the goods or services purchased under this Order



(except to the extent deemed to be Disclosing Party's property), shall not be deemed to be confidential or proprietary and shall be acquired by Receiving Party free from any restrictions (other than a claim for infringement) as part of the consideration for this Order, and notwithstanding any copyright or other notice thereon, Disclosing Party shall have the right to use, copy, modify and disclose the same as it sees fit.

#### **24. ASSIGNMENT AND SUBCONTRACTING**

Seller shall flow the substance and obligations of the terms herein to its subcontractors. Buyer may not assign its rights or obligations under the Order without the prior written consent of Seller.

#### **25. SUBCONTRACTOR FLOW DOWNS FROM US GOVERNMENT CONTRACTS**

When work performed under the Order is to be used in the performance of a contract or subcontract with a governmental body or other entity, the applicable government contract requirements, if referenced in the Order, shall apply.

#### **26. INDEMNIFICATION**

**EXCEPT IN THE CASE OF A CLAIM UNDER THIS SECTION OR A BREACH OF THE OBLIGATIONS SET FORTH IN SECTION 15, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANYONE CLAIMING BY, THROUGH OR UNDER THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED TO THE PRODUCTS OR THE TERMS FROM ANY CAUSE OR CAUSES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN THE CASE OF SELLER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 15, IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE TERMS, WHETHER IN CONTRACT OR TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE PURCHASE PRICE OF THE PRODUCTS, EVEN IF SELLER IS ADVISED OR PLACED ON NOTICE OF THE POSSIBILITY OF SUCH PENALTIES OR DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE OF ANY PRODUCTS.**

#### **27. LIMITATIONS ON INDEMNIFICATION**

Maximum individual and aggregate third-party claim liability. Seller is not obligated to reimburse Buyer under Section 26 for any Losses that exceed an aggregate of fifteen percent (15%) of the price stated on the Order. Payment adjustments for insurance proceeds. Payments by Seller under Section 26 in respect of any losses are limited to the amount of any liability or damage that remains after deducting any insurance proceeds and any indemnity, contribution or other similar payment actually received by Buyer in respect of any such indemnity claim, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims and any related increases in insurance premiums or other charge-backs. Buyer shall use its best efforts to seek to recover any insurance proceeds in connection with making a claim under this Section 27. Promptly after the realization of any insurance proceeds, indemnity, contribution or other similar payment, Buyer shall reimburse Seller for such reduction in losses for which Buyer was paid under Section 26 before the realization of reduction of such Losses.

Payment adjustments for taxes. Regarding any payment made under Section 26 in respect of losses, Seller:

- (a) may reduce it by an amount equal to any tax benefit actually realized as a result of such Losses by Buyer; and,
- (b) must increase it by an amount equal to any tax imposed on the receipt of such indemnity payment.

**Sole remedy.** SECTION 25 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF THE SELLER AND THE SOLE AND EXCLUSIVE REMEDY FOR THE BUYER FOR ANY DAMAGES COVERED UNDER SECTION 25.

#### **28. ORDER OF PRECEDENCE**

Except as provided otherwise in a written document executed by authorized representatives of Buyer and Seller, in the event of any conflict among the provisions of the Order and any other associated documentation, the following order of precedence shall apply in interpreting the Order: a) the text of the Quote, b) the Supplemental Terms, c) any special



or supplemental terms and conditions incorporated by reference in such Quote, d) these Terms, and e) other Order documents.

### **29. NEWS, PUBLICITY, AND ADVERTISING**

No news release or any other publicity in any way relating to Buyer or Seller concerning the Order shall be made by either Party to any news media or the general public without the prior written approval of the other Party.

### **30. TERMINATION**

- a) Buyer may terminate the Order (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Terms which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Order, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.
- b) If Buyer terminates the Order pursuant to Section 29(a), (i) Seller shall reimburse Buyer the difference between that portion of the Order Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Order Price allocable to Work completed, (b) lease fees incurred, and (c) amounts for any Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the schedule and rates set forth in the Order.
- c) Seller may suspend or terminate the Order (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Order, including, but not limited to, failure or delay in Buyer providing payment, making any payment when due, or fulfilling any payment conditions.
- d) If the Order (or any portion thereof) is terminated for any reason other than Seller's default under Section 29(a), Buyer shall pay Seller for all Work completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to quoted margin of the Order.

### **31. OBLIGATIONS ON TERMINATION**

Unless otherwise directed by Buyer, upon completion of the Order or after receipt of a notice of termination of the Order for any reason, Seller shall immediately: (a) stop work as directed in the notice; (b) place no further subcontracts or Orders for materials, services or facilities hereunder, except as necessary to complete any continued portion of the Order; and (c) terminate all subcontracts to the extent they relate to work terminated. Promptly after termination of the Order and unless otherwise directed by Buyer, Seller shall deliver to Buyer all completed work, work in process, including and all of Buyer's Confidential Information as defined in Section 22 and Buyer shall compensate Seller consistent with Section 29 (Termination).

### **32. SUSPENSION**

Buyer may at any time, by notice to Seller, suspend performance of the work for up to two weeks. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment Seller has on hand for performance. Buyer may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall within in a reasonable amount of time after receipt of written notice specifying the effective date and scope of withdrawal, resume diligent performance on the specified effective date of withdrawal of suspension. All claims for increase or decrease in the cost of or the time required for the performance of any work caused by such suspension shall be pursued pursuant to, and consistent with, Section 5 (Changes).

### **33. SEVERABILITY**

In the event any provision of the Order is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions of the Order will not be affected and, in lieu of such invalid





or unenforceable Article, there will be added automatically as part of the Order provisions as similar in terms as may be valid and enforceable under applicable law.

**34. WAIVER**

No claim or right arising out of a breach of the Order can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved Party. Either Party's failure to enforce any provisions hereof shall not be construed to be a waiver of a Party's right thereafter to enforce each and every such provision.

**35. HEADINGS**

Headings and sections set forth in the Order are for convenience of reference only and do not alter the meaning, content, or enforceability of any Article hereof.

**36. ENTIRE AGREEMENT**

The Quote, with documents as are expressly incorporated by reference, is intended as a complete, exclusive and final expression of the Parties' agreement with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, whether written or oral, between the Parties. The Quote may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument. Facsimile signatures on such counterparts are deemed originals. No course of prior dealings and no usage of the trade shall be relevant to determine the meaning of the Quote even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. The term "including" shall mean and be construed as "including, but not limited to", unless expressly stated to the contrary. All provisions or obligations contained in the Order, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of an Order will survive and remain binding upon and for the benefit of the parties, their successors (including without limitation successors by merger) and permitted assigns.