

KEYSTONE ENGINEERING COMPANY

Terms and Conditions of Purchase

A. DEFINITIONS

As used throughout these Terms and Conditions of Purchase, the Purchase Order, and Buyer's Quality Regulations, the following definitions apply unless otherwise specifically stated:

A. "Buyer" or "KEC" (as used in Buyer's Quality Regulations) means Keystone Engineering Company, a California Corporation, or a subsidiary, division, affiliate, successor, or assign of Keystone Engineering Company, or other entity issuing this Supply Agreement to which these terms and conditions are attached or referenced therein, or to any entity to which this Supply Agreement is assigned pursuant to this Supply Agreement.

B. "Buyer's Quality Regulations" means the Purchase Order Quality Assurance Regulations found in Buyer's document C6-019A. In the event of a conflict between these Terms and Conditions of Purchase and the Buyer's Quality Regulations, these Terms and Conditions of Purchase shall control.

C. "Goods" means products, supplies, or items that include, without limitation, those part numbers, model numbers and/or descriptions set forth on the face of the Purchase Order.

D. "Supply Agreement" means the Purchase Order, together with, these Terms and Conditions of Purchase and Buyer's Quality Requirements.

E. "Purchase Order" means each purchase order entered into between KEC and Supplier, together with any written change order which may be subsequently executed by Buyer.

F. "Services" means any effort provided by Supplier incidental to the sale of Goods by Supplier under this Supply Agreement, including, without limitation, installation, repair and maintenance Services, if applicable. The term "Services" shall also include, without limitation, any effort specifically required by, and stated in, the Purchase Order, including, without limitation, all associated efforts such as design, engineering, technical, construction, consulting, professional or other services.

G. "Supplier" means the legal entity providing Goods and/or Services or otherwise performing work pursuant to this Supply Agreement.

B. ACCEPTANCE OF ORDER

Unless otherwise specifically agreed to in writing, these Terms and Conditions of Purchase shall apply to the Supplier's acceptance of any Purchase Order and incorporate by reference herein Buyer's Quality Regulations. Supplier's acknowledgement, acceptance of payment, or commencement of performance, shall constitute Supplier's unqualified acceptance of these Terms and Conditions of Purchase.

C. MANUFACTURE OF GOODS

C.1. Specifications

Supplier shall comply with all specifications stated in the Purchase Order and shall meet the requirements of the applicable technical specifications and documentation (e.g. drawings, specifications, standards, etc.) in Supplier's manufacturing literature to the extent consistent with this Supply Agreement.

C.2. Discrepancies

Any discrepancies, omissions or lack of clarity in drawings, specifications or other terms in the Purchase Order, must be referred to Buyer for clarification. If Supplier fails to seek clarification from Buyer regarding any discrepancies, omissions or lack of clarity in the Purchase Order which results in the delivery of non-conforming Goods, Buyer shall not be liable for any expenses associated with the manufacture, shipment or other expenses pertaining to the non-conforming Goods.

C.3. Quantity

Supplier shall deliver to Buyer only that quantity of Goods which is specified in the Purchase Order, unless otherwise advised in writing by Buyer. Buyer is not required to accept or make any payment for any amount of goods in excess of the quantity specified on the Purchase Order which it has not authorized in writing.

C.4. Non-Conforming Goods

Where Supplier discovers that Goods are nonconforming after being shipped to Buyer, Supplier must notify Buyer immediately of the nonconforming Goods. Buyer may accept or reject any non-conforming Goods at its discretion and may pursue any course of action or remedy available to it under applicable law, including, without limitation, the U.C.C. of California. If Buyer rejects the non-conforming Goods, Supplier agrees to replace at its expense or, at Buyer's option, to refund the price of any Goods which fail to meet the requirements of applicable drawings, specifications and/or samples. Nonconforming Goods rejected and returned to Supplier shall not be retendered by Supplier to Buyer unless notification of the fact is submitted with the retender and Buyer specifically agrees to acceptance thereof. Supplier shall pay any shipping, packing or transportation costs associated with the return of non-conforming Goods.

C.5. Buyer-Funded/Buyer-Furnished Items

a. All materials, tooling, equipment, and parts for the manufacture, construction, repair or service of Goods that Buyer is required to furnish to Supplier under the provisions of this Supply Agreement (hereinafter "Buyer-Furnished Items") shall be delivered in sufficient time to enable Supplier to meet its delivery schedule.

b. Title to, and the right to immediate possession of, any and all Buyer-Furnished Items shall remain with Buyer.

c. Title to all tooling, parts, equipment and material identified as a separate line item under this Supply Agreement and fabricated, manufactured, constructed, or acquired by Supplier under this Supply Agreement shall vest in Buyer upon Buyer's payment for such items (hereinafter "Buyer-Funded Items").

d. Any Buyer-Furnished Items and any Buyer-Funded Items shall be used only for and in the performance of this Supply Agreement unless otherwise directed by Buyer in writing.

e. Upon completion or termination of this Supply Agreement, any Buyer-Furnished Items and any Buyer-Funded Items shall be dispositioned in accordance with instructions from Buyer.

f. Supplier agrees, as a condition of this Supply Agreement, that it will: (i) properly mark/label, identify, inventory and segregate any and all Buyer-Furnished Items and Buyer-Funded Items in connection with this Supply Agreement in such fashion as to clearly identify such items as being the property of Buyer, at all stages of its or their possession by Supplier; (ii) prevent the commingling of Buyer-Furnished Items and Buyer-Funded Items with other material in Supplier's possession except in accordance with applicable Buyer specifications or Buyer's written approval; and (iii) assume responsibility for risk of loss or damage with respect to any Buyer-Furnished Items and Buyer-Funded Items at all times while it is in the custody, care, or control of Supplier and while in the hands of carriers with responsibility for such materials; and (iv) shall be responsible to provide confirmation of the foregoing if requested by Buyer.

g. Supplier will maintain a policy or policies of insurance covering all property on Supplier's premises owned by Buyer against loss or damage. A certificate verifying such insurance will be submitted by Supplier to Buyer upon request.

h. Supplier, upon request, will provide a schedule of all quantities on hand of Buyer-Furnished Items and Buyer-Funded Items. Supplier will be accountable for all quantities provided and financially liable for all damages or unaccounted Buyer-Furnished Items and Buyer-Funded Items, unless specifically agreed upon in writing by Buyer and provided for in this Supply Agreement.

C.6. Restricted Materials

Material in the manufacturing of goods shall not contain tantalum, tin, tungsten or gold. Presence of these materials shall be reported to KEC, at which time KEC will determine its fitness for use. If found to be usable, KEC, along with its customer, and with the assistance of the supplier, shall perform its due diligence in determining the country of origin. All reporting to KEC for said materials shall be in accordance with KEC's or KEC's customers' requirements.

i. When Buyer provides Buyer-Furnished Items for the manufacture of parts or assemblies, Supplier shall not substitute material from any other source nor shall Supplier or its subcontractors alter the Buyer-Furnished Item's physical or chemical properties except in accordance with applicable Buyer specifications or with Buyer's written approval.

j. Supplier agrees not to copy or duplicate any Buyer-Funded Items, special tooling or special test equipment for any purpose other than performance of this Purchase Order or other orders for Buyer. Supplier warrants and affirms that it has not used, transferred to any person, firm or corporation, copies or duplicated any such Buyer-Funded Items, special tooling or special test equipment acquired or fabricated under any previous Purchase Order for the development or production of particular supplies or parts, or the performance of particular Services required under this Supply Agreement, for any purpose other than performance of orders for Buyer.

k. Buyer shall have the right to audit all pertinent books and records of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance hereof. Buyer shall be entitled to commence such audit no later than five (5) days after Buyer notifies Supplier.

D. SHIPPING AND DELIVERY

D.1. Packing and Crating.

Supplier will suitably pack Goods to prevent damage or deterioration during transportation and shipped in accordance with Buyer's Quality Requirements. Goods shall be shipped by Supplier via the lowest cost means that are otherwise appropriate for the Goods in accordance with the requirements of common carriers. Supplier is responsible for contacting Buyer to resolve any questions regarding proper packing or shipment under this Supply Agreement.

D.2. Marking of Goods

Supplier shall, at its own expense, mark all Goods with. Supplier shall pack such Goods in suitable packages or cases, each of which shall be sealed and shall have. Supplier will describe Goods in bills of lading in accordance with current national mode of freight or uniform freight classification, whichever is applicable.

D.3. Shipment of Hazardous Materials or Substances

Shipments of any hazardous materials or substances must be packaged and transported in compliance with all applicable provisions of Code of Federal Regulations (C.F.R.) Title 49.

D.4. Packing Sheet

Packing lists will accompany each box or package shipped, Buyer's count or weight of Goods will be final and conclusive on shipments not accompanied by packing lists.

D.5. Import/Export Requirements

Supplier will comply with all applicable export / import requirements. When Goods provided under this Supply Agreement originate outside of the United States, prior to its first shipment of goods to Buyer, Supplier shall provide Buyer a Certificate of Origin specifying the Country of Origin, including supplier name, Buyer, Purchase Order number, Buyer part number, and, as requested, any other documentation that is reasonably required for customs compliance.

D.6. Delivery Schedule

Supplier's timely performance is critical to the success of this Supply Agreement. Supplier will make deliveries strictly in accordance with the delivery schedule. If the Supplier suspects or determines that deliveries will not be made on time, the Supplier will advise Buyer of the possible delay, the cause, and the proposed recovery schedule as soon as possible, and shall continue to notify Buyer of any material change in the situation. In the event of such notification or of an actual failure by Supplier to comply with the delivery or completion schedules, Buyer may, in addition to all other remedies, require Supplier, at Supplier's expense, to ship goods via air freight or expedited routing

to avoid or minimize delay. Buyer reserves the right, at its sole discretion, to return, or delay payment, for any Goods which are received fifteen (15) days early to the terms of the Order.

D.7. Delay in Delivery

If Supplier becomes aware of any circumstances that are likely to cause a delay in delivery of the ordered item(s), Supplier will immediately notify Buyer in writing stating the reason for the delay and the updated delivery date. Upon receipt of this information, Buyer reserves the right to keep or cancel the purchase order without liability or penalty.

D.8. Inspection on Delivery

All Goods ordered shall be subject to inspection and approval at destination by Buyer or its duly authorized representative after delivery to Buyer's facility.

D.9. Loss Incurred During Delivery

Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Supplier, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Supply Agreement.

E. INVOICING AND PAYMENT

E.1. Invoices

Concurrent with each shipment under this Supply Agreement, Supplier will mail one original invoice to Buyer Attn: to l davidson@keyengco.com the address shown on the face of the Purchase Order. Delays in receiving invoices, errors or omissions on invoices, or lack of supporting documentation will be cause for Buyer withholding payment without losing discount privileges. Payment for the items delivered under this Supply Agreement will be made in accordance with Order terms, following receipt of a valid invoice, or acceptance of such delivered items, whichever is later. Payment shall be deemed to have been made as of the date of mailing Buyer's payment or electronic funds transfer.

E.2. Taxes and Fees

Unless otherwise specified, prices of Goods or Services as reflected in the Purchase Order include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

E.3. Special Tooling

Unless otherwise specified in the Purchase Order the price for Goods includes the cost of gauges, jigs, fixtures, dies, molds, tools, patterns, and similar items of special tooling that may be manufactured or acquired by Supplier for use in the manufacture, fabrication, or assembly of the goods called for herein, and unless otherwise specified herein, title to such special tooling will remain in Supplier.

E.4. Shipping Charges

Prices on the Purchase Order include all charges for Supplier's packing and crating. Charges for boxing, packing or cartage will be borne by Supplier and will not be paid by Buyer unless otherwise expressly stated in the Purchase Order.

F. QUALITY CONTROL

F.1. Quality Assurance

Supplier acknowledges that Buyer is committed to conducting its activities in a manner that ensures its products and services are safe and implements policies intended to protect the health and safety of Buyer's employees, customers and natural environment. In furtherance of Buyer's quality policy, Supplier represents and warrants that it has reviewed and agrees to Buyer's Purchase Order Quality Assurance Requirements (Document C6-019A) ("Buyer's Quality Requirements") which are fully incorporated herein. Buyer may reject and hold at Supplier's expense, subject to Supplier's disposal, all Goods which do not conform to applicable drawings, specifications and/or samples or Buyer's Quality Requirements.

F.2. Inspection

Supplier agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this Supply Agreement, shall at all reasonable times be subject to inspection by Buyer. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this Supply Agreement. Such reviews and evaluations shall be conducted in a manner that will not unduly delay work under this Supply Agreement. Further, it is recognized that despite such reviews, Supplier controls the day-to-day production, delivery and associated documentation of its work, and therefore, Buyer's right of review, whether exercised or not, does not release Supplier of any of its obligations of testing, inspection, quality control and associated documentation. Buyer shall have the right to inspect and test the material and workmanship of all Goods at all places and times including, when practicable, during the period of manufacture or provision of Services. If any such inspection or test is made on the premises of Supplier, Supplier shall furnish, without additional charge to Buyer all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.

G. WARRANTIES

G.1. Goods and Services Warranty

Supplier warrants that all Goods furnished, and Services provided, hereunder shall be free from defects in material and workmanship and shall conform to applicable industry standards, specifications, drawings, samples and/or other descriptions. Unless manufactured pursuant to detailed designs furnished by Buyer, Supplier assumes design responsibility and warrants that the Goods are suitable for the purpose for which they are intended. Supplier's warranties regarding Goods, together with any warranties and guaranties as to Services, shall run to Buyer, its assigns and each successive customer. Unless otherwise specified by Buyer, Supplier's warranties under this Clause shall begin effective delivery of the Goods to the ultimate end user and shall be for a period of 5 years, unless otherwise specified in the Purchase Order.

G.2. Price Warranty

In the event Supplier reduces its price for such Goods or Services during the term of this Supply Agreement, Supplier agrees to reduce the prices hereof correspondingly.

H. CHANGES

H.1. Buyer Changes

a. Buyer may, at any time and without notice to third parties, including sureties (if any), unilaterally make changes within the general scope of the Purchase Order, including, but not limited to, changes in whole or part and to any one or more of the following: (i) shipping or packing instructions, (ii) acceptance and place of delivery, (iii) place of inspection; (iv) any drawings, designs, or specifications, (v) delivery schedule, (vi) the method or manner of performance of the work, and (vii) Buyer-furnished property, facilities, equipment, materials, or Services. Supplier shall perform any changes ordered by Buyer.

b. If any change under this clause causes an increase or decrease in the cost of, or the time required for, performance, an equitable adjustment may be requested by Supplier or Buyer and shall be made in price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by Supplier for adjustment, must be asserted in writing not later than fifteen (15) calendar days after the date of receipt by Supplier of the change order, or within such extension of that fifteen day period as Buyer, in its sole discretion, may grant in writing at Supplier's request. Supplier's complete change proposal, fully supported by factual information, shall be submitted to Buyer's purchasing department within forty-five (45) days of the notice of change, provided, however, that Buyer may in its discretion consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this Purchase Order.

c. Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Supplier's personnel concerning the Goods or Services hereunder. No such action shall be deemed to be a change under this "Changes" clause of this Purchase Order and shall not be the basis for equitable adjustment. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's purchasing department.

d. If the cost of property or material made obsolete or excess as a result of a change is included in Supplier's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property or material.

e. Notwithstanding any pending claims for adjustment submitted by Supplier, Supplier shall diligently proceed with the performance of this Purchase Order, as directed by Buyer, and nothing herein shall be construed as relieving Supplier of its obligations to perform, including without limitation the failure of the parties to agree upon Supplier's entitlement to, or the amount or nature of, any such adjustment. Supplier may not make any changes to the Purchase Order or the items specified in the Purchase Order, without the express written approval of Buyer.

H.2. Supplier Changes

Buyer must be promptly notified by Supplier of changes in Goods, manufacturing location, or process definition that

were not requested by Buyer. Notification should describe the change or changes that have been made or are being proposed. Buyer reserves the right to require its approval of the product, manufacturing location or the process change in advance of such change.

I. INTELLECTUAL PROPERTY

I.1. Confidential and Proprietary Information and Materials

Buyer and Supplier will each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information; (ii) tangible items containing, conveying or embodying such information; and (iii) tooling identified as being subject to this provision and obtained, directly or indirectly, from the other in connection with this Supply Agreement (collectively referred to as "Proprietary Information"). Buyer and Supplier will each use and disclose Proprietary Information of the other only in the performance of and for the purposes of this Settlement Agreement. Unless otherwise provided herein or authorized by Buyer in writing, Supplier shall hold all Proprietary Information in confidence, and shall use Proprietary Information only in the performance of the relevant Order. Supplier shall not use or disclose Proprietary Information to, or for the benefit of, any third party nor shall Supplier sell or otherwise dispose of any completed or partially completed or non-complying Goods (or parts thereof) without destroying or rendering such Goods (or parts) unsuitable for use, and without removing or destroying any Proprietary Information embodied therein. Upon Buyer's request or on completion or termination of the relevant Order, Supplier shall, at Supplier's expense, cease all use of Proprietary Information and make such disposition of all such Proprietary Information, and any parts, equipment, tools, gauges, patterns, items and goods containing or embodying Proprietary Information as herein required or as may be subsequently directed by Buyer. Buyer shall have the right to audit all pertinent facilities, books and records of Supplier in order to verify compliance with this Clause. Supplier shall be liable to Buyer and shall indemnify, defend and hold Buyer harmless for any damages, awards, liabilities, costs and/or attorney fees resulting from any breach by Supplier of the provisions of this clause, which shall survive the performance, completion, expiration and/or termination of this Supply Agreement. Supplier shall promptly notify Buyer of any and all such breaches, and shall take all necessary measures to remedy the same. In all subcontracts for performance of work under the relevant Order, Supplier shall include provisions which provide to Buyer the same rights and protections as provided in this clause.

I.2. Underlying Intellectual Property

All information (regardless of form or format, and including, without limitation, designs, processes, drawings, specifications, reports, data (including CAD/CAM data), trade secrets, software and know-how) and all inventions, whether patentable or not (hereinafter, such information and inventions are collectively referred to as "Intellectual Property"), created, developed, owned, controlled or made by a Party prior to the effective date of the Purchase Order, or outside the scope or independent of the relevant Order (hereinafter "Underlying Intellectual Property), and all intellectual property rights in and to the foregoing, shall remain the property of such Party. Supplier must obtain written authorization from Buyer prior to incorporating any Underlying Intellectual Property into any Goods.

I.3. New Intellectual Property

All Intellectual Property created, developed or made for, or in connection with the Order ("New Intellectual Property") by either Party shall be owned by Buyer. Supplier shall disclose to Buyer any and all New Intellectual Property created, developed or made by Supplier, and agrees to assign, and does hereby assign to Buyer all rights, title and interest in and to such New Intellectual Property, at no cost to Buyer. All New Intellectual Property is Buyer's proprietary information, and shall be treated in accordance with the provisions of Clause I.1 of these Terms and Conditions of Purchase. Supplier shall execute, or have executed, all papers and instruments necessary to secure the foregoing rights to Buyer.

I.4. Licenses

Buyer does not grant to Supplier (1) any reproduction rights to the Goods ordered, or (2) any rights to use designs, drawings, tooling or other information belonging to or supplied by Buyer in the manufacture of design of Goods or other materials for anyone other than Buyer or the Government where the Government has received such rights from the Buyer.

I.5. Intellectual Property Infringement Indemnity

Supplier shall indemnify, defend and hold harmless Buyer, its customers, and their respective successors and assigns from any and all damages, awards, liabilities, costs and/or attorney fees, and shall conduct (at Supplier's sole cost and expense) the entire defense of any claim, suit or action alleging that the manufacture, use or sale of the Goods infringe the intellectual property rights of a third party. Supplier and Buyer shall promptly inform each other of the receipt of any such claim, suit or action, and Buyer will provide reasonable assistance to Supplier (at Supplier's sole cost and expense) to defend each such claim, suit or action. Supplier shall, at Buyer's option, either (i) obtain the right for Buyer and its customers to continue using the Goods, or (ii) replace or modify the Goods so they no longer infringes, but still meets all Goods requirements.

J. INDEMNIFICATION

a. Supplier covenants and agrees to indemnify, protect, and hold harmless Buyer, its officers, directors, employees, agents and successors and assigns ("Indemnified Person(s)") from any and every liability, claim of liability, allegation, judgment, cost, expense, reasonable attorney's fees, cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Supplier's performance under this Supply Agreement, howsoever arising, including, without limitation, by reason of negligence, any breach of representation, warranty, covenants, including, without limitation, any defect in design, material, workmanship or Service, or strict liability, unless caused by the sole negligence of the Indemnified Person. In the event Buyer should bring an action for enforcement of this indemnification provision, Supplier agrees that Buyer shall be entitled to be awarded its reasonable attorneys' fees and costs if Buyer prevails in such proceeding.

b. Supplier agrees, in any instance where any claims, suits, actions or legal proceedings, are brought against the Supplier and in any way affect Buyer's interests under this Supply Agreement or otherwise, that:

1. Supplier shall notify Buyer in a timely manner (not to exceed five (5) business days) after learning of any actual or threatened claims, suits, actions or legal proceedings, and shall not at any time consummate any settlement without Buyer's prior written consent;

2. Without releasing any obligation, liability or undertaking of Supplier to indemnify Buyer hereunder, Buyer shall have the right to (1) cooperate in the defense of such claim; or (2) with permission of the court, intervene in any such action; or (3) supersede Supplier in the defense of any such claim.

K. COMPLIANCE AND INSURANCE

K.1. Compliance with Applicable Laws and Regulations

Supplier will perform the requirements of this Supply Agreement in compliance with all applicable laws, statutes, orders, acts, codes, rules and regulations of the United States and its individual states (including, but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, the Occupational Safety and Health Act, Executive Orders, export/import laws and regulations, Uniform Commercial Code, and Environmental Protection Acts), and of other Countries or Unions, and including, without limitation, Buyer's Quality Requirements. Supplier will indemnify Buyer against any and all loss, cost, liability, damage or expense arising from or related to Supplier's failure to comply with this provision.

K.2. Government Contracts

a. If the Purchase Order is issued under a United States Government prime contract or subcontract, the Additional Terms and Conditions of Purchase Applicable to Government Contracts with the Department of Defense Issued under Federal Acquisition Regulations (FAR) (<http://www.acquisition.gov/far/index.html>) and the subsequent flow down clauses incorporated hereto and any other provision or requirement mandated as applicable to U.S. Government subcontracts by the Federal Acquisition Regulation and or applicable government department or agency supplement (including, without limitation, the Department of Defense FAR Supplement) is hereby incorporated herein. Such government contract provisions shall be controlling over any conflicting terms and conditions set forth herein.

b. Supplier expressly acknowledge and agrees that it will, to the extent required by law or government contract requirements, provide information and verification concerning the citizenship or immigration status of Supplier's personnel or Supplier's subcontractor personnel entering onto Buyer's premises or the premise of Buyer's prime contractor or the U.S. Government.

K.3. Insurance

a. Supplier shall maintain such public liability insurance, including products liability, completed operations, contractor's liability and protective liability, automobile liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses and expenses. Supplier agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.

b. In the event Supplier will be performing services on Buyer's premises, Supplier agrees to secure and carry as a minimum the following insurance covering all work to be performed under this Supply Agreement:

1. Workers' Compensation and Employer's Liability Insurance in an amount sufficient by virtue of the laws of the country, state, or other governmental subdivision in which the work or any portion of the work is performed;
2. General Liability Insurance in which the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;
3. General Liability Insurance in which the limit of liability for property damage shall be \$1,000,000 for any one occurrence;
4. Automobile Liability Insurance in which the limit of liability for injuries, including accidental death, shall be \$1,000,000 for any one occurrence;
5. Automobile Liability Insurance in which the limit of liability for property damage shall be \$1,000,000 for any one occurrence; and
6. Contractual Liability Insurance sufficient in scope of coverage and amount (in Buyer's reasonable discretion) to cover the liabilities herein assumed by Supplier.

c. All such insurance shall be issued by companies authorized to do business under the laws of the applicable governmental authority for the place in which all or part of the Services are to be performed, shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation except upon at least ten (10) days' prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of the Supplier's performance of work. Certified copies of said policies or certificates evidencing such insurance and naming Buyer as an additional insured shall be provided to Buyer upon request within 30 days after the date of this Supply Agreement and within a reasonable time after any renewals or changes to such policies are issued.

K.4. Certification and Traceability

Supplier shall abide by the certification and traceability requirements set forth in Buyer's Quality Requirements.

L. TERMINATION

L.1. Cancellation

Time is of the essence in this Supply Agreement. Buyer reserves the right to cancel this Supplier's Agreement, or any portion of this Settlement Agreement, without liability, if:

- (1) delivery is not made when and as specified;
- (b) Supplier fails to meet contract commitments as to exact time, price, quality or quantity;
- (c) Supplier ceases to conduct its operation in the normal course of business;
- (d) Supplier is unable to meet its obligations as they mature;
- (e) proceedings are instituted against Supplier under the bankruptcy laws or any other laws relating to the relief of creditors;
- (f) a receiver is appointed or applied for by Supplier; or
- (g) any assignment is made by Supplier for the benefit of creditors.

Buyer also reserves the right to cancel for any other reason permitted by the Uniform Commercial Code then in effect in the state where Buyer has signed the Purchase Order.

L.2. Force Majeure

a. Neither party shall be deemed in default of this Supply Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires,

explosions, earthquakes, floods, unusually severe weather conditions, or strikes ("Force Majeure").

b. If any Force Majeure condition affects Supplier's ability to perform, Supplier shall give immediate notice to Buyer and Buyer may elect to either: (1) Cancel at no cost to Buyer the affected Purchase Orders or any part thereof, (2) suspend the affected Purchase Order(s) or any part for the duration of the Force Majeure condition, with the option to obtain elsewhere Goods and Services to be furnished under such Purchase Order(s) and deduct from any commitment under such Purchase Order(s) the quantity of Goods and value of Services obtained or for which commitments have been made elsewhere or (3) resume performance under such Purchase Order(s) once the Force Majeure condition ceases, with an option in Buyer to extend any affected delivery date or performance date up to the length of time the Force Majeure condition endured.

Unless Buyer gives written notice otherwise within thirty (30) days after being notified of the Force Majeure condition, option (2) shall be deemed selected.

L.3. Termination for Convenience

a. Buyer may, at any time by written notice to Supplier, terminate all or any part of this Supply Agreement for Buyer's convenience, in which event Supplier agrees to stop work immediately as to the terminated portion of this Supply Agreement and to notify subcontractor(s) to stop work, and protect and preserve property in its possession in which Buyer has an interest, including, without limitation, Buyer-Funded and Buyer-Furnished Items as set forth in Clause C.5.

b. If this Supply Agreement is terminated, in whole or in part, for Buyer's convenience, Supplier shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Supplier's actual performance of work under this Supply Agreement, which in no case shall exceed the total price of the Purchase Order.

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

L.4. Termination for Default

a. Buyer may terminate the whole or any part of this Supply Agreement in any of the following circumstances:

1. If Supplier fails to deliver the goods or to perform the services required by this Settlement Agreement within the time specified herein, or any extension thereof granted by Buyer in writing; or
2. If Supplier fails to perform any of the other provisions of this Supply Agreement or so fails to make progress as to endanger performance of this Supply Agreement in accordance with its terms; or
3. If Supplier fails to deliver the Goods in accordance with Buyer's Quality Requirements; or
4. If Supplier fails to abide by applicable government regulations and law in the production, manufacture, packaging and shipment of the Goods; or
5. In the event of suspension of Supplier's business, insolvency, institution of bankruptcy, liquidation proceedings by or against Supplier, appointment of a trustee or receiver

for Supplier's property or business, or any assignment, reorganization or arrangement by Supplier for the benefit of creditors; or

6. If otherwise expressly authorized under the provisions of this Supply Agreement.

b. In the event that Buyer terminates this Supply Agreement as a result of any of the circumstances (1) through (6) in this Clause, L.4, Buyer may require Supplier to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (1) any completed Goods, and (2) such partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Supplier has produced or acquired for the performance of this Settlement Agreement, including, without limitation, the assignment to Buyer of Supplier's subcontracts. Payment for completed Goods delivered to and accepted by Buyer under this provision shall be at the contract price set forth on the Purchase Order. Payment for partially completed Goods and manufactured materials delivered to and accepted by Buyer under this provision shall be at a price mutually agreed to and determined by the Parties.

c. If this Settlement Agreement is entirely or partially terminated by Buyer under this section, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those Goods and Services so terminated, and Supplier shall be liable to Buyer for any and all procurement costs for such similar goods or services, including any price for such similar goods or services that is higher than this Settlement Agreement provided however, that Supplier shall not be liable for such additional costs if Supplier's failure to perform this Settlement Agreement

1. arises out of causes beyond the control and without the fault or negligence of Supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or

2. is caused by the default of a vendor or subcontractor to Supplier, so long as such default arises out of causes beyond the control of both Supplier and the vendor or subcontractor, and the subcontracted goods or services were not obtainable from other sources in sufficient time to permit Supplier to meet the required delivery schedule.

d. No cause shall constitute a basis for excusable delay unless Supplier has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.

L.5. Change in Control of Supplier

a. For the purpose of this Clause, a change in control ("Change in Control") shall mean the acquisition by a third party of direct or indirect control of Supplier. A third party shall be deemed to control Supplier if it, directly or indirectly:

1. holds a majority of the voting rights in Supplier; or
2. has the right to appoint or remove a majority of the Supplier's board of directors, supervisory board, or any other body in charge of or controlling the management of the Supplier; or
3. has the right to exercise a dominant or decisive influence over the Supplier.

b. In the event a Change in Control of Supplier is pending, Supplier shall, to the extent Supplier is permitted under applicable confidentiality obligations promptly give Buyer written notice of such event identifying the potential investor/acquiring party, or any other change, and (2) provide any relevant information to the Buyer during the

Change in Control process. In the event that Buyer believes such Change in Control will materially and adversely affect Supplier's ability to discharge its duties and obligations under this Supply Agreement, or if such Change in Control is in favor of a party which is not acceptable to Buyer, then Buyer shall be entitled to terminate this Supply Agreement pursuant to Clause L.4, within twenty-eight (28) calendar days from the date of Buyer's knowledge of the Change in Control.

M. ADMINISTRATIVE TERMS

M.1. Modification

This Supply Agreement shall not be modified by, interpreted by, reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of this Supply Agreement shall be effective unless in writing and signed by an authorized representative of both Buyer and Supplier.

M.2. Assignment Rights

The assignment of any right or interest in this Supply Agreement, without the written permission of Buyer, will be void. The Supplier may, with written consent of Buyer, assign claims for money due or to become due through a bank, trust company, federal lending agency or other financial institution. Supplier will not delegate any obligation under this Supply Agreement without the written permission of Buyer and any attempted delegation without written permission will be void and totally ineffective for all purposes. Any permitted assignment will provide that payment by Buyer to an assignee of any amount will be subject to set-off or recoupment for any present or future claims which Buyer may have against Supplier and will be valid only after Supplier has provided Buyer with two properly executed copies of the assignment.

M.3. Subcontracting

Supplier agrees to obtain Buyer's written approval before subcontracting any substantial portion of this Supply Agreement. However, this requirement will not apply to the purchase of standard commercial supplies or raw materials on which Supplier will perform further work.

M.4. Survival

Supplier agrees that the Warranties (Section G), Indemnification (Section J), Inspection (Clause F.2), Intellectual Property (Section I), and Cumulative Remedies (Clause M.10) of this Supply Agreement and all provisions which relate to claims which may be made by Buyer under this Supply Agreement shall survive and continue in full force and effect upon the termination of this Supply Agreement, unless otherwise agreed to in writing by a duly authorized representative of Supplier and Buyer.

M.5. Entire Agreement

The Purchase Order together with these Terms and Conditions of Purchase and Buyer's Quality Regulations, integrate, merge and supersede any prior offers, negotiations and agreements concerning the subject matter hereof and constitutes the entire agreement between the Buyer and Supplier.

M.6. No Waiver

Buyer's failure to seek a remedy for any breach by Supplier or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, or privileges or any other terms, conditions, or privileges whether of the same or similar type.

M.7. Notice

All notices required or permitted to be given in connection with this Supply Agreement shall be deemed to be properly given if in writing and delivered to the receiving party at the address (including to the attention of the individual representative, if specified) shown on the face of this Supply Agreement or to such other address or individual representative specified from time to time by such written notice. Notice shall be deemed effective upon receipt.

M.8. Headings

The paragraph and section headings contained herein are for reference only and shall not be considered as substantive parts of this Supply Agreement.

M.9. Cumulative Remedies

Buyer's remedies described herein shall be cumulative and in addition to any remedies provided by law or in equity.

M.10. Partial Invalidity/Unenforceability

If in any instance any provision of this Supply Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms.

M.11. Order of Precedence

In the event of conflict between these Terms and Conditions of Purchase and the Purchase Order, the terms of the Purchase Order, including, without limitation, special terms and conditions, specifications or drawings, shall be given precedence.

M.12. Governing Law and Interpretation

The requirements of this Supply Agreement will be interpreted and construed in accordance with the laws of the State of California, excluding choice of law rules. Any legal action with respect to this Supply Agreement and the duties and obligations herein shall be brought in the courts of the State of California or the United States for the Central District of California.