

Juniper Systems, Inc.

Procurement Terms & Conditions

Purpose. This document contains requirements and Terms & Conditions under which “Juniper Systems” or “Buyer” conducts its procurement activity. Purchase Orders (PO) submitted by Buyer are limited to the Terms & Conditions listed below. Any Terms stated or referenced in any Seller/Contractor form(s) which differ from or modify these Terms & Conditions shall have no effect unless specifically agreed upon and approved by an authorized officer of Buyer and expressly altered and referenced in the applicable Buyer PO, Subcontract, etc. Any use of the word “Contract” refers to the related Buyer PO/Subcontract.

Document Revision History

Revision	Brief Change History	Effective Date	Approval
00	Original Release	24-SEP-2014	Bryan Howard
01	Corrected Spelling, Updated Format	12-MAY-2017	Greg Foulger
02	Removed Tier Number	09-JAN-2024	Brenda Croshaw
03	Updated format, added sections 24-29	05-APR-2024	DeVon Labrum

Definitions

The following definitions apply unless otherwise specifically stated otherwise:

- a. **“Buyer”** – The legal entity issuing the referenced purchase order for the procurement of goods and/or services and paying for said goods and/or services.
- b. **“Purchasing or Procurement Representative”** – Buyer or the delegated individual authorized to issue this order.
- c. **“Seller” or “Contractor”** - the legal entity contracting with the Buyer for the sale of goods and/or services.
- d. **“Purchase Order” or “Order” or “Contract”** - this contractual instrument, including changes, general terms and conditions, special provisions, drawings, technical data, specifications, quality clauses, and all other documents incorporated herein.
- e. **“Goods and/or Services” or “Articles”** - the products, supplies, parts, assemblies, technical data, drawings, or other items to be furnished by Seller to Buyer, including raw materials, components, and intermediate assemblies of such items.
- f. **“Promise Date” or “Schedule Delivery Date”** - the date of receipt at destination, not ship date, irrespective of FOB point.

g. **“Days”** – Refers to standard “working” days, i.e. Monday, Tuesday, Wednesday, Thursday, and Friday.

1. **Entirety of Agreement.** The provisions of this Contract constitute the complete and exclusive agreement between the parties hereto and supersede all previous negotiations, discussions, communications, representations, or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof. The Terms of this Contract supersede any previous course of dealing or usage of trade. No agreement or understanding varying or extending the Terms or Conditions of this Contract will be binding unless in writing, signed by duly authorized representatives of both parties. Acceptance of this Order by the Contractor will be by any one of the following: (1) Acknowledgment in writing, (2) Commencement of performance by the Contractor or (3) Delivery in whole or in part of the items or services called for hereunder. No condition stated by the Contractor in its acknowledgment of this Contract shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein, unless expressly accepted in writing by an authorized Procurement Representative.
2. **Contract Changes.** Buyer may at any time by a written order issued by an authorized Procurement Representative and without notice to sureties, if any, make changes within the general scope of this Contract, in any one or more of the following: (1) drawings, designs, or specifications of the goods when the goods to be furnished are specifically manufactured in accordance with the drawings, designs, or specifications; (2) method of shipment or packing; (3) description of goods or services to be performed; (4) time or place of performance, inspection, delivery, or acceptance; (5) reasonable increases or decreases in quantities; (6) reasonable changes in delivery schedules; (7) issue additional instructions or require modification in the work or services. The Contractor shall proceed immediately to perform this Order as changed. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, or otherwise affects any other provisions of this Contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the purchase price, delivery schedule, or in such other provision of the Contract as may be so affected, and the Contract modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted in writing within twenty (20) days from the date of receipt by the Contractor of the notification of change.
3. **Product Changes / Part Obsolescence.** Contractor shall provide advanced notification in writing to the cognizant Procurement Representative of any changes to tooling, facilities, materials or processes at the contracting supplier or their sub-tier suppliers that could affect the Buyer - contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify Buyer of any pending or contemplated future action to discontinue articles purchased pursuant to this Contract and shall allow Buyer to submit a forecast of expected annual usage prior to Contractor finalizing its decision to discontinue the articles. Contractor shall provide Buyer with a “Last Time Buy Notice” at least twelve (12) months prior to the actual discontinuance, whenever possible. Contractor shall extend opportunities to Buyer to place last time buys of such articles with deliveries not to exceed twelve (12) months after the last time buy date.
4. **Disputes.** In the event of any dispute or disagreement arising under or relating to this contract, the parties agree to make diligent and reasonable attempts to resolve through negotiations all

such disputes or disagreements prior to resorting to any remedy available in law or equity. Either party may litigate any dispute arising under or relating to this Contract before a court in the state of Utah, Cache County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. Contractor's performance shall be in accordance with Buyer's written instructions.

5. Schedule

- a. Deliveries are to be made both in quantities and at the time specified in this Contract or modification thereof. Contractor shall strictly adhere to this Contract's promise date(s), schedule delivery date(s), or completion schedule(s). Contractor shall not deliver articles more than five (5) days prior to these dates unless authorized in writing by Buyer through its cognizant Procurement Representative. Articles delivered to Buyer more than five (5) days in advance of schedule may be returned at Contractor's expense and without any obligation to Buyer. Deliveries will be made even in the event of a strike at either the Buyer's or Seller's location, unless prior written consent is obtained from the other party, which shall not be unreasonably withheld. If the Contractor fails to deliver in accordance with the schedule, Buyer will be entitled, at its election and its sole discretion, to either an equitable price reduction for late deliveries, or the right to terminate this Contract for default for late deliveries. Failure of the parties to reach agreement on an equitable price reduction shall be a dispute under the "Disputes" clause. Contractor has a duty to continue performance under this Contract pending resolution of a dispute.
- b. In the event of any anticipated or actual delay in the performance of this Contract, Contractor will promptly notify the cognizant Procurement Representative in writing of the reasons for the actual/anticipated delay and the actions being taken to overcome or minimize the delay and will provide Buyer with a written recovery schedule. If Buyer requests, Contractor shall, at Contractor's expense, ship via air or other expedited routing to avoid the delay or minimize it as much as possible. Contractor agrees to flow this provision down to its Subcontractors, and notify Buyer when there are anticipated or actual delays at its Subcontractors that could affect performance under this Contract. Notification shall not be construed to relieve Contractor of its obligation to comply with Contract delivery requirements.
- c. Buyer will have no liability for payment for material or items delivered to Buyer that are in excess of the quantity specified in the delivery schedules, unless such excess is agreed upon by Buyer in writing by an authorized Procurement Representative.

6. Technical Direction and Contractor Responsibilities

- a. All communication between the Contractor and Buyer affecting the Contract Statement of Work or Description of Supplies or Services to be furnished shall be through the cognizant Procurement Representative. Buyer technical personnel may provide written technical direction. However, technical direction and management surveillance shall not impose tasks and requirements upon the Contractor that are additional to or different from the general tasks and requirements established in the Contract. The Technical Direction, to be valid:

- i. Must be issued in writing consistent with the general scope of the work as set forth in this Contract; and
 - ii. Shall not commit Buyer to any adjustment of the cost or other contract provisions.
 - b. If any Technical Direction is interpreted by the Contractor to fall within the clause entitled "Contract Changes", the Contractor shall not implement such direction, but shall notify the cognizant Procurement Representative in writing of such interpretation within ten (10) days after Contractor receipt of such direction. Such notice shall (1) include the reason upon which the Contractor bases its belief that the Technical Direction falls within the purview of the "Contract Changes" clause; and (2) include the Contractor's best estimate as to revision in estimated cost, fee, performance time, delivery schedules and any other contractual provisions that would result from implementing the Technical Direction.
 - iii. If, after reviewing the information presented pursuant to subparagraph (b) above, the Procurement Representative is of the opinion that such direction is within the purview of the "Contract Changes" clause and he/she considers such changes desirable, he/she will issue unilateral direction to proceed pursuant to the authority granted under the clause.
 - iv. In the event the cognizant Procurement Representative determines that it is necessary to avoid a delay in performance of the Contract, he/she may, in writing, direct the Contractor to proceed with the implementation of the Technical Direction pending receipt of the information to be submitted under paragraph (b) above. Should the cognizant Procurement Representative later determine that Change direction is appropriate; the written direction issued hereunder shall constitute the required Change direction.
 - c. Failure of the Contractor and the cognizant Procurement Representative to agree on whether direction is Technical Direction or a Change within the purview of the "Contract Changes" clause shall be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."
 - d. Any action taken by the Contractor in response to any direction which falls within the purview of the "Contract Changes" clause given by any person other than the cognizant Procurement Representative shall be at the Contractor's own risk.
7. **Title to Drawings, Specifications, and Work Product.** Buyer shall at all times have title to all drawings and specifications (1) furnished by Buyer to Contractor, and (2) shall have title to all drawings, specifications and work product generated by Contractor under this Contract. The Contractor agrees to use all drawings and specifications, either provided by Buyer or generated by Contractor under this Contract, solely in connection with this Contract and shall not disclose such drawings and specifications to any person, firm or corporation other than those employees of Buyer, the Contractor, or approved Subcontractors that have a need to know. The Contractor shall not retain any copies, and upon Buyer's request or upon completion of this Contract, promptly return or deliver all drawings, specifications and work product to Buyer.

8. Intellectual Property

- a. All technical work product, including, but not limited to, ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by or for Contractor, either alone or with others, in the course of or as a result of any work performed by or for Contractor which is covered by this Contract using funds paid for by Buyer under this Contract shall be the exclusive property of Buyer and be delivered to Buyer promptly upon request.
 - b. All inventions conceived, developed, or first produced by or for Contractor, either alone or with others, in the course of or as a result of any work performed by or for Contractor which is covered by this Contract using funds paid for by Buyer under this Contract, and any patents based on any such inventions (both domestic and foreign), shall be the exclusive property of Buyer. Contractor shall promptly disclose all such inventions to Buyer in written detail, and execute all papers, cooperate with Buyer, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications to Buyer.
 - c. All works of authorship, including, but not limited to, documents, drawings, software, software documentation, photographs, video tapes, sound recordings, and images, created by or for Contractor, either alone or with others, in the course of or as a result of any work performed by or for Contractor which is covered by this Contract using funds paid for by Buyer under this Contract, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such works shall be works made for hire, with the copyrights therein vesting in Buyer. The copyrights of all other such works, including all of the exclusive rights therein, shall be promptly transferred and formally assigned free of charge to Buyer.
9. **Rights in Computer Software.** Contractor hereby assigns to Buyer all rights, title and interest in computer software, including computer programs, data bases and documentation thereof, developed in the performance of this Contract, including the right to apply for and register copyrights and patents in the United States and any other country, the right to all extensions and renewals thereof, and unrestricted and complete rights of publication or reproduction, the right to use and license others to use said software, and the right to exclude others from reproducing said software. Contractor shall obtain from its Subcontractors all rights aforementioned necessary to fulfill the Contractor's obligation to Buyer under this Contract. Contractor agrees to execute any and all documents Buyer may require to perfect the above assignment.
10. **Confidential or Proprietary Information and Property.** Contractor shall keep confidential and otherwise protect from disclosure all information and property obtained from Buyer in connection with this Order and identified as confidential or proprietary. Unless otherwise expressly authorized herein or by Buyer, Contractor shall use such information and property, and the features thereof, only in the performance and for the purpose of this Order. Upon Buyer's request, and in any event upon the completion, termination or cancellation of this Order, Contractor shall return all such information and property to Buyer or make such other disposition thereof as is directed by Buyer. In all subcontracts and purchase orders issued by Contractor and involving Subcontractor receipt of such information or property, Contractor shall flow down to its Subcontractors these requirements in order to provide to Buyer the same rights and protection as contained in this clause.

11. **Release of Information.** The Contractor shall not, without the prior written consent of Buyer, release any information of any part of the subject matter of this Order. Contractor shall not, at any time during or subsequent to performance of this Contract, disclose to others the terms of this Contract or any other information, knowledge, or data, including business, technical, financial, or information that are of a proprietary or trade secret nature, that Contractor may receive from Buyer during the course of this Contract.

12. **Acceptance and Returns.** Buyer shall accept articles or give Contractor notice of rejection within a reasonable time, notwithstanding any payment or prior test or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve the Contractor of any obligations under this Contract or impair any rights or remedies of Buyer.

In case any article or lot of articles is defective in material or workmanship, or otherwise not in strict conformance with the requirements of this Contract, Buyer shall have the right either to reject it, require its correction, or accept it with an equitable adjustment in price or other consideration. Buyer's acceptance of a nonconforming article does not release the Contractor from its warranty or latent defect obligations. Any article that has been rejected or requires correction shall be replaced or corrected by, and at the expense of Contractor, including transportation charges, promptly after notice.

13. **Packing, Marking, and Shipping**

- a. All articles shall be packed, marked, and shipped in accordance with the requirements specified in the Purchase Order. If no specific instructions are provided, utilize good commercial practices to ensure protection in shipment and storage and compliance with applicable federal, state, and local laws and regulations. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking, or method of shipment shall be reimbursed by Contractor. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, or storage unless specifically stated in the Contract. Contractor shall forward to Buyer, with invoice, the express receipt of bill of lading; signed by the carrier evidencing the fact that shipment was made.
- b. If delivery is FOB origin, Contractor is to strictly adhere to Buyer's routing instructions delineated on the Order. Any losses or additional expenses incurred by Buyer that result from deviations from Buyer's routing shall be charged to the Contractor. Contractor will contact the Procurement Representative with any questions regarding routing instructions.
- c. **Delivery.** Contractor shall strictly comply with the delivery requirements of this Contract. In the event of Contractor's failure to do so comply with the delivery requirements, Buyer may, in addition to all other remedies, require Contractor, at Contractor's expense, to ship articles via air freight or expedited routing to avoid or minimize delay.
- d. **Time of the Essence.** Seller acknowledges that timely delivery of conforming Goods for all Purchase Orders submitted by Buyer to Seller is of the essence. Seller shall immediately notify Buyer if Seller has any reason to believe that any Goods will not be delivered by

the receipt date set forth in a Purchase Order or if any shipment will not be made as scheduled.

- e. **Transportation Charges; Insurance.** Irrespective of any other provision of this contract, Seller agrees to pay all transportation charges incurred in delivering the Goods to the Buyer's place of business as directed in its Purchase Orders. On behalf of Buyer, Seller agrees to procure insurance for the full value of all Goods sold under this Agreement from the time that the Goods are identified to the time of actual receipt of the Goods by Buyer. The cost of this insurance is included in the price and will be borne by the Seller.

14. **Hazardous Material Identification and Material Safety Data.** The packaging, labeling, handling, and shipping of all hazardous items must conform to all current federal, state, and local laws and regulations, including carrier regulations. In addition to application of proper shipping labels on the outside container, each container of hazardous items shall be marked with the appropriate precautionary label according to the Code of Federal Regulations. Any failure to comply with the above submission requirement shall be grounds for withholding payments due the Contractor hereunder.

15. **Invoices and Payment.** Contractor shall prepare at time of shipment in full, and complete invoices for the work performed and shall deliver one (1) legible copy of said invoices by email as directed in the Buyer PO. Seller shall contact Buyer if there is a question about which email address to use or if the email address is missing. Invoices sent to the wrong email address may be subject to lost or delayed payments.

Contractor shall be paid the prices stipulated herein for supplies delivered and accepted, less applicable deductions, if any. Payment due date, including prompt payment discounts, shall be based on the date articles are received or services completed, or the date a correct invoice is received, whichever is later. For purposes of earning the discount, payment is deemed made on the date of mailing Buyer's check or completion of wire transferred funds. Buyer may, at its option, make payment to the Contractor prior to the delivery and/or acceptance of supplies and/or services.

Each Contractor invoice shall be for delivery/completion of articles on only one PO. When there are several items to be invoiced during a given month, Contractor shall limit the number of submitted invoices on this PO to one per month when possible, with multiple items on a given invoice. Each Contractor invoice shall contain as a minimum the PO number, PO line item for each article, article description (including serial or lot numbers, if required), quantity delivered and invoiced of each article, invoiced amount for each article, and the total amount of the submitted invoice. Unless otherwise stated in the PO, invoiced unit costs for each article must exactly match what is in the PO. Tax and freight charges, when applicable, shall be separately stated on the invoice. Unless the Order specifies otherwise, prices shall not include any sales or use taxes for which Buyer provided an exemption. Buyer shall be entitled at all times to off-set any amounts owed by Contractor to Buyer against any amount payable by Buyer to Contractor. Except as otherwise provided or in this PO, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by Buyer.

Unless expressly specified otherwise on the face of the Order, terms of payment shall be net forty-five (45) days from Buyer's receipt of Seller's invoice and receipt of material and/or services.

During the term of the Agreement, if Buyer provides satisfactory evidence to Seller that it can purchase the Goods of like quality and in the same or greater quantity as provided for herein at a lower price and on terms and conditions substantially the same as those contained in this Agreement, Seller will reduce its prices for all future purchases of Buyer for such Goods on the same terms. If Seller elects not to meet such lower price(s) within ten (10) days of notice from Buyer, then Buyer may terminate this Agreement as it pertains to said Goods without liability by giving written notice to Seller.

16. **Bankruptcy.** In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Contractor's property, or for any act or petition in bankruptcy, whether voluntary or involuntary, as defined in the Bankruptcy Reform Act of 1978, Title 11, United States Code, as amended, Buyer may terminate the right of the Contractor to proceed with the further performance of this Contract without further obligation, except that Buyer shall be obliged to pay for any article accepted prior to any of the foregoing occurrences at the prices specified in the Contract. This Contract may be terminated by Buyer in accordance with the Termination for Default provisions herein whenever Contractor's financial condition may jeopardize performance.
17. **Liens.** Contractor agrees that no liens or property rights of any kind shall lie or attach upon or against the Articles, or any part thereof, for or on account of any work performed, provided, or service furnished by Contractor pursuant to this Contract. If any lien or encumbrance is asserted against these Articles, or any part thereof, Buyer shall have the right to discharge the same by filing a bond or security, or in its discretion, by paying the amount of such claim, and in such event, Buyer shall have the right to deduct from the contract price the amount thus paid. If the contract price has been paid, Contractor shall repay to Buyer, upon demand, the amount thus paid by Buyer for the purpose of discharging such claim, plus all administrative and legal expenses incurred by Buyer in this connection.
18. **Governing Law & Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Utah, without giving effect to the principles of conflicts of law of such state. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in Utah, Cache County. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court.

THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS AGREEMENT.

Contractor will comply with all applicable Federal, State, and Local laws in the performance of this Contract.

19. **Suspension of Work**

- a. Purchasing Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period of up to six (6) months. Within such period of any suspension of work, Purchasing Representative shall, in writing:
 - i. Cancel the order suspending work, or

- ii. Terminate this Contract in accordance with clause 1.21 Termination for Convenience, or clause 1.22 Termination for Default, or
 - iii. Extend the stop work period.
- b. Upon receipt of such an order, Contractor shall immediately comply with its terms and take all reasonable steps to mitigate its damages, including but not limited to stand-by costs, allocable to the work covered by the order during the work stoppage.
- c. Contractor shall resume work whenever a suspension is canceled, or the stop work period or its extension expires.
- d. Buyer and the Contractor shall negotiate an equitable adjustment in Contract price or schedule or both, if:
 - i. This Contract is not terminated,
 - ii. The suspension results in a change in Contractor's cost of performance or ability to meet Contract delivery schedule, and
 - iii. Contractor submits a claim for adjustment within thirty (30) days after the suspension is canceled.

20. Termination for Convenience

- a. Buyer may terminate performance of work under this Contract in whole or, from time to time, in part when it is in Buyer's best interest to do so. Buyer shall terminate by issuing to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- b. After receipt of a Notice of Termination, and except as directed by Buyer, the Contractor shall immediately proceed with the following obligations:
 - i. Stop work as specified in the Notice of Termination.
 - ii. Place no further subcontracts or orders except as necessary to complete the continued portion of this Contract.
 - iii. Terminate all subcontracts to the extent they relate to the work terminated.
 - iv. Complete performance of the work not terminated.
 - v. As directed by Buyer, transfer title and deliver to Buyer:
 - 1. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and

2. The completed or partially completed plans, drawings, information, and property that, if the contract had been completed, would be required to be furnished to Buyer per Buyer's "Mutual Non-Disclosure Agreement Form."
- vi. Comply with the instructions by Buyer in the Notice of Termination and any subsequent written instructions.
- c. After termination, Contractor shall submit a final termination settlement proposal for equitable adjustment to Buyer in the form prescribed by Buyer. The Contractor shall submit the proposal promptly, but no later than ninety (90) days of the Notice of Termination, unless extended in writing by the Procurement Representative upon written request of the Contractor within the 90-day period. If Buyer determines that the circumstances justify it, a termination settlement proposal may be received and acted on after the 90 days or any extension. If the Contractor fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined. Such determination shall be conclusive.
- d. Subject to paragraph (c) of this clause, the Contractor and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work completed; however, the agreed amount may not exceed the total Contract price as reduced by (1) The amount of payments previously made and (2) The Contract price of work not terminated. The Contract shall be modified and the Contractor paid the agreed amount.
- e. If the termination is partial, the Contractor may submit a proposal for an equitable adjustment of the price(s) of the continued portion of the contract.
- f. If the Contractor and Buyer fail to agree on the entire amount to be paid because of the termination of work, Buyer shall pay the Contractor the amount determined by Buyer to be due the Contractor. Failure of the parties to reach agreement shall be a dispute under the "Disputes" clause 1.15. A dispute shall not excuse continued performance on the non-terminated portion of this Contract.

21. Termination for Default

- a. Buyer may, subject to paragraphs (d) and (e) of this clause, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i. Deliver the articles or to perform the services within the time specified in this Contract or any extension,
 - ii. Make progress, so as to endanger performance of this Contract [but see paragraph (b) of this clause], or
 - iii. Perform any of the other provisions of this Contract [but see paragraph (b) of this clause].

- iv. Breach any confidentiality agreement as stated in Buyer's "Mutual Non-Disclosure Agreement Form."
- b. Buyer's rights to terminate this Contract under paragraphs (a) (2) and (a) (3) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- c. If Buyer terminates this Contract in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, articles or services similar to those terminated, and the Contractor will be liable to Buyer for any excess costs of those articles or services. However, the Contractor shall continue the work not terminated.
- d. Except for defaults of Subcontractors at any tier, the Contractor shall not be liable for any penalties if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Federal Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) freight embargoes, and (8) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- e. If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any penalties for failure to perform, unless the subcontracted articles or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- f. If this Contract is terminated for default, Buyer may require the Contractor to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed articles, and (2) partially completed articles that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of Buyer, the Contractor shall also protect and preserve property in its possession in which Buyer has an interest.
- g. Buyer shall pay contract price for completed articles delivered and accepted. Contractor and Buyer shall agree on the amount of payment for articles delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause 1.15. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- h. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer.
- i. Contractor agrees that any assistance given them by Buyer on this Contract or any acceptance of delinquent or nonconforming items will be solely for the purpose of

mitigating damages. It is not the intention of Buyer to condone any delinquency, waive any defect, or waive any rights Buyer has under this Contract.

- j. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this contract.

22. Buyer's Furnished Property

- a. The Contractor shall inform Buyer in writing of any and all anticipated Buyer's property as required. Buyer shall furnish to Contractor, at the time(s) and location(s) stated in this Contract, any Buyer-furnished property described in this Contract. If that property, suitable for its intended use, is not delivered to the Contractor, Buyer shall equitably adjust the affected provisions of this Contract in accordance with the "Contract Changes" clause when:
 - v. Contractor submits a timely written request for an equitable adjustment, and
 - vi. The facts warrant an equitable adjustment.
- b. Title to Buyer-furnished property shall remain in Buyer. The Contractor shall use the Buyer-furnished property only in connection with this Contract. In the event that any change will require another use or in addition to that previously indicated, the Contractor will immediately inform Buyer in writing. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and shall make such records available for Buyer's inspections at all reasonable times.
- c. Unless specifically stated elsewhere in the Contract, all Buyer-furnished property shall be "as is", with no express or implied warranty from Buyer. Upon delivery of any Buyer-furnished property, or the acquisition of property to which Buyer takes title under the Contract, the Contractor shall receive, use, manage, maintain, repair, protect, preserve, report, and dispose of the property in accordance with the requirements contained herein. Upon delivery of Buyer - furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
 - vii. For reasonable wear and tear;
 - viii. To the extent property is consumed in performing this Contract; or
 - ix. As otherwise provided for by the provisions of this Contract.
- d. Contractor shall promptly notify the Procurement Representative if Buyer furnished property is lost, damaged, or destroyed.
- e. Upon completing this Contract, Contractor shall follow the instructions of Buyer regarding the disposition of Buyer-furnished property not consumed in performing this Contract or previously delivered to Buyer.

- f. Buyer and all its designees shall have access at all reasonable times to the premises in which any Buyer-furnished property is located for the purpose of inspecting the Buyer-furnished property.

23. **Warranty.** In addition to all other warranties expressed or implied in law, the Contractor warrants that the items delivered hereunder will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by Buyer and will be merchantable, of good material and workmanship and free from defects. In case any such item shall be defective or otherwise not in conformity herewith, Contractor shall at Buyer's option and in addition to all other remedies of Buyer, either credit Buyer for any such nonconformity or defects or at the Contractor's expense replace, repair, or correct any such article. Contractor agrees to make all corrections to the satisfaction of Buyer. Should Buyer's customer require acceptance of items not conforming to all specifications or other description, payment will be made at an equitable reduction in price. This warranty shall survive acceptance and run to Buyer, its successors, assigns, customers and users of its products.

To the extent applicable, the goods are compliant with EU RoHS (RoHS-1, RoHS -2, RoHS -3) Directives or country/regional equivalent and agrees to furnish evidence of compliance upon request by Buyer. **(a)** goods do not contain any substances regulated as a substance of very high concern (SVHC) in Annex XIV of the EU Registration, Evaluation, Authorization of Chemicals (REACH) directive, unless explicit notification is provided to Buyer in advance and subsequently as new substances are added to the REACH and Annex XIV and Candidate List periodically. **(b)** goods are manufactured and provided to Buyer in a manner that complies with all applicable human rights laws, including local laws and international frameworks such as but not limited to provisions of the Dodd-Frank Act (conflict minerals rules). Seller further represents that the goods are conflict mineral-free, meaning any gold, tin, tantalum, or tungsten contained in the goods are sourced only from conflict – free zones, sources, and smelters. Seller agrees to cooperate and fulfill related due diligence activities with its suppliers or represents that it has already done so.

24. **Attorneys' Fees.** If either Party incurs any legal fees associated with the enforcement of this Agreement or any rights under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation, or other litigation expenses from the other Party.

25. **Waiver of Subrogation.** Seller agrees that with respect to any losses covered by, or required to be covered by, insurance under the terms of this Agreement, other than those losses caused by the Buyer's gross negligence or intentional acts, Seller hereby waives and releases Buyer, its officers, directors, employees, and agents, from any and all claims and liability or responsibility with respect to such losses, including losses arising out of the inability to conduct business. Seller further agrees that its insurance companies shall have no right of subrogation against Buyer on account of this release.

26. **Indemnification**

- a. **Seller's Indemnity Obligations.** Seller hereby agrees to defend, indemnify and hold harmless Buyer, its subsidiaries, parents and affiliates and their officers, directors, shareholders, agents, servants and employees from and against all third party claims, losses, damages, suits, expenses (including reasonable attorneys' fees) and costs

(collectively "Claims") in connection with or arising out of (i) any defects in any Goods sold by Seller to Buyer hereunder; (ii) Seller's breach of any of its representations, warranties or obligations contained in this Agreement; (iii) any negligent act or omission, willful misconduct or fraud of Seller or its agents; (iv) any allegation that the Goods infringe any U.S. patent, trademark or copyright; (v) Seller's failure to fully conform to all laws, ordinances, rules and regulations which affect the Goods or with respect to its performance of this Agreement; or (vi) any inaccurate, erroneous or incomplete NAFTA Certifications, country of origin information, or export control classification numbers supplied to Buyer for Goods furnished by Seller under this Agreement. This indemnification shall be in addition to any warranty obligations of the Seller.

- b. **Procedures for Indemnification.** Promptly after receipt of any written claim or notice of any action giving rise to a claim for indemnification, Buyer will provide Seller with written notice of the Claim or action. Buyer will provide Seller with reasonable cooperation and assistance in the defense or settlement of any Claim, and grant Seller control over the defense and settlement of same, provided that Buyer shall be entitled to participate in the defense of the Claim and to employ counsel at its own expense to assist in the handling of the Claim. Seller shall not agree to any settlement which results in an admission of liability by the Buyer without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed. If Seller fails to assume the defense of any Claim, or does not diligently pursue such defense, Buyer may retain counsel and assume the defense of such Claim at the cost of the Seller, and in that case, Seller shall reimburse Buyer for all of its reasonable attorneys' fees, costs and damages incurred in settling or defending such claims within [number, e.g., thirty (30)] days of each of Buyer's written requests.
- c. **Insurance.** Seller shall obtain and keep in force during the term of this Agreement, (i) Worker's Compensation insurance in compliance with the statutory requirements for worker's compensation of the state or states in which it has employees performing any work related to this Agreement; and (ii) Commercial General Liability (CGL) insurance, including contractual liability and product liability, with a combined single limit for bodily injury and property damage of not less than Five Million Dollars (\$5,000,000). Seller shall provide Buyer with a certificate of insurance evidencing the above coverages on forms furnished by or reasonably acceptable to Buyer, or upon the Buyer's request provide true copies of the insurance policies. The CGL policy shall name Buyer as an additional insured, but only with respect to liability arising out of this Agreement, and shall cover all claims arising out of incidents or events occurring during the term of the policies. Seller shall maintain its CGL insurance for a period of two (2) years after the termination or expiration of this Agreement.

27. Limitation of Liability. EXCEPT FOR THE INDEMNIFICATION AND WARRANTY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND/OR EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

28. **Assignment.** Seller may not assign this Agreement, either in whole or in part, nor delegate any performance hereunder, without the express, written consent of the Buyer, which consent shall be at Buyer's sole and absolute discretion. Any assignment without such consent shall be null and void. Buyer may assign this Agreement upon written notice to Seller. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and legal representatives.
29. **Relationship of Parties.** The relationship of the Parties hereto is that of vendor and purchaser. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents. Accordingly, Seller shall not be empowered to bind Buyer in any way, to incur any liability, make any statements, representations, warranties or commitments, or otherwise act on behalf of the Buyer. Each Party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

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