

D-RIVEN ENGINEERED SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

## D-RIVEN ENGINEERED SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

1. Applicability and Scope.
  - a. This purchase order is issued by D-riven Engineered Solutions (the "Buyer") for the purchase of the goods and services specified on the face of this purchase order collectively known as the "Work" or "Goods and Services" from the party to whom the purchase Order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"); together with the terms and conditions on the face of the purchase order, (the "Order"). This Order and any documents incorporated herein or therein by reference, (the "Agreement") constitute the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. This Agreement constitutes the parties' entire contractual agreement and supersedes any previous oral or written representations, including but not limited to provisions in Seller's quotations, proposals, acknowledgments or other documents. No course of dealing or usage of trade shall be applicable unless expressly incorporated in this Agreement. The terms of this Agreement may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of Buyer. Any stenographic or clerical errors are subject to correction by Buyer. Seller's written acknowledgment, commencement of work on the goods or services, or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this Agreement. All work is to be done and/or materials provided subject to an approved purchase order that is issued by the Buyer. Any acceptance by Seller is limited to acceptance of the express terms set forth in this Agreement. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Order or Agreement is hereby objected to and rejected. Any such proposal shall not operate as a rejection of this Order unless the variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration. Accordingly, this Order shall be deemed accepted by Seller without such additional or different terms. If this Agreement shall be deemed an acceptance of a prior offer by Seller, the acceptance is expressly made conditional on assent to the additional or different terms and such acceptance is limited to the express terms set forth in this Agreement. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Agreement shall be deemed material and are objected to and rejected.
  - b. Buyer may terminate this Order without liability to Buyer at any time before this Order is or is deemed accepted by Seller by written notice.
  - c. These Terms apply to any repair or replacement Work provided by Seller hereunder.
2. Acceptance. This Order is deemed accepted by Seller and constitutes a binding contract if Buyer receives a written notice of acceptance, if Seller begins performance of the Work hereunder, or if the Order is not rejected via electronic mail, facsimile, or any other form of writing within five (5) days of the Order's date. Acceptance is limited to the Terms of this Order.
3. Prices.
  - a. General. Unless otherwise specified, the price includes all charges for packing, hauling, storage and transportation to point of delivery. Seller will pay all delivery charges in excess of any delivery charge Buyer has agreed to pay. The price stated includes all taxes except state or local sales or use tax or similar taxes, which Seller is required by law to collect from Buyer. Such taxes, if any, shall be separately stated in Seller's invoice and paid by Buyer unless an exemption is available. Seller agrees that any price reduction made with respect to the items covered by this Order subsequent to its placement but prior to payment will be applicable to this Order.
  - b. Invoice. No payment shall be made by Buyer in advance of receipt of the Work specified by the Order. Unless otherwise agreed with written agreement by both parties, the Seller's invoice shall be payable, sixty (60) days from the date of invoice.
  - c. Payment Not as Acceptance. Payment for Work shall not constitute acceptance of the Work or waive Buyer's right to reject the Good and Services. Buyer may reject the Work and hold Seller in default if, at any time, Buyer, or any of its customers, discovers the Work to be defective or otherwise not conforming with the requirements of this Order.
  - d. Most Favored Nation. Seller warrants that the prices for the Work sold to Buyer are more favorable than those prices Seller currently extends to any other customer for the same or similar Work in similar quantities. If Seller reduces its prices to third parties during the term of this Order for the Work, Seller shall correspondingly reduce the prices charged to Buyer. Seller warrants that the prices on this Order are complete and that no other charges will be added without Buyer's written consent.
4. Delivery.
  - a. General. For any of the Work, Seller shall take all measures necessary to meet the delivery date and comply with the Terms specified in this Order and the Agreement. Deliveries shall be made in the quantities, on the dates, and at the times specified by Buyer in this Order.
  - b. Shipping Conditions. Substitutions will not be accepted. The Goods must be shipped completely by the date requested but must not be shipped more than one week in advance of the time or times specified herein, without Buyer's prior approval. When more than one shipment is made against any Order, indicate "Final Shipping" on shipping papers and invoice accompanying the last shipment in the Order. Seller shall not ship excess quantities without Buyer's prior approval. Except as otherwise provided herein, Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition at Seller's expense and risk. Seller's invoice shall describe the items, state the purchase Order number and be attached to the original bill of lading or other shipping receipt.
  - c. Delivery Time and Liquidated Damages. Seller agrees that time is of the essence. Seller further agrees that if Seller

## D-RIVEN ENGINEERED SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

fails to deliver conforming Work pursuant to the schedules set forth in this Order, Buyer may obtain substitute or replacement Goods or Services without notice to Seller, and thereafter reject any late Work tendered by Seller, even if conforming, and/or elect to terminate the Order by written notice to Seller. Seller shall be responsible for all general, consequential, and incidental damages incurred by Buyer as a result of Seller's failure to meet delivery schedules with conforming goods or services, including but not limited to, the cost of any line shutdown, the cost of obtaining Work from an alternate source and expedited or premium freight or transportation costs. Buyer's actions in obtaining substitute or replacement products or services shall not constitute an election of remedies, nor shall it in any way limit the rights and remedies of Buyer under an Order for breach by Seller. Seller agrees to notify Buyer promptly if, at any time, Seller becomes aware that it will not or may not be able to complete the Work in accordance with the terms of this Order or the Agreement.

5. Changes. Buyer may make changes in drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any goods at any time. If such changes result in an increase or decrease in cost, an equitable adjustment of price and delivery schedules may be made, or Buyer may, at its option, terminate the Order if agreement on an adjustment cannot be reached. Claims for adjustment must be asserted by Seller within ten days of the change Order.
6. Warranties. Seller warrants that the items and services covered hereunder will conform to applicable specifications, instructions, drawings and data, and samples, and will be merchantable, of good material and workmanship, free from defects, consistent with the highest industry standards, ethics, and practices for similar goods or services, and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory and as covered on the front page of this Purchase Order. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty. Buyer's customers shall be a third-party beneficiary of all of Seller's warranties.
7. Inspection and Tests.
  - a. All Work will be subject to inspection and test by Buyer to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. Seller agrees to permit access to Seller's facilities at all reasonable times for inspection of Work by Buyer's agents or employees and will provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to Buyer. Such Work will be subject to final inspection and acceptance by Buyer after delivery to Buyer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods delivered do not meet the specifications, or otherwise do not conform with the requirements of this Order, Buyer shall have the right to reject such goods. Goods which have been delivered and rejected in whole or in part may, at Buyer's option, be returned to Seller or held for disposition at Seller's risk and expense.
  - b. Buyer will have the right, but not the obligation to examine Seller's records for the purpose of determining compliance with this Order. Should a compliance review be performed, Buyer or its duly designated representatives will provide reasonable notice to Seller and the records may be examined only during the normal business hours. Buyer will bear all costs of audit. Seller agrees to maintain all records relating to the Work and shall not destroy any such records without Buyer's prior written consent.
- c. Buyer has the right to (i) correct the non-conforming Work at Seller's expense, (ii) reject and return the non-conforming Work at Seller's own risk and expense or (c) instruct Seller to retrieve the non-conforming Work at its expense within eight (8) days of notification of rejection or revocation of acceptance. Buyer shall be permitted to dispose of the Work upon Seller's failure to retrieve the non-conforming Work. If defects or deficiencies in the Tools provided by Seller are discovered by Buyer prior to a successful runoff and final acceptance, Buyer shall be entitled to, among other remedies, a return of all sums paid to date under this Order.
8. Buyer's Property. Title to and right of immediate possession of any property, including without limitation, patterns, tools, jigs, dies, equipment or materials furnished or paid for by the Buyer shall remain in Buyer. No articles made therefrom shall be furnished by Seller to any other party without Buyer's prior written consent. Seller shall keep adequate records of such property, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller's expense. Unless otherwise agreed to by Buyer, Seller shall insure Buyer's interest in such property against all risks of theft, loss or damage (including extended coverage). Copies of certificates of insurance evidencing this coverage will be furnished to Buyer on demand. In the event that Buyer's property becomes lost or damaged to any extent from any cause while in Seller's possession, Seller agrees to indemnify Buyer or replace such property, at Seller's expense, in accordance with Buyer's request. At the completion of the goods requested by Buyer in this Order for which Buyer's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available to Buyer at Buyer's request, in the manner requested by Buyer including preparation, packing and shipping as directed. Expenses for preparation for shipment will be for Seller's account and shipment shall be made F.O.B. Buyer's facility.
9. Drawings and Specification Review. If, during the term of this Order, Buyer's representatives review drawings, specifications, or other data developed by Seller in connection with the Order and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Buyer and shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other requirements of this Order.
10. Non-disclosure and Non-use of Buyer Information. Seller shall keep confidential all information, drawings, specifications, or data it received, receives or obtains, or that is prepared by Seller specifically in connection with the performance of this Order or the Agreement ("Confidential Information"), and take all necessary measures to ensure that neither Seller nor its employees, agents, suppliers or authorized subcontractors

## D-RIVEN ENGINEERED SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

- disclose, divulge, communicate, or use the Confidential Information except as required for the efficient performance of this Order and the Agreement, or as permitted by Buyer's prior written consent, including the existence of this relationship. Seller shall return all Confidential Information upon termination of this Order or upon Buyer's demand.
11. Use of Information. Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller in connection with the placing or filling of this Order or this Agreement is furnished or disclosed as a part of the consideration for this Order and this Agreement, that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary and that Seller shall assert no claims by reason of the use or disclosure of such information by Buyer, its assigns or its customers.
  12. Advertisements. Seller shall not in any manner advertise or publish the fact that it has furnished Buyer, or contracted to furnish Buyer, the goods or services herein mentioned without prior written consent of Buyer. Seller shall not disclose any details in connection with this Order to any party except as may be otherwise provided. Neither party may use the other party's name or trademarks in any form of advertising, promotion or publicity, including press releases, without the prior written consent of the other party; provided, no party will be restricted from using or referencing the other party's name when required to do so by applicable law.
  13. Tooling. Unless otherwise specified in this Order, all tooling and/or all other articles or things required for the performance hereof shall be furnished by Seller, shall be maintained in good condition and replaced when necessary at Seller's expense, and if furnished by Buyer, returned to Buyer upon demand
  14. Termination. Buyer may terminate the Agreement or the performance of the work under this Order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all Orders for materials, facilities and supplies in connection with the performance of this Order (and any other Orders issued under the Agreement if the Agreement is terminated) and shall proceed to cancel promptly all existing Orders and terminate all subcontracts insofar as such Orders or subcontracts are chargeable to the Agreement or Order being terminated. Upon such termination, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows:
    - a. as compensation to Seller for such termination, unless such termination is for the default of Seller, Buyer shall pay Seller the percentage of the total Order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done, that are not recoverable in the normal course of Seller's business, as Seller's full compensation for the work completed under this Order; and
    - b. upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid such vest in Buyer.
  - c. Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Buyer may have as a result of default, by Seller.
15. Default - Cancellation. Buyer reserves the right, by written notice of default, to cancel this Agreement or this Order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the Terms, the Order, or the Agreement, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (i) cancel this Agreement or this Order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) obtain the goods Ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative in addition to any other remedies provided at law or in equity.
  16. Force Majeure. Buyer shall not be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, epidemics, pandemics, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.
  17. Compliance with Laws. Seller shall, at all times during the term of this Agreement, comply with all applicable laws and regulations and Buyer's Prime Contract terms and conditions (including all applicable rules and regulations of Buyer's customer), and shall refrain from engaging in any illegal, unethical, or deceptive practices. Without limiting the foregoing, Seller agrees to comply with: Department of Labor Standards Compliance: Seller agrees and certifies that the goods to be manufactured or furnished hereunder have been or will be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Federal Fair Labor Standards Act, as amended, and that regulations and Orders of the U. S. Department of Labor issued under Section 14 thereof and with 29 CFR Part 470 Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees.
  18. Occupational Safety and Health Act. Seller hereby certifies that the goods Ordered meet or exceed all applicable requirements of the occupational safety and health standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and that the use by Buyer and its customer of such goods, if used by any of them in the manner prescribed in such standards, will not cause them to be in violation of such standards.
  19. Environmental Compliance. With respect to transactions under this Agreement and facilities of the Seller to which U.S. Executive Order 11738 applies, the Seller certifies: (i) no facility to be utilized by Seller, or any of its subsidiaries and/or affiliates, in the performance of this subcontract is included on the U.S. Environmental Protection Agency list of violating

## D-RIVEN ENGINEERED SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

- facilities, and (ii) prompt written notification shall be given by Seller to Buyer of any communication indicating that any facility of Seller, or any facility of its subsidiaries and/or affiliates, is under consideration to be included on or has been placed on the U.S. Environmental Protection Agency list of violating facilities. Seller shall label the goods in compliance with 40 CFR 82, subpart E, or certify that the goods are neither manufactured with nor contain a controlled ozone depleting substance.
20. Customs and Border Protection. Seller shall complete any security chain questionnaire or other document reasonably requested by Buyer relating to its import/export activities and shall provide written notice if it is CTPAT certified. Upon request, Seller shall furnish Buyer certificates of compliance with such laws and regulations.
21. Indemnification. Seller will defend, hold harmless and indemnify Buyer from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any breach of the Agreement, damages, injuries or third party claims or demands to recover for personal injury, death, or property damage caused by or arising out of any of the goods or services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal theories), except to the extent such injury, damage or loss results from Buyer's negligent actions or alteration or misuse of the goods provided by Seller.
22. Insurance. During the performance of the Order, Seller shall maintain and keep in force at its own expense, Commercial Auto Liability, General Liability Insurance, including products and contractual liability, with a combined single limit of \$1 million per occurrence in excess of its deductible. Seller shall provide a Certificate of Insurance to Buyer upon request to verify above listed coverage. Before commencing Work, Seller shall also furnish to Buyer a current certificate of insurance showing that Seller carries public liability, auto liability, products liability, property damage and workers' compensation insurance in amounts and by insurers acceptable to Buyer. All such policies of insurance shall contain appropriate endorsements naming Buyer as an additional insured, extending coverage thereof to liability expressly assumed by Seller and requiring the insurer to give Buyer 30 days' prior written notice of any cancellation or substantial change of coverage. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the indemnitees. Self-insured retentions for any of the foregoing required insurance coverages are not acceptable.
23. Intellectual Property Indemnification. Seller's provision of Services and delivery and use of any goods or services provided in relation to the Services will not violate or otherwise infringe any patent, copyright, trade secret, proprietary, intellectual property, or other right of any third party. Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, including actual reasonable attorney fees, costs and expenses, resulting from any claim that the manufacture, use, sale or resale of any goods or services supplied under this Agreement or this Order infringe any patent or patent rights, trademark, copyright or other intellectual property right of a third party and Seller shall when notified, defend any action or claim of such infringement at its own expense.
24. Assignment. Neither this Order, the Agreement, nor any rights or obligations therein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without Buyer's prior written consent.
25. Applicable Law and Jurisdiction. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Michigan without reference to conflict of laws principles. The parties agree that the venue for any action related to this Agreement shall be the Federal District Court for the Eastern District of Michigan or the Circuit Court for the State of Michigan, Wayne County, and the parties hereby irrevocably commit to the jurisdiction of these courts.
26. Indemnification. Seller hereby agrees to defend, indemnify and hold harmless Buyer, its affiliates, their directors, officers, employees, agents and customers ("Indemnified Parties") from any liability, claim, loss, cost, demand, expense of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or other customer field service action costs, costs allocated under a customer warranty allocation program, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labor and materials), any action and all other obligations and proceedings including without limitation all judgments rendered against, and all fines and penalties imposed upon Indemnified Parties, and all legal fees and any other costs of litigation ("Liabilities") arising from or as a result of (i) warranty claims, product recall claims, or product liability claims, injury or death of any person and damage or loss of any property, allegedly or actually resulting from or arising out of any act, omission or negligent conduct of Seller or its employees, agents, or subcontractors or in any way attributable to the performance of Seller; (ii) result of any noncompliance of Seller with section 19; (iii) any noncompliance of Seller with the Agreement (including without limitation, shipping or delivery requirements); or (iv) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's performance of its obligations under this Agreement; provided however, that Seller's obligation to indemnify Buyer will not apply to any liabilities solely arising from Buyer's negligence.
27. Buyer's Liability. The total liability of Buyer arising from a claim by Seller in connection with the Contents of this Purchase Order shall not exceed of 10% the total amount of the corresponding price paid by Buyer under the Order. Buyer shall have no liability to Seller whatsoever if Buyer's breach is caused by a breach or delay of Seller. Buyer will not be liable for any indirect, special, incidental, punitive, exemplary, or consequential damages, whether or not foreseeable.
28. Attorneys' Fees. In the event there is any dispute concerning this Agreement or the performance of Seller, and Buyer retains counsel for the purpose of enforcing any of the provisions of this Agreement or asserting the Terms of this Agreement in defense of any suit filed against Buyer, Buyer shall be entitled to recover its costs and attorneys' fees incurred in connection with the dispute from Seller as damages, irrespective of whether

## D-RIVEN ENGINEERED SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

- or not a lawsuit is actually commenced or prosecuted to conclusion.
29. Invoices and Notices. All correspondence and invoices covering this Order must be addressed to Buyer's Purchasing Department at the address indicated on the purchase Order. The parties agree that for any transactions subject to this purchase Order, facsimile signatures shall be accepted as original signatures, Orders may be transmitted electronically and any document created pursuant to this Order may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of this purchase Order, or any document created hereunder, based on the use of a facsimile signature, electronic Order or the use of a copy retrieved from an electronic storage system.
30. Severability. In case any one or more provisions contained in this purchase Order shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. If any provision of this Agreement is invalid or unenforceable for any reason whatsoever, that provision will be appropriately limited and reformed to the maximum extent provided by applicable law.
31. Waiver. The failure of the Buyer to require Seller's performance under the Agreement within a certain time shall not affect the right of the Buyer to require Seller's performance at a later time. The Buyer's waiver of any condition, or of the breach of any provision, term, representation or warranty contained in the Agreement shall not be deemed to be or construed as a further or continuing waiver of any such condition or breach, or of any other condition or of the breach of any other provision, term, representation, or warranty hereof.
32. Qualifications and Devotion of Efforts of Seller Personnel. Seller has, and will engage, employees, subcontractors and/or consultants ("Seller Personnel") with the proper skill, training and experience to provide the goods and services required by this Order and the Agreement. Seller, for itself and Seller Personnel, shall at all times during the term of this Agreement, have and maintain in good standing and without suspension, restriction or revocation, all government, professional and industry licenses and certifications necessary or customary for the performance of the Work under this Agreement ("Licenses"). Upon request of the Buyer, Seller will furnish a copy of all such Licenses to the Buyer. If necessary, Seller shall secure additional or other services providers to timely complete the Work required by this Order and the Agreement, but Seller shall not subcontract such Work in whole or in part without Buyer's prior written consent. The Buyer shall have the right, in its sole discretion, to require Seller to remove Seller Personnel from performance of the Work required by this Order or the Agreement.
33. Relationship of Parties. Seller is and at all times shall be construed to be an independent contractor. Nothing in this Agreement shall be construed or considered to create a relationship between Seller and the Buyer of partnership, joint venture, employment or principal and agent. The Seller shall be responsible for reporting and paying any income, employment, social security, or other taxes payable under applicable law on account of its receipt of compensation from the Buyer, and the Buyer shall not withhold any income taxes from such compensation under this Agreement unless and to the extent otherwise required from time to time under applicable law. Neither Seller nor any Seller Personnel shall be entitled to, or have a claim against the Buyer for, any employment, severance or other benefits of any kind, and Seller for itself and the Seller Personnel forever waives and relinquishes any right or claim to any such benefits from the Buyer.
34. Absence of Other Contractual Restrictions and Conflicts with Rights of Third Parties. Seller is under no contractual or other obligation or restriction that is inconsistent with, or will otherwise prohibit or restrict, Seller's execution or performance of this Agreement or any Order. Seller will not enter into any agreement, either written or oral, that would conflict with Seller's responsibilities under this Agreement or this Order.
35. Descriptive Headings. The headings to the sections and subsections of this Agreement are inserted for reference only and are not to be either taken as limiting or extending the provisions of this Agreement, or given any effect on the construction or interpretation of this Agreement.
36. Vague Terms. Each Party to this Agreement participated in the drafting, preparation and negotiation of this Agreement. Therefore, no one Party to this Agreement is or should be considered to be the drafter of this Agreement, and any rule of construction which favors or gives the benefit of any doubt, uncertainty or ambiguity over the interpretation of this Agreement to one Party over the other shall not be applicable, even if one Party physically reduced this Agreement to writing. Each Party acknowledges that it is freely and voluntarily entering into this Agreement after consultation with and advice from its own independent attorney or after having had the opportunity to consult with and receive advice from its own independent attorney.
37. Years, Months, Days. Each reference to a year, month or day in this Agreement shall be deemed to refer to a calendar year, month or day, unless expressly indicated to the contrary.
38. Counterparts. This Agreement may be executed in separate counterparts, none of which need contain the signatures of all Parties, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.
39. Electronic Delivery. This Agreement may be signed and delivered by facsimile, email of an image file, or other electronic means, in which case the Agreement as so delivered will be effective as if an original.
40. Survival. The terms, conditions and obligations that by their nature would reasonably survive termination of this Agreement shall do so, including, without limitation, terms, conditions, and obligations that require confidentiality, indemnification, non-competition, non-solicitation, or other performance after termination.