



# Trans Seas USA, LLC Terms of Sale

**1. Definitions.** As used throughout these Terms of Sale, including provisions incorporated by reference, the following terms shall have the meaning set forth below:

- (a) "Buyer" means the person or entity that is purchasing Seller's Product(s).
- (b) "End-User" means the party ultimately using the goods for their intended purpose.
- (c) "Order" means the contractual instrument (e.g. agreement, contract, subcontract or purchase order) into which these Terms of Sale are incorporated.
- (d) "Party" or "Parties" means the Buyer or Seller individually or collectively, respectively.
- (e) "Product" or "Products" means the equipment, software, or services being provided by Seller.
- (f) "Seller" means Trans Seas USA, LLC

**2. Acceptance of Orders.**

2.1 Seller's acceptance of an Order issued by Buyer shall be expressly limited to (a) the terms set forth herein, and (b) any additional terms and conditions agreed to by the Parties and expressly incorporated in the Order. The Order represents the entire agreement between Buyer and Seller pertaining to the subject matter of an Order and shall supersede all prior oral and written agreements, proposals, communications, and documents. Buyer's Order shall be deemed accepted only after Seller's written acceptance is provided to Buyer. Except where Seller provides written acceptance of an unusual circumstance, Buyer's Order shall not be construed to be accepted by any other action of Seller including, but not limited to, commencement of performance or delivery.

2.2 TO THE EXTENT THAT THESE TERMS OF SALE AND ACCOMPANYING DOCUMENTS CONSTITUTE AN OFFER TO SELL, SELLER'S OFFER IS EXPRESSLY LIMITED TO THE TERMS STATED HEREIN. TO THE EXTENT THAT THESE TERMS OF SALE AND ACCOMPANYING SELLER DOCUMENTS CONSTITUTES AN ACCEPTANCE OF BUYER'S OFFER, SELLER'S ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO SELLER'S TERMS HEREIN.

**3. Prices and Payment.**

3.1 All prices will be invoiced in United States dollars and must be paid in full in United States dollars. All prices are Free Carrier (FCA), United States port of export as chosen by Seller Incoterms® 2020, and do not include freight charges, forwarding agent fees, export/import duties, value-added taxes and all other taxes, assessments, tariffs, duties, wharf fees, insurance, licenses and the like. Any exceptions must be expressly agreed upon and documented in a duly executed contract modification. Buyer acknowledges that Seller has a right to payment for work performed or services rendered based on the prices set forth in the contract.

3.2 All orders are subject to a minimum twenty percent (20%) down payment. If Seller notifies Buyer that a down payment is required, no work will start on Buyer's Order until the down payment is received. Invoicing and payment for the balance due shall occur prior to shipment and/or rendering of service.

3.3 Where Seller, in its sole discretion, extends credit terms to Buyer, Buyer shall pay for all amounts due within thirty (30) calendar days from (a) the date Products are shipped or (b) date of the invoice, whichever is later.

3.4 If mutually agreed in writing, Buyer may make payments according to a performance or milestone-based schedule.

3.5 Payment will be deemed to have been made when received by Seller. Seller reserves the right to accrue interest on late payments from the date due until receipt by Seller of full payment at the lesser of (a) one and one-half percent (1.5%) per month compounded monthly, or (b) the maximum rate permitted by law.

3.6 If, in Seller's sole discretion, Buyer's financial condition has been impaired subsequent to acceptance of an Order, then Seller reserves the right, upon ten (10) calendar days' notice, to require full or partial payment in advance, regardless of the original agreed upon payment terms. In the event of bankruptcy or insolvency of Buyer, Seller may cancel any Order then outstanding and receive reimbursement for applicable cancellation charges.

3.7 At Seller's option, payment in advance of shipment, or the establishment by Buyer of a commercial letter of credit in favor of Seller may be required for all or part of the Order price. Any letter of credit must be irrevocable, issued by a reputable international bank, and either advised or confirmed at Seller's option in accordance with the following:

**For the benefit of Trans Seas USA, LLC**

Such letter of credit must: (a) be payable at sight upon presentation, accompanied by commercial invoice and evidence of shipment, (b) allow for transshipments and partial shipments, and (c) state shipment terms as Free Carrier (FCA), Seller's named United States facility, or named port, place, or delivery point (Incoterms® 2020). Buyer shall be liable for bank fees and charges associated with the administration of the letter of credit. Such letter of credit must permit presentation of documents to the United States bank within twenty-one (21) calendar days from the date of shipment. Issuance of letters of credit not in accordance with these conditions may result in cancellation of the Order, non-shipment, and/or delay in shipment. In the case of cancellation, Buyer shall reimburse Seller for applicable cancellation charges set forth in the letter of credit.

In the event that payment terms include a letter of credit that requires an Onboard Bill of Lading in order for Seller to obtain payment under FCA Incoterms® 2020, Buyer will obtain from the Carrier and issue to Seller an Onboard Bill of Lading immediately upon the lading of the goods onboard the vessel, and prior to departure of the vessel from the port of lading.

**4. Packing and Shipping.** Unless otherwise agreed to by Seller in writing, Seller shall pack and ship all Products in accordance with Seller's standard practice for export shipments.

**5. Delivery and Risk of Loss.**

5.1 Seller's liability and risk of loss or damage to the Products shall pass to Buyer under FCA Incoterms® 2020 (or other mutually agreed to and Seller approved Incoterm®). Delivery to the FCA delivery point will be via a freight forwarder and/or carrier either chosen by Seller or nominated by Buyer and approved by Seller. If the Buyer's freight forwarder and/or carrier are approved by Seller and/or the named place chosen is the Seller's shipping dock, Buyer agrees that it is responsible to ensure that its forwarder and/or carrier complies with Seller's instructions related to the proper filing of export clearance documents to record the export with U.S. Customs and Border Protection in the Seller's name as U.S. Principal Party in Interest (USPPI) and to indemnify Seller for any



compliance matters that may arise from any failure by the Buyer to ensure the forwarder and/or carrier follow the Seller's instructions related to export clearance.

5.2 Seller will make reasonable commercial efforts to meet its estimated delivery or performance dates; however, such dates are not guaranteed. Seller shall not be liable for any loss, cost or expense incurred by Buyer if Seller fails to meet such dates due to production or other delays. At its option, Seller reserves the right to make deliveries in installments.

5.3 If Buyer delays shipment and fails to negotiate a modification to the Order in good faith within fourteen (14) calendar days of the specified ship date, Seller may invoice Buyer and warranty shall be deemed to commence as though shipment had occurred as specified. Furthermore, Seller reserves the right to move such Products into storage or to dispose of such Products and charge any incidental costs to Buyer.

5.4 The shipment of Products or portions thereof may be contingent on Buyer's and/or Seller's compliance with export laws as described in clause 15.0.

## 6. Inspection, Acceptance and Title.

### 6.1 Equipment.

6.1.1 Seller's Facility. Except as otherwise agreed in writing by Seller, final acceptance shall occur upon delivery of the equipment to the freight forwarder at Seller's facility. Unless otherwise agreed in writing, the equipment is subject to Seller's standard inspection and/or test at place of manufacture. For Orders in which Seller agrees to inspection or test by Buyer on the premises of Seller, final inspection and acceptance by Buyer shall be conclusive. Buyer agrees that any inspection and test on its part shall not delay or disrupt Seller's performance. Buyer further agrees that it shall comply with Seller's security and safety policies during any inspection or test on the premises of Seller, and also shall comply with applicable export laws and regulations.

6.1.2 Locations Other than Seller's Facility. Where the Parties agree in the Order that inspection and acceptance will occur upon delivery of the equipment to a mutually agreed upon Incoterm® 2020 delivery point other than Seller's named United States facility, Buyer's acceptance will be deemed complete if Buyer provides no written report of exceptions within ten (10) calendar days after receipt. It is further understood that Buyer's (a) placing of any equipment provided hereunder into service and/or (b) beneficial use of such equipment shall constitute acceptance.

6.1.3 Title and Risk of Loss. Unless otherwise agreed to by Seller in writing, the FOB point shall be a shipping point designated by Seller. Title and liability for loss or damage to the articles shall pass to Buyer upon delivery of the articles by a carrier at the FOB point. Loss or damage after delivery at the FOB point shall be the sole responsibility of Buyer. Under no circumstances will Seller drop ship to an End Customer. Delivery dates are best estimates only and are not guaranteed. At its option Seller reserves the right to make deliveries in installments.

6.2 Services. Buyer shall accept the services or give Seller written notice of rejection within ten (10) calendar days after receipt. In the event of a rejection notice, Seller will determine whether or not a non-conformity exists, and if so, promptly correct or re-perform the nonconforming services. Seller shall disclose any corrective action taken. Redelivery to Buyer of any corrected or re-performed services shall be at Seller's expense.

## 7. Force Majeure.

7.1 Neither Party shall be liable for any excess costs or other damages if the failure to perform arises out of causes beyond the

reasonable control and without the fault or negligence of the Party asserting an event of Force Majeure. Force Majeure causes may include, but are not limited to (a) acts of God or of the public enemy, (b) war (whether an actual declaration thereof or not), (c) acts of terrorism or threats thereof, (d) acts of a Government in either its sovereign or contractual capacity, (e) sabotage, (f) insurrection, (g) riot or other act of civil disobedience, (h) atmospheric disturbances, (i) fires, (j) floods, (k) plagues or epidemics, (l) quarantine restrictions, (m) labor disputes or strikes, (n) failure or delay in transportation due to transportation workers strike or freight embargoes, (o) worldwide parts shortage(s) or rationing allocations, (p) shortage of labor, fuel, raw material or machinery, or (q) violent storms or unusually severe weather. If the delay is caused by a delay of Seller's subcontractor and if such delay arises out of causes beyond its reasonable control, and without its fault or negligence, Seller shall not be liable for any delay in performance, excess costs or other damages unless the Product to be furnished by the Seller or subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) calendar days after it becomes aware of any Force Majeure event. If the original delivery schedule is overcome by the Force Majeure event, then the Parties agree to negotiate in good faith a revised delivery schedule.

7.2 Should either Party be unable to fulfill a material part of its obligations under an Order for a period in excess of sixty (60) calendar days due to circumstances beyond its reasonable control as described above, the other Party may at its sole discretion terminate the Order by written notice. Upon either resolution of the Force Majeure event or termination as described, the Parties shall proceed in good faith to negotiate a termination settlement covering the performance of the Order prior to the effective date of the termination.

## 8. Taxes, Customs, Licenses, Insurance and Secure Work Conditions.

8.1 Buyer shall bear all value-added and local income taxes, customs duties, import license fees, excise taxes, work permits, licenses, or other charges imposed by governmental or quasi-governmental bodies, other than Seller's United States income or franchise taxes, assessable on Products sold hereunder. Buyer will obtain and pay for any necessary in-transit or other insurance after Seller's delivery of Products to the carrier at the FCA named point identified by Seller. In no event shall Buyer, its agents or assigns, be allowed the right to audit or examine Seller's books and records for purposes of this or any other term or condition herein.

8.2 Except as agreed in writing by the Parties, Buyer assumes responsibility for securing and paying for any satellite, radio or wireless antenna communication type approval certifications or national homologations that may be required within the country of end-use. In addition, Buyer shall bear sole responsibility to secure and pay for all local certifications or licenses deemed necessary for the operation of the Products and for related connections of such Products to electrical, gas, or other utilities.

8.3 For Orders requiring the presence of Seller personnel or subcontractors at Buyer's or Buyer's customer's facility, Buyer agrees to sponsor Seller's employees for any required visa applications. Furthermore, Buyer shall provide a written security plan upon request of Seller, and Buyer shall take reasonable steps to execute and maintain safe and secure work conditions for the duration of Seller's site work. Seller reserves the right to stop work immediately if it deems the site to have a security concern and to be afforded an equitable price adjustment for such work stoppage. Seller also agrees to conduct site work in accordance with Seller's standard commercial practices and any safety plan deliverables that may be a part of the Order.



**9. Warranty.** This clause applies unless a separate warranty statement for the specific Product is attached.

**9.1 Equipment.**

9.1.1 All equipment provided under an Order conform to Seller's applicable specifications and are warranted against defects in materials and workmanship for a period of ONE (1) year from the date of shipment unless otherwise specified in the Order or Product's published documentation. If a defect exists during the warranty period, Seller, at its option and to the extent permitted by law, will (a) repair the equipment at no charge at its factory, or (b) exchange the equipment with a functionally equivalent product, or (c) refund the original purchase price of the original Buyer prorated for normal wear and tear based on proof of purchase documentation if the equipment is no longer repairable or replaceable. Before returning any equipment, Buyer must contact Seller's customer care or service representative and provide proof of purchase and details of the defect. If Seller determines the equipment is under warranty, Seller will provide Return Material Authorization (RMA) instructions. The defective equipment must be returned to Seller's facility as per the RMA instructions no later than thirty (30) calendar days from the date the Buyer received such instructions. Seller shall warrant returned equipment as to the particular defect subject to repair, for ninety (90) calendar days after shipment or the remaining warranty term, whichever is longer. Seller's total liability is limited to the original purchase price by the original Buyer of the defective equipment. Seller will return the equipment under the same delivery terms and conditions as originally used or as mutually agreed upon in writing.

9.1.2 This warranty does not apply to any Product not in its original condition less normal wear and tear or which Seller determines has been, by Buyer or otherwise, subjected to testing for other than specified electrical characteristics, to operating and/or environmental conditions in excess of the maximum values established, lightning strike, or to mishandling, abuse, misuse, neglect, improper installation, testing, repair, alteration, modification, damage, assembly or processing that alters physical or electrical properties or other causes that are not defects in materials or workmanship.

9.1.3 THIS WARRANTY EXTENDS TO BUYER ONLY AND MAY BE INVOKED ONLY BY BUYER ON BEHALF OF ITS CUSTOMERS. SELLER WILL NOT ACCEPT WARRANTY RETURNS DIRECTLY FROM BUYER'S CUSTOMERS OR USERS OF BUYER'S PRODUCTS. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED.

9.2 Services. Seller warrants that each of its employees assigned to perform the Services hereunder shall have the proper skill, training and background to perform in a competent and professional manner and that all work will be performed in accordance with the applicable statement of work. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY RELATED TO TESTING OR SERVICES PROVIDED UNDER THIS ORDER INCLUDING ANY EXPRESS, IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**10. Changes.** No changes, extras or other work (whether deemed to be within or outside of the general scope of an Order or modification of any kind or description) shall be authorized unless evidenced by a written agreement signed by duly authorized representatives of both Parties.

**11. Termination.**

11.1 No Order accepted by Seller may be terminated by Buyer for any reason other than Seller's breach as determined by a court of

competent jurisdiction except by written agreement signed by duly authorized representatives of both Parties. In such an event, Buyer shall provide Seller thirty (30) days prior written notice for Seller to cure or present a plan to remedy the breach within the thirty-day notice period. In the absence of a pre-negotiated termination liability schedule, the Seller reserves the right to charge the Buyer termination or re-stocking fees in addition to any other payments due.

11.2 It is hereby agreed that the rights and obligations of the Parties contained in clause 9 and clauses 13 through 24 shall survive and continue after any termination or cancellation of an Order and shall continue to bind the Parties, their successors, their assigns and their legal representatives.

**12. Audit.** Notwithstanding any language or provision to the contrary, Buyer shall have no right to audit or examine Seller's books and records.

**13. Proprietary Information.**

13.1 Except as provided in Section 13.3, all information disclosed in written, graphic, model, or oral form, including, but not limited to, drawings, prints, publications, specifications, processes, manufacturing techniques, oral explanations, schedules and financial reports, obtained by Buyer from Seller prior to and during the performance of an Order which is marked as "Proprietary" by Seller shall be kept confidential by Buyer and shall remain the property of Seller, and shall be returned at Seller's request. Such information shall only be used in performance of the Order and shall not be used for other purposes unless agreed to in writing by Seller. Such information shall not be reproduced, published, disseminated, or disclosed to any third party, including the U.S. Government, by Buyer without the prior written consent of Seller. Buyer will notify Seller promptly in writing if Buyer learns of any unauthorized use or disclosure of Seller's proprietary information, and will cooperate with Seller in good faith to remedy such occurrence to the extent reasonably possible. Buyer acknowledges that a breach of this provision may result in irreparable harm to Seller, for which money damages maybe an insufficient remedy, and therefore, Seller will be entitled to seek injunctive relief to enforce the provisions of this Section. Buyer agrees that any breach of this Section is a material breach, and is cause for immediate termination of the Order.

13.2 Nothing contained herein shall be construed as granting an implied license or a license by estoppel or otherwise to any of Seller's intellectual property.

13.3 Subject to the terms contained in an Order, Seller grants to Buyer and its customer (as applicable), including Buyer's and its customer's subcontractors associated with the Order, a non-exclusive, non-transferable, irrevocable, royalty-free license to use and reproduce in whole or in part copyrighted standard commercial documentation provided with the Product(s) for the limited purposes of conducting training and/or to facilitate operation and maintenance of Seller's Product(s).

**14. Patent Indemnity- Products.** Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based upon a claim that any Products manufactured and sold by Seller to Buyer constitute direct infringement of any duly issued United States Patent. Seller shall pay all damages and costs finally awarded therein against Buyer provided that Seller is informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance at Seller's expense necessary to defend or settle said suit or proceeding. If the use or sale of a Product furnished hereunder is enjoined as a result of such suit, Seller, at its option and at no expense to Buyer, shall obtain for Buyer the right to use and sell the Product, or shall substitute an equivalent



Product acceptable to Buyer and extend this indemnity thereto, or shall require Buyer to return the Product and reimburse Buyer the purchase price therefore, less a reasonable charge for wear and tear. Seller shall have no obligation or liability hereunder for infringement, that results from compliance with Buyer's specifications or from a combination with or addition to or modification of the Product after delivery by Seller, or from use of the Product or any part thereof in the practice of a process. Seller's obligations enumerated above shall not apply to any infringement occurring after Buyer has received notice alleging the infringement unless Seller has given Buyer written permission therefore. The sale of the Products furnished hereunder does not convey any license by implication, estoppel, or otherwise under any proprietary or patent rights of Seller covering a combination of these Products with other elements.

SELLER SHALL NOT BE LIABLE FOR ANY COLLATERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, IN REGARD THERETO.

#### 15. Compliance with Export Laws.

15.1 Buyer will comply in all respects with all laws, including but not limited to the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Control Reform Act, the Export Administration Regulations, trade sanctions or embargoes imposed or maintained by the U.S. Government (including but not limited to those administered by the Department of the Treasury's Office of Foreign Assets Control, the U.S. State Department, and the U.S. Department of Commerce).

15.2 Export License/Approvals. Buyer agrees that it will not, without the prior authorization of the Bureau of Industry and Security, United States Department of Commerce; the Directorate of Defense Trade Controls, United States Department of State; or the Office of Foreign Assets Control (OFAC), United States Department of the Treasury, whichever is applicable, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any Product or technical data or service sold or otherwise furnished hereunder to any person within any territory for which the United States Government, or any agency thereof, at the time of such action, requires an export license or other governmental approval, without first obtaining such license or approval. Buyer agrees to indemnify and hold harmless Seller, its officers, directors, employees and agents from and against any and all loss or liability for any and all claims, losses, demands, expenses, penalties or costs (including attorneys' fees) resulting from failure of Buyer to comply with this clause

15.3 End-Use and End-User. Buyer agrees to provide detailed actual End-Use and End-User information and to provide any additional information requested by Seller in satisfaction of any regulatory or due diligence requirements when required by Seller. Seller's ability to deliver an Order is dependent on receipt of complete End-Use and End-User information and such other written certifications (i.e., OFAC, etc.) that Seller deems necessary or required to be obtained by regulation. If the End-User is other than the Buyer, then Buyer shall, at the time of its disclosure of end use and End-User, identify any pertinent laws or regulations in the Buyer's legal jurisdiction (i.e. Country) affecting Seller's performance of the subject Order. Seller reserves the right, at its option, to fully or partially terminate any Order or to rescind or revise its offer and price, if any change in any person or entity handling the Products in Buyer's order chain and/or any law or regulation that Seller in its sole discretion believes makes a particular Order no longer tenable.

#### 16. Limitation of Liability.

16.1 Notwithstanding any other provisions or language in these Terms of Sale or in the Order to the contrary, in no event shall Seller's total liability under an Order (including breach of contract actions or any action arising in tort) exceed the total price thereof.

16.2 UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE IN CONTRACT OR OTHERWISE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES ARISING FROM ANY LOSS, DAMAGE, EXPENSE OR INJURY SUSTAINED FROM OR IN CONNECTION WITH THE SALE, INSTALLATION, USE, SERVICE OR FAILURE OF ANY PRODUCT SOLD HEREUNDER, OR ANY DEFECT THEREIN, OR FROM ANY OTHER CAUSE. BUYER'S REMEDY, IF ANY, WILL BE STRICTLY LIMITED TO THE TERMS OF THIS CLAUSE.

16.3 No action may be brought for any alleged breach of an Order more than one (1) year after the date such alleged breach occurred.

17. **Translations.** In the event of translation into a language other than English, the English language version of these Terms of Sale and all documents related to or connected with an Order, including any specifications or statements of work, will be considered the authentic and controlling text for all purposes, including, but not limited to, resolution of conflict or ambiguity in interpretation of rights and obligations thereof.

#### 18. Governing Law and Venue.

18.1 Buyer and Seller agree that these Terms of Sale shall be deemed to have been executed and delivered within the State of Arizona, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Arizona without regard to its conflict of law principles.

18.2 All claims or disputes arising under or in any way related to an Order, including those relating to the validity of these Terms, shall be resolved through good faith negotiations between authorized representatives of each Party. In the event that such negotiations do not lead to a written settlement signed by a duly authorized representative of each Party within thirty (30) calendar days or such longer period of time as may be mutually agreed upon in a written document that is signed by a duly authorized representative of each Party, then either Party may elect to resolve the matter through the state or federal courts. Venue for any action brought under or relating to an Order covered by these Terms of Sale shall exclusively be in a state or federal court of competent jurisdiction in the State of Arizona. The Parties hereby irrevocably waive any right to challenge such venue on the basis of forum non conveniens or otherwise. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO AN ORDER COVERED BY THESE TERMS OF SALE.

18.3 The Parties agree and consent to accept service of process by certified or registered United States mail, return receipt requested, addressed as provided herein. In the event that an action is commenced by either Party with respect to an Order, the substantially prevailing Party shall be entitled to recover its costs and attorneys' fees from the other Party. Seller and Buyer expressly disclaim the application of the United Nations Convention on Contracts for the Sale of Goods to any Order.

19. **Transfer/Assignment.** An Order shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Neither Party may assign or transfer its rights or obligations as provided in an Order without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that Seller may, without consent of Buyer, assign an Order as a result of a merger or a sale of all or substantially all of the



assets or stock of Seller or to a parent, subsidiary or affiliate as part of any internal reorganization.

**20. Validity and Waiver.** If a court of competent jurisdiction determines any provision, in whole or in part, of an Order to be illegal, invalid, or unenforceable, then the validity and enforceability of the remaining provisions hereunder will not be affected. In lieu of such illegal, invalid, or unenforceable provision, the Parties shall negotiate one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law to be added as part of an Order. The failure of Seller to enforce any applicable provision of these Terms of Sale, or to require at any time performance by Buyer of any provision or obligation related to an Order or these terms hereof, shall in no way be construed to be a waiver of such provision, nor in any way affect the validity of an Order, these terms, or any part hereof, or the right of Seller thereafter to enforce each and every provision.

**21. Offset/Countertrade.** These Terms of Sale do not allow for any offset or countertrade commitment. Should the Buyer require any offset or countertrade commitment as a condition of purchase, Seller reserves the right, at its option, to terminate the subject Order, or to rescind and revise its offer and price.

**22. Foreign Corrupt Practices Act and Anti-Bribery Laws.** Buyer agrees to comply with the Foreign Corrupt Practices Act, the UK Bribery Act of 2010, and all applicable anti-bribery laws. Buyer specifically represents and warrants that, in connection with the performance of its activities under an Order covered by these Terms of Sale, neither it, nor anyone acting on its behalf, has or will, directly or indirectly, offer, pay, promise to pay, or authorize the giving of, any money or thing of value to any Government Official or to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a Government Official, for the purpose of influencing any act or decision of such Government Official, including any act or decision to fail to perform his/her lawful duty, or for the purpose of inducing such Government Official to use his/her influence with any government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality to obtain or retain business for any person. "Government Official" means any officer, employee, agent, representative, or any other person acting in an official capacity for or on behalf of a government, government-owned or government-controlled entity or instrumentality, public international organization, political party, party official or political candidate.

Buyer will comply and will cause its directors, officers, employees, representatives, agents and contractors to comply with all applicable laws, regulations and administrative requirements of the United States, and the Territory. In performing any services pursuant to this Agreement, Buyer will comply and will cause its directors, officers and employees and any third-parties whose services are employed pursuant to the written consent of Seller to comply, in all respects with all Laws, including but not limited to the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Control Reform Act, the Export Administration Regulations, trade sanctions or embargoes imposed or maintained by the U.S. Government (including but not limited to those administered by the Department of the Treasury's Office of Foreign Assets Control, the U.S. State Department, and the U.S. Department of Commerce), and the Foreign Corrupt Practices Act. Buyer will also comply with all applicable non-U.S. laws and regulations, including but not limited to laws prohibiting corruption in international business transactions (such as the United Kingdom Bribery Act) and international trade sanctions or embargoes imposed by the United Nations Security Council. Buyer will not, directly or indirectly, use proceeds received from Seller to fund any activities or business that would violate any Laws or applicable non-U.S. international trade or anti-bribery and corruption laws and regulations.

## **23. Compliance with Laws.**

**23.1** Each Party represents, warrants, and certifies that it will comply with all laws applicable to its contractual obligations and to the Products and/or the activities contemplated or provided under an Order covered by these Terms of Sale, including, but not limited to, any national, international, federal, state, provincial or local law, treaty, convention, protocol, common law, regulation, directive or ordinance and all lawful orders, including judicial orders, rules and regulations issued thereunder, including without limitation those dealing with the environment, health and safety, employment, records retention, personal data protection, and the transportation or storage of Hazardous Materials.

**23.2** Seller represents, warrants, and certifies that it will comply with applicable 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 manufacture or service under similar circumstances.

**24. Equipment Support and Spares.** Buyer recognizes that its placement of an Order may occur at any stage of a given equipment, subsystem or component lifecycle. Accordingly, subsequent to fulfillment of its warranty obligations and except as may be negotiated in the Order, Seller makes no commitments regarding the time period for availability of spare parts and/or technical support services. From time to time, Seller will make End-of-Life (EOL), End-of-Sale (EOS) and/or Last Time Buy Notices related to its equipment, subsystems and components. Seller will cooperate with Buyer in a commercially reasonable manner to support Products during their operational lives and recommend appropriate sparing levels and/or locate replacement equipment, subsystems, and components, as may be applicable.

**25. Orders for Labor Services Only.** In the event that an Order pertains only to labor services being provided by Seller to Buyer, the words "Product" and "Products" shall mean "services." In addition, Sections 4, 5, 6.1, 6.2, 9.1, 9.2, 9.4, 14, and 24 are not applicable to such services provided by Seller.

**26. Order of Precedence.** In the event that two or more provisions in a particular Order conflict and there is no reasonable interpretation that resolves the conflict in a manner that is consistent with the entire Order, then the parties shall resolve the conflict using the following descending order of precedence: (a) Seller's written acceptance of the Order, (b) any unique term(s) specified in the accepted Order, (c) these Terms of Sale, and (d) the statement of work (if any).

**27. EU General Data Protection Regulation.** The Parties shall not transmit any Personal Data, as defined in Article 4 of the European Union's General Data Protection Regulation (GDPR), under this Order.

## **28. Environment, Health and Safety**

**28.1 General.** As used in these Terms, the phrase "Hazardous Materials" shall mean any substance or material defined as a hazardous material, hazardous substance, toxic substance, pesticide or dangerous article under U.S. Government Code of Federal Regulations 49 CFR 171.8 or any other substance regulated on the basis of potential impact to safety, health or the environment pursuant to an applicable requirement of any entity with jurisdiction over the Products, which is subject to an Order. For Orders in which Seller agrees to inspection by Buyer on the premises of Seller, Buyer shall be permitted to enter Seller's premises at a mutually agreed time for the purpose of Buyer's inspection of Seller's compliance with applicable hazardous materials regulations under an Order, provided that Buyer gives Seller reasonable advance written notice and that such visit will not disrupt or delay Seller's performance or normal business operations. Buyer shall be required to comply with Seller's safety and security policies and applicable export laws at Buyer's sole



expense. In the event Buyer is unable to comply with Seller's safety and security policies and/or applicable export laws, including but not limited to, applicable export authorizations, Buyer's right to enter Seller's premises shall be null and void.

28.2 WEEE Compliance. EU Directive 2012/19, recast, on waste electrical and electronic equipment ("WEEE") and national laws and regulations implementing the WEEE directive, as amended from time to time, (collectively "WEEE Regulations") provide for the marking, collection, recycling, take-back, recovery, treatment, and/or environmentally sound disposal of WEEE. Where Buyer imports, places on the market, resells, or distributes the Products to third parties, or where Buyer acts in a manner that would result in Buyer being deemed a "producer" of the Products within the meaning of any relevant WEEE Regulations, Buyer agrees that Buyer qualifies as and is deemed the "producer" of all such Products. Buyer shall be solely responsible for complying with all applicable WEEE Regulations in any jurisdiction in connection with all WEEE arising or deriving from the Products and for all associated costs. Buyer agrees that any subsequent re-transfer or re-export of equipment or technical data to a party, who was not identified to Seller at the time of the original export from the United States, to manage the collection, recycling, take-back, recovery, treatment, and/or environmentally sound disposal of WEEE, is subject to all United States export laws. Buyer shall be responsible for passing on to all successive buyers to the end-user terms consistent with and no less stringent than the terms set forth in: (i) this "WEEE Compliance" clause and (ii) the "Compliance with Export Laws" clause included in this Order. Buyer agrees to indemnify and hold harmless Seller, its officers, directors, employees, agents, parent, subsidiaries, and affiliates from and against any and all loss or liability for any and all claims, losses, demands, expenses, penalties or costs (including attorneys' fees) resulting from failure of Buyer to comply with this clause.

28.3 RoHS Compliance. Buyer shall include in its request for quote any request for compliance with the European Union (EU) RoHS regulations (Restriction of Hazardous Substances in electrical and electronic equipment). Any such compliance requirements are to be mutually agreed by the Parties and incorporated in an Order. Except as may be negotiated in a particular Order, Seller makes no commitments regarding RoHS compliance.

29.4 REACH Compliance. Buyer shall include in its request for quote any request for compliance with the EU REACH regulations (Registration, Evaluation, Authorization and Restriction of Chemicals). Any such compliance requirements are to be mutually agreed by the Parties and incorporated in an Order. Except as may be negotiated in a particular Order, Seller makes no commitments regarding REACH compliance.

29.5 CE Markings and Declarations. Buyer shall include in its request for quote any request for compliance with European Union (EU) Conformité Européenne ("CE") directives. Any such compliance requirements are to be mutually agreed by the Parties and incorporated in an Order. Except as may be negotiated in a particular Order, Seller makes no commitments regarding CE compliance.