NOTICE: Sale of any Products or Services, as each is defined in the Contract, is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No Buyer form shall modify these Terms and Conditions, nor shall any course of performance, course of dealing, or usage of trade operate as a modification or waiver of these Terms and Conditions. Any order to purchase products or receive services shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire thirty (30) days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance. Fulfillment by Seller of any order by Buyer shall not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions.

1. Definitions. "Buyer" means the entity to which Seller is providing Products or Services under the Contract.
"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products and/or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement, but expressly excluding any additional or different terms proposed by Buyer in accordance with the Notice provision above. Unless expressly agreed to in writing and signed by Seller, the Terms and Conditions shall take precedence over other documents included in the Contract.
"Contract Price" means the agreed price stated in the Contract for the sale of Products and/or Services, including adjustments (if any) in accordance with the Contract.
"Products" means the equipment, parts, materials, supplies, and other goods Seller has agreed to supply to Buyer under the Contract.
"Seller" means the entity providing Products or performing Services under the Contract.
"Services" means the services Seller has agreed to perform for Buyer under the Contract.
"Terms and Conditions" means these "General Terms and Conditions for the Sale of Products or Services," together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

2. Delivery and Shipping Terms. (a) Seller shall deliver Products to Buyer FCA Seller's facility or warehouse (Incoterms 2020). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus handling. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type, or price to those itemized in the shipping invoice or documentation, Buyer shall notify Seller within ten (10) days after receipt. (b) For shipments that do not involve export, or for export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Buyer upon delivery in accordance with Section 2(a). For shipments from the U.S. to another country, title shall pass to Buyer immediately after each item departs from the territorial land, seas, and overlying airspace of the U.S. The 1982 United Nations Convention of the Law of the Sea shall apply to determine the U.S. territorial seas. For all other shipments, title to Products shall pass to Buyer the earlier of (i) the port of export immediately after Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas, and overlying airspace of the sending country. When Buyer arranges the export shipment, Buyer will provide Seller evidence of exportation acceptable to the relevant tax and custom authorities. (c) Risk of loss shall pass to Buyer upon delivery pursuant to Section 2(a), except that for export shipments from the U.S., risk of loss shall transfer to Buyer upon title passage. (d) If any Products to be delivered under this Contract cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer, Seller may ship the Products to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) a fee of two percent (2%) of the value of the Products will be charged to Buyer; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery. (e) Any liability of Seller for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

3. Cancellation of Purchase Order. Buyer may cancel its order only with the prior written consent of Seller, which Seller may withhold in its sole discretion. All cancelations will be subject to payment to Seller of reasonable cancelation charges.

4. Inspection and Acceptance of Products Buyer shall inspect all Products within five (5) days of the transfer of title to Buyer in accordance with Article 2. Buyer shall be deemed to have accepted all Products unless Buyer notifies Seller in writing during such five (5) day period that any Products do not conform to the applicable Seller specifications. Buyer may return Products (including any nonconforming Products) only at its sole cost and only with the prior written authorization of Seller, subject to a restocking fee as agreed by the parties. At Seller's sole option, Seller will repair or replace any nonconforming Products or refund to Buyer the purchase price for such Products, in any case as Buyer's sole remedy for such nonconforming Products. Notwithstanding the foregoing, no returns of special, custom, or made-to-order Products will be permitted. No returns will be permitted, in any case, more than sixty (60) days after delivery.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer pursuant to the terms of Article 2. As collateral security for the full payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under (i) if in the U.S., the Pennsylvania Uniform Commercial Code or (ii) if in Canada, the Personal Property Security Act (Canada). Seller shall have the right to file any and all documents and take any action it deems necessary to fully establish protection of its security interest in the Products; however, the failure of Seller to file any such document shall not in any way act as a waiver of Seller's right to such security interest.

6. Assembly/Installation Work. In the event Buyer desires for Seller to perform any assembly/installation work, said work will be performed pursuant to a separate agreement to be entered into in writing by both Buyer and Seller detailing the terms of said work.

7. Set-up Charges. A non-recurring set-up charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns acquired to manufacture items sold subsequent to this Contract. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges therefore by Buyer unless otherwise agreed to in writing by the parties. Payment of charges in connection with tooling or apparatus does not constitute ownership of same. All charges in connection with this Article will be imposed only with the knowledge and acceptance of Buyer. Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property at its sole discretion at any time.

8. Contract Price. (a) Buyer shall purchase the Products and, if applicable, shall pay for the Services provided, from Seller at the Contract Price. Prices are subject to change without prior notice and Seller shall thereafter notify Buyer of any price increases. In the event of a price increase, Buyer may cancel any undelivered portion of any order by written notice to Seller, provided such notice is received by Seller not more than ten (10) days after Buyer's receipt of Seller's notice of a price increase. Upon cancellation, Buyer shall pay Seller: (1) the Contract Price for all Products which have been completed or are in the process of completion, (2) components or goods secured by Seller from outside sources for the performance of the Contract, and (3) special tooling and equipment procured for the performance of the Contract. All prices shall be confidential, and Buyer shall not disclose such prices to any party in accordance with Article 20. (b) All Contract Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. (c) The Contract Price excludes shipping and handling charges, which are the obligation of Buyer and will be added to the invoice if prepaid by Seller.

9. Payment Terms. (a) Terms of payment are net cash thirty (30) days following the date of invoice in U.S. currency, or by letter of credit paid upon submittal of shipping documents, all payable in the currency specified in the invoice.
(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and court costs. In addition to all other remedies available under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights hereunder),

Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof. (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. (d) If Buyer disputes any invoice or portion thereof, it shall notify Seller in writing within thirty (30) days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.

10. Disclaimer of Warranty. (a) Seller warrants that all Products manufactured by Seller shall, at the time of sale, comply with applicable Seller specifications. All Products not manufactured by Seller are sold only with the warranties provided by the manufacturer of such Products, if any. Unless expressly set forth in a separate service agreement, Seller makes no warranties with respect to any Services provided by Seller pursuant to this Contract. SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE PRODUCTS OR SERVICES, AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. Seller does not authorize any agent, representative, or personnel to make any other warranties or alter this disclaimer of warranty.
(b) All Products are sold for commercial use only and are not intended for use by consumers. Accordingly, Seller disclaims all warranties to consumers, including such warranties as defined by the Magnuson-Moss Act and/or applicable Canadian Consumer Protection Act. Any inspection services provided by Seller at Buyer's request shall be provided as a customer service only and shall not be deemed to act as a warranty or approval of Buyer's installation, use, or maintenance of the Products, nor shall Seller be liable for failure to detect improper use, installation or maintenance of the Products by Buyer.

11. Limitation of Liability. (a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THOSE SPECIFIC PRODUCT(S) PURCHASED BY BUYER HEREUNDER THAT ARE THE SUBJECT OF THE CLAIM OR, AS TO SERVICES, FOR THE AMOUNTS PAID TO SELLER FOR THE SPECIFIC SERVICES PERFORMED BY SELLER HEREUNDER THAT ARE THE SUBJECT OF THE CLAIM. (c) This limitation of liability is a material basis for the parties' bargain and reflects the bargained-for allocation of risks between Seller and Buyer, without which Seller would not have agreed to provide the Products or Services at the price charged.

12. Indemnification. Buyer shall indemnify, defend and hold harmless Seller from and against all damages, losses, expenses and costs (including reasonable attorneys' fees and costs and expenses related to the enforcement by Seller of any such indemnity obligation) related to or arising from claims brought by a third party, on account of personal injury or damage to tangible property in connection with Buyer's obligations under this Contract and/or Buyer's handling, use, or sale of the Products.

13. Adequate Assurance. Seller reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Seller in the event of: (i) Buyer's insolvency, (ii) Buyer's filing of a voluntary petition in bankruptcy, (iii) the appointment of a receiver or trustee for Buyer or (iv) the execution by Buyer of an assignment for the benefit of creditors. Seller reserves its right to suspend its performance until payment or adequate assurance of performance is received and also reserves its right to cancel Buyer's credit at any time for any reason.

14. Intellectual Property Rights. (a) Seller is unable to guarantee that no patent rights, copyrights, trademarks, (user) rights, trade models or any other rights of third parties are infringed by goods received from suppliers and/or buyers via Seller or

any third parties, including but not limited to goods, models, and drawings for the manufacture and/or delivery of certain Products. (b) In the absence of written agreement to the contrary, Seller holds the copyrights and all rights of (industrial) property to the offers it has made and the designs, images, drawings (test) models, software, templates, and other goods that it has issued. (c) Buyer agrees that no express or implied licenses or other rights relating to any intellectual property of Seller, or the Products are provided to Buyer hereunder. Title in all intellectual property of Seller and the Products (including intellectual property licensed to Seller) shall remain at all times in Seller.

15. Compliance with Laws. (a) Seller shall take reasonable steps to ensure the Products are in conformity with applicable laws and regulations; however, Buyer acknowledges that Products may be used in various jurisdictions for various applications subject to disparate regulations and therefore that Seller cannot warrant compliance with all applicable laws and regulations. Seller disclaims any representation or warranty that the Products conform to federal, state or local laws, regulations, ordinances, codes or standards, except as expressly set forth by Seller in writing. Buyer shall comply with all applicable laws, regulations and ordinances. Seller may terminate this Contract if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products. (b) The Products, items, technology, or software covered by a quotation/order may be subject to various laws including U.S. and foreign export controls. Seller is committed to complying with all relevant export laws. If these items are being exported from the United States, the following statement applies, “These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.” Buyer is responsible for applying for export licenses, if required, based on end user or country of ultimate destination. Seller’s obligations are conditioned upon Buyer’s compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller’s invoice. Buyer agrees to indemnify, defend, and hold Seller harmless from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable export laws and regulations, including reasonable attorneys’ fees and costs and expenses related to the enforcement by Seller of any such indemnification obligation. (c) Buyer represents and warrants that it is not subject to any trade sanctions imposed by the U.S., EU and/or UN and that it is in compliance and shall comply with all applicable laws and regulations relating to trade restrictions and/or export controls (including trade sanctions imposed by the US, EU and/or UN) with respect to Products sold hereunder, and shall provide evidence of compliance with the foregoing as Seller may reasonably request from time to time. (d) Buyer represents and warrants that it is in compliance and shall comply with all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, and has not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any government official for the purpose of influencing any act or decision of such government official. Buyer is not on, nor is Buyer associated with any organization that is on, any list of entities maintained by the United States Government that identifies parties to which the sale of goods or services is restricted or prohibited. (e) Buyer and Seller may be subject to the European Union’s General Data Protection Regulation (EU) 2016/679 (the “GDPR”). Buyer and Seller shall comply with all applicable provisions of the GDPR. In performing this Agreement, it may be necessary for, and Seller has a “legitimate interest” in, “processing” Buyer’s “personal data”, as those terms are defined in the GDPR.

16. Nuclear and Hazardous Activities. Unless specifically agreed to in writing by an authorized officer of Seller, Products shall not be used in connection with any nuclear facility or any other application or hazardous activity where the failure of a single component could cause substantial harm to persons or property. If so used, Buyer agrees to indemnify, defend, and hold Seller harmless from any and all causes of action, claims, costs, liabilities, and losses that arise from or relate to the use of Products in such facilities, applications, or activities, including attorneys’ fees and costs and expenses related to the enforcement by Seller of any such indemnification obligation.

17. Termination. In addition to any remedies that may be provided under these Terms and Conditions, Seller may terminate this Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Contract and such failure continues for thirty (30) days after Buyer’s receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commended against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18. Amendment and Modification. These Terms and Conditions may only be amended or modified in a writing which specifically states that it amends these Terms and Conditions and is signed by an authorized representative of each party.

19. Waiver. No waiver by Seller of any of the provisions of this Contract is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20. Confidential Information. All non-public, confidential or proprietary information of Seller or provided by Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Article. This Article does not apply to information that is: (a) in the public domain through no fault of Buyer; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party that had a lawful right to disclose it.

21. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, or Seller's suppliers, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, or the worsening, escalation or expansion of any of the foregoing.

22. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this Article is null and void and shall not relieve Buyer of any of its obligations under this Contract.

23. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. Governing Law. All matters arising out of or relating to this Contract are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any other jurisdiction.

25. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Contract shall be commenced in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania, in each case located in Allegheny County. If Buyer's pertinent place of business is outside the U.S. and Canada, the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The number of arbitrators shall be one, selected in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. $5,000,000, in which event it shall be three arbitrators. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) shall be final and binding upon both parties, and neither

party shall seek recourse to a law court or other authority to appeal for revisions of the decision. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding arising out of these Terms and Conditions.

26. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), electronic transmission (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Contract, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Article.

27. Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms and Conditions which by their nature should apply beyond the Term of the Contract will remain in force after any termination or expiration of these Terms and Conditions including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Indemnification, Submission to Jurisdiction, and Survival.

29. Complete Agreement. This Contract constitutes the entire agreement between Buyer and Seller relating to the subject matter hereof, and supersedes all prior and contemporaneous discussions, understandings, and agreements related to the subject matter hereof.

30. Language. The parties have expressly requested that this Contract and all related documents be drafted in the English language. Les parties ont expressément exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

Related Documentation

SOP-10 Contract Review and Order Management
WI-10-01 Contract Review