

CARLETON TECHNOLOGIES INC. TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

This Agreement [is made between:

Carleton Technologies Inc., doing business as Cobham Mission Systems Division, a company incorporated in Delaware, USA, whose principle address is 10 Cobham Drive, Orchard Park, NY 14127,

("Buyer");

and

the person (e.g., individual or legal entity, however organized) named in an Order issued by Buyer for the procurement of Goods or Services ("Supplier").

Supplier and Buyer shall be known individually as "Party" and collectively as the "Parties".]

1. Buyer Definitions

"Affiliate"	means a company or corporation under common control with or effectively controlled by or controlling a Party directly or indirectly either through the ownership or control of shares or other controlling Agreements.
"Base Prices"	means initial prices established and agreed by the Parties in writing for the supply of the Products.
"Confidential Information"	means any information received by one Party (the "receiving Party") from the other Party (the "disclosing Party") and which the receiving Party has been informed, or has a reasonable basis to believe, is confidential to the disclosing Party, unless such information: (i) was known to the receiving Party prior to receipt from the disclosing Party; (ii) was lawfully available to the public prior to receipt from the disclosing Party; (iii) becomes lawfully available to the public after receipt from the disclosing Party, through no act or omission on the part of the receiving Party; (iv) was rightfully communicated by a third party to a receiving Party free of any obligation of confidence subsequent to the time of the originating Party's communication thereof to the receiving Party; or (v) is independently developed by an employee or agent of the receiving Party who has not received or had access to such information.
"Developments"	means any Product, development documentation, information, materials, plans, drawings, reports or the like conceived during the course of the performance of an Order.
"Direct Competitor"	means any third party in the defense, aerospace, intelligence or surveillance market selling products in competition with Buyer or its Affiliates.
"Documentation"	means the user guides and user manuals (as appropriate) for the Products, regardless of whether in printed and/or machine-readable format.
"Forecast"	means a rolling estimate of Buyer's requirements for Products from current Orders up to a forward looking period of at least nine (9) months and preferably twelve (12) months including the quantities to be manufactured and the requested delivery date.
"Intellectual Property Rights"	means, to the extent that any of the following are recognized in any jurisdiction, any industrial and intellectual property and/or proprietary rights whether registered or unregistered, legal or beneficial, including but not limited to: copyrights, patent rights (including applications for patent protection), publicity rights, trade secret rights, registered or otherwise protected trademarks, trade names and service marks and protections from trademark dilution, database rights and semiconductor topography rights.
"Traceable"	means that all the Products, Sub-Assemblies and Components supplied by Supplier shall be accompanied with original authentic certificates of conformity from the manufacturer of the original Component or if not accompanying the Component delivered to the Buyer are in the possession of Supplier as specified by the Buyer's specification.
"Tools" or "Tooling"	means tools funded or provided by the Buyer.
"Non-Recurring Expense Items" or "NRE Items"	means any unique labor, tooling, jigs, fixtures, stencils, or other items utilized for the manufacture of a Product that are separately priced in an Order for the Product, amortized in the Base Price of a Product or detailed in a separate NRE Items Order related to a Product.
"Order"	shall mean an order placed by Buyer for Products.
"Products"	shall mean hardware (meaning the tangible materials, sub-assemblies, assemblies and equipment, or any modified form thereof); software (meaning the computer object programs, source codes, procedures, statements, screen layouts, machine readable instructions and definitions, or any modified form thereof, supplied separately or along with or as part of any hardware); and related services; and, for the avoidance of doubt, shall include the Developments.
"Buyer's Property"	means any dies, tools, patterns, plates, artwork, designs, drawings, specifications, free issue materials or other documents or items in the possession or under the control of Supplier which have either been supplied by the Buyer to Supplier, or in respect of which the Buyer (subject always to Buyer's rights under this Agreement) has paid Supplier the entire NRE Items price.
"Third party Products"	means the software and operating system software necessary to run the Products.
"VMI"	means Vendor Managed Inventory.

2. Agreement

- 2.1 Supplier shall provide the Products to Buyer as agreed to from time to time by the Parties pursuant to Orders on the negotiated terms set out herein. Each Order shall include a reference, and be subject, to these terms and conditions and to the exclusion of all other inconsistent terms and conditions and each Order incorporating these terms and conditions shall constitute an Agreement separate from all other Orders. To the extent that there are any conflicts between this Agreement and the Order then the Order shall prevail. This Agreement and any documents expressly incorporated herein by reference comprise the entire Agreement between the Parties in relation to the matters referred to herein and supersede any previous Agreement, arrangement, communication and negotiation (whether written or oral) between the Parties relating thereto. In entering into this Agreement no Party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of the other Party on or before the date of this Agreement (and such are agreed to be merged into, and superseded by, the terms hereof), and each of the Parties waives all rights and remedies which, but for this clause, might otherwise be available to it in

respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause shall limit or exclude any liability for fraud.

- 2.2 Supplier will procure all components necessary to fulfill Forecasts and Orders issued in accordance with this Agreement and to reasonably ensure sufficient capacity is available to achieve the quantities and delivery dates specified in such Forecasts and Orders, at lead-times reasonably consistent with the lead-times of such components at the time of order. The Buyer acknowledges that Supplier may be required by its suppliers to procure components in minimum buy quantities and that such quantities may exceed the Buyer's actual demand for such components. Supplier may also purchase components in economic order quantities with the prior written approval of the Buyer and provided that Supplier has notified the Buyer of any commercial obligations or restrictions involved in such written approvals.
- 2.2.1 The Buyer will issue, and Supplier will accept or reject in writing in accordance with **Section 2.2.3** below, Orders for all Products covered by this Agreement. Each Order shall contain the following information:
- 2.2.1.1 a description of the Product by part number;
 - 2.2.1.2 the quantity of the Product (with the exception of blanket Orders);
 - 2.2.1.3 the scheduled delivery date or delivery schedule;
 - 2.2.1.4 the location to which the Product is to be delivered; and transportation instructions if other than defined by this Agreement;
 - 2.2.1.5 Price, including unit, extended and Order total prices;
 - 2.2.1.6 and any other special terms or requirements.
- 2.2.2 Orders shall comply with the price and Product lead-times agreed by the Parties in writing. The Buyer shall place Orders in advance of the delivery date and allow for the Product lead-time.
- 2.2.3 Order process is as follows:
- 2.2.3.1 Each Order shall be issued by the Buyer by electronic mail, fax or postal mail to Supplier. The Order will be deemed as received by Supplier on the day issued if by electronic mail or fax and two days after issue in the event of posted mail;
 - 2.2.3.2 The Order will be checked by Supplier; and
 - 2.2.3.3 All Orders shall be confirmed or acknowledged in writing as accepted or rejected by Supplier within five (5) working days of receipt. If Supplier does not accept or reject the Order within the said five (5) day period, the Order shall be deemed accepted by Supplier and should Supplier commence work under the Order, it shall be deemed to have been accepted the Order by performance.
 - 2.2.3.4 If there is a conflict of terms the order of precedence shall be:
 - 2.2.3.4.1 The typewritten provisions on the face of the applicable accepted Order;
 - 2.2.3.4.2 This Agreement;
 - 2.2.3.4.3 Any Appendices, program schedules or other written Agreements attached to this Agreement as agreed by both Parties; and
 - 2.2.3.4.4 the specification. Supplier shall accept all Orders that are placed consistent with Buyer's Forecasts and within the Product lead-times as agreed by the Parties. In the event that Supplier is unable to meet the delivery date set forth in an Order because the demand under the Order exceeds the previously Forecasted demand or the delivery date is shorter than the Product lead-time, the Parties shall negotiate in good faith to resolve the matter. Supplier will make reasonable efforts to accommodate Orders that are within 25% of the previously Forecasted demand.
- 2.2.4 Supplier will supply Products strictly in accordance with the Buyer's requirements as detailed in this Agreement, the specification and the Order.
- 2.2.5 The Parties acknowledge that the pre-printed provisions appearing on the reverse of, or attached to, an Order acknowledgment, or other Supplier generated written communication shall be deemed deleted and of no effect whatsoever. Supplier shall ensure that no such pre-printed terms are on an Order acknowledgement sent to the Buyer.
- 2.2.6 Under this Agreement, Orders will be issued by each Buyer Affiliate and all rights and obligations of the Buyer under this Agreement and the Order shall pass to such Affiliate and for the purposes of that Order such Affiliate shall be deemed to be the Buyer for the purposes of this Agreement. Upon Supplier's acceptance of Orders from a Buyer's Affiliate, such Orders shall be governed exclusively by this Agreement.

3. General

- 3.1 Any notice to be given hereunder shall be in writing and sent to the relevant Party's General Manager and Company Secretary at its address or fax number contained above (or such other address or fax number as shall have been notified to the other Party), and shall be delivered or sent:
- 3.1.1 by fax, provided that the transmission note shall be retained for proof of delivery and provided also that a confirmation copy shall also be sent by first class post; or either;
 - 3.1.2 in the case of a notice between Parties whose respective addresses for service are in the same country, by registered or recorded delivery post or local equivalent postal service which provides written evidence of delivery; or
 - 3.1.3 in the case of a notice between Parties whose respective addresses for service are in different countries, by courier provided that such courier obtains a signature on behalf of the recipient by way of:
 - 3.1.3.1 acknowledgment of receipt and
 - 3.1.3.2 evidence of the date and time of receipt.
- 3.2 Such notice shall be deemed to have been given:
- 3.2.1 in the case of a notice sent by fax, at the start of the first normal business day in the country of receipt following the date of transmission as such date is evidenced by the transmission receipt;
 - 3.2.2 in the case of a notice sent by post in accordance with **clause 3.1.2**, 48 hours after the date on which the registered or recorded delivery letter including such notice is posted; and
 - 3.2.3 in the case of a notice which is delivered by courier in accordance with **clause 3.1.3**, when it is delivered to the appropriate address, as evidenced by the signature referred to in **clause 3.1.3**.
- 3.3 Neither Party shall in any manner assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, or act for or bind one another in any respect except as expressly permitted under the terms of this Agreement.
- 3.4 The relationship of Buyer and Supplier under this Agreement and the Order is intended to be that of independent contractors. Nothing contained in this Agreement or the Order shall be construed as creating a partnership, joint venture, agency, trust, or other legal association of any kind between the Parties. Except as specifically provided in this Agreement, neither Party shall act or represent or hold itself out as having authority to act as an agent or partner of the other Party or in any way to bind or commit the other Party to any obligations. Any such act shall create a separate liability in the Party so acting to any and all third Parties affected thereby. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective, each Party being individually responsible only for its actions and the obligations as set forth in this Agreement and the Order.
- 3.5 A person who is not a Party to this Agreement may not enforce any of its terms.
- 3.6 If any provision of this Agreement or an Order is found invalid or unenforceable, the remaining provisions will be given effect as if the invalid or unenforceable provision were not a part of this Agreement or the Order (as the case may be).

- 3.7 Neither this Agreement nor an Order may be varied or amended except in writing and signed by a duly authorized officer of each Party.
- 3.8 The headings contained in this Agreement and an Order are for reference only and shall not be used in its construction or interpretation. The provisions of this Agreement and the Order shall be construed and interpreted fairly and in good faith to both Parties without regard to which Party drafted the same.
- 3.9 References to any gender includes any other gender and the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.
- 3.10 Reference to any statute, enactment, ordinance, order, regulation or other similar instrument shall be construed to include a reference to the statute, enactment, ordinance, order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, orders, regulations or instruments made pursuant to it.
- 3.11 The failure of either Party to enforce any provision of this Agreement or an Order shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 3.12 During the term of this Agreement and for one year after termination or expiration of this Agreement, Supplier shall not either directly or indirectly employ, or solicit to employ, or cause to be solicited for employment, persons employed by Buyer at the relevant time, without Buyer's prior written consent. As to employees who left the employ of Buyer prior to termination of this Agreement, Supplier shall not, directly or indirectly, employ or otherwise contract such former employee of Buyer until one year after the former employee's termination or separation from Buyer, except with Buyer's written consent.
- 3.13 Supplier undertakes to inform Buyer immediately of any changes in ownership or control of Supplier and of any change in its organization or method of doing business that might affect the performance of Supplier's duties under this Agreement or an Order.
- 3.14 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 3.15 The applicable terms in **clauses 2, 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20** shall survive termination or expiration of this Agreement.
- 3.16 Supplier shall at all times comply with all laws and regulations applicable to the proposed sale of the Products to Buyer and any other laws pertaining to compliance with this Agreement and the Order and obtain all permits, registrations and approvals of governmental authorities and/or standard setting agencies that are necessary or advisable (in the judgment of Buyer or Supplier) in respect of the Products.
- 3.17 Supplier understands the provisions of any relevant local laws relating to the prevention of corruption and agrees to comply with them to the extent that they apply.
- 3.18 Supplier warrants that none of its officers are government officials, police officers or civil servants.
- 3.19 Each Party hereby represents that the individuals identified below have the corporate power and authority necessary to execute this Agreement.

4. Law

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by the laws of the State of New York applicable therein (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

5. Disputes

- 5.1 The intent of the Parties is to identify and resolve disputes promptly. Each Party agrees to perform as follows:
 - 5.1.1 to notify the other Party of any dispute in reasonable detail as soon as possible after any dispute arises;
 - 5.1.2 to negotiate in good faith to seek to resolve the dispute.
 - 5.1.3 if a dispute is not resolved within thirty days of it arising, either Party shall be entitled to submit the dispute for final and binding resolution. The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New Hampshire for the determination of any disputes arising out of or in connection with this Agreement (including (without limitation) any dispute regarding the existence, validity or termination of this Agreement and/or this clause and any dispute regarding non-contractual obligations arising out of or in connection with this Agreement), and agrees that such courts are a convenient forum for such disputes. For such purposes, each party irrevocably waives any objection to the jurisdiction of those courts (including, without limitation, the exercise of personal jurisdiction by those courts), or that such courts represent an inconvenient forum, and each party irrevocably agrees that a judgment or order of those courts in connection with this Agreement is conclusive and binding upon it.
 - 5.1.4 EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **CLAUSE 5.1.4**.

6. Import/Export

- 6.1 Supplier shall promptly notify Buyer of any export restrictions that may apply to the Products supplied under the Order, which shall include but not be limited to United States export controls administered by the U.S. Department of State, U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control and other United States agencies, and the export control regulations of the European Union, including without limitation the Council Regulation (EC) No. 1334/2000. Supplier, at its own expense, agrees to comply with all laws and regulations of the United States related to exports, imports, and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), the Export Administration Regulations (EAR) (15 C.F.R. §§ 730-774). Supplier also agrees to obtain, at its sole expense, any export licenses or other official authorizations and to carry out any customs or similar requirements for the export of any Products covered by the Order. Supplier specifically shall obtain all required authorizations from the U.S. Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16). Supplier shall provide written notification to Buyer before assigning or granting access to a Foreign Person to technical data related to the Order. Supplier agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. Buyer may deem Supplier's failure to comply with the requirements of this clause a substantial breach of a material term of the Order that shall subject Supplier to the termination provisions of **clause 18**.

7. Federal Acquisition Regulation ("FAR")/Defense Federal Acquisition Regulation Supplement ("DFARS")

- 7.1 The FAR/DFARS clauses listed in the Order are incorporated in the Order by reference with the same force and effect as if they were included in full text. Unless otherwise expressly noted herein, where necessary to make the FAR and DFARS clauses applicable to the Order and to protect Buyer's interest, the words "Government," "DOD," and "Contracting Officer" each shall mean "Buyer" or (when appropriate) "Buyer and the Contracting Officer," the words "Contractor" or "Offeror" shall mean "Supplier," and the words "Contract" and "Schedule" shall refer to this "Agreement" or the applicable Order. The definitions outlined herein are intended to create legal relationships between Buyer and Supplier identical to, but not dependent on, the relationship the FAR and DFARS intend to establish between the "Government" and a "Contractor." It is not the intent of Buyer that any such substitution shall result in the disclosure of a Party's proprietary and /or confidential cost and pricing data.

8. Products

- 8.1 Supplier represents and warrants that it shall provide the Products to Buyer precisely in accordance with this Agreement and the Orders. Supplier further represents and warrants that:
- 8.1.1 it shall use all best skill and care in such provision and shall perform its obligations in accordance with the Order;
 - 8.1.2 title to the Products (including software unless expressly agreed) ordered under the Order shall transfer free from any security interest or other lien or encumbrance;
 - 8.1.3 it has the rights to grant the license rights set out in this Agreement and in the Order;
 - 8.1.4 that the Products are of good quality, material and workmanship in accordance with best industry practice;
 - 8.1.5 the Products are and will be fit for their intended purpose and use;
 - 8.1.6 the Products are free from defects and hazards to health;
 - 8.1.7 Products are new and not used, refurbished, repaired or reconditioned and not of an age that deteriorates or impairs their usefulness, safety or operation;
 - 8.1.8 the Products do not infringe the rights of any third party.
- 8.2 The Products will be delivered carriage paid to the address stated as the address for delivery on the Order unless otherwise specified in the Order. Supplier will off-load the Products at its own risk. Upon delivery of the Products by Supplier to Buyer, Buyer (or Supplier at the request of Buyer) may perform an acceptance test upon such Products. The Products shall be deemed to have been accepted when notified by Buyer in writing, including where applicable that Supplier has overcome any defects.
- 8.3 Supplier:
- 8.3.1 agrees that title to the hardware provided to Buyer under the Order shall pass to; and
 - 8.3.2 grants a worldwide, royalty free, perpetual, irrevocable, non-transferable right to use, distribute and onward develop the software and any utilization rights thereof to, Buyer (or its Affiliate) upon delivery or payment, whichever is the earlier. Supplier shall bear the risk of loss and damage to the Products until they are delivered (and off loaded) in conformity to the Order at Buyer's destination specified in the Order. This shall not affect or waive any of Supplier's warranties or other obligations under this Agreement or the applicable Order for, or in relation to, the Product.
- 8.4 When delivering a Product that contains software to Buyer, Supplier shall deliver all of the following:
- 8.4.1 the object code for the software;
 - 8.4.2 the source code for the software;
 - 8.4.3 all Development Documentation and other Documentation relating to the software;
 - 8.4.4 copies of all applications and tools used in the creation or development of the software;
 - 8.4.5 any password and encryption details necessary to access the software or its source code; and
 - 8.4.6 full details of the software, including full name and version details, design information including module names and functionality, the type of media on which the software is provided, details of any commands required to install and make a backup copy of the software, any compression used in packaging the software, and details of operating systems on which the software runs.
- 8.5 Supplier may not deliver the Products by separate installments unless agreed in writing by Buyer.
- 8.6 Time for the performance of all obligations of Supplier under this Agreement and Orders is of the essence.

9. Developments

- 9.1 Supplier agrees that it will promptly communicate the Developments to the Buyer together with all inventions, programs, improvements, processes, standards, techniques, developments, know how, designs or any other original matters whether capable of registration or not associated with the Products which, at any time during the performance of this Agreement or any Order, Supplier might devise or discover. Supplier further agrees that all such Intellectual Property Rights and all rights throughout the world deriving from the same which arise after this Agreement or any Order has terminated shall vest in Buyer absolutely, as works made for hire.
- 9.2 Supplier shall, both during the continuance and following the termination of this Agreement for any reason whatsoever, at the request and reasonable expense of Buyer, as Buyer may require, apply for, and do all acts and things necessary to obtain registration or other protection in respect of the Intellectual Property Rights in the Developments in any part of the world. Further, Supplier shall vest all such Intellectual Property Rights in Buyer, or as Buyer may direct, and also Supplier grants to Buyer the right to use Supplier's name to obtain ownership, registration and protection of such Intellectual Property Rights.
- 9.3 Supplier shall not, at any time, whether during the continuance or following the termination of this Agreement for any reason whatsoever, do anything to imperil the validity of any of the Intellectual Property Rights in the Developments and shall, at the discretion and expense of Buyer, render all assistance within Supplier's power to obtain and maintain such Intellectual Property Rights and any extension thereof.
- 9.4 To the extent that any of the rights, title and interest referred to in **clause 9.1** do not vest in Buyer by operation of law, Supplier hereby irrevocably assigns, transfers and conveys to Buyer, without further consideration, all such rights, title and interest (including Intellectual Property Rights) and such assignment shall be an assignment (in respect of any copyright subsisting therein) of future copyright.
- 9.5 With respect to any moral rights which arise under **clause 9.1**, Supplier shall procure that all applicable moral rights shall not be asserted by the holder of such rights.
- 9.6 Supplier acknowledges that:
- 9.6.1 all rights in the Developments shall vest in Buyer absolutely;
 - 9.6.2 it is not entitled to any source code or object code relating to the Developments, as all rights in such source code vest absolutely in Buyer; and
 - 9.6.3 it has no rights to license the Intellectual Property Rights or Developments, or any part thereof, to any third party.

10. Support

- 10.1 In consideration of the fees paid by Buyer Supplier will:
- 10.1.1 provide a maintenance service to Buyer on the Products as defined in **clauses 10.2** and **10.3**; and
 - 10.1.2 be responsible for the future development of the Products and in particular ensuring their continuing compatibility with subsequent versions of Buyer's product(s), throughout the term of this Agreement and the term of any Agreement signed between Buyer and its customers, which involve the provision of Products. For the avoidance of doubt this obligation shall continue and survive termination of this Agreement.
- 10.2 Supplier will at no additional fee or sum for the period of three (3) years from date of written acceptance of the Products by Buyer:
- 10.2.1 provide the warranties and representations in **clause 8.1**; and
 - 10.2.2 correct or procure the correction promptly, and no later than within five (5) days, of any failures of the Products to perform in accordance with the Order which are identified in writing by Buyer to Supplier. Any correction by Supplier shall be deemed to be a Product for the purposes of this Agreement and the Order. Supplier shall be responsible for all costs (including delivery and collection charges) and delays incurred by Supplier and Buyer in respect of any faulty Products or failure to meet Supplier's obligations under this Agreement or any Order.

- 10.3 Buyer may produce maintenance releases of its own proprietary software, which use or are integrated with the Product from time to time, and Supplier shall update the Product to ensure that such updated Product shall operate with Buyer's maintenance releases in the manner that it did with Buyer's original software. Such updated Products will be supplied to Buyer at no additional fee. The Parties hereto shall agree a delivery date for such update Products, which date shall be no later than three (3) months from date of notification to Supplier by Buyer of its maintenance release schedule.
- 10.4 Supplier shall give Buyer at least thirty (30) days' written notice if it proposes to incorporate in or use Products in combination with any open-source software, whereupon Buyer may require that Supplier, as soon as practicable and in good faith:
 - 10.4.1 provides and discusses with Buyer all reasonable additional information concerning the open-source software including without limitation (except for conditions of confidentiality) the type, proposed use and license terms;
 - 10.4.2 discusses with Buyer any negative potential effects upon the Intellectual Property Rights of Buyer's products; and
 - 10.4.3 takes such action as may be reasonably instructed by Buyer to minimize any such negative effects or to remove and replace the open-source software. Irrespective of the above, Supplier shall not use open-source software for any reason whatsoever, if Buyer notifies Supplier in writing of its objection to such use.
- 10.5 Supplier shall not introduce into any of Buyer's or any of Buyer's Affiliates' computer systems anything, including any computer program code, virus, authorization key, license control utility or software lock, which is intended by any person to, is likely to, or may:
 - 10.5.1 impair the operation of the Product or any other computer systems or programs in the possession of Buyer or any of Buyer's Affiliates or impair the receipt of the benefit of the Products; or
 - 10.5.2 cause loss of, or corruption or damage to, any program or data held on any computer systems or other systems.
- 10.6 Supplier shall immediately notify Buyer if any Products and/or Intellectual Property Right or part thereof, shall infringe or breach any law. In the event that any such Products and/or Intellectual Property Right or part thereof shall infringe or breach any law, Supplier shall at no additional cost to Buyer and as soon as is reasonably practicable provide to Buyer replacement Products and/or Intellectual Property Right which do not infringe or breach the law and which shall perform in a manner identical in all material respects to the Products and/or Intellectual Property Right as it was prior to such replacement.

11. Quality and Inspection

- 11.1 Supplier's quality system shall be compliant with the requirements of ISO9001.
- 11.2 Buyer may at any time make changes in writing relating to the Order, including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, performance of the Order an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by Buyer in writing before Supplier proceeds with such changes.
- 11.3 Supplier undertakes to work with the Buyer to maintain a technical watch for obsolescence on all Products. For the purpose of this Agreement, a technical watch shall be defined as the ongoing verification of the forward availability of parts, processes and materials procured from Supplier's subcontract and supply base. This watch shall occur on a quarterly basis.
- 11.4 Supplier will maintain detailed quality control and manufacturing sub-assembly and component Traceability records for the period of at least twelve years from the date of last supply of the Products. After twelve (12) years, Supplier shall either agree to continue holding the records or shall offer the Buyer, at no charge, the option to transfer them for archiving or provide electronic copies to the Buyer. No record shall be destroyed without the Buyer's written approval.
- 11.5 Supplier agrees that Buyer and Buyer's customers may each inspect the performance of Supplier's obligations under this Agreement or any Order. To the above extent Supplier shall enable Buyer, or Buyer's customers (as applicable) to conduct inspection at its office or at the place where it performs the obligations under this Agreement or any Order, specifically by allowing Buyer's and/or Buyer's customers (as applicable), inspectors and persons authorized by the same to have access to premises, documents and information connected with performance of Supplier's obligations and provide oral or written information to the persons performing the inspection.
- 11.6 Supplier, at no additional cost to Buyer, shall:
 - 11.6.1 comply with all of Buyer's standard policies that are relevant to the supply of the Products and any other on-site regulations specified by Buyer for personnel working at Buyer's premises or relating to accessing any Buyer's computer systems. Buyer shall provide Supplier with a copy of such policies and standards as they exist at the Order date, and, whenever they are updated, promptly following issue of the updated versions;
 - 11.6.2 provide the Products in compliance with all requirements of all applicable legislation from time to time in force and which is or may become applicable to the Products. Supplier shall promptly notify Buyer if Supplier is required to make any change to the Products for the purposes of complying with its obligations under this clause; and
 - 11.6.3 promptly notify Buyer of any health and safety hazards that exist or may arise in connection with the supply of the Products.

12. Traceability

- 12.1 Under the terms of this Agreement, Supplier shall have and operate a process to ensure that all Products, sub-assemblies and the components contained therein supplied to the Buyer are completely Traceable back to manufacturer by batch or lot or date code.
- 12.2 Further Supplier hereby agrees, unless directed otherwise by the Buyer, to procure components through franchised distributors or direct component Suppliers. Supplier agrees to indemnify and hold the Buyer harmless from and against all costs and expenses for the removal, repair or replacement and reinstallation of counterfeit components incorporated into a Product sold by Supplier to the Buyer where the counterfeit component was procured by Supplier from a person or entity other than a franchised distributor or direct component Supplier or other person or entity pre-approved by the Buyer in writing.
 - 12.2.1 Supplier will:
 - 12.2.1.1 require that its Suppliers provide a Certificate of Conformance with each component shipment;
 - 12.2.1.2 perform incoming inspections of components and paperwork to ensure conformity to Specification; and
 - 12.2.1.3 maintain and document incoming inspection specifications used for each component used in manufacturing Products. The foregoing obligations of this **Section 12.2.1** shall not apply to components consigned or sold to Supplier from the Buyer.
 - 12.2.2 If components are not purchased from an original equipment manufacturer, franchised distributor or without full traceability and manufacturers certificates, Supplier will ensure that prior written approval has been obtained from the Buyer before using such components and that the approving permit number shall be cross referenced on Supplier's release certification. To obtain the Buyer's approval Supplier may have to, at the Purchases sole option and at Suppliers cost, perform the following:
 - 12.2.2.1 check with the original equipment manufacturer that the date and batch codes identified on the Certificate of Conformity are genuine; and
 - 12.2.2.2 complete or arrange for actual component testing on a representative sample of the components to verify their conformance to specification.
 - 12.2.3 For components purchased from the Buyer Supplier shall maintain the traceability back to the paperwork provided by the Buyer as part of the components transfer.

13. Buyer Continuous Improvement

- 13.1 The Parties agree that competitive pressures necessitate a program of continuous improvement. On all manufacturing contracts forecast to last longer than six (6) months in aggregate, each Party shall cooperate in good faith to implement a Product cost reduction program involving new technologies, component cost reduction, productivity, quality and reliability improvements, and manufacturing processes (including cycle time and assembly costs) which are mutually deemed beneficial when all engineering and re-qualification costs are considered. The Parties shall at quarterly meetings conduct reviews with specific emphasis on quality, delivery, and cost improvements. Any cost savings which are achieved by Supplier as a result of implementing cost reductions proposed solely by the Buyer shall reduce the price of the Products by the entire amount of Supplier's cost savings, after Supplier has recovered its NRE Items associated with the cost reduction. Any cost savings which are achieved by Supplier as a result of changes proposed solely by Supplier, or jointly by the Parties, after Supplier has recovered its NRE Items associated with the cost reduction, shall be shared equally by the Parties for a period of twelve (12) months and shall be retained exclusively by the Buyer after twelve (12) months. Notwithstanding the foregoing, cost reductions will commence immediately to reduce total costs of acquisition within an integrated supply chain by actively driving best practice in areas including, but not limited to:
- 13.1.1 elimination of incoming inspection activities;
 - 13.1.2 simplification of ordering, and billing processes;
 - 13.1.3 improved packaging and labeling; and
 - 13.1.4 inventory reduction through: application of supply replenishment concepts; direct fulfillment, pull systems where appropriate; logistics solutions, including consignment supermarkets, ship set kitting and VMI; close collaboration on forecasting and planning; and integration of higher level assemblies.
- 13.2 The Parties will work together to develop a cost model under which Product Base Prices will be agreed. Supplier shall embrace the concept of target costing for new projects. Target costs will be provided for all new enquiries and modifications when known. Regular review meetings will be used to develop the Base Price structure with Supplier prior to any contractual Agreement. The cost for volume production for each potential product will be agreed using the framework of this Agreement.
- 13.3 Supplier agrees that during the term of this Agreement, if requested by the Buyer, they will work together to develop and implement productivity improvements, including but not limited to, value engineering, Kaizen events, and quality improvements for the purpose of reducing Supplier's costs to manufacture the Products and the Parties' transaction costs.
- 13.4 The Parties agree that during the term of this Agreement, they shall work together to develop and implement a Product lead-time and component lead-time reduction program to reduce the Product lead-times and component lead-times mutually agreed by the Parties immediately this Agreement is signed. Product lead-time and component lead-time reduction programs may include, but shall not be limited to initiatives such as security stocking of long lead-time items, lower tier Supplier Agreements, re-engineering the manufacturing process, and Product redesign. The Parties agree to baseline forward Product lead-times and component lead-times for purposes of benchmarking the success of such programs.

14. NRE and Tooling

- 14.1 Supplier shall quote the life of any new Tools prior to these Tools being manufactured. This will be expressed as the number of parts capable of being produced by the Tooling. Supplier will be responsible for the maintenance and replacement of all Tooling where damage is caused to the Tooling by the acts or omissions of Supplier in not undertaking due care, maintenance and attention to the Tooling, negligence or willful misconduct of Supplier. Supplier shall transfer to the Buyer any transferable warranties on tooling.
- 14.2 Unless otherwise agreed between the Parties for extraordinary NRE costs (which will be discussed by the Parties), all NRE Item costs will be amortized into the Base Price over a 12-month period.
- 14.3 Full NRE Item costs for each Product will be quoted using the Buyer's Bid Template documents.
- 14.4 The amortization quantity should be clearly documented on the Buyer's Bid Template. Once the total amortization quantity for each Product has been delivered, Supplier shall subtract the amortization amount from the Base Price and establish a new Base Price for subsequent deliveries.
- 14.5 Lead times for all tooling are to be quoted by Supplier and accompanied by a detailed timing plan.
- 14.6 Supplier shall be responsible for the routine maintenance, storage, repair, usage and calibration (if calibration or other specialist requirements are required outside of routine maintenance, repair or usage and not caused by a lack of care or damage by Supplier, then such costs shall be agreed in advance and paid for separately by the Buyer) of all the Buyer furnished, Government furnished and or Government funded equipment tooling, test rigs, rigs and fixtures and/or test stands and Buyer acquired NRE Items in Supplier's possession for performance of this Agreement. Equipment not owned by Supplier which requires a National Institute of Standards and Technology traceable certificate of calibration will be quoted and submitted to the Buyer for approval prior to submitting equipment to third Party calibration. Supplier will track and file calibration certificates and schedules.
- 14.7 Supplier shall be responsible for the maintenance and replacement of all NRE Items within their useful life, fair wear and tear excepted. The Buyer shall have an option at any time, which shall be exercised by written notice to Supplier, to pay not more than the balance of the outstanding NRE Item cost for its outright ownership. In this event, Supplier shall subtract the amortization amount from the Base Price and establish a new Base Price for subsequent deliveries.

15. Buyer's Property

- 15.1 Buyer's Property shall become and/or remain the exclusive property of the Buyer. The Buyer may demand possession thereof at any time without notice; however, if such a demand of possession is made and it affects Supplier's cost of performing the Order(s) on which the Buyer's Property is or was to be used, or affects Supplier's ability to meet any delivery dates under such Order(s), then such demand shall constitute a modification for which Supplier is entitled to a price adjustment or delivery schedule adjustment or both. Similarly, if Supplier requires such demanded Buyer's Property and it adversely impacts the ability of Supplier to perform its obligations under this Agreement, Supplier shall be reasonably excused from such further obligations.

Further Supplier warranty that:

- 15.2 Supplier shall maintain and keep the Buyer's Property in good condition. The Buyer will compensate Supplier at its normal hourly rates for all calibration, maintenance or repair services to the Buyer's equipment or tooling (other than normal preventative maintenance services or services to correct defects caused by Supplier's act or omissions negligence or willful misconduct, provided that the Buyer approves such services and rate in advance and in writing. The Buyer is not required to compensate Supplier for any such services associated with equipment or tooling owned by Supplier and not intended to be assigned to the Buyer.
- 15.3 The Buyer's Property shall not be removed from Supplier's premises except on the prior written permission of the Buyer. Supplier may remove Buyer's Property from Supplier's premises for purposes of repair provided that Supplier provides advance notice to the Buyer of the anticipated removal.
- 15.4 Supplier shall keep the Buyer's Property separate and apart from its own property and that of other persons and shall clearly mark the Buyer's Property as being the Buyer's property.
- 15.5 The Buyer's Property shall not be used by Supplier for any purpose other than for the supply of Product to the Buyer.
- 15.6 Supplier will compile and submit reports on the status of the Buyer's Property as reasonably requested by the Buyer including details on any repairs and maintenance necessary to maintain supply of Product to specification.
- 15.7 Supplier shall be liable to the Buyer for any loss of or damage to the Buyer's Property during the time it is in Supplier's possession, custody or control. During such time Supplier shall insure the Buyer's Property at full replacement value in the name of and for the benefit of the Buyer at Supplier's expense with a reputable insurance provider and shall provide to the Buyer on demand certificates of insurance evidencing such insurance and the receipts for premiums paid thereon.

- 15.8 Supplier waives any lien which it might otherwise have (whether at the date hereof or subsequently) on any of the Buyer's Property for work done thereon or otherwise. This condition shall not be construed as a waiver of any other right of recovery of any other charges that may be due to Supplier for such work.
- 15.9 Supplier shall keep the Buyer's Property free of all mortgages, charges or other encumbrances and will procure that any lien over the Buyer's Property is discharged forthwith.
- 15.10 Supplier shall promptly pay the Buyer on demand the full replacement value of any of the Buyer's Property, which is not returned or satisfactorily accounted for.

16. LIABILITY AND INDEMNITY

- 16.1 SUPPLIER REPRESENTS AND WARRANTS THAT IT HAS THE AUTHORITY TO PERFORM ALL ITS OBLIGATIONS AND GRANT THE RIGHTS GRANTED PURSUANT TO THIS AGREEMENT OR THE ORDER AND THAT SUCH PERFORMANCE OR THE GRANTING OF SUCH RIGHTS IS NOT IN BREACH OF ANY AGREEMENT TO WHICH IT IS A PARTY OR OTHERWISE BOUND.
- 16.2 SUPPLIER SHALL BE LIABLE TO BUYER FOR ALL DAMAGES, COSTS, EXPENSES AND ANY OTHER SUMS INCURRED OR CHARGED THAT BUYER MAY SUFFER IN CONNECTION WITH ANY ACTS OR OMISSIONS OF SUPPLIER UNDER THIS AGREEMENT OR THE ORDER.
- 16.3 SUPPLIER SHALL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS BUYER FROM AND AGAINST ANY CLAIMS BY THIRD PARTIES WHICH ARE CAUSED BY OR ARISE OUT OF OR IN CONNECTION WITH
- 16.3.1 ANY ACT OR OMISSION OF BUYER CARRIED OUT PURSUANT TO INSTRUCTIONS OF SUPPLIER; OR
- 16.3.2 ANY BREACH BY SUPPLIER OF ANY TERMS OF THIS AGREEMENT OR THE ORDER
- 16.4 NOTWITHSTANDING ANYTHING STATED HEREIN NOTHING SHALL EXCLUDE OR LIMIT THE LIABILITY OF EITHER PARTY:
- 16.4.1 FOR DEATH OR PERSONAL INJURY ARISING AS A RESULT OF THE NEGLIGENCE OF THE OTHER OR ITS EMPLOYEES; OR
- 16.4.2 FOR FRAUD; OR
- 16.4.3 FOR LIABILITY ARISING PURSUANT TO **CLAUSE 8, CLAUSE 9, CLAUSE 16.7 OR CLAUSE 17**; OR
- 16.4.4 FOR GROSS NEGLIGENCE; OR
- 16.4.5 FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR THE RELEVANT PARTY TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.
- 16.5 SUBJECT TO **CLAUSE 16.4**, BUYER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO 100% OF THE TOTAL AMOUNT OF FEES WHICH HAVE BEEN PAID UNDER THIS AGREEMENT.
- 16.6 BUYER WILL HAVE NO LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY ORDER IN RESPECT OF:
- 16.6.1 LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR
- 16.6.2 LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT (INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR
- 16.6.3 ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, HOWSOEVER ARISING.
- 16.7 SUPPLIER WARRANTS THAT THE PRODUCTS WILL NOT INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. SUPPLIER WILL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS BUYER AND BUYER'S CUSTOMERS FROM, AND AT ITS OWN COST DEFEND ANY ACTION BROUGHT AGAINST BUYER OR ITS CUSTOMERS BASED UPON, A CLAIM, LEGAL ACTION OR ALLEGATION THAT THE PRODUCTS AND/OR INTELLECTUAL PROPERTY RIGHT CREATED BY SUPPLIER PURSUANT TO THIS AGREEMENT OR THE ORDER (WHETHER CREATED USING BUYER'S SOFTWARE OR CREATED BY ANY OTHER MEANS WHATSOEVER) INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY AND WILL PAY THE AMOUNT OF ANY SETTLEMENT OR THE COSTS AND DAMAGES AWARDED INCLUDING REASONABLE LEGAL FEES (IF ANY) IN SUCH ACTION. FOLLOWING NOTICE OF A CLAIM OR A THREATENED OR ACTUAL ACTION SUPPLIER SHALL (WITHOUT PREJUDICE TO BUYER'S OTHER RIGHTS):
- 16.7.1 PROVIDE FOR BUYER AND BUYER'S CUSTOMERS THE RIGHT TO CONTINUE TO USE THE PRODUCT AND/OR INTELLECTUAL PROPERTY RIGHT; OR
- 16.7.2 REPLACE OR MODIFY THE PRODUCT AND/OR INTELLECTUAL PROPERTY RIGHT SO AS TO MAKE IT NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS AND SUPPLIER SHALL ENSURE THAT SUCH REPLACEMENT OR MODIFICATION SHALL PERFORM IN A MANNER IDENTICAL IN ALL MATERIAL RESPECTS TO THE, PRODUCT AND/OR INTELLECTUAL PROPERTY RIGHT AS IT WAS PRIOR TO SUCH REPLACEMENT OR MODIFICATION.
- 16.8 SUPPLIER SHALL PURCHASE, RENEW AND MAINTAIN AS NECESSARY SUFFICIENT PUBLIC LIABILITY, TANGIBLE PROPERTY AND PROFESSIONAL INDEMNITY INSURANCE COVER TO SATISFY BUYER THAT IT IS INSURED TO SUCH AN EXTENT TO ENABLE IT TO SATISFY ANY INDEMNITIES AND LIABILITIES INCURRED UNDER THIS AGREEMENT OR ANY ORDER. SUPPLIER SHALL PROVIDE TO BUYER A COPY OF THE RELEVANT INSURANCE POLICIES UPON REQUEST, AND SHALL ALSO PROVIDE BUYER WITH A COPY OF THE SAME AT ANY TIME DURING THE CONTINUANCE OF THIS AGREEMENT OR ANY ORDER UPON THE REQUEST OF BUYER AND UPON EACH RENEWAL OF SUCH INSURANCE. FOR THE AVOIDANCE OF DOUBT, EACH SAID INSURANCE POLICY FOR THE ABOVE MUST PROVIDE SUPPLIER WITH COVER OF AT LEAST \$50,000,000 (FIFTY MILLION UNITED STATES DOLLARS) PER EVENT OR SERIES OF RELATED EVENTS.

17. Intellectual Property Rights in Buyer's Products

- 17.1 Supplier acknowledges that any and all of the Intellectual Property Rights subsisting in or used in connection with the products (which includes software and documentation) of Buyer are and shall remain the sole property of Buyer.
- 17.2 Supplier undertakes not to:
- 17.2.1 copy Buyer's product (other than as authorized under this Agreement) nor otherwise reproduce the same;
- 17.2.2 utilize, customize, modify or create derivative works of, translate, adapt or vary Buyer's products except as expressly permitted in this Agreement or otherwise agreed in writing between the Parties;
- 17.2.3 disassemble, decompile or reverse engineer Buyer's product, except if and to the extent permitted by applicable law; and
- 17.2.4 license or sell any Buyer's products, or any part thereof, to any third party.

18. Termination

- 18.1 Supplier shall be entitled by notice in writing, without prejudice to any of its rights herein, to terminate forthwith this Agreement or an Order if Buyer is in substantial breach of a material term of this Agreement or an Order (as the case may be) and within sixty (60) days of the date of dispatch to Buyer of a written request from Supplier to remedy such breach Buyer fails to remedy such breach.
- 18.2 Without prejudice to any of its accrued rights whether arising out of or in connection with this Agreement or a Purchase Order either Party shall be entitled to immediately terminate this Agreement or any Purchase Order by notice in writing if the other Party is unable to pay its debts; admits its insolvency; commences a case or has a case commenced against it under any applicable bankruptcy, insolvency, or reorganization laws now or hereinafter in effect (except in the case of the filing of an involuntary petition for bankruptcy, in which case such right to terminate shall not arise unless an order for relief is entered or such petition is not dismissed within ninety (90) days of filing); commences any other dissolution, liquidation, or similar proceeding under the laws of any jurisdiction now or hereafter in effect; makes an assignment for the benefit of its creditors; suffers the appointment of any receiver, custodian, or like officer for itself or any substantial portion of its property that is not discharged or stayed within sixty (60) days.

- 18.3 Supplier shall promptly notify Buyer in writing if Supplier or any of its Affiliates:
- 18.3.1 purchases a controlling interest, acquires or otherwise has any interest in a direct competitor of Buyer; or
 - 18.3.2 is purchased, has any of the controlling interest bought, acquired or otherwise transferred to a direct competitor of Buyer. Buyer shall have the right to terminate this Agreement or any Order within thirty (30) days of receipt of such written notice by serving notice in writing on Supplier to that effect.
- 18.4 This Agreement may be terminated by Buyer serving one month's notice in writing on Supplier. Each Order entered into pursuant to this Agreement will continue until terminated in accordance with the terms of that Order notwithstanding any termination of this Agreement unless Buyer serves notice in writing on Supplier on or before the date of the termination of this Agreement that the Order will terminate on the termination of this Agreement. A right on the part of Buyer to terminate an Order will immediately give rise to a right on the part of Buyer to terminate any or all other Orders.
- 18.5 Buyer is entitled to cancel the Order in whole or in part by giving written notice to Supplier at any time prior to delivery of the Products in which event Buyer's sole liability will be to pay to Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 18.6 Supplier shall provide or return, as applicable, to Buyer all the Developments and any other material relating to the Developments and all copies of any of them by no later than thirty (30) days from the date of expiration or termination of this Agreement for any cause whatsoever.

19. Confidentiality Obligations

- 19.1 Each Party agrees to maintain Confidential Information received from the other in confidence and not to use or disclose such Confidential Information, without the prior written approval of the disclosing Party, except as required to comply with any order of a court or any applicable rule, regulation or law of any jurisdiction. Confidential information shall not include that which:
- 19.1.1 is in the public domain prior to disclosure to the receiving Party;
 - 19.1.2 becomes part of the public domain through no unauthorized act or omission on the part of the receiving Party;
 - 19.1.3 is lawfully in the possession of the receiving Party prior to disclosure by the disclosing Party; or
 - 19.1.4 is independently developed by employees of the receiving Party with no access to the Confidential Information. In the event that a receiving Party is required by judicial or administrative process to disclose Confidential Information of the disclosing Party, it shall promptly notify the disclosing Party and allow the disclosing Party a reasonable time to oppose such process. Each Party agrees that the Confidential Information shall be disclosed only on a need-to-know basis to their employees, officers, directors, Affiliates, agents, professional advisors or others that are likewise subject to a confidentiality obligation. Each Party shall protect the Confidential Information of the other by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure or use thereof that such Party uses to protect its own confidential information of like nature. The Parties hereby acknowledge that damages may not be an adequate remedy for any breach of this clause 19.1 and that either Party will therefore be entitled to apply for injunctive relief from any court of competent jurisdiction to restrain any breach or threatened breach of this clause 19.1.
- 19.2 Return of Confidential Information
- Upon termination or expiration of this Agreement, each Party agrees at the request of the other Party to destroy and certify destruction thereof of all Confidential Information in its possession received from the other save insofar as the receiving Party needs such Confidential Information to fulfill its post-termination obligations to the other Party or to Customers.

20. Price and Payment

- 20.1 Supplier shall invoice Buyer for the Products which are specified in the Order the fees specified therefore as set out in the Order upon Buyer's written acceptance of the Products. Such invoice shall include: Order number, descriptions of the Products, sizes, quantities, prices and totals. Supplier may invoice Buyer for Products on or at any time after date of delivery or acceptance whichever is the later.
- 20.2 Buyer shall pay to Supplier the invoiced fees in the currency of payment all as set out in the Order within sixty (60) days of receipt of a correct invoice. All payments shall be made to Supplier at the address shown in the Order. Buyer may make adjustments or withhold payment if Buyer reasonably deems that any invoices are not submitted in accordance with this Agreement, due to any shortages or failures, or for any failure to comply with the requirements of the Order.
- 20.3 The fees and any other sums payable by Buyer are gross amounts inclusive of
- 20.3.1 any value added tax and all other foreign, federal, local, sales or use taxes
 - 20.3.2 all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Products to Buyer's specified place of delivery; and
 - 20.3.3 any duties, imposts and levies.

21. Assignment

Supplier shall not assign the benefit or delegate the burden of this Agreement or any Order (whether in whole or in part) without the prior written consent of Buyer.