

## PURCHASE ORDER TERMS AND CONDITIONS (rev. 00)

For purposes of these terms and conditions (the “**Terms**”), EEW American Offshore Structures is referred to herein as “**Purchaser**” and the Supplier of the products and or services reflected on the attached Purchase Order (the “**Purchase Order**”) is referred to herein as “**Supplier**.” These Terms shall apply to the transaction(s) contemplated by the Purchase Order unless Purchaser and Supplier have previously entered into a separate written supply agreement governing such transaction(s) (a “**Supply Agreement**”), in which event the Supply Agreement shall govern in the event of a conflict between these Terms and the terms of the Supply Agreement.

**1. Agreement**—The attached revocable Purchase Order and these Terms, together with any Supply Agreement, will become a binding agreement on, and only on, the terms set forth herein, only upon the occurrence of the following (and following such occurrence, shall be referred to herein as this “**Agreement**”) (a) Supplier’s written acceptance of the Purchase Order (which term as used herein shall include these Terms), (b) Supplier’s commencement of production of goods under the Purchase Order (the “**Goods**”) or shipment of any permitted unit of the items described herein, (c) Supplier’s commencement of the provision of services hereunder (the “**Services**”); or (d) other conduct by Supplier manifesting to Purchaser the existence of a contract. Notwithstanding any terms communicated in any way by Supplier to Purchaser in connection with this Agreement, including any terms contained in any quote by Supplier, all of which terms are rejected by Purchaser, Supplier agrees that this Agreement will control the relationship of, and constitutes the sole and entire agreement between Supplier and Purchaser, and any such other terms provided by Supplier are null and void. This Agreement supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this Agreement. Unless permitted by the Purchase Order, Supplier may not assign or subcontract any of its obligations under this Agreement without the prior, written consent of Purchaser in its sole discretion. In the event that Supplier is not organized and existing under the laws of the State of New Jersey, Supplier must prior to commencing performance of this Agreement register as a foreign entity with the State of New Jersey.

**2. MODIFICATION**— No amendment, alteration, or change of this Agreement subsequent to the date hereof including without limitation, the wording of Supplier’s acceptance, shall be valid or enforceable unless in writing and executed by an authorized representative of Purchaser.

**3. WARRANTIES**—Supplier agrees and represents and warrants to Purchaser that: (i) the title to the Goods is good and marketable and free and clear of all liens, taxes, charges, or other encumbrances; (ii) the Goods are free from all defects in design, workmanship, and materials and are merchantable; (iii) the Goods are fit for their ordinary intended purposes and any purposes specified hereunder; (iv) the Goods and their components are new and not previously used; (v) the Goods comply with all applicable laws, regulations, rules, codes and standards of the jurisdiction in which the Goods are to be sold; (vi) the Goods do not and will not infringe or misappropriate the patent, copyright, trademark or other intellectual property or proprietary rights of any third party and (vi) the Goods shall, for a period of forty-eight (48) months from shipment or twenty-four (24) months in actual service, whichever occurs earlier (the “**Warranty Period**”), conform to Purchaser’s specifications, drawings, plans, or other documents furnished to Supplier or referenced in the Purchase Order (collectively, the “**Specifications**”). Supplier also represents and warrants that any Services sold hereunder: (i) will be performed in a professional and workmanlike manner, in accordance with the Specifications, the highest standards in Supplier’s industry, and applicable law; and (ii) do not and will not infringe or misappropriation the patent, copyright, trademark, or other intellectual property or proprietary rights of any third party. These express warranties shall not be deemed waived by reason of either or both the receipt of the Goods or Services or payment therefor by Purchaser. If, at any time prior to the expiration of the Warranty Period, or any extension thereof, it appears that the Goods or the Services, or any portion thereof, do not conform to the above warranties, and Purchaser so notifies Supplier within a reasonable time after his discovery, Supplier shall promptly correct, replace or reperform, as applicable, such defective portion to the satisfaction of Purchaser at Supplier’s sole expense. For replacement of defective portion at a jobsite, Supplier shall bear all risk and costs of returning the defective portion to Supplier, and such return shall not be effected until the arrival of the replacement portion at the jobsite. The rectification of defects by Supplier includes inter alia defect detection, supply and delivery of new material, equipment and components, provision of qualified personnel in sufficient number and carrying out any workmanship as necessary including required dismantling and reassembly. In case Supplier fails to take any corrective action required by Purchaser within thirty (30) days of Purchaser’s written request, Purchaser may perform the repair or replacement by whatever means necessary and back-charge the expenses to Supplier. Such self-remedy shall not relieve the Supplier from its warranty obligations under the Agreement. Supplier shall also be responsible for any and all costs and expenses incurred or imposed on Purchaser as a result of defective Goods or Services. If repair is required during a time sensitive situation such as during field operations, Supplier must take immediate action and make every effort to correct or replace the defective item in the shortest possible time, but not to exceed forty-eight (48) hours. The Warranty Period for all repaired, replaced and reperformed Goods and Services shall be reinstated for a period equal to the original Warranty Period, beginning as of the date the repair, replacement or reperformance is accepted by Purchaser.

**4. SERVICE PERFORMANCE SCHEDULE** -- Supplier shall give Purchaser timely, updated and complete information in advance as to Supplier's plans and schedules for performing the Services. If at any time during the performance of the Services, Supplier's actual progress does not keep pace with the requirements of this Agreement, or is insufficient to assure that any schedule herein can be met, Purchaser may notify Supplier to take appropriate steps as may be necessary to improve Supplier's progress. Supplier will thereupon submit a recovery plan to Purchaser for approval and take steps as may be necessary to improve its progress including, without limitation, an increase in Supplier's labor force, or the number of shifts, or overtime operations, or additional days of work per week, or similar measures. In the event such recovery plan affects any delivery date, or the cost of performance of the Services, the parties shall meet and confer to determine an equitable adjustment of same. Neither such notice by Purchaser nor Purchaser’s failure to issue such notice shall relieve Supplier of its obligation to achieve the quality of the Services, rate of progress or other requirements of this Agreement. Failure of Supplier to take appropriate steps within a thirty (30) day period following receipt of Purchaser notice may be grounds for determination by Purchaser that Supplier is not prosecuting the Services with such diligence as shall assure delivery within the times specified. Upon such determination, Purchaser may terminate this Agreement for default

**5. FABRICATION/MANUFACTURING SCHEDULE** – For Purchase Orders requiring the manufacture of certain Goods, within fifteen (15) days from Supplier acceptance of this Agreement, Supplier shall provide the Purchaser with a fabrication schedule for the Goods wherein the beginning and completion of each major and semi-major fabrication step is identified. Supplier shall provide any and all clarification requested by

Purchaser on the fabrication schedule. Supplier shall update the fabrication schedule on a monthly basis, or on a schedule requested by Purchaser. Promptly following Supplier's delivery to Purchaser of a fabrication schedule for Goods, Supplier shall also confirm its delivery schedule for the Goods, which shall comply with this Agreement and be held as an irrevocable commitment of Supplier, subject to Purchaser's rights as set forth in this Agreement. Any change to the delivery date(s) can only be made by mutual written consent of Purchaser and Supplier.

**6. DELIVERY—INSPECTION—EXCESS TRANSPORTATION COSTS**—Time of delivery and performance is of the essence of this Agreement. If any shipment or service rendered is not made when promised, Purchaser reserves the right to refuse any Goods and to cancel without any liability all or any future shipments or performance by Supplier. Delivery of Goods shall not be deemed complete until Goods or Services have actually been received, inspected, tested, and accepted by Purchaser. Supplier shall retain title and bear the risk of loss to the Goods purchased hereunder until received and accepted by Purchaser. Such inspection or testing will be made by Purchaser within a reasonable time after their receipt by Purchaser, irrespective of payment date. If inspection discloses that part of the Goods received are not in accordance with Purchaser's Specifications, Purchaser shall have the right to cancel any unshipped portion of the Purchase Order. In the event such Goods are nonconforming, Purchaser may either return the rejected Goods or hold at Supplier's entire risk and expense, and may in any event charge Supplier with the cost of transportation (inbound and outbound) of such Goods. Purchaser reserves the right to refuse Goods when shipped contrary to instructions or not on the shipping date specified by Purchaser or for noncompliance with classification packing requirements.

**7. SUSPENSION** -- Notwithstanding any other provision of this Agreement, Purchaser with or without cause may at any time, and from time to time, suspend, or extend the time for, Supplier's performance, upon prior written notice of such suspension or extension. Thereafter, Supplier shall resume performance as directed by Purchaser. In the event of such suspension or extension that is not attributable to Supplier, Supplier shall be entitled to reimbursement for additional costs reasonably and necessarily incurred by Supplier in effectuating such suspension or extension period, to the extent that such additional costs are actually incurred, and result directly and exclusively from such suspension, provided, however, that such costs must be claimed within twenty (20) days after the earlier of receipt of notice to resume work or the resumption of performance. Accordingly, the failure of the Supplier within such twenty (20) days to serve notice shall be deemed to be a conclusive and binding waiver by the Supplier of all claims or damages by reasons thereof. Under no circumstances, including but not limited to the pendency of any dispute, may Supplier terminate, suspend, or limit performance of the Services, unless and until Purchaser agrees in writing to such termination, suspension or limitation, or until a final order of a court of competent jurisdiction determines Supplier is permitted to do so.

**8. STEP-IN RIGHTS** -- Supplier acknowledges that its timely performance of this Agreement in accordance with its terms is required to meet Purchaser's obligations under its agreements with respect to the project. In the event of a Supplier default under this Agreement, Purchaser or its designee, or an affiliate of such company or Purchaser (the "Takeover Party"), may notify Supplier of its intent take over any work to be performed by Supplier hereunder (the "Work") under specified conditions (a "Takeover Notice"). In such event, Supplier grants to the Takeover Party a license over the development works hereunder as necessary to enable the Takeover Party to complete the Work and, in order to facilitate same, Supplier agrees to assign, to the extent permitted by law, to the Takeover Party, effective upon the Takeover Party exercising its Step-In-Rights: (a) all of Supplier's contracts and permits for the Work; (b) all of Supplier's agreements with any consultants for the Work; (c) all of Supplier's rights to funding or reimbursement for any unexpended costs, and (d) all of Supplier's agreements with any utility providers for the Work (collectively, the "Assigned Rights"). Additionally, this Agreement will constitute both Supplier's consent to the Takeover Party completing the Work and Supplier's consent and authorization for the Takeover Party to submit such applications and otherwise to take such actions as may be necessary or desirable to obtain the agreement of any applicable governmental agencies to accept the Work. Upon such assignment, the Takeover Party shall execute and deliver any and all agreement necessary to coordinate the completion of the Work. In addition, within ten (10) business days after written request therefore, Supplier shall execute such additional certifications, documents or agreements as may be required to enable the Takeover Party to exercise the Assigned Rights and to obtain the agreement of the applicable governmental agencies to accept the Work. All contracts entered into by Supplier with respect to the Work, shall be assignable to the Takeover Party, and Supplier shall use reasonable endeavors to list the Takeover Party as a third-party beneficiary therein with regard to the indemnification, insurance and warranty obligations of each contractor if such assignment occurs. Supplier acknowledges and agrees that each Takeover Party is a third party beneficiary under this Agreement, including with respect to the indemnification, insurance and warranty obligations set forth herein. Additionally, Supplier agrees to execute and deliver to Purchaser contemporaneously with this Agreement a Key Subcontractor Collateral Warranty Agreement with Designee and Purchaser, in such form as required by EEW. This Agreement shall not be binding or have any force or effect until Supplier has complied with the preceding sentence.

**9. EXPEDITING** -- The Goods and Services furnished hereunder, including all warranty work, shall be subject to expediting by Purchaser. Purchaser's representatives shall be afforded free access during working hours to Supplier's facilities. Supplier shall supply schedules, progress reports and unpriced copies of Supplier's purchase orders and subcontracts for Purchaser's use in expediting, if required. Supplier shall notify Purchaser in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. Failure to comply with Supplier's schedule may be deemed to be reasonable grounds for insecurity in which event Purchaser may demand in writing that Supplier provide adequate assurance that Supplier will perform on time. If Supplier does not make up for failures to comply with schedule to the satisfaction of Purchaser, Purchaser may replevin the Goods and Services in process, and associated materials, and seek remedies available to it hereunder.

**10. PRICE**—Price is set forth on the face of this Purchase Order and is not subject to increase for the duration of the performance of this Agreement. If Price is not stated on the face of this Purchase Order, it is agreed that the Goods and Services shall be billed at the price last quoted by Supplier to Purchaser, or billed at the prevailing market price, whichever is lower. If, prior to the actual date of shipment of any Goods or provision of any Services, Supplier quotes, charges, or otherwise uses a price, for like Goods or Services under like terms, either with Purchaser or any of its customers, that is lower than the price set forth on the face of this Purchase Order or the price established pursuant to the second sentence of this paragraph, Supplier will charge the lower price to Purchaser.

**11. PAYMENT**—Individual invoices must be issued for each shipment applied against Purchase Orders and must reflect PO number. In the event Supplier's invoice is not received in an acceptable form or if it does not include proper proof of shipment and/or delivery documentation, or

evidence of services completion, the date of payment including net invoices or cash discounts will be computed from the Purchaser's receipt of same. Drafts will not be honored. Invoice must not be dated prior to shipping date. Purchaser is not liable to pay interest on any amounts past due. Unless otherwise agreed to by the parties in writing, payments due hereunder shall be due within forty-five (45) calendar days from satisfactory completion and delivery of all associated Goods and Services.

**12. CONFIDENTIALITY** -- In connection with the performance of this Agreement, Purchaser expects to disclose to Supplier certain Confidential Information, as defined herein, which Purchaser considers confidential. The term "**Confidential Information**" as used herein shall include, without limitation, all specifications, drawings, sketches, models, samples, forecast and current data, computer programs or documentation and oral disclosure of other technical, business, financial or marketing information, and any copies thereof, that Purchaser may provide to Supplier in accordance with these terms. Confidential Information that Purchaser provides to Supplier need not be identified as confidential when it is disclosed to Supplier.

Except as provided herein, Supplier shall not, directly or indirectly, disclose any Confidential Information to any other party, corporation, organization or person of any kind for any reason without Purchaser's prior, express written consent. Prior to requesting Purchaser's written consent, Supplier shall first enter into a confidentiality agreement with the proposed third party that is at least as restrictive as the terms set forth in this Section. If Purchaser provides its written consent to Supplier's request to disclose Confidential Information to such third party ("**Additional Receiving Party**"), Supplier shall be fully liable for any breach of confidentiality under this Section by the Additional Receiving Party. Supplier shall use the Confidential Information solely and exclusively to perform its obligations hereunder, and will not use the Confidential Information for any other purpose except pursuant to the express, written consent of Purchaser. Supplier shall hold all Confidential Information in confidence and protect it to the same extent and by the same means it uses to protect the confidentiality of its own proprietary or confidential information that it does not wish to disclose, but in no event shall it use less than reasonable care. To the extent any Confidential Information received by the Supplier bears any marking or stamp denoting its confidential nature, Supplier shall not remove or deface any such marking or stamp. The foregoing notwithstanding, Supplier shall have no obligation to preserve the confidential nature of any information which: (1) becomes publicly available other than by unauthorized disclosure; (2) is released for disclosure pursuant to Purchaser's prior written consent; or (3) is lawfully obtained by Supplier from a third party owing no obligation of confidentiality to Purchaser without restriction and without breach of this Agreement. If the disclosure of Confidential Information should be lawfully required by a valid order of a court, other governmental body or any political subdivision thereof or otherwise required by law, Supplier may disclose such information to the extent of such order or law, provided, however, that prior to disclosing any Confidential Information, the Supplier shall (to the extent practicable and permitted by law): (a) inform Purchaser immediately of the circumstances of the proposed disclosure and provide the Purchaser with written confirmation that the disclosure is necessary; (b) use reasonable endeavors to comply with Purchaser's reasonable requirements in relation to the disclosure including, where possible, taking reasonable steps to limit the adverse effects of any disclosure; and (c) use reasonable endeavors to gain assurances and/or undertakings as to confidentiality from the body to whom the information is to be disclosed. The obligations of this Section shall be complied with indefinitely from the date of disclosure thereof.

**13. LIMITATIONS OF LIABILITY--IN NO EVENT SHALL PURCHASER BE RESPONSIBLE FOR ANY CLAIM FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHETHER ARISING IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, IMPLIED WARRANTY AND STRICT LIABILITY.**

**14. INTELLECTUAL PROPERTY**--Except as set forth in the Purchase Order, all Goods and associated work product authored, developed or reduced to practice by Supplier in its performance of this Agreement, are works made for hire the ownership of which shall vest in Purchaser. To the extent any such Goods or work product shall be deemed not to constitute a work made for hire under applicable law, or in the event that Supplier should otherwise, by operation of law, be deemed to retain any rights therein, Supplier hereby assigns to Purchaser all worldwide rights, title and interest, in and to such Goods and work product including, without limitation, all intellectual property rights therein. To the extent the Purchase Order identifies that any Supplier or third-party intellectual property existing prior to the date of this Purchase Order is included in the Goods or work product ("**Utilities**"), Supplier hereby grants to Purchaser a non-exclusive, non-transferable worldwide, perpetual, irrevocable right and license to use those Utilities as incorporated into the Goods and work product in connection with their use and enjoyment.

**15. INTELLECTUAL PROPERTY INFRINGEMENT**—Supplier agrees to defend, indemnify, and hold harmless Purchaser against all claims, suits, liabilities, damages, costs, fees and expenses including reasonable attorneys' fees and court costs, on account of any alleged infringement of any third party's patent, copyright, trade name, trademark, trade secret, or other legal rights resulting from or arising with the manufacture, sale, import, use, distribution or other disposition of any Goods, excluding those items fabricated to Purchaser-furnished drawings. Supplier shall retain counsel reasonably acceptable to Purchaser to defend any indemnified claim hereunder and shall not settle any such claim without Purchaser's prior, written consent if the settlement requires Purchaser to pay any monies or admit any liability. Purchaser retains to the right to participate in the defense of any indemnified claim hereunder at its sole expense, without relieving Supplier of any obligation hereunder.

**16. PURCHASER PROPERTY**--All tools, dies, patterns, designs, molds, drawings, specifications, and other data or papers, and the like, as well as any samples furnished by Purchaser to Supplier in connection with this Agreement, remain the property of Purchaser. In the event the Purchase Order contemplates Purchaser providing materials to Supplier for processing by Supplier, such materials shall at all times, remain the property of Purchaser. In the event materials furnished by Purchaser to Supplier include any intellectual property of Purchaser, Supplier is granted a non-exclusive, non-transferable, non-sublicensable and non-assignable limited license required to such intellectual property only for the production of Goods sold to Purchaser under this Agreement. No other use of Purchaser's intellectual property is licensed or permitted, and all other rights to Purchaser's intellectual property not expressly licensed to Supplier above are reserved by Purchaser.

**17. RELEASE AGAINST LIENS OR CLAIMS** -- Supplier shall promptly pay all claims of persons or firms furnishing labor, equipment or materials used in performing the Services or delivering the Goods hereunder. Purchaser may require Supplier to submit satisfactory evidence of payment and releases of all such claims, including lien waivers. If there is any evidence of any such unpaid claim, Purchaser may withhold any payment until Supplier has furnished such evidence of payment and release and Supplier shall indemnify and defend Purchaser against any liability or loss arising from any such claim. Supplier shall cause any lien asserted against property, which arises from furnishing Services hereunder, including liens asserted by any supplier or contractor of Supplier at any tier, to be discharged within twenty (20) days of its assertion.

In order to assure Purchaser of the prompt and unrestricted use of the Goods and Services for purpose for which they are procured hereunder, Supplier agrees to waive any and all liens which it might otherwise assert in the resolution of disputes arising out of its performance hereunder and will deliver a full waiver of lien rights from each of its subcontractors, vendors, or suppliers supplying materials hereunder, if required. This waiver is not intended to be, nor will it be construed to be, a limitation of any of Supplier's other rights hereunder or its other legal remedies. Supplier further agrees to incorporate the substance of this provision into all of its agreements with sub suppliers.

**18. TERMINATION FOR CONVENIENCE** -- Supplier's performance hereunder may be terminated by Purchaser for its convenience in accordance with this clause in whole, or, from time to time in part whenever the Purchaser shall elect. Any such termination shall be affected by delivery to Supplier of a notice of termination specifying the extent to which performance hereunder is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Supplier shall, unless the notice requires otherwise: (1) immediately discontinue work on the date and to the extent specified in the notice; (2) place no further orders for materials other than as may be necessarily required for completion of any portion of the work that is not terminated; (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to Purchaser of all orders to sub suppliers or assign those orders to Purchaser; and (4) assist Purchaser upon request in the maintenance, protection, and disposition of property acquired by Supplier or furnished by Purchaser hereunder; and (5) complete performance of work which is not terminated. If claimed in writing within twenty (20) days after notice of termination, Purchaser will pay Supplier an equitable adjustment to include: (a) all amounts due and not previously paid to Supplier for Goods provided and Services completed in accordance with this Agreement prior to such notice, and for work thereafter completed as specified in such notice; (2) a reasonable amount for any Goods then in production; provided that no such adjustment shall be made in favor of Supplier with respect to any Goods which is Supplier's standard stock; and (3) costs of settling and paying claims arising out of the canceled orders under lower-tier subcontracts or purchase orders. The total sum to be paid to Supplier under this Section, exclusive of settlement costs, shall not exceed the total Purchase Order price as reduced by the amount of payments otherwise made and as further reduced by the Purchase Order price of Goods and Services not terminated, and will not include any consideration for loss of anticipated profits on the terminated work, all claims for which Supplier agrees to waive.

**19. DEFAULT**—Upon default by Supplier under any clause, provision or obligation hereunder, Supplier shall pay all of Purchaser's costs, charges and expenses arising from such default including, but not limited to, reasonable attorneys' fees and costs of litigation, and Purchaser shall have any and all remedies available to Purchaser under the Uniform Commercial Code or otherwise including, without limitation, the right to terminate the Agreement. Supplier agrees to assist Purchaser in the event that re-procurement action is necessary as a result of default, by cooperation in the transfer of information, in the disposition of work in progress or residual material, and in the performance of other reasonable requests made by Purchaser. Supplier agrees to provide Purchaser with the right to continue to use any and all Intellectual Property and proprietary information Purchaser deems necessary to complete the delivery of all Goods and Services hereunder. Supplier grants unrestricted replevy rights to the Purchaser, if relocation of Supplier's performance hereunder, in Purchaser's sole and exclusive judgment, is determined by Purchaser to be the best course of action. Supplier shall reimburse Purchaser for any and all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Purchaser in securing the release of its Goods and Services and associate materials or in any replevin action.

**20. INSURANCE**—Supplier agrees to provide Purchaser Certificates of Insurance demonstrating that Supplier has insurance from an insurance company acceptable to Purchaser, with a Best rating of A- or higher, covering the following: (i) comprehensive general liability insurance coverage in the minimum amount of \$2 million combined single limit bodily injury and property damage per occurrence/\$2 million aggregate; (ii) such certificate must also specifically state that this liability insurance includes blanket contractual liability or specifically state that it provides contractual liability coverage for the risks and obligations assumed under these Terms; (iii) Purchaser is to be named as an additional insured through broad form endorsements to the comprehensive general liability insurance policy; (iv) automobile liability coverage in the minimum amount of \$2 million combined single limit bodily injury and property damage per occurrence/\$2 million aggregate; (v) Worker's compensation coverage in accordance with the laws of the states in which Supplier is conducting business in a form satisfactory to Purchaser. Upon Purchaser's request, Supplier agrees to provide Purchaser Supplier's most current certified financial statements.

**21. INDEMNIFICATION**—Supplier shall indemnify, defend and hold harmless Purchaser from and against all claims, suits, liabilities, damages, costs, fees and expenses including reasonable attorneys' fees and court costs arising out of or incurred in connection with: (i) any claim for personal injury or property damage resulting or arising out of delivery or use of the Goods or Services, (ii) any claim that the Goods or Services infringe the intellectual property or proprietary rights of any third party; (iii) any failure of the Supplier or the Goods or Services to comply fully with the requirements of any applicable law, rule, regulation or Purchase Order, (iv) any breach of this Agreement by Supplier including, without limitation, the breach of any warranties as described herein, (v) any defect or failure in the Goods or Services including, without limitation, any manufacturing defect, design defect, warning defect, or other product liability claim; (vi) the gross negligence or willful misconduct of Supplier; or (vii) any violation of law by Supplier. Supplier shall use counsel reasonably satisfactory to Purchaser in connection with any defense of any indemnified claim, and the indemnified party shall provide to Supplier such assistance as Supplier may reasonably request in connection with such defense, at Supplier's sole expense. The indemnified party may participate in the defense of the indemnified claim without counsel of its own choosing at its sole cost and expense. Supplier shall not settle any indemnified claims without the prior, written consent of Purchaser and the indemnified party, if the settlement requires Purchaser or the indemnified party to admit liability, take or refrain from taking any action, or pay any monies.

**22. ENVIRONMENTAL PROTECTION** -- Supplier will prevent contamination of the environment by its performance hereunder, including the following: (i) Supplier shall, in accordance with applicable laws and regulations, provide suitable facilities to prevent the introduction of pollutants into any ground or surface water including, without limitation to all other additional precautions necessary and in accordance with all laws, rules, regulations and permits of the governmental entities, a berm will be constructed around any chemical or petroleum storage area designed to contain a spill from the single largest container within the berm plus additional capacity for precipitation. Supplier will notify Purchaser of any oil or other chemical spill; (ii) Supplier will not discharge smoke, dust or other contaminants into the atmosphere in violation of the laws, rules, regulations or permits of the governmental entities; (iii) Supplier will preserve and protect all vegetation in accordance with all laws, rules and regulations and consistent with its performance hereunder; (iv) Supplier will be solely responsible for damage to any such vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, unauthorized damage arising from its performance hereunder, and in no event will herbicides be used; and (v) Supplier will remove all solid waste from the work area and dispose of it in

accordance with all laws, rules and regulations and consistent with Purchaser requirements. Except as otherwise provided herein, necessary sanitary conveniences for use by Supplier's subcontractors and employees and personnel at any jobsite shall be furnished and maintained by Supplier.

**23. SAFETY PROTECTION** -- Supplier will be solely responsible for the safety and health of the employees, subcontractors and other persons engaged in the performance of this Agreement. Supplier (and all its subcontractors and suppliers) will comply with all federal, state and local safety and health laws, rules and regulations, as well as these terms in its performance hereunder. Supplier's safety program will meet all laws, regulations and OSHA requirements. Supplier (and all of its subcontractors and suppliers) will, at all times, conduct all operations hereunder in a manner to avoid risks of bodily harm to individuals, avoid risks of damage to any property and avoid risks of fire. Supplier and all of its subcontractors and suppliers will take all precautions necessary and continuously inspect all Goods and Services, materials, and equipment to discover, determine and correct any such conditions which may result in any of the aforementioned risks to: (i) all employees and other persons engaged in performing the Services and all other persons who may be affected thereby; (ii) all Goods and Services and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Supplier, its subcontractors or suppliers. Supplier (and all subcontractors and suppliers) will comply with all applicable laws, rules, regulations and jobsite requirements pertaining to the health and safety of persons or property and protect them from damage, injury or loss. Supplier (and all subcontractors and suppliers) will erect and maintain as required by existing conditions and in accordance with all laws, rules and regulations and consistent with the progress of the Services, all safeguards for safety and protection, including, without limitation, posting danger signs and other warnings against hazards, enforcing all applicable safety and health and fire regulations and notifying any owners and users of adjacent facilities.

**24. COUNTERFEIT PARTS PREVENTION:** Supplier represents and warrants that only new and authentic materials, items, or components are used in its performance hereunder, and that the Goods contain no counterfeit or fraudulent parts. No other materials or parts of the Goods, other than a new and authentic materials or parts of the Goods, are to be used in the Goods supplied, unless approved in advance by Purchaser in writing.

**25. ENGINEERING ANALYSIS FILES:** For Services involving performance of engineering analysis, upon Purchaser's request, Supplier will provide all computer input files and computer output files in the form requested by Purchaser for a period of ten (10) years from the date of Purchaser's acceptance of the Services. Supplier will warrant the accuracy of the delivered Services for ten (10) years from the date of Purchaser's acceptance of the Services. Supplier will immediately notify Purchaser in writing of any error in the delivered Services that is identified by Supplier's own staff or other third parties in the ten (10) warranty period.

**26. PROPOSITION 65 COMPLIANCE**—All Goods sold by Supplier to Purchaser, whether for distribution, resale or otherwise, shall be labeled in compliance with California's Proposition 65 law and implementing regulations. Supplier must notify Purchaser of any Goods without a Proposition 65 label. Upon its receipt of such notice, Purchaser, in its sole discretion, will instruct Supplier to either return any or all of such Goods with properly labeled Goods, or to retain any or all such Goods, in which case Supplier shall provide labels and further instructions for the labeling of such Goods. Supplier agrees to indemnify Purchaser for all claims, actions and suits, and all associated costs expenses and fees (including reasonable attorneys' fees) arising from any or alleged violation of Proposition 65 relating in any way to any Goods provided by Supplier to Purchaser.

**27. COMPLIANCE WITH LAWS**—Supplier shall comply with all applicable laws in connection with its performance of this Agreement including, without limitation, the U.S. Foreign Corrupt Practices Act and any other applicable anti-bribery laws, any applicable export laws, and any applicable child labor laws.

**28. FORCE MAJEURE**—Purchaser shall not be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, epidemic, pandemic, disease outbreak, or any governmental "stay-at-home" order, war, armed conflict, labor strike, lockout, or boycott, provided that the party relying upon this Section: (i) shall have given the other party prompt written notice thereof; and (ii) shall take reasonably steps under the circumstances to mitigate the effects of the force majeure event. In the event Purchaser is unable to timely accept delivery of any Goods or Services under this Agreement as a result of the force majeure, Supplier shall deliver such deliverables at such time Purchaser notifies Supplier it is able to take delivery, and Supplier shall pay all costs associated therewith. Notwithstanding the preceding, in the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, Purchaser may terminate this Agreement upon notice to Supplier.

**30. WAIVER**—The failure of Purchaser to insist in any instance upon strict performance by Supplier of any provision of this Agreement shall not be construed as a continuing waiver of such item, or waiver or any other provision of this Agreement.

**31. GOVERNING LAW AND VENUE**—This Agreement shall be governed by and interpreted according to the laws of the State of Delaware, without application of its conflict of law provisions. Any dispute arising out of or relating to this Agreement shall be brought in the state or federal courts located in the State of Delaware, the exclusive jurisdiction of which the parties irrevocably consent to for this purpose. The parties hereby waive objection to the venue of such courts on grounds of *forum non conveniens* or otherwise.