



**TERMS AND CONDITIONS – Products and Services Other than U.S.  
Government End Customers; Northrop Grumman Corporation  
International Inc.**

**CTM No. P401**

**Primary Process Owner:** Director of Supply Chain

**Functional Process Owner:** Manager of Supply Chain Strategy,  
Performance, and Initiatives

**Publication Date:** 30 May 2014

**AUTHORIZED DOCUMENTS ARE PUBLISHED ONLINE ONLY.  
VERIFY ANY COPY AGAINST THE ONLINE SYSTEM BEFORE USE.**

# **TERMS AND CONDITIONS – Products and Services Other than U.S. Government End Customers**

CTM No. P401

ACCEPTANCE	2	HEADINGS	28
ANTIDUMPING/COUNTERVAILING DUTIES	50	INDEMNITY AGAINST CLAIMS	32
APPLICABLE LANGUAGE	38	INSPECTION	8
ASBESTOS	54	INSURANCE	2
ASSIGNMENT	18	INTELLECTUAL PROPERTY INDEMNIFICATION	20
ASSIGNMENT OF RIGHTS TO DIVESTED ENTITIES	49	INTELLECTUAL PROPERTY RIGHTS	21
BADGES & PLANT SECURITY	48	INVOICE AND PAYMENT	6
BUYER AUTHORIZATION	3	LABOR DISPUTES	23
BUYER'S PROPERTY	16	NONWAIVER OF REMEDIES	30
CHANGES	10	OFFSET COMMITMENT	25
COMPLETE AGREEMENT	55	ORDER OF PRECEDENCE	11
COMPLIANCE WITH LAWS	24	PACKING AND SHIPPING	7
CONFLICTS OF INTEREST	35	PARTIAL INVALIDITY	29
CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM	41	PLACE OF PERFORMANCE	44
DATA BREACH NOTIFICATION	40	PRICES	37
DEFINITIONS	1	PRIVACY, CONFIDENTIALITY AND DATA SECURITY	39
DELIVERY	4	PROTECTION OF INFORMATION	36
DISPUTES	13	RELATIONSHIP OF THE PARTIES	33
EUROPEAN UNION REGISTRATION, EVALUATION, AUTHORIZATION AND RESTRICTION OF CHEMICALS (REACH)	45	RELEASE OF INFORMATION OR ADVERTISING	27
EXPORT AND IMPORT COMPLIANCE	26	STOP WORK	34
FORCE MAJEURE	43	SUBCONTRACTING	19
FOREIGN CORRUPT PRACTICES ACT	46	SUCCESSORS OF PARTIES	47
FREE TRADE AGREEMENT AND TARIFF PREFERENCE PROGRAMS	51	SUSPECT/COUNTERFEIT MATERIALS – RESERVED	53
FREIGHT CHARGES	5	SUSTAINABILITY	42
GOVERNING LAW (SEE ALSO DISPUTES CLAUSE)	12	TAXES AND DUTIES	17
		TERMINATION FOR CONVENIENCE	14
		TERMINATION FOR DEFAULT	15
		TOXIC SUBSTANCES CONTROL ACT	52
		WARRANTIES	9

## 1. DEFINITIONS

A. BUYER means the Northrop Grumman Corporation International Inc. or its subsidiary, or affiliate identified on the face of this Order.

B. BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order and who has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.

C. INCOTERMS means the set of international rules for the interpretation of terms used in foreign trade contracts as prepared and published by the International Chamber of Commerce, Paris, France. When a term covered by such Inco-terms is specified in this Order, such term shall be governed by the Inco-terms 2010. In case of a conflict between the provisions of the Inco-terms and the provisions of this Order, the provisions of this Order shall govern.

D. ORDER means the instrument of contracting including this Order and all referenced documents, including any subsequent changes or modifications.

E. PARTIES means Buyer and Seller collectively.

F. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by its customer for the acquisition of Products and/or Services.

G. PRODUCTS means those deliverable goods, supplies, reports, computer software, data, materials, articles, items, parts,

components or assemblies, and any incidental to any related services described required in by the Order.

H. SELLER means the party with whom Buyer is contracting under this Order.

I. TECHNICAL DATA means all designs, dimensions, specifications, drawings, patterns, know how, or other information concerning, methods, manufacturing processes, equipment, gauges and tools used in the design, manufacture, assembly, operation, repair, testing, maintenance, or modification of Products. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation, or used in the performance of Services. Technical Data may be recorded in a written or printed document, computer or electronic file, electro-magnetic tape or disc, software, or any other tangible form of expression. Technical Data also includes unclassified and classified information that is required for defense articles, in accordance with International Traffic in Arms Regulations (ITAR) 22 CFR § 120.10.; technical information in support of defense services; any information covered by an invention secrecy order; and software directly related to defense articles as defined in (ITAR) § 121.8(f).

J. SERVICES means Seller's, or its subcontractor's or supplier's, time and effort required to perform tasks or other labor requirements of the Order, including any goods, supplies, material, articles, items, parts components or assemblies (Products) incidental to the performance of the Service.

## 2. ACCEPTANCE

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and signed by Buyer's Authorized Purchasing Representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in not specifically negotiated and identified on the Order that add to, vary from, or conflict with the terms of this Order.

**3. BUYER AUTHORIZATION**

A. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.

B. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the products or services hereunder. Such communications shall not be contractually binding on Buyer and no such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

**4. DELIVERY**

A. The Parties expressly agree that time is and shall remain a material element of this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

B. Delivery is to be made both in quantities and at times specified herein. Partial shipments are not authorized unless expressly authorized in writing by Buyer. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Buyer reserves the right to return partial shipments, over shipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of partial shipments, over shipments and early shipments.

C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation at Seller's expense.

D. If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to (1) terminate this Order, and/or (2) fill such Order, or any portion thereof, from sources other than Seller; charge Seller any excess costs of re-procurement; and reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer. Alternatively, Buyer may require Seller to provide consideration for the late delivery. This condition shall not limit Buyer's rights and remedies under the Termination for Default clause contained herein.

**5. FREIGHT CHARGES**

Freight charges, unless otherwise specified on this Order shall be reimbursed at actual cost and shall be accompanied by legible

copies of prepaid freight bills, express receipts, or bills of lading supporting the invoice amounts. Such invoices shall include: (1) carrier's name, (2) date of shipment, (3) number of pieces, (4) weight, and (5) freight classification.

**6. INVOICE AND PAYMENT**

When invoices are required, a separate invoice shall be issued for each shipment, and should include the relevant Buyer Order number. Unless otherwise specified in this Order, no invoice shall be issued prior to shipment of supplies or completion of services and no payment will be made prior to receipt of supplies or completion of services and receipt of a correct invoice. Payment due dates, including Buyer's entitlement to take a discount, will be computed from the date of receipt of acceptable supplies at Buyer's facility or the date of receipt of a correct invoice (whichever is later). If Seller is directed under this Order to ship supplies to locations other than Buyer's facility, Seller shall notify Buyer's Authorized Purchasing Representative within three (3) business days of completed shipment. Seller understands that Buyer will not issue payment under this Order until Buyer verifies receipt of supplies at the location specified by Buyer and receipt is processed in Buyer's system. Any discount taken will be taken on the full amount of the invoice. Buyer may set off against any amounts due under Seller's invoices, including (1) any damages resulting from Seller's default under or breach of any contract (including any Order and these terms and conditions); (2) any amount owing from Seller to Buyer; or (3) any adjustment for shortage or rejection and any associated costs

**7. PACKING AND SHIPPING**

A. Unless otherwise specified in this Order, all shipments are to be made in accordance with Incoterms 2010, Free Carrier (FCA) Seller's Premises.

B. Prior to exportation, one copy of the required commercial invoice and packing list shall be enclosed in a waterproof envelope or wrapper, clearly marked "Customs Invoice," and securely attached to the outside of the No. 1 shipping container in each shipment. For shipment to the U.S., Seller's invoice will be used as the customs invoice if it meets U.S. Customs Service requirements, but it must be marked "Invoice for Customs Purposes Only". At the time of shipment of the Products ordered herein, Seller shall forward via FAX, or other electronic means, copies of commercial invoices and bills of lading covering each shipment marked to the attention of the Buyer's applicable traffic office.

C. All goods shall be prepared (cleaned, preserved, etc.) and packed per best commercial practice for export shipment in a manner to comply with carrier regulations and prevent damage or deterioration during handling, shipment and indoor storage for up to ninety (90) days at destination. If requested, Seller shall submit two copies of its proposed packaging procedure and packing design to Buyer for review not less than sixty (60) days prior to first shipment, and shall prepare and package in accordance with said procedure and design.

D. Each unit container (individual part box or other innermost package), each intermediate container, and each shipping container (shipping box, crate or other outermost package) in each

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

shipment shall be marked with its country of origin clearly in English.

E. Number and mark each container with a consecutively assigned number and applicable Order number. The No. 1 shipping container in each shipment shall contain one copy in English of the packing list.

F. The packing list shall include the following information: container number, Order number, item, serial number (as applicable), part number and any applicable test reports.

G. Unless otherwise specified on the face of this Order, the price stated includes the cost of preparing and packing for shipment, boxing, crating, container marking, furnishing packing lists and test reports.

H. Shipping documents shall include bar coding or other specialized marking as required by Buyer.

I. Seller shall provide the applicable Export Control Classification Number (ECCN) or ITAR control statement for all Products furnished by Seller to Buyer. If Seller is a distributor, Seller shall obtain the ECCN or ITAR classification information from its source of supply. If Seller is manufacturing to Buyer's design it shall utilize the ECCN or ITAR classification identified in Buyer's furnished engineering data. Seller will include the ECCN or ITAR designation on its packing slips and shipping documentation and also provide to Buyer on Buyer's request.

**8. INSPECTION**

A. Buyer, and its customer, upon notice to Seller, may inspect and test material, work in progress and supplies at all reasonable times and places, during manufacture and otherwise. Buyer's inspection may, in its sole discretion, include physical, visual and/or mechanical review, as well as any documentation necessary to substantiate the meeting of quality requirements or specific requirements set forth in the Order. If inspection and test are made on Seller's premises, Seller, without additional charge to Buyer, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and tests by Buyer shall be performed in such manner as not to unduly delay the work. Buyer may charge to Seller any additional cost of inspection and test when material, work, or supplies are not ready at the time such inspection and test is requested by Seller. In case of rejection by Buyer, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test.

B. The inspection, review or approval by Buyer of any work, or of any drawing, design, or other document, will not be deemed to relieve Seller of any of its obligations under any Order, or to constitute a waiver of any defects or nonconformities. The acceptance by Buyer of any supplies or services under any Order will not be deemed to limit or affect any warranty or right of indemnity granted by Seller under such Order, these terms and conditions or otherwise.

C. Except as otherwise agreed in writing, all shipments and supplies furnished under this Order shall be subject to final inspection and acceptance by Buyer after receipt by Buyer at Buyer's facility or other destination as identified in this Order notwithstanding any previous inspection, or the earlier passing of title to Buyer or any prior payment by Buyer, or any prior

inspection of any type. Seller shall maintain a quality control and inspection system acceptable to Buyer, and its customer.

D. Except as specifically otherwise provided in this Order, Seller shall be responsible for supplies meeting the requirements of this Order until final inspection and acceptance thereof by Buyer and shall bear all risks as to rejected supplies or supplies requiring correction after notice of rejection notwithstanding any prior acceptance.

**9. WARRANTIES**

A. Seller warrants at the time of delivery to Buyer that all supplies or services covered by this Order will conform to the design, specifications, drawings, samples and other descriptions referred to in this Order, will be free from defects in workmanship, and, to the extent that Seller knows or has reason to know of the purpose for which the supplies or services are intended, will be fit and sufficient for such purpose. All warranties contained in this clause shall run to Buyer and its customers. Seller shall, at no expense to Buyer or its customer, correct any failure to fulfill this warranty.

B. Seller warrants that the supplies and/or services provided under this Order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which in any manner would interfere with the Intellectual Property Rights and Protection of Information clauses of this Order.

C. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.

D. Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its successors and customers.

**10. CHANGES**

A. Buyer's Authorized Purchasing Representative may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order including but not limited to, changes in (1) drawings, designs, specifications, planning, and/or other technical documents; (2) method of shipment, packaging, or packing; (3) place of delivery; (4) reasonable adjustments in quantities or delivery schedules or both; (5) place of inspection; and (6) place of acceptance.

B. If the authorized change causes an increase or decrease in the cost or time required to perform this Order, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease.

C. Any claim for adjustment shall be unconditionally waived unless: (1) asserted in writing and delivered to Buyer within fifteen (15) days of the date of the written change order; and (2) a fully supported proposal is delivered to Buyer's Authorized Purchasing Representative within forty five (45) days after Seller's receipt of such direction.

D. If Seller claims the cost of any property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.

E. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

F. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause of these terms and conditions.

**11. ORDER OF PRECEDENCE**

The various documents constituting this Order shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this Order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items:

- A. Any provisions required by statute or regulation
- B. Any Change Order document(s)
- C. Original Order document
- D. This terms and conditions document
- E. Statement of work
- F. Specifications/drawings
- G. Other referenced documents

**12. GOVERNING LAW**

Irrespective of the place of performance, this Order and any dispute arising under or in connection with it shall be governed by and interpreted in accordance with the substantive laws of the State of New York, United States of America (USA), without regard to its conflicts of law principles. The Parties agree the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order.

**13. DISPUTES**

A. Amicable Negotiation. All disputes, differences, controversies, claims or questions arising in connection with, arising out of, occurring under, or related to, this Order and any subsequent amendments thereto, including, without limitation, the formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims (a "Dispute") shall be reduced to writing in a document to be sent to the other Party, requesting amicable negotiation (a "Negotiation Request"). A Negotiation Request may be sent by e-mail. The negotiation process hereunder shall be submitted to mutually compatible levels of management of the respective Parties to try and resolve the Dispute amicably and in good faith and the executives selected shall use their reasonable best efforts to meet and to find a mutually acceptable resolution to the Dispute.

B. Arbitration. In the event that the Dispute or any part thereof is not satisfactorily settled by negotiation within sixty (60) days (or within such further period of time as the Parties may have agreed in writing), any Party may file a request for arbitration (a "Notice of Arbitration") with ICDR, in which case the Dispute shall be referred to and finally determined by binding arbitration pursuant to ICDR's (International Centre For Dispute Resolution) International Arbitration Rules then in effect ("the Rules"), subject to the following provisions:

- 1. The Parties shall agree to the selection of one (1) or three (3) arbitrators, depending on the complexity of the case. Where a tribunal of three (3) arbitrators is to be selected (the "Arbitral Tribunal"), each Party shall appoint a person to serve as an arbitrator. The two Parties' appointed arbitrators shall then appoint the Chairperson.

2. If the Parties cannot jointly agree on the composition of the Arbitral Tribunal within thirty (30) days from the date of the Notice of Arbitration, ICDR shall appoint the Arbitral Tribunal in accordance with the Rules, appointing as many arbitrators and using such mechanisms to appoint them as it deems appropriate in accordance with the Rules, at its sole discretion.

3. The Parties and ICDR shall ensure that the Arbitral Tribunal shall have been appointed at the very latest forty-five (45) days from the date of the Notice of Arbitration.

4. All arbitrators shall be fluent in English. The arbitrator (or the chairperson of the Arbitral Tribunal, in the event of a three person tribunal) shall not be of the nationality of anyone of the Parties and shall be a qualified lawyer.

5. Subject to paragraph J hereof, each Party shall bear its own expenses, including lawyers' fees, in connection with the proceedings hereunder. If the Arbitration should involve multiple claimants and/or multiple respondents who cannot agree to a joint nomination of a single arbitrator for claimants and/or respondents within the time limit set out in paragraph B 2 above, the ICDR shall appoint all members of the Tribunal without regard to any Party's nomination, but considering the criteria set out in this paragraph B.

6. Where the Dispute is settled at any time after commencement of the Arbitration, but before final award, any settlement agreement reached may be submitted to the Arbitral Tribunal by any Party and issued as a consent award by the Tribunal.

D. Location. The seat or legal place of the arbitration proceedings shall be New York, New York, USA.

E. English Language. The arbitration proceedings shall be English. All documents in any other language shall be translated into English at the expense of the Party(ies) producing them.

F. Governing Law. This Order and all matters related to or arising therefrom including without limitation, the arbitration clause and arbitrability of the Dispute, shall be governed and construed according to the laws of the state of New York, USA, without regard to its conflict of laws rule and specifically excluding the United Nations Convention on the International Sale of Goods. The Tribunal shall not decide the Dispute based on amiable compositeur (composition) or ex aequo et bono (from equity and conscience).

G. Confidentiality. Any settlement discussions or Arbitration hereunder shall be conducted in strict confidence. Except as necessary to enforce an award or required by law, no information or documents produced, generated or exchanged in connection with settlement discussions, Arbitration (including the award) shall be disclosed to any person without the prior written consent of all Parties to the settlement, Arbitration. This restriction shall not apply to public records or other documents obtained by the Parties in the normal course of business independent of any settlement discussions, Arbitration.

H. Scope of Tribunal's Jurisdiction. The scope of the Tribunal's jurisdiction shall not be limited because the subject matter of the Dispute implicates public policy questions or national statutory rights.



**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

I. Discovery. Document production shall be guided by the IBA's 2010 Rules on the "Taking of Evidence in International Commercial Arbitration." The Tribunal shall ensure that document production is conducted on a timely basis and the Tribunal may impose sanctions through the allocation of the costs of the Arbitration for abuse or undue delay of the document production procedure.

J. Written Reasoning, Finality and Enforcement of Award. The Award rendered by the Tribunal shall be reasoned and in writing. The Tribunal shall have the discretion to award reasonable costs to the prevailing Party but shall have no authority to award any double or treble damages, punitive damages or any other damages in the nature of a penalty. Such costs may include the costs of the arbitrators, the Tribunal administrator, and assistance required by the Tribunal, as well as reasonable costs for legal representation. The Award rendered by the Tribunal shall be binding on the Parties and may be entered in any court having jurisdiction over the Party or Parties to the Dispute against which enforcement is sought, or a court in any other competent jurisdiction where the assets of said disputing Party or Parties are located. The Parties hereby exclude and expressly waive any right of review or appeal to any court.

**14. TERMINATION FOR CONVENIENCE**

A. This Order and any and all rights granted and obligations assumed may be terminated in whole or in part by Buyer, if Buyer determines that a termination is in its interest. Buyer shall deliver to Seller a written notice of termination specifying the extent of termination and the effective date.

B. After receipt of notice of termination, and except as otherwise mutually agreed, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Promptly stop all work as specified in the notice.
2. Place no further subcontracts for materials, services, or facilities except as necessary to complete the continued portion of this Order.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. As directed by Buyer, transfer title and deliver to Buyer:
  - i. The fabricated or unfabricated products, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
  - ii. The completed or partially completed plans, drawings, information, and other property that, if the Order had been completed, would be required to be furnished to Buyer.
5. Submit a termination claim within sixty (60) days after the effective date of the termination notice incorporating all claims of Seller. The amount to which Seller shall be entitled upon complete termination of this Order shall be determined as follows:
  - i. Any payments then due and owing to Seller from Buyer for work performed and accepted by Buyer prior to the effective date of termination;

ii. An allowance for any reasonable cancellation charges due to material commitments made by Seller with Seller's suppliers or subcontractors;

iii. At Buyer's option, an allowance for any inventory held by Seller which is for Buyer's Order, in which case Seller shall transfer title and possession of said inventory to Buyer in accordance with Buyer's instructions;

iv. Any other amounts that are mutually acceptable to Buyer and Seller as being fair and reasonable.

6. Protect property in Seller's possession in which Buyer has or may acquire an interest.

7. Complete performance of the work not terminated.

C. In the event payment has been made by Buyer in excess of the amount determined as being the entitlement of Seller under the provisions of this article, Seller shall repay such excess costs immediately. Buyer may deduct as a set off, any excess amounts from other open subcontracts or Orders with Seller, if any.

D. In the event payments made by Buyer are less than the amount determined as being the entitlement of Seller under the provisions of this article, Buyer shall pay to Seller such difference between the amount so paid and the total amount determined to be due to Seller in accordance with this article within thirty (30) days of Buyer's receipt of Seller's invoice for said amount.

E. Notwithstanding the foregoing, the Parties hereto may mutually agree to a partial termination of the Order provided such agreement: (1) equitably revises the price for work remaining to be performed and/or delivery of supplies by Seller thereafter; (2) equitably revises all such other rights requirements, risks, obligations and/or responsibilities as may be affected by such partial termination; and (3) is evidenced by a formal modification to this Order signed by both Parties.

F. In no event shall Buyer's total liability to Seller exceed the total Order price of the supplies or services to which such termination applies and as reduced by the amount of payments previously made and the Order price of work not terminated, nor shall Buyer be liable for incidental or consequential liabilities. Further, Seller shall have no claim against Buyer for loss of anticipated profits or consequential damages suffered by reason of such termination. If the Parties are unable to reach agreement on an equitable settlement pursuant to this clause, any such dispute shall be handled in accordance with the Disputes clause of this Order.

G. Unless otherwise provided in this Order, Seller shall maintain all records and documents relating to the terminated portion of this Order for three (3) years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Order. Seller shall make these records and documents available to Buyer, at Seller's office, at all reasonable times, at no charge.

**15. TERMINATION FOR DEFAULT**

A. Buyer may terminate this Order in whole or in part, by written notice of default to Seller if Seller:

1. Fails to deliver Products or to perform the Services within the time specified in this Order or any respective extension; or

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

2. Fails in any material way to perform any of Seller's obligations under this Order, or so fails to make progress as to endanger such performance and does not cure such failure within ten (10) days of receipt of Buyer's notice of such failure; or

3. In the event that Seller becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy (whether voluntary or involuntary) or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business.

B. If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, products or services similar to those terminated, and Seller will be liable to Buyer for any and all excess costs associated with the re-procurement of those products or services from another source. Seller shall also continue the work not terminated. In addition, Buyer may rework or repair to bring any product back to conforming state in accordance with the Warranties clause herein, at Seller's cost.

C. If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, any (1) completed products, (2) partially completed products, (3) materials that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has or may have an interest.

D. Buyer shall pay the Order price for completed products delivered or services performed and accepted. Seller and Buyer shall agree on the amount of payment for the protection and preservation of any property.

E. Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, the sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

F. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law, equity, or under this Order.

**16. BUYER'S PROPERTY**

All supplies, materials, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items purchased, either directly or indirectly, by Buyer and/or furnished or delivered to Seller to perform the Order, or for which Seller has been reimbursed by Buyer (collectively referred to as "Buyer's Property"), shall be and remain the property of Buyer. Seller shall bear the risk of loss of and damage to Buyer's Property in Seller's possession, custody or control. Buyer's Property shall at all times be properly housed and maintained by Seller; shall not be used by Seller for any purpose other than the performance of this Order; shall be deemed to be property; shall be conspicuously marked

International Inc. by Seller; shall not be commingled with the property of Seller or with that of any third person; and shall not be moved from Seller's premises without Buyer's prior written approval. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Seller, at Buyer's direction and expense. With reasonable prior notice, Buyer shall have the right to enter onto Seller's premises to inspect Buyer's Property and Seller's records with respect thereto. Seller agrees that it will comply with the obligation hereunder to release Buyer's Property notwithstanding any offsetting claim it might have against Buyer and that Seller shall be liable for any loss or damage to Buyer resulting from Seller's failure to release Buyer's Property when requested.

**17. TAXES AND DUTIES**

A. All taxes, including but not limited to, levies, surcharges, import taxes, export taxes, duties, tariffs, surcharges and social benefit fees imposed on Buyer and/or its employees by any authority of any country arising out of or related to the work or services performed by Seller hereunder, including transportation associated therewith shall be solely for the account of and shall be paid by Seller. Seller shall indemnify and hold Buyer harmless from the payment of such taxes, and Buyer may deduct the amount of any such taxes paid by Buyer from any amounts due Seller.

B. The Order price shall include all applicable taxes and duties. Such taxes and duties, if any, shall be separately itemized on the invoice. Use or sales taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption shall not be included.

**18. ASSIGNMENT**

A. Neither this Order, nor any payments, rights, obligations, duties or claims hereunder, are assignable or transferable by subcontract or otherwise without Buyer's prior written consent, except as specifically stated in this clause. Seller may assign to a bank, trust company, or other financing institution including any U.S. federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:

1. The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and set-off or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;

2. Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.

B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.

C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of Buyer's Proprietary Information (including this Order) until and unless authorized to do so by Buyer's Authorized Purchasing Representative.

D. Assignment by Seller shall not relieve Seller of any of its obligations under this Order or prejudice any of Buyer's rights

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

against Seller whether arising before or after the date of any assignment.

**19. SUBCONTRACTING**

A. Any subcontract assignment, subcontract or other transfer of rights or obligations arising under this Order and made to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

B. Subcontracting or delegation by Seller, with or without Buyer's consent, shall not relieve Seller of any of its obligations under this Order or prejudice any of Buyer's rights against Seller whether arising before or after the date of any subcontracting or delegation.

C. This provision shall not apply to purchases of standard commercial articles, including electronic components or raw materials such as casting, forgings, and rough welded structures on which Seller will perform further work.

**20. INTELLECTUAL PROPERTY INDEMNIFICATION**

A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller shall indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers from and against any and all liability and losses, including costs and expenses, based on a claim that the manufacture, or delivery of supplies or performance of services under this Order for infringement of any patent, trade secret, copyright, or other intellectual property right of third parties or out of the use or disposal by, or for the account of, Buyer and/or Buyer's customer of such supplies or services.

B. Buyer shall notify Seller as soon as practicable and in writing of the suit, action or other proceeding alleging such infringement and Buyer shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof.

C. Such indemnity shall not apply if (1) the infringement results from compliance with specific written instructions of Buyer directing a change in the supplies or services to be delivered or in the materials or equipment to be used, or directing a manner of performance of this Order not normally used by Seller; (2) the infringement results from addition to, or change in, the supplies or services furnished made subsequent to delivery or performance by Seller; or (3) the claimed infringement is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction.

**21. INTELLECTUAL PROPERTY RIGHTS**

A. Intellectual Property developed or otherwise acquired by Buyer or Seller prior to or outside the scope of this Order ("Background Intellectual Property"), and any Intellectual Property Rights therein, shall be owned by the party that developed or otherwise acquired the Background Intellectual Property and associated rights.

B. Seller agrees to make prompt and complete disclosure to Buyer of all inventions and disclosures made or conceived as a result of work performed under this Order. Seller agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records.

C. Any invention, discovery, patent, copyright, trade secret, trademark, maskwork, software, system, data, report or other intellectual property resulting from the work performed under this Order shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of the Seller and without any duty to account to the Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this Order, and to provide reasonable support for the Buyer's prosecution of such patent application. Furthermore, the Parties agree that any original work of authorship created under this Order is a work made for hire for purposes of copyright ownership. To whatever extent Seller has any interest in any original work of authorship created under this Order, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

D. This Order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the Order.

**22. INSURANCE**

A. During the entire Order period Seller shall, at its sole cost and expense, procure and maintain all insurance coverage required by the laws of the jurisdiction in which they are located or where services are performed. Buyer, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification contained in these terms and conditions but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify. Seller shall specify Buyer as a named insured on any such policies and provide certificates of insurance evidencing such coverage and provide Buyer ten (10) days prior written notice of cancellation or material change of any such coverage.

B. Seller shall maintain, at its sole cost and expense, insurance coverage in at least the minimum amounts and types as follows:

1. Worker's Compensation insurance coverage as required by the laws of the jurisdiction in which the work is performed sufficient to cover all of its general and special employees and such insurance shall provide waiver of subrogation against Buyer.

2. Employer Liability insurance in a minimum amount of U.S. \$1,000,000.

3. Commercial General Liability (CGL) – Combined Single Limit U.S. \$2,000,000 bodily injury and/or property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.

4. Commercial Automobile Liability (CAL) – Combined Single Limit U.S. \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles.

C. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the jurisdiction in which the work is being performed and shall be in a form reasonably acceptable to Buyer.

30 May 2014



**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

D. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least fifteen (15) days prior to the expiration date of the insurance under each required coverage.

E. Additional insurance types and/or limits will be necessary if the work involves extra hazardous or sensitive operations. The extra hazardous or sensitive operations include but are not limited to aviation operations or products, nuclear hazard operations, professional engineering advice, construction projects, hazardous waste, medical care, food service, crane operation, work above ground, work below ground, and demolition, explosives operations or management or storage of sensitive data.

F. Buyer and Seller agree to defend, indemnify, and hold harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified parties.

**23. LABOR DISPUTES**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer and provide all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller's performance of Buyer's Order and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.

**24. COMPLIANCE WITH LAWS**

Seller warrants that it shall abide by and comply with all applicable laws, regulations and rules of any country, including any governmental subdivision thereof, where Seller has an office or facility or is otherwise doing business or properly subject to jurisdiction, as well as all applicable laws of the United States of America, including, but not limited to, the U.S. Foreign Corrupt Practices Act, Trading With The Enemy Act, Arms Export Control Act and regulations of the Office of Foreign Assets Control. Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its affiliates, and all of their officers, agents, employees, successors and assigns and subcontractors at any tier, against any claims, loss, damage or expense, regardless of how arising and even if unforeseeable, including, without limitation, payment of direct, special, incidental and consequential damages and attorney's fees, arising out of, or relating, Seller's failure to comply with the requirements of this provision.

**25. OFFSET COMMITMENT**

This clause shall only apply to Orders in excess of fifty thousand dollars (\$50,000.00).

A. Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell its Products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's Products or to meet other customer country national objectives.

B. Regardless of whether this Order is or is not made in direct support of a foreign sale, Seller agrees that it is obligated to support Buyer's offset commitments as a condition of this Order.

C. The offset credits arising out of or resulting from, directly or indirectly, this Order are for the exclusive use of Buyer and may be used by Buyer and any of its affiliates and subsidiaries to fulfill all past, present and future offset obligations. In addition, Seller agrees to identify and retain for Buyer's use any rights to offset credits generated by its suppliers and subcontractors arising out of or resulting from this Order.

D. Promptly after selection of non-U.S. subcontractor for work under this Order, Seller shall notify Buyer of the name, address, point of contact (including telephone number) and dollar value of the subcontract.

E. Seller shall execute all necessary documents to evidence Buyer's right to use or assign any offset credits.

F. Buyer reserves the right to assign offset credits generated through Seller's efforts under this Order to third parties.

G. Seller shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this Order.

**26. EXPORT AND IMPORT COMPLIANCE**

A. Export Compliance.

General. Performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2799 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 2401-2420 (Export Administration Act of 1979, as amended), 50 United States Code 1701-1706, (International Emergency Economic Powers Act, as amended), and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either (1) a U.S. Person as that term is defined in the Export Laws and Regulations, or (2) a Foreign Person as that term is defined in the Export Laws and Regulations and has disclosed to Buyer's Representative in writing the country in which it is incorporated/authorized/ organized to do business, and all nationalities of any dual or third-country national employees who will require access to the data, articles or services provided hereunder. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued there under.

B. Registration.

If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR.

Foreign Persons. Seller shall not re-transfer any export-controlled information (e.g. technical data) to any other non-U.S. person or entity (including the Seller's dual and/or third-country national employees) without first complying with all the requirements of the

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

applicable Export Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of the Buyer. No consent granted by Buyer in response to Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this Clause or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Laws and Regulations.

**C. Import Compliance.**

Both Parties shall comply with all U.S. Customs laws and regulations (e.g., 19 CFR) and all other applicable U.S. government regulations pertaining to importations of goods and materials into the United States.

For International Orders (Orders issued to entities addressed in foreign countries): Specifically, without excluding other regulations, Seller shall comply with and adhere to the commercial invoice requirements detailed in 19 CFR 141 subpart F of the regulations, and provide additional information as requested by the Buyer. Seller shall immediately upon discovery, notify Buyer of any change to the shipment data related to product valuation, quantities shipped, country of origin, port of export and any additional information directed by the Buyer. Seller will timely provide pre-alert shipping information and documentation prior to shipment arrival to the U.S. Buyer will direct Seller where to send pre-alert shipping information and documentation. Pre-alert shipping documentation includes, but is not limited to, a commercial invoice, airway bill, bill of lading, and other required documentation as directed by U.S. regulations and Buyer. For Domestic Orders (Orders issued to entities addressed in the United States): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, taxes, and fees for goods entering into the United States. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for goods procured through a domestic Order.

**D. Indemnification.**

Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph A or B. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.

**E. Subcontracts.**

The substance of this clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the Seller for the performance of any part of the work under this Order.

**F. Notification.**

Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with U.S. Government, debarment, assignment of consent agreement, and initiation or existence of a U.S. Government investigation, that could affect Seller's performance under this Order.

**27. RELEASE OF INFORMATION OR ADVERTISING**

Except as required by law, no news release in any way relating to Buyer or Seller concerning this Order shall be made by either party to any news media or the general public without the prior written approval of the other party. Seller will not, and will require its suppliers and subcontractors to not advertise or publish the fact that Buyer has ordered supplies or services from Seller, or the terms or nature of such order. Seller will not and will cause its employees and other representatives to not disclose such information in company periodicals, press releases, public lectures, sales or other promotional literature, websites or otherwise. The Parties agree that in the event a news release is so approved and made, such news release will recognize both Buyer and Seller. Additionally, Seller shall not use Buyer's name or identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

**28. HEADINGS**

The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

**29. PARTIAL INVALIDITY**

If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

**30. NONWAIVER OF REMEDIES**

A Party's failure at any time to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

**31. Reserved**

**32. INDEMNITY AGAINST CLAIMS**

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its affiliates, and all of their officers, agents, employees, successors and assigns and subcontractors at any tier (each an "Indemnified Party"), against any claims, loss, damage or expense, regardless of how arising and even if unforeseeable, including, without limitation, payment of direct, special, incidental and consequential damages, and expenses of defending or participating in claims, including attorney's fees, for property loss and/or damage, and personal injury and/or death, which may be sustained by any third party and/or by an Indemnified Party, arising out of, or relating to, this Order, except for claims resulting from the sole negligence of Buyer.

In the event an Indemnified Party desires Seller to provide the indemnification set forth above, Buyer will inform Seller of the claim, demand or suit asserted or instituted against the Indemnified Party and, may require, at Buyer's sole discretion, Seller to defend the claim, demand or suit and settle or otherwise resolve the matter, with Buyer's participation and prior written permission.

**33. RELATIONSHIP OF THE PARTIES**

The relationship of Seller to Buyer shall be that of an independent contractor and nothing contained herein shall be construed as creating any employer/employee, agency, or other relationship of any kind. Seller's employees, agents or representatives (hereinafter "Employees") performing under this Order shall at all times be under Seller's direction and control. Seller shall pay all

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

wages, salaries, and other amounts due its Employees in connection with this Order and shall be responsible for all reports and obligations for its Employees. Under no circumstance shall Seller be deemed an agent or representative of Buyer or authorized to commit Buyer in any way.

**34. STOP WORK**

A. Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this Order for a period of up to ninety (90) calendar days after the stop work order is delivered to Seller, and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order (SWO) issued pursuant to this clause. Upon receipt of a SWO, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within the period of the work stoppage specified by the SWO, and any amendments to it, Buyer shall either (1) cancel the SWO, (2) terminate the work covered by the SWO as provided for in the applicable termination clause contained herein.

B. If a SWO issued under this clause is canceled, or the period of the Order or any extension thereof expires, Seller shall resume work. An equitable adjustment shall be made in the delivery schedule or Order price, or both, and the Order shall be modified in writing accordingly, if (1) the stop work results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Order, and (2) Seller submits its proposal for such adjustment within twenty (20) calendar days after the end of the period of work stoppage. Failure of the Parties to agree to any adjustment to be made under this clause shall not excuse Seller from proceeding with the performance of the Order.

C. If a SWO is not canceled and the work covered by such SWO is terminated for the convenience of Buyer, the reasonable costs resulting from the SWO shall be allowed in arriving at the termination settlement.

**35. CONFLICTS OF INTEREST**

Seller warrants to the best of their knowledge and belief, that no conflict or potential conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

**36. PROTECTION OF INFORMATION**

A. If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller which relates to the subject matter of this Order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (B) through (H) of this clause shall not apply.

B. If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Seller, paragraphs (C) through (H) of this clause apply.

C. For purposes of this clause, "Information" shall mean information disclosed to Seller by Buyer in connection with this Order which is either identified to Seller as being proprietary to Buyer or which is information that a reasonable person would

understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products, services, equipment or processes, as well as duplicates, copies, or derivative works thereof. Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence.

D. Information furnished to Seller shall remain Buyer's proprietary property, shall be duplicated only as authorized in writing by Buyer, and shall be returned to Buyer or destroyed upon request or when no longer required for the performance of this Order. Seller shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties, including any foreign national, firm, or country, and foreign nationals employed or associated with Seller's company except as specifically authorized by Buyer. Seller further agrees not to use any Buyer Information to develop any product, service or system, or to support any third party in the development of any product, service or system.

E. Neither the existence of this Order nor the disclosure of Buyer Information or any other information hereunder shall be construed as granting expressly by implication, by estoppels or otherwise, a license under any invention or patent now or hereafter owned or controlled by the Buyer or Buyer's customer, except as specifically set forth herein.

F. Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by Buyer only upon approval of Seller. Buyer may use unmarked Seller's data and information for any purpose.

G. Seller's obligations with respect to Buyer Information disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

H. Buyer or its authorized representatives may at any time audit all pertinent books, records and files of Seller in order to verify compliance with this clause. Seller will, in all of its contracts with its suppliers relating to any Buyer Order, include provisions which secure for Buyer all of the rights and protections provided for by this clause.

**37. PRICES**

The prices stated in this Order are stated in United States Dollars and are not subject to exchange rate adjustments.

**38. APPLICABLE LANGUAGE**

This Order is made in the English language and all correspondence between the Parties of a technical and non-technical nature shall be in the English language and shall employ the units of measure customarily used by Buyer in the United States of America, unless otherwise specified. All notices and

30 May 2014

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

other binding communications may, unless otherwise specified, be sent by facsimile, electronic mail, air mail, or other customary means.

**39. PRIVACY, CONFIDENTIALITY AND DATA SECURITY**

A. This provision sets forth the terms and conditions relating to the privacy, confidentiality and security of Personal Information (as defined below) associated with services to be rendered by Seller ("Seller") to Buyer or its affiliates (collectively, "Buyer") pursuant to this Order.

**Definitions**

1. "Personal Information or Data" is any information relating to an identified or identifiable natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver's license number, account number, credit or debit card number, personal identification number, health or medical information, or any other unique identifier or one or more factors specific to the individual's physical, physiological, mental, economic or social identity), whether such data is in individual or aggregate form and regardless of the media in which it is contained, that may be (i) disclosed at any time to Seller or its Personnel by Buyer or its Personnel in anticipation of, in connection with or incidental to the performance of services for or on behalf of Buyer; (ii) Processed at any time by Seller or its Personnel in connection with or incidental to the performance of services for or on behalf of Buyer; or (iii) derived by Seller or its Personnel from the information described in (i) or (ii) above.
2. "Personnel" means employees, agents, consultants or contractors of Seller or Buyer, as applicable.
3. "Process" or "Processing" means any operation or set of operations performed upon Personal Information, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying the data.

**B. Terms and Conditions**

Seller will ensure that it provides the Services under this Order in accordance with the following requirements:

1. Seller will hold in strict confidence any and all Personal Information.
2. Seller will provide at least the same level of privacy protection for Personal Information as is required by the relevant U.S.-EU Safe Harbor Framework ("Safe Harbor") Principles.
3. Seller will Process Personal Information only on behalf of Buyer and in accordance with Buyer's written instructions, and only in connection with the services it provides for Buyer and to fulfill its obligations to Buyer.
4. Seller will comply with all applicable laws and regulations relating to the privacy, confidentiality or security of Personal Information (collectively, "Privacy Requirements").
5. In the event a Privacy Requirement, enforcement action, investigation, litigation or claim, or any other circumstance, is reasonably likely to adversely affect Seller's ability to fulfill

its obligations under this Order, Seller will promptly notify Buyer in writing.

6. Subject to applicable law, in the event Seller is required by law or legal process to disclose Personal Information, it will give prior written notice of the disclosure to Buyer, so that Buyer may, in its discretion, seek to block the disclosure. Buyer will have the right to defend such action in lieu of and on behalf of Seller. Buyer may, if it so chooses, seek a protective order. Seller will reasonably cooperate with Buyer in such defense at Buyer's reasonable cost.

7. Seller may disclose Personal Information to a third party if, and only if, it obtains the written consent of Buyer, for the avoidance of doubt the signature of this Order constitutes written consent, and (i) the disclosure is made to a party that performs services on behalf of Buyer and the disclosure is made in order to perform the Seller's services to Buyer; or (ii) the disclosure is made to a third party performing clerical, administrative, technical, or security-related services for Seller, and such disclosure is incidental to the performance of such services. In either case, Seller will enter into a written agreement with such third party under which the third party agrees it will (1) maintain the confidentiality of the disclosed Personal Information; (2) (a) if the third party is located inside the European Economic Area ("EEA"), such party will provide at least the same level of privacy protection as is required by the relevant Safe Harbor Principles (unless such third party has certified to the Safe Harbor, or is subject to the European Union Directive on Data Protection (Directive 95/46/EC) or another adequacy finding by the European Commission, in which case the third party is not required to make the representation contained in (2) (b)) if the third party is located outside the European Economic Area (EEA), such party will provide at least a level of privacy protection which is compliant with local applicable law and consistent with the level of privacy required by the relevant Safe Harbor Principles (unless such third party has certified to the Safe Harbor, or is subject to the European Union Directive on Data Protection (Directive 95/46/EC) or another adequacy finding by the European Commission.); (3) not disclose the Personal Information to other third parties without the prior written agreement of Buyer; (4) use the Personal Information only in connection with performing its obligations under its agreement with Seller; (5) disclose the Personal Information only to its own personnel who need the information to perform the obligations under the agreement with Seller, and who have been fully advised as to the confidentiality requirements set forth herein; (6) promptly notify Seller of any Information Security Incident (as defined below); and (7) , upon Seller's written request (provided that Seller receives Buyer's prior written approval), return to Seller all copies of Personal Information Processed in connection with the relevant services for which the third party was retained or, upon Seller's written request (provided that Seller receives Buyer's prior written approval), securely destroy or, at the option of Buyer, render



**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions.

8. Seller will develop, implement and maintain a comprehensive written information security program that complies with applicable Privacy Requirements. Seller's information security program will include appropriate administrative, technical, physical, organizational and operational measures designed to (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security and integrity of Personal Information; and (iii) protect against accidental or unlawful destruction, loss or alteration, unauthorized disclosure or access, and any other unlawful forms of Processing (hereinafter "Information Security Incident"). Seller's information security program will contain standards that are at least as stringent as those set forth in Seller's attached Form C-137. If the Processing involves the transmission of Personal Information over a network, Seller will implement appropriate measures to protect Personal Information against the specific risks presented by the Processing. Seller will immediately, but in no event later than 72 hours after Seller's discovery of the Information Security Incident, notify Buyer in writing of any Information Security Incident. Such notice will summarize in reasonable detail the effect on Buyer, if known, of the Information Security Incident and the corrective action taken or to be taken by Seller. Seller will promptly take the necessary and advisable corrective actions, and will cooperate fully with Buyer in all reasonable and lawful efforts to prevent, mitigate or rectify such Information Security Incident. The content of any filings, communications, notices, press releases or reports related to any Information Security Incident must be consulted with Buyer prior to any publication or communication thereof.

9. Seller will exercise the necessary and appropriate supervision over its relevant Personnel to maintain appropriate privacy, confidentiality and security of Personal Information. Seller will restrict access to Personal Information to those Personnel who need the information to perform obligations under Seller's agreement with Buyer and who have explicitly agreed to legally enforceable and sound confidentiality obligations. Seller will ensure that Personnel with access to Personal Information are periodically trained regarding privacy and security and the limitations on Processing of Personal Information as provided in this Order.

10. Seller will engage an independent third-party to conduct a security evaluation/certification of Seller's systems (namely ISAE 3402) that host Personal Information. Not more than once every calendar year Seller will provide Buyer, subject to the confidentiality provisions of the underlying Order, copies of the audit report(s).

11. If Buyer has a good faith reason to believe that there is a system issue or failure that could adversely impact Buyer's use and/or receipt of the Services from a Seller facility providing the Services, Buyer may request a

Structured Walkthrough of such Seller facility providing Services that is the subject of the requested Structured Walk-Through. Unless otherwise agreed to by the Parties, such a "Structured Walk-Through" (i) shall be made on at least 45 days' prior written notice (with such notice period being waived if the seriousness of the incident warrants), (ii) shall be supervised by Seller personnel, (iii) will last no more than one day for each affected facility, (iv) will be held during normal business hours where that facility is located and (iv) shall not involve any access to Seller's systems, or any highly sensitive areas of such facility. In no event shall Seller be required to divulge any information or provide access to any sites that would result in a breach of any of its legal or contractual obligations. All Structured Walkthroughs shall be subject to Seller's security policies and shall be conducted in such a manner which does not interfere with Seller's ability to perform the Services. Any costs or expenses of Buyer and/or its external auditors related to the Structured Walk-Through shall be borne by Buyer.

12. Buyer reserves the right to review Seller's physical and information security policies, practices, and procedures on an annual or biennial basis, in Buyer's reasonable discretion.

13. Seller agrees that any Processing of Personal Information in violation of this Order, Buyer's instructions or any applicable Privacy Requirement, or any Information Security Incident, may cause immediate and irreparable harm to Buyer for which money damages may not constitute an adequate remedy. Therefore, Seller agrees that Buyer may obtain specific performance and injunctive or other equitable relief for any such violation or incident, in addition to its remedies at law, without proof of actual damages.

14. Seller will not transfer or store Personal Information outside the country to which it originally was delivered to Seller for processing (or, if it was originally delivered to a location inside the European Union or inside a jurisdiction declared adequate for personal data processing by way of Decision of the European Commission ("Adequate Jurisdiction"), outside the European Union or outside such Adequate Jurisdiction) without advance notice to Buyer. Seller will cooperate with Buyer if a data subject wants to access or amend Personal Information pertaining to him or her.

15. Seller will immediately inform Buyer in writing of any requests, complaints or investigations regarding Seller's Processing of Personal Information. Seller will respond to such requests, complaints or investigations in accordance with Buyer's instructions and Seller will fully cooperate with Buyer in responding to any such request, complaint or investigation.

16. Seller will enter into any further privacy or information security agreement requested by Buyer for purposes of compliance with applicable Privacy Requirements. In case of any conflict between this Order and any such further privacy or information security agreement, such further

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

agreement will prevail with regard to the Processing of Personal Information covered by it.

17. Seller will return or destroy Buyer Personal Data upon the expiration or earlier termination of this Order subject to; (i) a written request of Buyer notified reasonably in advance, (ii) applicable statute, and (iii) to the extent such return and destruction can be accomplished using commercially reasonable technical and organizational processes and technology which are commensurate with the categorization and the amount of data processed. If Buyer requests a deletion procedure that requires a departure from Seller's client data deletion standards, the Parties will review in good faith the feasibility of such a non-standard procedure, which may result in Seller charging the reasonable demonstrable costs associated to such Buyer's request. To the extent that any portion of Buyer Personal Data remains in the possession of Seller following a request for return or destruction of same from Buyer, such portion of Buyer Data shall remain subject to the generally applicable statutory rules and the confidentiality protections contained in the underlying Order.

18. Seller agrees to indemnify and hold harmless Buyer and its officers, employees, directors and agents from, and at Buyer's option defend against, any and all third party claims, losses, liabilities, costs and expenses, including without limitation reasonable attorneys' fees, consultants' fees and court costs,

19. Seller's indemnity obligations hereunder are subject to the following provisos: (i) Seller is promptly notified in writing of such suit or cause of action, (ii) Seller controls any negotiations or defense and Buyer assists Seller as reasonably required by Seller, and (iii) Buyer takes all reasonable steps to mitigate any potential damages that may result. Seller's obligations under this Order will survive the termination of Seller's agreement to provide services to Buyer and the completion of all services subject thereto.

**40. DATA BREACH NOTIFICATION**

In the event Seller reasonably believes that unauthorized access to, disclosure of, or breach in the security of Buyer's data may have occurred, Seller, at its own cost and expense must:

1. In the most expeditious manner possible, without unreasonable delay, and in any event no later than 72 hours, notify Buyer of any potential data security breach involving Buyer's data;
2. Promptly provide Buyer full details of the potential breach of the data security of Buyer's data;
3. Assist Buyer and any third parties authorized by Buyer, including law enforcement authorities, in investigating and remediating any potential breach of the data security of Buyer's data
4. Promptly use best efforts to prevent a recurrence of any potential breach of the data security of Buyer's data; and
5. Cooperate with Buyer in notifying individuals injured or potentially injured by the potential breach of the data security of Buyer's data.

**41. CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM**

Buyer supports the U.S. Customs and Border Protection (CBP) in the Customs-Trade Partnership Against Terrorism (C-TPAT) program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Contact Buyer's Authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program. Information about C-TPAT can be found at [www.cbp.gov](http://www.cbp.gov).

**42. SUSTAINABILITY**

Buyer is committed to providing a sustainable environment for its employees, customers, investors, suppliers, and communities. Buyer's goal is to promote resource conservation and environmental responsibility through the use of recycled contents and recovered materials to achieve waste reduction and energy efficiency. Buyer is dedicated to obtaining products and services from suppliers that exceed or comply with all applicable laws, regulations, and ordinances relating to preservation and protection of the environment, in addition to employing techniques and materials that support sustainability. To assist Buyer in maintaining its commitment, suppliers of products and services are strongly encouraged to demonstrate the same degree of integrity from a social and environmental perspective and strive for continuous improvement in the following key areas of sustainability: water quality, energy conservation, responsible recycling, waste management and air quality.

**43. FORCE MAJEURE**

(a) Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to: (1) acts of God or of the public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and (4) unusually severe weather or other acts of Nature. In the event

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

that performance of this Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so immediately notify the other party's authorized representative in writing, including all relevant information with respect thereof and, at Buyer's sole option, this Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of Force Majeure or this Order may be terminated for convenience.

(b) Neither receipt of such notice by Buyer, nor any provision of these terms and conditions will be deemed to be a waiver by Buyer of any of its rights under any Order, these terms, at law or otherwise.

(c) Seller shall include the substance of this clause, including this subparagraph (c), in all of its subcontracts or purchase orders issued at all tiers under this Order.

**44. PLACE OF PERFORMANCE**

Seller shall notify Buyer's Authorized Purchasing Representative in writing of any change in Seller's name, ownership or the place of performance. Buyer's Authorized Purchasing Representative will instruct the Seller on formal notification actions and specific forms to submit, as necessary.

**45. EUROPEAN UNION REGISTRATION, EVALUATION, AUTHORIZATION AND RESTRICTION OF CHEMICALS (REACH)**

A. Seller shall comply with any and all European Union (EU) Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation obligations with respect to any of the Products delivered by Seller to Buyer under the terms of this Order.

B. Seller must provide Buyer with a list of substances contained in any of the Products that were included on the Candidate List published by ECHA on October 28, 2008. Thereafter, if a substance is added to the Candidate List by ECHA, and that substance is also contained in any Products, Seller must notify Buyer within fifteen (15) days.

C. By accepting this Order, Seller recognizes and agrees that Buyer will thereafter act in reliance on Seller's acceptance of this Order as a contractual commitment that it is in compliance with EU REACH regulations, subject to the further provisions below.

D. Should any Products contain substances listed on the Candidate List that are above 0.1% on a weight by weight basis within that Product, Seller shall provide Buyer with so-called Safe-Use information, pursuant to the provisions of REACH Article 33 and shall maintain the REACH database for the life of this Order.

E. As indicated, Buyer will act in reliance on the statements and commitments Seller makes regarding the Candidate List status of each of the substances contained in any of the Products. If Seller fails to comply with the provisions of this clause, Buyer may consider whether such failure constitutes a breach of this Order sufficient to warrant Termination for Default in accordance with the terms of this Order. Moreover, in the event failure to timely comply with these provisions results in a business interruption of Buyer's operations, Buyer will seek to recover the damages, including financial losses, it suffers as a consequence of such failure.

**46. FOREIGN CORRUPT PRACTICES ACT**

Seller shall comply with the Foreign Corrupt Practices Act, 15 U.S.C. 78 et. seq.

**47. SUCCESSORS OF PARTIES**

This Order is binding on the Parties and their respective legal representatives, trustees, successors and assigns.

**48. BADGES & PLANT SECURITY**

If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to abide by and comply with, and require its employees and subcontractors to abide by and comply with, such rules and regulations pertaining to plant security as may be prescribed by Buyer and/or the Buyer's customer.

**49. ASSIGNMENT OF RIGHTS TO DIVESTED ENTITIES**

A. Upon Buyer's divestiture of any affiliate, division, business unit, line of business or sector ("divested entity"), Buyer may assign in whole or in part the right to purchase any products or services that are the subject of this Order to that divested entity. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned products or services (with the exception of any unpaid fees for products and services previously properly furnished which remain due on the effective date of such assignment) and the divested entity shall become the "customer" of record for the assigned products and services.

B. Divested entities will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase the products and/or Services covered under this Order, or Buyer may purchase such products and services under this Order on behalf of the divested entities. If a divested entity wishes to order from Seller directly, Seller reserves the right to require such divested entity to provide financial information sufficient to determine creditworthiness, which shall not be unreasonably withheld, before accepting any orders.

C. Buyer may access and use products and services available under the agreement to provide transitional support to a divested entity during the transition period at no additional charge (i.e., no charge other than fees otherwise due to Seller under the agreement as if the divested entity were a part of Buyer) provided that Buyer is and remains current on the payment of all amounts due to Seller under the agreement.

D. If Buyer merges with or acquires an entity or entities that have a need for Seller's products and Services, Buyer and the acquired entity will be permitted to make purchases using this Order and price discounts in support of the acquired entity. If, under any existing Order with an acquired entity or entities, Seller currently provides or agrees to provide products or services, Buyer and Seller will negotiate a combined agreement sufficient to cover the combined companies so as to avoid any disruption.

**50. ANTIDUMPING/COUNTERVAILING DUTIES**

Seller must affirmatively determine whether Seller's product is subject to U.S. antidumping/countervailing duties (AD/CVD). Seller must notify Buyer in writing if Seller's product is subject to AD/CVD at the time of contracting or if Seller's product becomes subject to AD/CVD at any time during the term of this Order.

**51. FREE TRADE AGREEMENT AND TARIFF PREFERENCE PROGRAMS**

**TERMS AND CONDITIONS – Products and Services Other than U.S. Government  
End Customers**

CTM No. P401

Seller must provide to Buyer, upon Buyer's request, product country of origin information under North American Free Trade Agreement (NAFTA), Caribbean Basin Initiative (CBI), General System of Preferences (GSP) or other relevant, existing or future trade agreements or tariff preference programs. If required by Buyer based on the origin of the product under the relevant rules of origin, Seller will complete and deliver to Buyer a certificate of origin appropriate to the relevant trade agreement or tariff preference program, or sufficient information to enable Buyer to satisfy Buyer's obligations in utilizing such trade agreements or tariff preference programs. Seller must continuously monitor Seller's materials sourcing, bills of material, and/or formulations for changes that might affect the validity of any origin determination or certificate of origin provided to Buyer. If any such change affects origin information or a certificate of origin provided to Buyer, Seller must immediately notify Buyer in writing.

Upon request by Customs and Border Protection, seller will provide all applicable requested information in support of a FTA certificate of origin.

**52. TOXIC SUBSTANCES CONTROL ACT**

Seller warrants that each and every chemical substance delivered under this Order shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (Title 15 USC § 2601 et seq.), and Seller agrees to certify as such upon request by Buyer. Seller shall not include any chemical substance (including mixtures or articles containing a chemical substance or mixture) in any shipment to the United States pursuant to this Order without prior notice to and written consent of Buyer. Pursuant to the indemnity provisions of this Order, Seller shall indemnify and hold harmless Buyer from any loss, cost, liability, damage, or penalty to Buyer by reason of Seller's nonperformance under this section. The rights of the Parties hereunder shall survive completion or termination of this Order.

**53. SUSPECT/COUNTERFEIT MATERIALS - Reserved**

**54. ASBESTOS**

Seller shall not provide any Product that contains asbestos and shall submit certification to Buyer on demand that the Products contain no asbestos.

**55. COMPLETE AGREEMENT**

This Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposals, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order.