

## TERMS AND CONDITIONS FOR SALE AND LEASE OF PRODUCTS AND SERVICES

NOTICE: Sale or Lease of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless agreed to in writing by Seller; provided however, that no pre-printed facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions or the Contract shall not be binding on either party. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation or Contract, any quotation by Seller shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's acceptance.

### 1. Definitions

Unless Seller otherwise agrees:

- A. "Buyer" means the entity to which Seller is providing Products or Services under the Contract.
- B. "Contract" means the documents that comprise the agreement between Buyer and Seller for the sale or lease of Products or Services, including these Terms and Conditions and any other documents incorporated therein by reference, such as, the final quotation, the agreed scope(s) of work, and Seller's order acknowledgement.
- C. "Hazardous Materials" means any chemical, substance, material or emission that is or may be regulated, governed, listed or controlled pursuant to any international, national, federal, provincial, state or local statute, ordinance, order, directive, regulation, judicial decision or other legal requirement applicable to the Site as a toxic substance, hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, pesticide, radioactive material, regulated substance or any similar classification, or any other chemical, substance, emission or material, including, without limitation, petroleum or petroleum-derived products or by-products, regulated, governed, listed or controlled or as to which liability is imposed on the basis of potential impact to safety, health or the environment pursuant to any legal authority of the United States or the country of the Site.
- D. "Leased Equipment" means all Products Seller has agreed to lease to Buyer under the Contract, as well as all equipment of Seller which will be located at the Site during all or some portion of the term of the Contract without Seller's personnel present, such as remote diagnostic equipment.
- E. "Products" means all equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply under the Contract, including Leased Equipment and Refurbished Parts.
- F. "Refurbished Parts" means used Products that have been repaired and/or reconditioned by Seller for resale.
- G. "Seller" means the entity providing Products or performing Services under the Contract.
- H. "Services" means all services Seller has agreed to perform for Buyer under the Contract.
- I. "Site" means the premises where Products are delivered or Services are performed, not including Seller's premises from which it performs remote Services.
- J. "Terms and Conditions" means these Terms and Conditions for Sale and Lease of Products and Services.

### 2. Payment

Except as otherwise agreed to by Seller in writing, and upon approved credit, the following payment terms apply:

- 2.1 Buyer shall pay Seller all invoiced amounts in U.S. dollars, without right of set-off, within 30 days from date of invoice. Seller shall be entitled to payment of all charges associated with Seller's performance of Services as the Services are performed. For each Product with a price of U.S.\$50,000 or more, partial payments of the contract price shall be made as invoiced starting upon order placement, such that 80% of the Contract price is received before scheduled shipment. Buyer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that the payment is overdue and all costs of Seller's collection efforts including reasonable attorney's fees.
- 2.2 Unless otherwise agreed in the Contract, in any transaction in which Buyer and Seller are domiciled in separate countries, Buyer shall establish an irrevocable, unconditional, sight letter of credit allowing for pro-rata payments for partial deliveries, storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract and certification of the charges and grounds for such payment. The letter of credit shall be (a) confirmed by a bank that is acceptable to Seller, (b) payable at the counters of the confirming bank and (c) opened sixty (60) days prior to the earliest scheduled shipment and (c) remain in effect until ninety (90) days after the latest scheduled shipment. Buyer shall pay all banking charges. Seller will not begin performance until the letter of credit becomes operative. Buyer will increase the amounts and/or extend the validity period(s) and make appropriate modifications to any letter of credit within five business days of Seller's notification that such increase or extension is necessary to provide for payments to become due.
- 2.3 If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller's performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract.

### 3. Taxes and Duties

Unless otherwise specified in the Contract, Seller shall be responsible for and pay directly, all corporate and individual taxes measured by net income or profit imposed by any governmental authority on Seller, its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Seller Taxes"). Buyer shall be responsible for and pay directly when due and payable all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Seller Taxes, imposed by any governmental authority on Seller or its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Buyer Taxes"). All payments due and payable by Buyer to Seller hereunder shall be made in the full amount of the Contract price, free and clear of all deductions and withholding for Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts to Seller to cause the amounts Seller actually receives, net of deducted or withheld Buyer Taxes, to equal the full Contract price. Buyer shall provide to Seller within one month accurate official receipts from the appropriate governmental authority for deducted or withheld taxes.

### 4. Delivery; Title Transfer; Risk of Loss; Storage

- 4.1 For shipments within the country of origin or manufacture and for U.S. exports, Seller shall deliver Products to Buyer EXW Seller's facility, place of manufacture or warehouse (Incoterms2000). For all other export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2000). Buyer shall pay all delivery costs and charges or reimburse Seller for shipping charges plus 25%. Except for those obligations that are consistent with Incoterms 2000 specifically stated above, Seller shall not be liable in any claim asserted by Buyer with respect to delivery. Partial deliveries will be permitted. If Products delivered do not correspond in quantity, type or price to those itemized in the invoice for the shipment, Buyer will so notify Seller within 10 days after receipt. Seller may deliver any or all Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all materials and information necessary to proceed with the work without interruption.
- 4.2 Title to Products shipped from the U.S. shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S. For this purpose, the parties acknowledge that the territorial seas of the U.S. extend to twelve nautical miles from the baseline of the country determined in accordance with the 1982 United Nations Convention of the Law of the Sea. Title to Products shipped from within the country where Products will be installed shall pass to Buyer when Products are made available for shipment from the manufacturer's factory or the storage facility utilized by Seller. Title to Products shipped directly from a European Union ("EU") manufacturer or a EU storage facility outside the country where the Product will be installed shall pass to Buyer the earlier of (i) the port of export immediately after the Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the EU sending country. Title to Products to be shipped from any other country shall pass to Buyer at the port of export immediately after the Products have been cleared for export. Title to Services shall pass to Buyer as performed. Notwithstanding the foregoing, for any software provided by Seller hereunder, only the license to the software transfers as set forth herein, and title to Leased Equipment shall remain at all times with Seller.
- 4.3 Notwithstanding Section 4.1 above, in all events risk of loss shall transfer to Buyer upon title passage.
- 4.4 If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Seller, Seller will notify Buyer and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed freight forwarder. If Seller places Products in storage or if Products are detained at any port, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer if they had not already passed; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices; (iii) all expenses and charges incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, demurrage, removal and any taxes shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Products to the originally agreed point of delivery.
- 4.5 Buyer shall bear the sole risk of loss for Buyer's equipment during the term of the Contract, whether at the Site, the Seller's facility or in transit from the Seller's facility. If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for transporting the equipment to and from Seller's facility. Buyer shall reimburse Seller at Seller's then current storage rate if the equipment remains at Seller's facility beyond 10 days after notification that the Services have been completed.

### 5. Excusable Delays

Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment.

**6. Compliance with Laws, Codes and Standards**

6.1 Seller represents that the Products will be produced in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to nonsegregation and equal employment opportunity.

6.2 The Contract price, delivery and performance dates and any performance guarantees will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change in industry specifications, codes, standards, applicable laws or regulations.

6.3 Seller's obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations. Buyer shall not transship, re-export, divert or direct Products other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Seller's invoice, except as permitted by applicable laws and regulations.

6.4 Notwithstanding any other provisions, Buyer shall timely obtain any required authorization, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization, even if Seller applies for the authorization. Buyer shall be solely responsible for obtaining, maintaining and/or effectuating any governmental authorizations or notifications, including, without limitation, the submission and approval of a spill prevention and control plan, oil processing notification, and required air permit modifications, if any, required for the lawful performance of the Services at the Site.

**7. Warranty**

7.1 Seller warrants to Buyer that (i) the Products shall be shipped free from defects in material, workmanship and title and (ii) the Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Unless Seller expressly agrees otherwise in writing, any items not manufactured by Seller (including incidental materials and consumables used in the Services) shall carry only the warranty that the original manufacturers provide, and Seller gives no warranty on behalf of the manufacturers of such items. Furthermore, used Products other than Refurbished Parts shall be sold "as is."

7.2 Unless otherwise stated in the Contract, the warranty period for Products and services shall be six months from first use or 12 months from delivery, whichever occurs first, except that software is warranted for 90 days from delivery.

7.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing within the warranty period. Seller shall thereupon (i) at Seller's option, repair or replace the defective Products or (ii) re-perform the defective Services. If in Seller's reasonable judgment the Product cannot be repaired or replaced or the Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for that portion of Products or Services that do not meet the above warranties. Any repair, replacement or reperformance by Seller hereunder shall not extend the applicable warranty period. The parties shall mutually agree on the specifications of any test to determine the presence of a defect.

7.4 Buyer shall bear the costs of troubleshooting to determine the defective product and/or service, as well as the cost of access (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of Products to Seller and back to Buyer. Should the Seller's on-site services be required to assist Buyer with troubleshooting and/or removal/installation of the defective product, Buyer shall be responsible for Seller's Travel Time and Travel Expenses associated with travel to the jobsite, as well as Seller's Time and Expenses associated with assisting Buyer with troubleshooting and/or removal/installation of the defective product. Should Seller's on-site services be required to re-perform defective services, Buyer shall be responsible for Seller's Travel Time and Travel Expenses associated with travel to the jobsite. The Seller's Travel Time and Travel and Living Expenses shall be invoiced at the Seller's then-current published rates and T&L/Material markups.

7.5 These warranties and remedies are conditioned upon (a) the proper storage, installation, operation, and maintenance of the Products and conformance with the proper operation instruction manuals provided by Seller or its suppliers or subcontractors, (b) Buyer keeping proper records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of the Products or Services only as authorized by Seller. Seller does not warrant the Products or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Seller. Any modification or repair of any of the Products or Services not authorized by Seller shall render the warranty null and void.

7.6 This Article provides the exclusive remedies for all claims based on failure of or defect in Products or Services, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however described, is based on contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. **NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

**8. Limitation of Liability**

8.1 The total liability of Seller for all claims arising out of or relating to the performance or breach of the Contract or use of any Products or Services or any order shall not exceed (a) the Contract price or (b) if this Contract is in the form of a frame or master agreement under which Buyer places an order with Seller for the Products and Services to be purchased, (i) the final price of the particular order under which the specific Products or Services giving rise to the claim are supplied or performed or (ii) ten thousand US dollars (US\$10,000) if the claim is not part of any particular order. Seller's liability shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim that accrued prior to that date by commencing an action or filing an arbitration, as applicable under the dispute resolution clause, before the expiration of the applicable statute of limitations or repose, but not later than one year after the expiration of such warranty period.

8.2 Seller shall not be liable for loss of profit or revenues, loss of product, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages.

8.3 If Buyer is supplying Seller's Products or Services to a third party, Buyer shall require the third party to agree to be bound by this Article. If Buyer does not obtain this agreement for Seller's benefit, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this Article.

8.4 Seller shall not be liable for any advice or assistance that is not required under the Contract.

8.5 For the purposes of this Article, the term "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their agents and employees, individually or collectively.

8.6 The limitations and exclusions in this Article shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise.

8.7 Buyer's and Seller's rights, obligations and remedies arising out of or relating to the Products or Services are limited to those rights, obligations and remedies described in this Contract.

This Article shall prevail over any conflicting or inconsistent terms in the Contract, except to the extent that such terms further restrict Seller's liability.

**9. Dispute Resolution, Governing Law**

9.1 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be resolved in accordance with this paragraph and will be settled, if possible, by negotiation of the parties. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management of each party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of higher management, or any later date to which the parties may agree, either party may submit to arbitration or court depending on Buyer's pertinent place of business, as follows:

(a) If Buyer's pertinent place of business is in a country other than the U.S., the dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which are incorporated by reference into this clause. The number of arbitrators shall be one unless the amount in dispute exceeds the equivalent of U.S. \$1,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The single arbitrator or the Chairman may not be a national or resident of the country of the Site or the countries in which either party is organized or has its principal place of business, unless both parties otherwise agree. The seat, or legal place, of arbitration shall be London, England. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

(b) If Buyer's pertinent place of business is in the U.S., any claim, legal action or proceeding (including without limitation claims for set-off or counterclaim) regarding the dispute shall be brought in the U.S. District Court for the northern District of Georgia, or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts Cobb County, Georgia, and the parties irrevocably consent to the exclusive jurisdiction of those courts for such claims. Each party submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its person and property, and irrevocably consents to the service of process in connection with any such action proceeding by personal delivery to the party or by registered or certified mail, postage prepaid, to its address for notice under the contract.

9.2 Notwithstanding the terms above, each party has the right at any time, at its option and where legally available, to commence an action or proceeding in a court of competent jurisdiction to apply for interim or conservatory measures, but not monetary damages.

9.3 The validity, performance and all matters relating to the interpretation and effect of the Contract and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws, excluding the rules on the conflict or choice of laws, of (i) the State of New York, U.S., if the Buyer has its pertinent place of business in the U.S., or (ii) England and Wales if the Buyer has its pertinent place of business outside of the U.S. If the Contract includes the sale of Products and the Buyer has its pertinent place of business outside of the U.S., the United Nations Convention on Contracts for the International Sale of Goods shall apply.

**10. Confidentiality**

10.1 In connection with the Contract, Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with "Confidential Information." "Confidential Information" means (a) all pricing for Products and Services, (b) all terms of the Contract, (c) all information that is designated in writing as "confidential" or "proprietary" by the Disclosing Party at the time of written disclosure, and (d) all information that is orally designated as "confidential" or "proprietary" by the Disclosing Party at the time of oral disclosure and is confirmed to be "confidential" or "proprietary" in writing within 10 days after oral disclosure. The obligations of this Article shall not apply as to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than from disclosure by the Receiving Party, its representatives or its affiliates; (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party; (iii) is independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law, a valid legal process or a government agency; or (v) is approved for disclosure in writing by an authorized representative of the Disclosing Party.

10.2 The Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and permitted use(s) and maintenance of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, agents or financing parties who have a need to know for Buyer to perform its obligations under the Contract or to use and maintain Products or Services, and (iii) not to disclose the Confidential Information to a competitor of the Disclosing Party. The Receiving Party agrees to obtain a commitment from any recipient of Confidential Information to comply with the terms of this Article. Confidential Information shall not be reproduced without the Disclosing Party's written consent, and the Receiving Party shall return all copies of Confidential Information to the Disclosing Party upon request except to the extent that the Contract entitles the Receiving Party to retain the Confidential Information. Seller may also retain one copy of Buyer's Confidential Information until all its potential liability under the Contract terminates.

10.3 If either party or any of its affiliates or representatives is required by law, legal process or a government agency to disclose any Confidential Information, that party agrees to provide the Disclosing Party with prompt written notice to permit the Disclosing Party to seek an appropriate protective order or agency decision or to waive compliance by the Receiving Party with the provisions of this Article. In the event that efforts to secure confidential treatment are unsuccessful, Seller may lawfully revise the Confidential Information to make it nonproprietary or to minimize the loss of its proprietary value.

10.4 Nothing in this Article grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party.

10.5 Buyer shall not disclose Confidential Information to Seller unless it is required to do so to enable Seller to perform work under the Contract. If Buyer does disclose Confidential Information, Buyer warrants that it has the right to disclose the information, and Buyer shall indemnify and hold Seller harmless against any claims or damages resulting from improper disclosure by Buyer.

10.6 As to any individual item of Confidential Information, the restrictions of this Article shall expire the earlier of five (5) years after the date of disclosure or three (3) years after termination or expiration of the Contract.

10.7 This Article does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

**11. Health and Safety Matters**

11.1 Buyer shall take all necessary precautions, at all times, for the health and safety of Seller personnel at the Site. These include, but are not limited to providing to Seller for review, and instructing Seller's personnel regarding, Buyer's safety practices, proper and safe handling of, and protection of Seller's personnel from exposure to, Hazardous Materials, energization and de-energization of all power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out procedures, and conducting periodic safety meetings.

11.2 Seller may, from time to time, conduct safety audits to ensure the existence of safe site and working conditions and make recommendations to Buyer concerning them. Whether or not Seller conducts safety audits or makes recommendations, Buyer will remain responsible for providing a work environment that is safe and that complies with all applicable legal requirements. Buyer will make its local medical facilities and resources available to Seller personnel who need medical attention, for the duration of their needs. Under no circumstance will Seller personnel be required to work more than any maximum time periods allowed by applicable law.

11.3 If, in Seller's reasonable opinion, the safe execution of the Contract at the Site is, or is apt to be, imperiled by security concerns, local conditions, war (declared or undeclared), armed conflict or threatened conflict, civil unrest, terrorist acts or threats, threat to safety or well-being of the Site or personnel or Seller's persons or interests, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from the Site, suspend performance of all or any part of the Contract, and/or transfer such performance and supervise it at a location solely determined by Seller. Buyer shall assist in any evacuation. Any delay that results shall be considered excusable.

11.4 Before issuing its purchase order, Buyer shall advise Seller in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to Products and Services.

11.5 Operation of Buyer's equipment is the responsibility of Buyer. If Buyer requires or permits Seller's personnel to operate Buyer's equipment at the Site, Buyer shall indemnify and save Seller, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Seller, its employees and agents, based upon exposure to Hazardous Materials, injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Seller personnel. Buyer shall not require Seller personnel to work on other projects or equipment during the term of the Contract.

**12. Site Access and Conditions; Hazardous Materials**

12.1 Buyer shall provide Seller access to the Site and any other facilities free of charge, including the operating and development environment and information, as necessary for Seller's performance of the Contract. Prior to Seller starting any work at the Site, Buyer will (i) provide documentation that identifies any existing Hazardous Materials on or about the Site, and (ii) allow Seller, at its option, access to the Site to perform or have performed a Site evaluation, including without limitation, a review of applicable documents and visual examination of the Site. Whether or not Seller conducts any evaluation, Seller will have no responsibility of liability for existing Site conditions.

12.2 Seller shall promptly, and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface, latent physical or other conditions at the Site, including but not limited to Buyer's health and safety requirements, differing materially from those indicated in the Contract or otherwise disclosed by Buyer, and (ii) previously unknown physical conditions at the Site, including archeological remains, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. Buyer shall promptly investigate those conditions. If it is determined that any conditions do materially differ and cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, the parties shall make an equitable adjustment in price and schedule and modify the Contract in writing accordingly.

12.3 If, at the Site, Seller encounters Hazardous Materials that require special handling or disposal, Buyer shall immediately take whatever precautions are required to eliminate legally the hazardous conditions so that the work under the Contract may safely proceed. Seller shall not be obligated to commence or continue work until Buyer causes the hazardous conditions to be removed. If any such Hazardous Materials cause an increase in Seller's cost of or time required for performance of any part of the work, the parties shall make an equitable adjustment to the price and schedule and modify the Contract in writing accordingly. Buyer agrees to properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

12.4 Buyer shall indemnify and hold Seller harmless for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials which are or were (i) present on or about the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on the Site by parties other than Seller.

**13. Termination and Suspension**

13.1 Buyer may terminate the Contract (or any portion thereof) for cause if Seller: (i) substantially breaches a material obligation which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice (or such extended period as is considered reasonable by the parties), to either (1) commence and diligently pursue cure of the breach, or (2) provide reasonable evidence that the breach has not occurred; or (ii) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws. If Buyer terminates the Contract as provided in this Section: (a) Buyer shall pay to Seller all portions of the Contract price allocable to work performed (for example, the price for Products completed or partially completed before the termination), Lease Fees incurred, and all Services performed at the Seller's then-current standard time and material rates; and (b) Seller shall pay Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably paid by Buyer to another supplier for that scope.

13.2 Seller shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 5 above) lasting longer than 120 days; (iii) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; or (iv) Buyer materially fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions.

**13. Termination and Suspension, Continued.**

13.3 If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 13.1 above, Buyer shall pay Seller for all Products completed or partially completed, Lease Fees incurred, and Services performed before the effective date of termination, plus a cancellation charge equal to 15% of the Contract price allocable to the uncompleted Products, unfinished Lease Term and unperformed Services. The following shall apply when determining the amount due from Buyer for Services performed before the date of termination: (i) for Services performed under time and material pricing, Buyer shall pay for all hours performed at Seller's then-current standard time and material rates and (ii) for Services performed under a firm fixed price, Buyer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Seller's then-current standard time and material rates.

13.4 Buyer shall pay any reasonable expenses incurred by Seller in connection with a suspension or termination, including expenses for repossession, fee collection, demobilization/remobilization or costs of storage during suspension upon submission of Seller's invoice(s). Performance of Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

**14. Software and Software Services**

14.1 If Seller provides any software to Buyer, the terms of this Contract shall apply including any Software License Addendum that may be incorporated by reference.

14.2 If Seller performs Services related to Seller's own proprietary software, Buyer agrees that Seller owns all proprietary rights, including, but not limited to any patent, copyright, trade secret, trademark and other proprietary rights, in and to that software and any work derived from that software ("Derivative Work"). "Derivative Work" is (i) any work that is based upon one or more pre-existing work, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, extension or any other form in which such pre-existing work may be recast, transformed, or adapted, and that, if prepared without the authorization of the owner of the copyright to such pre-existing work, would constitute a copyright infringement and (ii) any compilation that incorporates such a pre-existing work. Buyer shall have only a "right to use" license to a Derivative Work for internal business purposes and shall not disclose, sell, lease, distribute, or otherwise transfer the Derivative Work to any third party except as may be permitted by these terms or as approved in writing by Seller.

14.3 For the purposes of this Article, "Seller" means Seller, its affiliates, and their successors or assigns.

**15. Intellectual Property Indemnification**

15.1 Subject to the terms of the Contract, Seller shall indemnify Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (a "Claim") alleging that Products or Services infringe a patent in effect in the U.S., an EU member state or country of delivery (provided there is a corresponding patent issued by the U.S. or an EU member state), or U.S. copyright or copyright registered in the country of delivery; provided that: (a) Buyer promptly notifies Seller in writing of any such Claim; (b) Buyer makes no admission of liability and gives Seller sole authority, at Seller's expense, to direct and control all defense, settlement, and compromise negotiations; and (c) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

15.2 Seller shall have no obligation or liability with respect to any Claim based upon: (a) any Products or Services that have been altered, modified, or revised; (b) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim; (d) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract; or (e) Products or Services made or performed to Buyer's specifications.

15.3 Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back Products or Services and refund any fees received by Seller attributable to the infringing Product or Service.

15.4 This states Seller's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.

15.5 Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured/developed by Seller, only the indemnity of the manufacturer/developer, if any, shall apply.

**16. Changes**

16.1 Each party may at any time propose changes in the schedule or scope of Products or Services in the form of a draft change order. Some changes requested by Buyer may require analytical or investigative work to evaluate the change, and this evaluation work may be charged to Buyer at prevailing rates. The parties may mutually agree on the length of time within which a decision shall be made regarding the change. If mutually agreed, the changes will be documented in a written document signed by authorized representatives of each party, along with any equitable adjustments in the Contract price or schedule. Seller is not obligated to proceed with the changed schedule or scope until both parties agree in writing. Changes in applicable laws, rules and regulations shall be treated as a change within the meaning, and subject to the requirements, of this Article. Unless otherwise agreed by the parties, pricing for additional work arising from changes in laws, rules and regulations shall be at time and material rates.

16.2 All Products delivered shall conform to Seller's part or version number specified or (at Seller's option) its equivalent or the superseding number subsequently assigned by Seller. If the number ordered is no longer available, Seller is authorized to ship a valid interchangeable Product without notice to Buyer.

**17. Inspection and Factory Tests**

The quality control exercised by Seller in its manufacture of Products shall be in accordance with Seller's normal quality control policies, procedures and practices. Seller shall attempt to accommodate Buyer's requests to witness Seller's factory tests of Products, if such witnessing can be arranged without delaying the work. Such access shall be limited to areas directly concerned with Products ordered by Buyer and shall not include restricted areas where development work or work of a proprietary nature is being conducted.

**18. General Clauses**

18.1 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity without the written consent of Seller. Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, unless Seller agrees to the use in writing. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damages, injury or contamination, and in addition to any other legal or equitable rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against any such liability. If Seller agrees in writing to any such use, the parties shall agree upon special terms and conditions that provide Seller protections against nuclear liability and which are acceptable to Seller under the then current laws that apply.

18.2 Seller may assign or novate its rights and obligations under the Contract, in part or in whole, to any of its affiliates without Buyer's consent, and may subcontract portions of the work, so long as Seller remains responsible for it. Buyer agrees to execute any documents that may be necessary to effect Seller's assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller's prior written consent shall be void.

18.3 Buyer shall notify Seller immediately upon any change in the ownership of more than fifty percent (50%) of Buyer's voting rights or in Buyer's controlling interest. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), or (c) put in place special controls regarding Seller's Confidential Information.

18.4 If any provision of the Contract is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and is valid and enforceable.

18.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17 and 18.

18.6 The Contract represents the entire agreement between the parties. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing by the parties' authorized representatives.

18.7 For direct and indirect U.S. government contracts only, all Products and Services provided by Seller shall be considered "commercial items" as defined in FAR Part 2, 2.101 and in accordance with FAR 52.244-6. If the reasonableness of the price cannot be established, if cost or pricing data is required for any other reason, or if the Products or Services cannot be considered "commercial items," Seller may cancel the Contract without liability.

18.8 This Contract may be executed in multiple counterparts that together shall constitute one agreement.

18.9 Except as provided in the Article entitled "Limitation of Liability," and in 18.1 above regarding Nuclear use, this Contract is for the benefit of the parties and not for any third party.

**19. Indemnities**

Subject to the provisions of Article 8, "Limitations of Liability", Seller agrees to indemnify and save harmless Buyer from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, arising out of the performance of this agreement, to the extent such damage or injury is attributable to the negligence of Seller; provided that Customer gives Seller prompt notice of any such claim and all necessary information and assistance so that Seller at its option, may defend or settle such claim and Buyer does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss, expense or claim shall be borne by Seller and Buyer in proportion to their negligence.