



## KOBUS INC.

### GENERAL TERMS & CONDITIONS FOR SALE OF PRODUCTS, PARTS AND SERVICES

**NOTICE:** These Terms and Conditions cover all orders for any Products, Parts and/or Services sold by Kobus Inc. or any of its Affiliates or subsidiaries (hereinafter referred to as "Seller") to the purchaser of such Products, Parts and/or Services (the "Buyer"). Any order by Buyer for any such Products, Parts and/or Services shall constitute acceptance by Buyer of these Terms and Conditions. Notwithstanding anything else to the contrary, Seller hereby objects to any terms and conditions proposed by Buyer which are different from or in addition to those contained herein. Any additions to or modifications of these Terms and Conditions shall not bind Seller unless accepted in writing by an authorized representative of Seller. Seller reserves the right to correct any clerical errors appearing on any relevant quote, invoice or other sales document.

#### 1. DEFINITIONS

**"Affiliate"** means with respect to either Party an entity (including without limitation any individual, corporation, partnership, limited liability company, association, or trust) that directly or indirectly controls, is controlled by, or is under common control with, such Party.

**"Applicable Law"** or **"Applicable Laws"** means any law, statute, order, decree, rule, injunction, license, permit, consent, approval, agreement, regulation, judgment or legislative or administrative action of a competent governmental authority, which applies to the sale of Products, Parts and/or provision of Services.

**"Buyer"** means the entity purchasing Products, Parts and/or Services and its successors and permitted assigns.

**"Buyer Taxes"** means all existing and future taxes, duties, fees, and other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales and use, stamp, storage, transfer, turnover, value-added taxes ("VAT"), or other similar taxes, and any and all items of deficiency, penalty, addition to tax, interest, or assessment related thereto), imposed or assessed by any governmental authority of any country in connection with the execution of this Contract or performance of or payment for work hereunder, but excluding Seller Taxes.

**"Claims"** means all claims, demands, disputes, causes of action, liabilities, damages, judgments, fines, penalties, awards, losses, costs, and expenses (including, without limitation, attorneys' fees and costs) of any kind or character.

**"Consequential Loss"** means, whether direct or indirect, and whether or not foreseeable at the time of entering into the Contract or at the time of commencing performance: any loss, delay or interruption of business, profits, revenue, production or opportunity; loss of product, use or equipment; standby time; rig, vessel, or other facility or equipment downtime; cost of capital; cost of substitute equipment, facilities, services or replacement power; overhead; any special, punitive, exemplary, incidental and/or consequential damages or losses; and/or Claims of a Party's customers for any of the above losses, costs or damages.

**"Contract"** means either the contract agreement signed by both Parties or the purchase order signed by Buyer and expressly accepted by Seller in writing, together with Seller's Proposal, any other documents incorporated by reference, and any agreed scope of work, all of which incorporate these Terms and Conditions for the sale of Products, Parts, and/or Services.

**"Contract Price"** means the aggregate amount to be paid by Buyer to Seller for the purchase of Products, Parts and/or Services, as stated in the Contract, and any agreed adjustments to the same.

**"Delivery"** means when the Products/Parts have been delivered according to the applicable Incoterm (2020). "Deliver" shall be construed accordingly.

**"Group"** means with respect to either Party, such Party (either Buyer or Seller, as applicable), as well as its Affiliates, and in connection with the project to which the Products, Parts and/or Services relate, its joint venture partners, joint interest owners, co-lessees, consortium members and/or other partners, and, in respect of Buyer only, the Site owner, end user, or Site operator; and for all of the above, also its and their contractors and subcontractors of any tier in connection with said project, as well as the

shareholders, officers, directors, employees, invitees, agents, and consultants of all of the foregoing. "Buyer Group" and "Seller Group" shall be construed accordingly. Seller Group does not include any member of Buyer Group and Buyer Group does not include any member of Seller Group. "Hazardous Materials" means any chemical, substance, material, waste or emission defined, classified or regulated as hazardous or toxic, or as a pollutant, contaminant, or threat or potential threat to human health, safety or the environment under Applicable Law, including but not limited to naturally occurring radioactive material, hydrocarbons, asbestos, lead, hydrogen sulphide or polychlorinated hydrocarbons, including biphenyls and biphenols.

**"Indemnify"** means release, defend, indemnify, and hold harmless.

**"Loss(es)"** means all losses, actions proceedings, Claims, demands, liabilities, costs, damages, expenses, costs (including, but not limited to any attorney's fees and expenses

**"Parts"** means the spare or repaired parts required in relation to the Product, identified by Seller in the Contract.

**"Party"** or **"Parties"** means individually, either the Seller or Buyer or collectively the Seller and Buyer.

**"Products"** means all equipment, materials, supplies, software, products, and other goods (excluding Parts) as applicable, sold under the Contract.

**"Proposal"** means Seller's formal offer to provide the Products, Parts and/or Services, and any mutually agreed written amendments thereto.

**"REGARDLESS OF CAUSE OR ACTION"** MEANS (TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW), REGARDLESS OF: CAUSE, FAULT, DEFAULT, NEGLIGENCE, OR ACTION IN ANY FORM OR DEGREE, STRICT OR ABSOLUTE LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PERSON, INCLUDING OF THE INDEMNIFIED PERSON, UNSEAWORTHINESS OF ANY VESSEL, AND/OR ANY DEFECT IN ANY PREMISES/VESSEL; FOR ALL OF THE ABOVE, WHETHER PRE-EXISTING OR NOT AND WHETHER THE DAMAGES, LIABILITIES, OR CLAIMS OF ANY KIND RESULT FROM CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL OR STRICT LIABILITY, QUASI CONTRACT, LAW, OR OTHERWISE.

**"Repair Services"** means Services related to the repair of Products.

**"Seller"** means Kobus Inc. or any Affiliate or subsidiary signing the Contract or the purchase order, and its respective successors and permitted assigns.

**"Seller Taxes"** means all corporate income taxes imposed on Seller and any taxes imposed on Seller's employees in connection with the execution of this Contract or the performance of or payment for work hereunder by Applicable Laws.

**"Services"** means all the services, including, without limitation, technical assistance and guidance, training, repairs, and remote diagnostics, to be provided by Seller under the Contract.

**"Site"** means the premises where Parts or Products are used or meant to be used and/or Services are performed or meant to be performed, not including any Seller Group's premises.

## 2. DELIVERY, TRANSFER OF TITLE & RISK, STORAGE

2.1. Unless otherwise provided in the Contract and in accordance with Incoterms 2020, Seller shall deliver Products and Parts to Buyer (i) FCA Seller's facility, place of manufacturer or warehouse; if the shipment does not involve an exit out of Seller's country of formation, or (ii) FCA Port of Export for export shipments. The **"Delivery Date"** for any item of Products/Parts is defined as the date on which such item is Delivered in accordance with this Article. Partial Delivery and Delivery in advance of the Delivery schedule shall be permitted, unless otherwise specified in the Contract.

2.2 Subject to Article 2.3, title and risk of loss to Products and/or Parts shall pass upon Delivery as provided in Article 2.1, with the exception that title and risk of loss to: (i) Products and/or Parts shipped from the United States of America ("U.S.") shall pass from Seller to Buyer immediately after each item departs from the U.S. territorial land, seas and overlying airspace, which the Parties acknowledge extend to twelve nautical miles from the baseline of the country, determined in accordance with the 1982 United Nations Convention of the Law of the Sea; and (ii) Products and/or Parts to be shipped to a Delivery destination directly from countries different from Seller's country of formation (drop shipment), shall pass immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. For the avoidance of doubt, Seller or its relevant Group member shall retain title to any equipment leased to Buyer Group.

2.3 If any of the Products and/or Parts cannot be shipped to Buyer in accordance with the agreed upon Delivery terms due to any cause not attributable to Seller Group, upon notice to Buyer, Seller may store such Products and/or Parts or ship them to outside storage, in which cases: (i) any amounts otherwise payable to Seller upon Delivery or shipment shall become payable upon presentation of a certification specifying the cause and place of storage (any payment security shall allow payments upon presentation of notice to storage instead of transport documents); (ii) all expenses incurred by Seller Group, such as for preparation and placement into storage, handling, inspection, preservation, insurance, removal charges, interest, and any VAT or other taxes imposed directly or indirectly under Applicable Law shall be reimbursed or paid by Buyer upon submission of Seller's invoices; and (iii) when reasonably possible and upon payment of all amounts due hereunder, Seller shall resume Delivery of the Products and/or Parts to the originally agreed point of Delivery. Title and risk of loss to Products and/or Parts shall pass as provided in Article 2.2., provided that Seller shall not have any obligation to store any item beyond 60 calendar days and if the storage period extends beyond 60 days, Seller shall be entitled to resume Delivery of the Products/Parts in accordance with Article 2.1. The terms of Article 2.3 shall apply also in the event any Buyer equipment repaired at Seller Group's facilities cannot be shipped to or received by Buyer in accordance with the agreed upon terms, provided that, in the case of Buyer equipment to be repaired at Seller Group's facilities, Buyer shall retain title to, and risk of loss for, any such equipment at all times.

## 3. EXCUSABLE DELAYS

3.1 Neither Party shall be liable or considered in breach or default of its obligations to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the impacted Party's reasonable control, including but not limited to: (i) acts of God, acts or omissions of governmental authorities, fire, severe weather conditions, earthquake, strikes or other labor disturbances, flood, serious risk of kidnapping, war (declared or undeclared), armed conflict, acts or threats of terrorism, epidemics, civil unrest, riot, severe delay in transportation, severe car shortage, or inability to obtain necessary materials, components or services; (ii) in the case of Seller, acts or omissions of Buyer Group, including failure to timely provide Seller Group with access, information, tools, material, and approvals necessary to permit Seller Group to timely perform the required activities, and including, without limitation, unknown physical conditions at the Site of an unusual nature and differing materially from those ordinarily encountered and generally recognized as occurring in the work of the character provided for in the Contract. The affected Party shall promptly notify the other Party in the event of a delay under this Article. The Delivery or performance dates shall be extended for a period equal to

the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of such delay. If Seller is delayed by acts or omissions of Buyer Group, or by the prerequisite work of Buyer's other contractors, Seller shall also be entitled to an equitable price adjustment. Under no circumstances shall Buyer's payment obligation be deemed excusable under this Article.

3.2 If a delay excused by this Article 3 extends for more than 90 days and the Parties have not agreed upon a revised basis for resuming work, including an equitable price adjustment, then either Party (except where delay is caused by Buyer Group, in which event only Seller), upon 30 days written notice may terminate the Contract with respect to the unexecuted portion of the work. In the event of a delay under Article 3.1(ii), the terms of Article 10.2 shall apply in full. In the event of a delay under Article 3.1(i), Buyer shall pay Seller the pro-rated Contract Price for all work performed before the effective date of termination.

## 4. WARRANTY

4.1 Subject to the limitations set forth in the Contract, Seller warrants to Buyer that: (i) the Products and/or Parts shall be Delivered free, in all material respects, from defects in material, workmanship and title, and conform to Seller's published specifications or the specifications agreed upon in writing by the Parties; and (ii) the Services shall be performed in a competent manner in accordance with Seller's published specifications or the specifications agreed upon in writing by the Parties. Unless Seller expressly agrees otherwise in writing and except for Products/Parts provided by Seller's Affiliates, any Parts not manufactured by Seller (including incidental materials and consumables used in the Services) shall carry only the warranty provided by the original manufacturer (to the extent transferrable), and Seller gives no warranty for such Parts.

4.2 Unless otherwise stated in the Contract, the warranty period ("**Warranty Period**") shall be as follows: (i) for Products is 12 months from first use or 18 months from shipment, whichever occurs first; (ii) for Re-certification Services, one year after performance of the Service; (iii) for Repair Services one year after completion of the Repair Service; (iv) for Parts, 18 months after shipment or 12 months after installation, whichever occurs first; (v) for repaired, replaced, or re-performed Products, Parts, or Services, six months after repair/replacement or re-performance, provided that Seller Group's warranty obligations shall in all cases terminate and in no event extend beyond 24 months after shipment or placement into storage of the original Products/Parts or performance of the initial Service.

4.3 If Products, Parts, or Services do not meet the above warranties during the applicable Warranty Period and Buyer informs Seller in writing within 15 days of discovery, Seller's sole and exclusive liability shall be to either re-perform the defective Services, or repair or replace the defective component of the Products/Parts, at Seller's option. If despite Seller's reasonable efforts, a non-conforming Product/Part cannot be repaired or replaced, or non-conforming Services cannot be re-performed, the Parties will negotiate an equitable adjustment in price with respect to such Product, Parts, component, or Service. Seller Group shall not under any circumstances be liable for any defects that arise or are discovered after expiration of the Warranty Period.

4.4 Seller shall not be liable for accessing, retrieving, removing, or decontaminating defective Products or Parts, or for reinstalling repaired or replacement Products/Parts, or for any Claims, costs, damages, or losses incurred in connection with any of the above operations. Seller shall be responsible to transport defective Products or Parts only to and from the original Delivery point. Buyer shall be responsible for all customs formalities, costs and taxes connected with any export to Seller or import of goods returned to Buyer.

4.5 Seller does not warrant the Products, Parts or any repaired or replacement item against: normal wear and tear, including that due to environment, excessive operation at peak capability, frequent starting, type of fuel, detrimental air inlet conditions or erosion, corrosion or material deposits from fluids, misuse, accident, modification, heating, machining, bending, welding, alteration of any kind, or operation under conditions more severe than, or otherwise exceeding those set forth in, the specifications for the relevant Product or Part. The warranties and remedies set forth herein

are further conditioned upon: (i) proper storage, installation, use, operation, and maintenance of the Products/Parts, and conformance with the operation instruction and installation manuals (including revisions thereto) provided by Seller Group; (ii) Buyer keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Seller access to those records; and (iii) repair or modification pursuant to Seller's instructions and approval. Unless otherwise authorized in writing by Seller, testing shall only be executed by the Seller or Seller's authorized service partner. Seller Group shall not be responsible for nor shall have any liability for unauthorized third-Party testing, results, or damage resulting therefrom.

Failure to meet any such conditions in Article 4.5 renders the warranty of Seller Group null and void.

4.6 THE REMEDIES SET FORTH IN ARTICLE 4 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS OR LOSSES ARISING OUT OF OR RELATING TO ANY FAILURE OF, OR ANY DEFECT OR NON-CONFORMITY IN, THE PRODUCTS, PARTS, OR SERVICES, REGARDLESS OF WHEN THE FAILURE, DEFECT OR NON-CONFORMITY ARISES. THE WARRANTIES SET FORTH IN ARTICLE 4 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY. NO IMPLIED OR STATUTORY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. SELLER AGREES TO USE ITS COMMERCIALY REASONABLE EFFORTS TO TRANSFER ANY THIRD-PARTY'S WARRANTY AVAILABLE TO IT TO BUYER AND THEREFORE BUYER'S WARRANTY RIGHTS SHALL BE LIMITED TO THE RIGHTS AND OBLIGATIONS CONTAINED IN ANY SUCH THIRD-PARTY SUPPLIER'S WARRANTY ASSIGNED TO BUYER.

4.7 All Parts Delivered shall conform to Seller's part or version number specified in the Contract, or its equivalent or the superseding number subsequently assigned by Seller. If the number ordered is no longer available, Seller is authorized to provide a valid interchangeable Part without notice to Buyer.

**5. INSPECTION AND FACTORY TESTS** – The quality control exercised by Seller in its manufacture of Products/Parts shall be in accordance with Seller's normal quality control policies, procedures and practices. Unless otherwise expressly agreed in the Contract, Seller shall attempt to accommodate Buyer's requests to witness Seller's factory tests of Products/Parts, but only if such witnessing can be arranged without delaying the work. Access to Seller Group's premises shall be limited to areas directly concerned with the Products/Parts, excluding in all cases areas where work of a proprietary nature is conducted.

**6. CHANGES** - Each Party may at any time propose changes in the schedule or scope of Parts, Products or Services in the form of a draft change order. Neither Party is obligated to proceed with the changed schedule or scope until both Parties agree to such change in writing. Seller shall notify Buyer of any additional costs resulting from such changes and extension of Seller's time of performance if it is impacted by Buyer's request for a change

## **7. PAYMENT**

7.1 If nothing is agreed in the Contract, payment shall be made in U.S. currency or the currency set forth in the Proposal and on 30 day terms from the invoice date. If requested by Seller, Buyer shall pay to Seller all invoiced amounts against one or more irrevocable, unconditional, letters of credit payable at sight ("Payment Security"), without any set-off, and in the currency agreed in the Contract (or on the face of the purchase order). Payment milestones, if any, shall be as set forth in the Contract.

7.2 In addition to other Contract remedies, Buyer shall pay interest to Seller at the rate of 1.5% per month (or fraction thereof), not to exceed the lesser of 18% per annum or the maximum amount permitted by Applicable Law, on all amounts not timely paid in accordance with the Contract.

7.3 Each Payment Security shall be irrevocable and unconditional, and allow for *pro-rata* payments for partial Deliveries, other charges (e.g., storage, export shipments, cancellations, and adjustments), and all other payments due to Seller under the Contract. Each Payment Security shall be: (i) issued or confirmed by a primary international bank that is reasonably acceptable

to Seller; (ii) payable at the counters of such bank; (iii) opened 30 days from the Contract effective date; and (iv) remain in effect until the latest of 90 days after the latest scheduled Products/Parts shipment, or completion of Services, or receipt by Seller of final payment. Buyer shall make relevant adjustments in the Payment Security (including increasing amounts or validity period, and including in accordance with the changes agreed in the Contract) as required to fulfill its payment obligations under the Contract, within 15 business days of Seller's notification that such adjustment is necessary. Seller will not have an obligation to begin performance until the Payment Security, or the required adjustment thereof, has become operative.

## **8. TAXES AND DUTIES**

8.1 Seller shall be responsible for and shall pay when due all Seller Taxes, and Buyer shall be responsible for and shall pay when due all Buyer Taxes. The Contract Price does not include any Buyer Taxes. Therefore, if any such taxes are applicable, they will be added to the Contract Price. For U.S. sales and use tax, and in other jurisdictions where applicable, Buyer may report/remit sales or similar taxes directly if Buyer timely provides a direct pay or exemption certificate to Seller.

8.2. If the Applicable Laws require the Contract to be subject to stamp duty, fee, or registration, Buyer shall be responsible for the required formalities and bear the related costs. Buyer shall return to Seller a copy of the registration certificate or a registered copy of the Contract within 10 days from the due date required by said Applicable Laws to register or pay for such stamp duty, fee, or registration. According to the Applicable Laws of the country in which Buyer has requested Seller to provide Services, Seller may be required to be registered locally, in which case, Seller shall perform the Services and invoice for them with the intervention of its relevant branch or permanent establishment.

8.3 If Buyer is required to deduct or withhold any Seller Taxes from the Contract Price, Buyer shall (1) give at least 30 days' notice to Seller that Buyer will withhold, (2) make all reasonable efforts to minimize any withholding tax from payments to Seller, in accordance with Applicable Laws and any applicable bilateral conventions against double taxation, and (3) provide to Seller, within 30 days from payment, the official receipt issued by the competent government authority to which the Seller Taxes have been paid, or an alternative document acceptable to the relevant tax authorities. If Buyer requires tax residence certificates or other documentation from Seller to apply for any exempted or reduced tax regime, Seller shall submit the appropriate certificates upon Buyer's written request. If Buyer, under the Applicable Laws of any country other than Seller's country of formation or in which Seller has a branch, deducts or withholds Seller Taxes or fails to comply with the requirements of this clause, Buyer shall pay additional amounts to Seller so that Seller receives the full amount of the Contract Price, as though no such Seller Taxes had been deducted or withheld.

8.4 If Buyer benefits from any tax, fee or duty exemption which is applicable to Seller or Seller's Group, Buyer agrees to provide Seller, without charge and before the following as applicable: (1) entering into the Contract, (2) before invoicing, or (3) before any other relevant event, documentation acceptable to the competent tax authorities supporting the exemption, together with instructions on the exemption procedure. Buyer shall promptly inform Seller in writing about the revocation, expiry or other change of the exemption. If Seller is denied the exemption because of a failure of Buyer, Seller shall be entitled to invoice and Buyer shall pay promptly the applicable tax, fee or duty.

8.5 When Buyer arranges the export or intra-European Union ("EU") community shipment, Buyer will provide to Seller, free of charge and within 90 days (or, in the case of exports from the U.S., 30 days), evidence (obtained from Buyer's forwarder) of exportation or intra EU community shipment; such evidence must be in a form that is acceptable to the competent tax and customs authorities. Failing the above, Seller shall be entitled to invoice Buyer the applicable VAT, U.S. sales and use tax, or similar taxes.

**9. ASSIGNMENT, NOVATION & SUBCONTRACTING** – Buyer may assign, transfer or novate the Contract, in full or in part and including through change of ownership, only with the prior written consent of Seller, which

consent shall not be unreasonably delayed or withheld, provided that Seller shall be entitled to withhold such consent only for demonstrable reasons if the assignee/transferee/novatee lacks adequate financial capability, is a competitor or potential competitor of Seller or its Affiliates, causes Seller Group to be in breach of Applicable Law, and/or does not meet Seller's code of ethics. Seller may assign, transfer or novate to third parties the Contract, in full or in part, only with the prior consent of Buyer, which consent shall not be unreasonably delayed or withheld, provided that Seller may, without Buyer's consent: (i) assign, transfer or novate the Contract, in full or in part, to one or more Affiliates of Seller or to the assignee or transferee of all or substantially all of the assets or equity interest of Seller or any member of the Seller Group; and (ii) assign or transfer any receivables due hereunder to one or more Affiliates of Seller. The Parties agree to execute such documents as may be necessary to effect the permitted assignments or novations. In the event of a novation, transfer or assignment by Buyer, Buyer shall cause the novatee/transferee/assignee to provide additional payment security at Seller's reasonable request. Any assignment, transfer or novation in violation of the above shall be void and without effect for the other Party. Nothing herein shall restrict Seller from subcontracting portions of its work, provided that Seller remains responsible to Buyer for performance of such work.

## 10. TERMINATION AND SUSPENSION

10.1 Either Party may terminate this Contract for default if: (i) any proceeding is brought against the other Party, voluntarily or involuntarily, under applicable bankruptcy or insolvency laws, or if the other Party is unable to pay its debts when due, to the extent permitted by Applicable Law; or (ii) the other Party commits a breach of this Contract, which does not otherwise have a specified contractual remedy, and fails to cure the breach within 30 days of notice from the non-breaching Party, or if it is not possible to cure such breach within 30 days, fails to commence to cure the breach within 30 days of such notice or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible. In the event of a termination by Buyer under this Article 10.1, Seller shall reimburse Buyer the actual amounts reasonably incurred by Buyer to complete such terminated scope; and Buyer shall pay to Seller the portion of the Contract Price allocable to Products/Parts purchased and/or completed, and amounts for Services performed, before the effective date of termination. Said amounts shall be calculated using the applicable Contract rates, or in the absence of such rates, at Seller's then-current standard time and material rates. In the event there are agreed-upon Contract milestones, said amounts shall be calculated in accordance with the milestone schedule for completed milestones, and the Contract rates for work toward milestones not yet achieved.

10.2 Buyer may terminate the Contract (even in part) with a 20-day prior written notice for reasons other than those set forth in Article 10.1, in which case Buyer shall pay Seller's charges in accordance with the Contract termination schedule; or if no such schedule exists: (i) Buyer shall pay Seller for all work completed and for work which cannot be reasonably stopped before the effective date of termination, plus a reasonable margin percentage in relation to such costs and expenses, which margin percentage shall not be lower than the margin percentage applicable to the overall Contract; or (ii) for Contracts based on payment milestones Buyer shall pay Seller: (a) all amounts due under the Contract for completed milestones, plus (b) all costs and expenses incurred by Seller in connection with work performed in relation to incomplete milestones, plus a reasonable margin percentage in relation to such costs and expenses, which margin percentage shall not be lower than the margin percentage applicable to the overall Contract. In connection with both (i) and (ii), Buyer shall also pay Seller the costs and expenses incurred by Seller as a result of the termination, including the costs associated with vendor disputes or Claims.

10.3 If Buyer fails to pay any outstanding invoice as set forth in the Contract, or fails to issue the Payment Security within the time agreed, Seller, upon a 15-day notice to Buyer, may suspend performance and Delivery. Any costs and expenses incurred by Seller as a result of such suspension (including, but not limited to any storage fees, stand-by costs, demobilization, remobilization costs, attorney's fees and expenses, etc.) shall be payable by Buyer upon submission of Seller's invoices. Performance of Seller's

obligations shall be extended for a period equaling the period of Buyer's failure to meet its payment obligations, plus such additional time as may be reasonably necessary to overcome the effect of such payment delay.

10.4 Upon 20-day written prior notice, Buyer may elect to suspend performance of the Contract for a maximum cumulative period of 90 days, after which Seller may terminate the Contract and Article 10.2 shall apply. In the event of suspension under this Article 10.4, Buyer shall also pay all reasonable costs and expenses incurred by Seller in connection with the suspension, including without limitation, any attorney's fees and expenses as well as any costs and expenses for repossession, fee collection, stand-by costs, demobilization/remobilization, and costs of storage. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

## 11. COMPLIANCE WITH LAWS, CODES AND STANDARDS

11.1 The Contract Price is based on Seller Group's design, manufacture, testing, and Delivery of the Products, Parts and Services pursuant to: (i) its design criteria, manufacturing processes, and procedures and quality assurance program; (ii) those portions of industry specifications, codes, and standards in effect as of the date of entering into the Contract as are specified in the Contract; (iii) Applicable Law; and (iv) any mutually agreed-upon written terms and specifications set forth in the Contract.

11.2 Notwithstanding any other provision of this Contract, the Parties shall at all times comply with Applicable Law in the performance of the Contract, except for Seller to the extent that such compliance is penalized under, or otherwise violates, the laws of the United States or any European Union laws.

11.3 Seller is entitled to an equitable adjustment to the Contract Price and the Delivery schedule to reflect any additional costs and other impact incurred by Seller Group as a result of a change in Applicable Law or applicable standards and regulations, including changes in the interpretation thereof, after entering into the Contract. In the event any such change prevents Seller Group from executing its obligations without breaching Applicable Law or makes Seller's execution of its obligations unreasonably burdensome or unbalanced, Seller shall also have the right to withdraw its Proposal or terminate the Contract without any liability.

11.4 Unless otherwise agreed in the Contract, Seller shall be responsible for obtaining any permits, licenses, and authorizations required for Seller Group to meet the requirements of the Contract, except that Buyer shall be responsible for timely obtaining any required permits, licenses, and authorizations that can only be obtained by Buyer Group. Buyer and Seller shall provide each other reasonable assistance in obtaining the required permits, licenses and authorizations.

11.5. Buyer agrees that it will not sell, distribute, disclose, release or otherwise transfer any item or technical data provided under this Contract to: (i) any country designated as a "State Sponsor of Terrorism" by the U.S. Department of State including, but not limited to the countries of Iran, Sudan, Syria and North Korea (ii) any entity located in, or owned by an entity located in, a "State Sponsor of Terrorism" country, (iii) the region of Crimea or (iv) any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce, the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other applicable prohibited party list of the US Government. This clause will apply regardless of the legality of such a transaction under local law. Except as otherwise agreed in writing between the Parties, each Party shall be responsible for obtaining and maintaining any authorization required for its performance under this Contract (including the transfer any item or technical data under this Contract), such as export license, import license, exchange permit or other required government export or import authorization. Each Party shall provide the reasonable assistance necessary for the other Party to secure and comply with such authorizations as may be required. Neither Party shall be liable if any government export authorization is delayed, denied, revoked, restricted or not renewed despite reasonable efforts by the Party. Additionally, such delay, denial, revocation or non-renewal shall not constitute a breach of this Agreement. Buyer shall not use any items sold hereunder for any military application, or resell them for such purpose.

## 12. ENVIRONMENT, HEALTH, SAFETY AND SECURITY (EHSS)

12.1 Buyer shall take all actions necessary to provide a safe, healthy and secure work environment, including transportation and accommodation if applicable, for Seller Group personnel. Buyer shall inform Seller of any known risks, hazards, or changed conditions impacting worker health, safety or the environment, including the presence or potential presence of Hazardous Materials, and shall provide relevant information, including safety data sheets, site security plans, risk assessments and job hazard analyses.

12.2 To evaluate risks associated with the provision of Services and performance under this Article, Buyer shall provide Seller Group with reasonable access to review the Site and related equipment. If Seller's work at the Site is subject to local, state or national EHS legal requirements that are not reasonably available, Buyer shall notify and provide copies of same to Seller.

12.3 If Seller or any member of the Seller's Group believes in good faith that Site conditions, Seller transportation or accommodation provisions, or the actions of others threaten the health, safety, or security of Seller Group personnel or the environment, Seller or its representatives may, in its sole and absolute discretion and in addition to other rights or remedies available to it, STOP WORK, evacuate some or all of its personnel, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. If Seller exercises its rights under this provision, it shall give prompt notice to Buyer, and the Parties shall work cooperatively to correct the conditions or actions prompting the STOP WORK. The Parties agree there shall be no retaliation taken against any person who invokes their right under this provision to STOP WORK. Any delay resulting from Seller or any member of Seller Group's exercise of its rights under this Article shall constitute an excusable delay as set forth in Article 3.

12.4 To the full extent permitted by Applicable Law, Buyer agrees that it is the generator, and shall be solely responsible for the storage, transportation and disposal of all Hazardous Materials or waste related to or arising from the performance of Services at Buyer Group sites, including any removed from Seller's equipment. Prior to the transportation and disposal of waste materials by Buyer, Seller shall properly handle and manage all Hazardous Materials resulting from the Services in accordance with Applicable Law and Buyer's written requirements. If Seller or any member of Seller Group encounters any Hazardous Materials, it may suspend work pending Buyer elimination of the hazardous condition. If any Seller equipment or Buyer equipment destined for a Seller facility is contaminated with Hazardous Materials, Buyer shall assume sole responsibility for decontaminating such equipment and returning it in the same condition received to allow for its safe handling and transportation in compliance with Applicable Law. If any such Hazardous Materials cause an increase in Seller's cost or time, Seller shall, at its sole discretion, be entitled to an equitable adjustment in price and schedule or reimbursement of any costs and expenses incurred by Seller.

## 13. CONFIDENTIALITY

13.1 "Confidential Information" means pricing for Parts, Products, and Services, and/or information that is designated in writing as "confidential" or "proprietary" at the time of disclosure, or orally designated as "confidential" or "proprietary" and confirmed in writing within ten days after oral disclosure. Confidential Information shall not include information that: (i) is or becomes generally available to the public other than from disclosure by the receiving Party's Group; (ii) is or becomes available to the receiving Party's Group on a non-confidential basis from a source other than the disclosing Party and, after due inquiry, that source is not subject to a confidentiality obligation to the disclosing Party; or (iii) is independently developed by the receiving Party's Group without reference to the disclosing Party's Confidential Information, as evidenced by written documents.

13.2 The Parties shall: (i) use, reproduce, or disclose the other Party's Confidential Information only in connection with the Contract and permitted use(s) and maintenance of Products, Parts and Services; (ii) take reasonable measures to protect the confidentiality, and prevent disclosure and unauthorized use of the Confidential Information and (iii) in particular, not disclose Confidential Information to the other Party's competitors.

13.3 Either Party may disclose Confidential Information: (i) to any member of its Group who has a need to know to perform the Contract or use and maintain Products, Parts, or Services and who is bound in writing to confidentiality obligations and use restrictions at least as restrictive as in this Contract; and (ii) to comply with a legal obligation, but only after promptly notifying the disclosing Party of its disclosure obligation so that the disclosing Party may seek an appropriate protective order. Buyer shall not disclose Confidential Information to Seller unless such disclosure is required for Seller to perform under this Contract. Buyer warrants that it has the right to disclose the information and shall Indemnify Seller and any member of the Seller Group from any Claims or damages resulting from improper disclosure.

13.4 Neither Party shall make any public announcement about any aspect of the Contract or related documents or information without prior written approval of the other Party.

13.5 The confidentiality and use restrictions of this Article 13 shall survive any termination of the Contract for ten years. Each Party shall Indemnify the other for failure to comply with this provision.

## 14. INTELLECTUAL PROPERTY

14.1 Seller shall Indemnify Buyer from any rightful Claims of third Parties that the Products or Parts manufactured by Seller or its Affiliates infringe any utility patent of the U.S., EU, or the country of initial installation (if set forth in the Contract), provided that: (i) Buyer promptly notifies Seller in writing of any such claim; (ii) Buyer makes no admission of liability and does not take any position adverse to Seller regarding such Claim and gives Seller authority, at Seller's expense, to direct and control all defense, settlement and compromise negotiations; and (iii) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

14.2 Seller shall have no obligation or liability with respect to any Claim based upon: (i) any Products, Parts or Services that have been altered, modified, or revised; (ii) the combination, operation, or use of any Products, Parts or Services with other products or services when such combination is part of any allegedly infringing subject matter; (iii) failure of Buyer or any member of Buyer Group to implement any update provided by Seller or Seller Group that would have prevented the Claim; (iv) unauthorized use of Products, Parts or Services, including without limitation a breach of the provisions of the Contract; or (v) Products, Parts or Services made or performed to Buyer Group's specifications.

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

14.4 THE FOREGOING STATES SELLER GROUP'S ENTIRE AND EXCLUSIVE LIABILITY FOR ANY INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS INFRINGEMENT.

14.5 Each Party shall retain ownership of all Confidential Information and intellectual property it had prior to the negotiations of the Contract. Any and all new intellectual property conceived, created or provided by Seller or any member of Seller Group under the Contract, whether alone or with any contribution from Buyer or Buyer Group, shall be owned exclusively by Seller or other members of Seller Group, as the case may be. To the extent that Buyer Group may acquire any right or interest in such new intellectual property, Buyer irrevocably assigns and/or causes other members of Buyer Group to assign, all such rights and interests in such new intellectual property as instructed by Seller, and to execute assignments and other documentation as necessary to achieve this result. To the extent permissible by law, Buyer and Buyer Group waives any moral rights it acquires in any such new intellectual property. Seller shall grant Buyer use rights to utilize Seller's intellectual property embedded in the Products or Parts solely for standard use, operation, and maintenance of the Products/Parts by Buyer. Such license shall not give Buyer the right to manufacture and/or have manufactured such Products/Parts to the extent such maintenance will result in substantially new Products/Parts.

14.6 Buyer agrees that Seller may create, receive, maintain, transmit and

otherwise have access to machine, technical, system, usage and related information, including, but not limited to, information about Buyer's products, services, systems and software, that is gathered periodically to facilitate the provision of Products, Parts, Services, other support, consulting, training and other services to Buyer (if any), and to verify compliance with the terms of this Contract. Seller and its Affiliates may use such information to provide, develop or improve their Products, Parts and/or Services.

## **15. INDEMNITY, LIMITATION OF LIABILITY, AND INSURANCE**

15.1 The provisions of Article 15 shall apply to the maximum extent permitted by Applicable Law and, unless otherwise expressly stated, prevail over any conflicting clauses.

15.2(i) Seller agrees to Indemnify Buyer and any member of Buyer Group from and against any Claims or Losses of third Parties on account of bodily injury, illness or death, or damage to or loss of property, to the extent resulting directly from the negligence of Seller or any member of Seller Group in connection with performance of the activities performed under this Contract.

(ii) Buyer agrees to Indemnify Seller Group from and against any Claims or Losses of third parties on account of bodily injury, illness or death, or damage to or loss of property, to the extent resulting directly from the negligence of Buyer or any member of the Buyer Group in connection with the activities performed under this Contract.

(iii) In the event the injury or damage to third parties is caused by the joint or concurrent negligence of the Parties or their respective Groups, each Party shall bear such injury or damage proportionally to its Group's negligence. For the avoidance of doubt, no members of either Party's Group shall be considered third parties and, for purposes of Seller's indemnity obligation in Article 15.2(i), no part of the Site or any property or facilities thereon shall be considered as third party property, and the Site owner and its partners, Affiliates, and contractors/subcontractors shall not be considered third parties. The reciprocal indemnities in this Article 15.2 shall apply only if the indemnified Party: (i) promptly notifies the other in writing of the third party claim; (ii) makes no admission of liability, does not take any position adverse to the other Party and gives such other Party's authority to direct and control all defense, settlement and compromise negotiations; and (iii) provides the other Party with full disclosure and assistance as may be reasonably required to defend such claim.

15.3 Except only as provided in Article 15.1(i) but notwithstanding anything else to the contrary herein, in the event the Site is offshore, Buyer assumes sole responsibility for and shall Indemnify the Seller or any member of the Seller Group (to the maximum extent permitted under Applicable Law) from and against any and all Claims or Losses asserted by or in favor of any person or party resulting from pollution, contamination or blow-out of any kind and including costs of pollution control, removal, spills, leakage, and clean-up. The above indemnity applies REGARDLESS OF CAUSE OR ACTION and even if the claim is on account of any defect in the Products, Parts or Services; but it shall not apply to surface pollution or spillage of fuels, lubricants, sewage or garbage to the extent such surface pollution or spillage originates from Seller Group's property while such property is in Seller Group's sole care, custody and control.

15.4 EXCEPT ONLY FOR SELLER'S OBLIGATIONS IN ARTICLES 8.1, 14, AND 11.2 (TO THE EXTENT OF FINES AND PENALTIES IMPOSED BY A GOVERNMENT AUTHORITY AS A RESULT OF SELLER'S VIOLATION OF APPLICABLE LAW), SELLER AND SELLER GROUP'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS OF ANY KIND, REGARDLESS OF CAUSE OR ACTION, ARISING OUT OF OR RELATED TO THE CONTRACT, OR ITS PERFORMANCE OR BREACH, INCLUDING WITHOUT LIMITATION WARRANTY AND TERMINATION, SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED: (I) IN THE CASE OF CLAIMS OR LOSSES RESULTING FROM THE PROVISION OF OR FAILURE TO PROVIDE, OR FROM THE USE OR FAILURE TO USE PRODUCTS OR PARTS, THE CONTRACT PRICE ALLOCABLE TO THE PRODUCT AND/OR PARTS GIVING RISE TO THE CLAIM OR LOSS ; AND (II) IN THE CASE OF CLAIMS RESULTING FROM THE PROVISION OR FAILURE TO PROVIDE SERVICES, THE CONTRACT PRICE ALLOCABLE TO THE SERVICES GIVING RISE TO THE CLAIM. SELLER AND ANY MEMBER OF SELLER GROUP SHALL HAVE NO LIABILITY FOR ADVICE OR

ASSISTANCE GRATUITOUSLY PROVIDED BY SELLER GROUP BUT NOT REQUIRED PURSUANT TO THE CONTRACT. ALL SELLER AND SELLER GROUP'S LIABILITIES SHALL TERMINATE AT THE END OF THE RELEVANT WARRANTY PERIOD, EXCEPT FOR CLAIMS THAT HAVE BEEN TIMELY COMMENCED BY BUYER IN ACCORDANCE WITH THE CONTRACT.

15.5 NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT ONLY TO THE EXTENT OF ANY PREDETERMINED TERMINATION FEES DUE TO SELLER UNDER THE CONTRACT, SELLER SHALL INDEMNIFY BUYER GROUP FROM AND AGAINST ANY AND ALL CLAIMS FOR CONSEQUENTIAL LOSS OF SELLER AND ANY MEMBER OF SELLER GROUP; AND BUYER SHALL INDEMNIFY SELLER AND ANY MEMBER OF SELLER GROUP FROM AND AGAINST ANY AND ALL CLAIMS FOR CONSEQUENTIAL LOSS OF BUYER GROUP REGARDLESS OF CAUSE OR ACTION.

15.6 NOTWITHSTANDING ARTICLE 15.2(i), IN THE EVENT BUYER GROUP PROVIDES PRODUCTS OR PARTS TO A THIRD PARTY OR USES SELLER'S PRODUCTS/PARTS AT A FACILITY NOT OWNED BY BUYER, OR THE SERVICES ARE PERFORMED AT A FACILITY NOT OWNED BY BUYER, BUYER SHALL INDEMNIFY SELLER OR ANY MEMBER OF SELLER GROUP FROM AND AGAINST ANY LOSS ARISING OUT OF CLAIMS MADE IN EXCESS OF THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE CONTRACT, REGARDLESS OF CAUSE OR ACTION. IN THE EVENT BUYER ASSIGNS OR NOVATES THE CONTRACT, IN WHOLE OR IN PART, SUCH ASSIGNEE OR NOVATEE SHALL BE BOUND BY THE SAME TERMS OF THIS CONTRACT, AND BUYER HEREBY WAIVES ANY RIGHT TO CLAIM, WHETHER IN TORT, AT LAW OR OTHERWISE, FOR LOSSES OF ANY KIND IN EXCESS OF THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE CONTRACT.

15.7 EXCEPT TO THE EXTENT SELLER HAS RESPONSIBILITY UNDER ARTICLE 4 (WARRANTY), BUYER WAIVES RIGHTS OF RECOVERY AGAINST SELLER OR ANY MEMBER OF SELLER GROUP, WHETHER BUYER'S CLAIM IS BROUGHT UNDER BREACH OF CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR LOSS TO THE PROPERTY OF BUYER

**16. NO NUCLEAR USE** – The Products, Parts and/or Services are not intended or authorized for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use, or permit others to use, Products, Parts and/or Services in connection with or for any such purposes without the advance written consent of Seller. If, in breach of the foregoing, any such use occurs, Seller hereby disclaims any and all Loss for any nuclear or other damage, injury, or contamination REGARDLESS OF CAUSE OR ACTION. In addition to any other rights of Seller and any member of Seller Group and to the maximum extent permitted under Applicable Law, Buyer assumes sole responsibility for, and shall Indemnify Seller and any member of Seller Group from and against, any and all Claims or Losses asserted by or in favor of any person or party resulting from any nuclear or other damage, injury, or contamination REGARDLESS OF CAUSE OR ACTION. Consent of Seller to any use in connection with any nuclear facility or activity, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

## **17. INTENTIONALLY NOT USED**

**18. GOVERNING LAW** – This Contract shall be governed by and construed in accordance with the laws of the State of Texas, U.S., excluding in any case conflict of law rules.

**19. DISPUTE RESOLUTION** – Any Claim arising out of or in connection with this Contract shall be referred to settlement proceedings under the International Chamber of Commerce (ICC) Mediation Rules, without prejudice to either Party's right to seek emergency, injunctive, or conservatory measures of protection at any time. If any such Claim has not been settled within 60 days following the filing of a Request for Mediation (or such other period of time as may be reasonable under the circumstances or agreed in writing), the Claim shall be finally settled in accordance with the ICC Rules of Arbitration by one or more arbitrators appointed under the said Rules. The seat, or legal place, of arbitration shall be (i) Houston, Texas, if Buyer is incorporated in the U.S.; or (ii) London, England, UK, if Buyer is incorporated outside the U.S.

## **20. GENERAL CLAUSES**

20.1 Except as otherwise expressly provided with regard to the members of each Party's Group, none of the terms herein are intended to be enforced by third parties under the United Kingdom Contracts (Rights of Third Parties) Act (1999), where applicable. Buyer and Seller shall be entitled to modify, vary, amend and/or extinguish such rights without the consent of any third parties or member of either Party's Group.

20.2 This Contract represents the entire agreement between the Parties and no modification, amendment, rescission, waiver or other change shall be binding on either Party unless agreed to in writing by their authorized representatives. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in the Contract.

20.3 The invalidity in whole or in part of any part of this Contract shall not affect the validity of the remainder of the Contract. In the event any provision of this Contract is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause and provision to the extent not held invalid or unenforceable.

## **21. U.S. GOVERNMENT CONTRACTS**

21.1 This Article 21 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. Buyer agrees that all Products, Parts and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of

Products/Parts is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). The version of any applicable FAR clause listed in this Article 21 shall be the one in effect on the effective date of this Contract.

21.2 If Buyer is an agency of the U.S. government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

21.3 If Buyer is procuring the Products, Parts or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price. If the reasonableness of the price cannot be established through adequate price competition, or if cost or pricing data should be required for any other reason, or if a Product, Part or Service cannot be considered a "commercial item", Seller may terminate the Contract without penalty and be reimbursed for work done before the effective date of termination.

21.4 Seller reserves the right to reject any order from a Buyer listed on any denied party list.