



**Ontic Engineering and Manufacturing, Inc. ("Seller") (Creedmoor)**  
**Terms and Conditions of Sale**  
**(Rev. 15May2023)**

**NOTICE: Sale of any Products is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No purchase order will modify these Terms and Conditions even if signed by Seller's representative. Any order to perform work and Seller's performance of work will constitute Buyer's assent to these Terms and Conditions. These Terms and Conditions prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute Seller's acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions.**

**1. Definitions**

"Buyer" means the entity to which Seller is providing Products under the Contract.

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. Unless provided otherwise in a contract agreement, these Terms and Conditions of Sale will take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Products" means the equipment, parts, materials, supplies, and other goods Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Products or performing Services under the Contract which is Ontic Engineering and Manufacturing, Inc.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are used, not including Seller's premises from which it performs Services.

"Terms and Conditions" means these "Terms and Conditions for Sale of Products and Services," together with any modifications or additional provisions specifically stated in Seller's final quotation or expressly agreed upon by Seller in writing.

**2. Payment**

**2.1.** Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within 30 days from the invoice date. For each calendar month, or fraction thereof, that payment is late; Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less. If Buyer chooses to pay with a credit card, the Contract Price shall be grossed up to pay the respective credit card fees so that Supplier receives the full Contract Price, e.g., if the Contract Price is \$100 and the credit card company charges a 3% fee, the Contract Price shall be  $100/0.97 = \$103.09$ .

**2.2.** If and as requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security must be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least 60 days prior to both the earliest scheduled shipment of Products and commencement of Services, and (d) remain in effect until the latest of 90 days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

**2.3.** Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable payments have been received. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller will be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

**3. Taxes and Duties**

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("Buyer Taxes"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.



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

**4.1. Products** are deemed accepted by Buyer unless Buyer notifies Seller in writing within 10 days of delivery of product shortages, damage or defect. No returns may be made for any reason without a Return Material Authorization issued by Seller. If Buyer refuses to accept tender or delivery of any products or returns any products without authorization from Seller, such products will be held by Seller awaiting Buyer's instruction for 20 days, after which Seller may deem the products abandoned and dispose of them as it sees fit, without crediting Buyer's account.

**4.2.** Title to products and risk of loss or damage shall pass to Buyer upon delivery EXW-Ex Works Seller's factory or warehouse. Seller shall not be responsible for damage to any of the products while the products are in transit. Any claim Buyer may have due to damage in transit shall be made of Buyer against the carrier. For export shipments, Seller shall deliver Products to Buyer Ex Works Seller's factory or warehouse (Incoterms 2020). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges. Seller reserves the right to make and to invoice for partial deliveries of completed articles. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten days after receipt.

**4.3.** The Products purchased under this order may be subject to export licensing and other export related requirements and restrictions of the U.S. Export Administration Regulations, 15 CFR Parts 730-774 (EAR), and/or the U.S. International Traffic in Arms Regulations, 22 CFR Parts 120-130 (ITAR). Buyer shall comply with these regulations and all other applicable U.S. export laws and regulations when exporting the commodities or related technical data from the United States, including furnishing or transferring the Products or related technical data to a foreign person located anywhere. Seller shall not be responsible for any delays in delivery if Buyer timely fails to provide Seller's required third party vetting information or the necessary export documentation requested by Seller including, but not limited to, end user certificate(s) or equivalent.

**4.4.** If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (a) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery will be deemed to have occurred; (b) any amounts otherwise payable to Seller upon delivery or shipment will be due; (c) all expenses and charges incurred by Seller related to the storage will be payable by Buyer upon submission of Seller's invoices; and (d) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

**4.5.** If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss

of, such equipment always, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

#### 5. Warranty

**5.1.** Seller warrants that Products shall be delivered free from defects in material, workmanship, and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

**5.2.** All warranty adjudication requests must receive prior approval from Seller before Buyer returns any product. The Seller's Return Material Authorization (RMA) number will authenticate the warranty request upon receipt at Seller's facility. The Seller will have sole right to accept or deny any warranty upon evaluation of returned item. Failure to have Seller's RMA number clearly marked on Buyer documentation will invalidate warranty consideration. The product warranty shall start on date of delivery to Buyer, except as noted below, and shall apply as follows:

- Factory New Units\*: One year
  - Overhaul\*: One year or 2000 flight hours (documentation substantiating flight hours required), whichever occurs first
  - Repair\*: Six months and limited to materials installed and labor performed during last repair activity
  - Detail Parts: No Warranty - Guaranteed Conformity prior to installation

\*Note: Any material returned and determined by Seller to have a No Fault Found (NFF) finding will result in charges to Buyer for inspection, test and recertification. Seller's obligation is limited to the repair and/or replacement of such products returned to the Seller, transportation charges prepaid, within time periods listed above to the Buyer when examination thereof shall disclose them to Seller's satisfaction, to have been defective. This Warranty does not apply to any of Seller's products which have been opened, disassembled, repaired or altered by anyone other than Seller or subjected to improper installation, misuse or abuse as determined by Seller. **EXCEPT FOR THE WARRANTY COVERAGE REFERENCED ABOVE, SELLER WILL NOT HAVE ANY LIABILITY OR OBLIGATION TO BUYER OR ANY OTHER PERSON FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE INADEQUACY OF ANY PRODUCTS FOR ANY PURPOSE, BY ANY DEFICIENCY OR DEFECT IN ANY PRODUCT, BY THE USE OR PERFORMANCE OF ANY PRODUCTS OR BY ANY FAILURE OR DELAY IN SELLER'S PERFORMANCE HEREUNDER, OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR LOSS OF BUSINESS, USE, OR PROFIT, WHETHER OR NOT BUYER WILL HAVE INFORMED SELLER OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES.**

**5.3.** If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall, at its option (a) repair or replace defective Products; and / or (b) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or



credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller will not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

**5.4.** The warranties and remedies set forth herein are expressly conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products; (b) Buyer's keeping complete, accurate records of operation and maintenance during the warranty period and providing Seller access to those records; and (c) modification or repair of Products or Services only by Seller or as otherwise authorized by Seller in writing. Failure to meet any such condition renders the warranty null and void. Seller is not responsible for normal wear and tear.

**5.5.** This Article 5 provides the exclusive remedies for all claims based on a failure of or defect in Products or Services, regardless of when such failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability, or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees, whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

#### **6. Confidentiality**

**6.1.** 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 in connection with this Contract "Confidential Information" means any information disclosed by the Disclosing Party unless such information falls into an exception as set forth in Section 6.4 or the Disclosing Party confirms in writing that it is not confidential. Prices for Products and Services will be considered Seller's Confidential Information.

**6.2.** Receiving Party agrees: (a) to use the Confidential Information only in connection with the Contract and associated Products and Services; (b) to take reasonable measures to prevent disclosure of the Confidential Information to third parties; and (c) not to disclose the Confidential Information to a competitor or any party affiliated with a competitor of Disclosing Party. The reasonable measures that Receiving Party shall take to prevent disclosure of the Confidential Information include the same security measures and degree of care that Receiving Party applies to its own confidential information, which Receiving Party warrants as providing adequate protection from unauthorized disclosure, copying or use.

**6.3.** Notwithstanding the restrictions set forth in 6.2, (a) Seller may disclose certain Confidential Information to its representatives and affiliates in connection with performance of the Contract; (b) a Receiving Party may disclose Confidential Information to its auditors; (c) Buyer may disclose certain Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract; and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such auditors, lenders or other permitted third party that prohibits disclosure of the Confidential

Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

**6.4.** The obligations under this Article 6 will not apply to any portion of the Confidential Information that: (a) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (b) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (c) is independently developed by Receiving Party, its representatives or affiliates, without reference to or use of the Confidential Information; (d) is required to be disclosed by law or court order provided that the Receiving Party promptly notifies the Disclosing Party in advance of such disclosure and reasonably cooperates in attempts to maintain the confidentiality of the Confidential Information.

**6.5.** Each Disclosing Party warrants that it has the right to disclose the Confidential Information that it discloses. Neither Buyer nor Seller will be permitted to make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five years after the date of disclosure, except with respect to information designated as a trade secret of the Disclosing Party, in which case the obligation will not expire unless and until such Confidential Information becomes part of the public domain or subject to an exception as set forth in section 6.4, through no act or omission of the Receiving Party. Nothing in this section is intended or will be construed to supersede any separate confidentiality or nondisclosure agreement signed by the parties.

**6.6** In the event Buyer and Seller have entered into a separate confidentiality agreement or mutual non-disclosure agreement, the provisions of this Article 6, Confidentiality, shall supersede that agreement as it relates to this Contract.

#### **7. Intellectual Property**

**7.1.** Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a "Claim") alleging that Products or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim; (b) makes no admission of liability and does not take any position adverse to Seller; (c) gives Seller sole authority to control defense and settlement of the Claim; and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.

**7.2.** Section 7.1 will not apply and Seller will have no obligation or liability with respect to any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such combination is a



basis of the alleged infringement, (e) unauthorized use of Products or Services, or (f) Products or Services made or performed to Buyer's specifications.

**7.3.** Should a 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 applicable 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 infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.

**7.4.** Article 7 states Seller's exclusive liability for intellectual-property infringement by Products or Services.

**7.5.** Each party will retain ownership of all Confidential Information and intellectual property it had prior to the Contract. Any new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, will be owned exclusively by Seller, and Buyer agrees to cooperate as necessary to achieve that result.

## **8. Indemnity**

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party because of personal injury or damage to the third party's tangible property, to the extent caused by negligent or intentional acts or omissions of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Products or Site is considered third party property.

## **9. Insurance**

During the term of the Contract, Seller shall maintain for its protection Commercial General Liability with a limit of \$5,000,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

## **10. Excusable Events**

Seller will not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance will be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors cause the delay, Seller will also be entitled to an equitable price adjustment.

## **11. Termination and Suspension**

**11.1.** Buyer may terminate the Contract (or the portion affected) for cause if Seller (a) becomes Insolvent/Bankrupt; or (b) commits a material breach of the Contract that does not otherwise have a specified contractual remedy, provided that (i) Buyer first provides Seller with detailed written notice of the breach and of Buyer's intention to terminate

the Contract; and (ii) Seller then fails, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

**11.2.** If Buyer terminates the Contract pursuant to Section 11.1, (a) Seller shall reimburse Buyer that portion of the Contract Price already paid by Buyer allocable to the terminated scope; and (b) Buyer shall pay to Seller (i) the portion of the Contract Price allocable to Products completed; and (ii) amounts for Services performed before the effective date of termination. The amount due for Services will be determined in accordance with Seller's then-current standard time and material rates.

**11.3.** Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (a) becomes Insolvent/Bankrupt; or (b) materially breaches the Contract, including but not limited to failure or delay in Buyer's providing Payment Security, making any payment when due, or fulfilling any payment conditions.

**11.4.** If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Products completed and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services will be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

**11.5.** Either Buyer or Seller may terminate the Contract (or the portion affected) upon 20 days' notice if there is an excusable event (as described in Article 10) lasting longer than 120 days. In such case, Buyer shall pay to Seller amounts payable under Section 11.4.

**11.6.** Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, fee collection and costs of storage during suspension. The schedule for Seller's obligations will be extended for a period reasonably necessary to overcome the effects of any suspension.

## **12. Compliance with Laws, Codes, and Standards**

**12.1.** Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services.

**12.2.** Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

**12.3.** Seller shall not be liable to Buyer for any failure to deliver Products as a result of any following government actions: (i) refusal to grant any export or re-export license; (ii) cancellation of any export or re-export license; or (iii) any subsequent interpretation of a law or regulation, after the date of this Contract, that adversely impacts or effects Seller's costs or ability to perform its obligations.

## **13. Changes**

**13.1.** Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with



any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

13.2. The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's Site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made because of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes will be at Seller's time and material rates.

#### 14. Limitations of Liability

14.1. The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, will not exceed the (a) Contract Price; or (b) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and US \$5,000 for all claims not part of any particular order.

**14.2. SELLER WILL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT OR SYSTEMS, INTERRUPTION OF BUSINESS, COST OF REPLACEMENT POWER, COST OF CAPITAL, DOWNTIME COSTS, INCREASED OPERATING COSTS, ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE FOREGOING TYPES OF DAMAGES.**

14.3. All Seller liability will end upon expiration of the applicable warranty period, if Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

14.4. Seller will not be liable for advice or assistance that is not required for the work scope under this Contract.

14.5. If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (a) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 14; or (b) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 14.

14.6. For purposes of this Article 14, the term "Seller" means Seller, its affiliates, subcontractors, and suppliers of any tier, and their respective employees. The limitations in this Article 14 will apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and will prevail over any conflicting terms, except to the extent that such terms further restrict Seller's liability.

#### 15. Governing Law and Dispute Resolution

15.1. This Contract will be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any

choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). Application of the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor law is specifically excluded.

15.2. All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 15 and if not resolved by the parties, the parties agree that all disputes will be resolved by arbitration. 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, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration. Arbitration will be in Raleigh, California and it will be conducted by the American Arbitration Association in accordance with its Consumer Arbitration Rules and Mediation Procedures. In reaching an arbitration 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(s) will 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.

15.3. Notwithstanding the foregoing, each party will have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 6 or to seek interim or conservatory measures. Monetary damages will be available only in accordance with Section 15.2.

#### 16. Inspection and Factory Tests

Seller shall apply its normal quality-control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

#### 17. General Clauses

17.1. Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) will be void.

17.2. Buyer shall notify Seller immediately upon any change in ownership of more than 50% of Buyer's voting rights or of any controlling interest in Buyer. 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), and/or (c) put in place special controls regarding Seller's Confidential Information.

17.3. If any Contract provision is found to be void or unenforceable, the remainder of the Contract will not be affected. The parties will endeavor

to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

**17.4.** The following Articles will survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, and 17.

**17.5.** The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract will be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver will be binding on either party unless agreed in writing.

**17.6.** Except as provided in Article 14 (Limitations of Liability), this Contract is only for the benefit of the parties, and no third party will have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

**17.7.** This Contract may be signed in multiple counterparts that together will constitute one agreement. Seller may amend all or any part of these Terms, Service Contract(s) and/or Services. Any such modifications and/or amendments to these Terms will not apply retroactively (unless agreed to separately by Buyer) and shall become effective seven days after publication, however, changes made for legal or regulatory reasons will be effective immediately upon publication.

#### **18. U.S. Government Contracts**

**18.1.** This Article 18 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

**18.2.** Orders are subject to U.S. Government regulation and shall abide by the requirements of 41 CFR SS 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

#### **19. Sanctions**

**19.1** Buyer represents, warrants, agrees that:

Buyer is not a "Sanctioned Person," meaning any individual or entity: (1) named on a governmental denied party or restricted list, including but not limited to: the Office of Foreign Assets Control ("OFAC") list of Specially Designated Nationals and Blocked Persons ("SDN List"), the OFAC Sectoral Sanctions Identifications List ("SSI List"), and the sanctions lists under any other Sanctions Laws; (2) organized under the laws of,

ordinarily resident in, or physically located in a jurisdiction subject to comprehensive sanctions administered by OFAC (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine/Russia) ("Sanctioned Jurisdictions"); and/or (3) owned or controlled, directly or indirectly, 50% or more in the aggregate by one or more of any of the foregoing.

Relating to this transaction and/or Agreement, Buyer is in compliance with and will continue to comply with all economic Sanctions Laws administered by OFAC, other U.S. regulatory agencies, the European Union and its Member States, the United Kingdom, and the United Nations ("Sanctions Laws"). Buyer will not involve any Sanctioned Persons in any capacity, directly or indirectly, in any part of this transaction and performance under this transaction. Buyer will not take any action that would cause Seller to be in violation of Sanctions Laws.

Buyer will not sell, export, re-export, divert, use, or otherwise transfer any Seller products, technology, software, or proprietary information: (i) to or for any Sanctioned Persons or to or involving Sanctioned Jurisdictions; or (ii) for purposes prohibited by any Sanctions Laws. Buyer will not source any components, technology, software, or data for utilization in Seller products or services: (i) from any Sanctioned Persons or Sanctioned Jurisdictions or (ii) in contravention of any Sanctions Laws.

Buyer's failure to comply with this provision will be deemed a material breach of the Agreement, and Buyer will notify Seller immediately if it violates, or reasonably believes that it will violate, any terms of this provision. Buyer agrees that Seller may take any and all actions required to ensure full compliance with all Sanctions Laws without Seller incurring any liability.

#### **20. ECONOMIC SURCHARGES**

**20.1** Seller may, from time to time and in its sole discretion, issue surcharges on new and existing Contracts in order to mitigate and/or recover increased operating costs arising from or related to, without limitation: (a) foreign currency exchange variation; (b) increased cost of third-party content, labor and materials; (c) impact of duties, tariffs, and other government actions; and (d) any other circumstances that increase Seller's costs, including, without limitation, increases in freight, labor, material or component costs, and increased costs due to inflation (collectively, "Economic Surcharges").

Seller will invoice Buyer through a revised or separate invoice, and Buyer agrees to pay for the Economic Surcharges pursuant to the standard payment terms in this Agreement. If a dispute arises with respect to Economic Surcharges, and that dispute remains open for more than fifteen (15) days, Seller may, in its sole discretion, withhold performance and future shipments or combine any other rights and remedies as may be provided under this Contract or permitted by law until the dispute is resolved.