

# Terms and Conditions for Supply and Services NAFTA (August 2019)

## E.1 Definitions

**Supplier:** name and address as listed in the quotation.

**Customer:** name and address as listed in the quotation.

**Equipment:** the equipment located on the Customer's premises that is subject to the Services.

**Products:** the products that are manufactured sold or otherwise provided by the Supplier.

**Services:** the machine tool services to be provided by the Supplier as more specifically set forth in the Statement of Work attached hereto.

**Statement of Work:** the formal document that captures and defines the work, products and/or services to be provided by the Supplier such as technical specification, technical proposal, technical quotation etc.

## E.2 General

The Supplier shall provide the Products and/or Services for the Customer and the Customer shall accept such Products and/or Services, each in accordance with these Terms and Conditions and Statement of Work. No binding contract of purchase/sale shall be affected until the Customer's order is accepted, in whole or in part, by the Supplier. These Terms and Conditions supersede all other terms, conditions, acknowledgments, or other provisions, whether express or implied, oral or in writing (including all previously distributed the Supplier's price books). Any provisions contained in any acknowledgement or other documents issued by the Customer are expressly rejected and shall be of no force or effect. In the event the Statement of Work and/or these Terms and Conditions conflict with the terms in any acknowledgement or other document issued by the Customer, the Statement of Work and these Terms and Conditions shall control.

## E.3 Price and Payment

- a) The price for Products shall be as stated in the Suppliers quotation and acknowledgement and shall be subject to these Terms and Conditions. The price for the Services shall be as stated in the Statement of Work, the service rate schedule and acknowledgement, subject to these Terms and Conditions. Unless otherwise stated in the Statement of Work.
- b) Prices exclude all duties, taxes or other governmental charges, which now are, or hereafter may be, imposed upon the sale or use of the Products. All such duties, taxes or other charges required to be paid by the Supplier shall be for the Customer's account. Any exemption claimed from the application of such duties, taxes or other charges should be plainly designated on the face of orders placed with the Supplier and accompanied by exemption certificates where required.
- c) Orders will be entered with prices in effect at the time of receipt of the purchase order and are subject to the applicable scrap metal surcharge, if any, in effect at the time of receipt of such order. All prices are subject to change without notice, and quoted prices are firm for thirty (30) days unless the Customer's specifications are changed after prices are quoted by the Supplier, in which event the Customer agrees that the Supplier may adjust the price accordingly. The Customer further acknowledges that all prices for Products are subject to adjustment on account of changes in specifications, quantities, shipment arrangements and other terms and conditions which are not part of the Supplier's original pricing as set forth in the Statement of Work.
- d) Unless otherwise agreed to in writing by an authorized representative of the Supplier, all prices quoted are net, EXW (INCOTERMS 2010). All prices and terms offered by the Supplier are and shall remain confidential. All applicable orders are subject to surcharges in affect at time of shipment.
- e) Payment terms shall be net thirty (30) days.
- f) Retainage may only be applied on the final invoice, not on prior progress payment invoices.

- g) The Customer shall have no right of setoff or to retain payment on account of any claim that it may have against the Supplier or its affiliates. For each thirty (30) days, or part thereof, that an invoice remains overdue, the Customer agrees to pay interest charged on the unpaid balance at a rate of one and one-half percent (1.5 %) per month (but not in excess of the maximum rate allowed by law).
- h) If the Customer fails to make any payment when due, in addition to all other sums payable hereunder, the Customer agrees to pay to the Supplier the reasonable costs and expenses incurred by the Supplier in connection with all actions taken to enforce collection or preserve and protect the Supplier's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees and court costs and other expenses.
- i) Partial shipments may be made at the Supplier's option. If all items are not shipped on the same date, pro rata invoices shall be rendered. If engineering design is part of the order, monthly progress payments shall be required.
- j) If the Customer is responsible for any delay in shipment exceeding one business day the Customer agrees that: (1) the date of completion of goods may be treated by the Supplier as the first day of the payment term calculation and (2) completed goods shall be held at the Customer's sole risk and expense and the Supplier shall have the right to invoice the Customer for reasonable storage and insurance expenses.

## E.4 Sale and Delivery

If freight is to be prepaid by the Supplier, actual freight charges will be added to amount due. The Supplier reserves the right to stop delivery of any Product in transit and to withhold shipments in whole or in part if the Customer fails to make any payment to the Supplier when due or otherwise fails to perform its obligations hereunder or under any other outstanding payment obligations of the Customer to the Supplier, whether related to the Statement of Work or otherwise. SHIPMENT, DELIVERY AND INSTALLATION DATES ARE ESTIMATED DATES ONLY and, unless otherwise specified, are calculated from the later of the date of Supplier's receipt from the Customer of (a) complete technical data and approved drawings or (b) any down payment required by the Supplier. The Supplier may deliver any or all of the order in advance of the estimated delivery date. THE DATE OF DELIVERY IS THE DATE OF DELIVERY BY THE SUPPLIER TO THE INITIAL CARRIER. DELIVERY TO THE INITIAL CARRIER SHALL CONSTITUTE DELIVERY TO THE CUSTOMER, AND AS OF SUCH DELIVERY, RISK OF LOSS IS TRANSFERRED TO THE CUSTOMER. CLAIMS FOR ERRORS OR SHORTAGES IN SHIPMENTS MUST BE SUBMITTED TO THE SUPPLIER, WITH ADEQUATE DOCUMENTATION AND SUPPORT, WITHIN THIRTY (30) DAYS AFTER RECEIPT. ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON THE CUSTOMER AND ALL CLAIMS FOR LOSS, DAMAGE IN TRANSIT, OR NON-DELIVERY SHALL BE MADE BY THE CUSTOMER AGAINST THE CARRIER. In estimating dates of delivery and installation, the Supplier has not made any allowance and shall not be liable directly or indirectly, for delays of carriers or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining materials or manufacturing facilities, computer failures, system downtimes, power outages, viruses, "hacking" or other intrusion by unauthorized third parties, acts of government, bad weather, or any causes beyond the Supplier's reasonable control or causes designated Acts of God or force majeure by any court of law, and, when such delays arise, the estimated delivery date shall be extended accordingly. THE SUPPLIER SHALL NOT BE LIABLE FOR ANY DAMAGES OR PENALTIES WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, RESULTING FROM ITS FAILURE TO PERFORM OR DELAY IN PERFORMING.

## E.5 Title

Notwithstanding the trade terms indicated above and subject to the Supplier's right to stop delivery of any Product in transit, title to the goods will pass to the Customer only after the Customer has paid the Supplier full price of the Products, and provided, however, any software incorporated within or forming part of the Equipment shall

at all times remain with the Supplier or the licensor(s) thereof, as the case may be.

#### **E.6 On-Site Services**

Unless otherwise specified or included in the Statement of Work, all on-site Services are provided to the Customer on a time and materials basis (plus travel and living expenses), at the Supplier's then prevailing hourly rates as set forth on the Statement of Work.

#### **E.7 Permits, Licenses and Fees**

The Customer shall be responsible at its expense for all environmental permits, applications, regulatory approvals, safety compliance and other permits or licenses that may be required for the Services and the installation and/or operation of the Products and the Equipment.

#### **E.8 Changes, Orders in Error**

Any changes requested by the Customer after signing the Statement of Work will be separately designed and priced by the Supplier. No change will be made to the Statement of Work without receipt of a written change order accepted in writing by the Supplier. If the Customer desires to return Products ordered in error, the Customer must make such request in writing to the authorized the Supplier representative within ten (10) days of delivery. If the Supplier chooses to accept the return, the Supplier will advise the Customer in writing of the conditions of the return, including, but not limited to, a restocking fee not to exceed ten (10) percent of the invoice value of the Products being returned, freight charges to be prepaid by the Customer, and a stipulation that such items must be in new condition. Credit to the Customer is dependent upon receipt of the Products, confirmation of count, and final inspection by the Supplier.

#### **E.9 Returns**

All returns, regardless of the reason, must be accompanied by the current Return Material Authorization (RMA) paperwork, as provided by the Supplier and completed by the Customer.

#### **E.10 Acceleration**

The Customer agrees that the Supplier, at its discretion, may accelerate and make due and payable all remaining payments if the Customer shall fail to perform any of its obligations hereunder or under the Statement of Work, including without limitation the Customer's failure to pay any amount when due, subject to any applicable cure periods provided for herein.

#### **E.11 Cancellation**

In the event that the Customer cancels all or a portion of the Services required by the Statement of Work, the Customer will be obligated to pay the Supplier's cancellation charges which shall be equal to the Supplier's direct costs of goods sold and all out of pocket expenses related to the Services, plus direct labor costs and fixed charges relating to the design and manufacture of the Products, plus ten percent (10%) of the total final price as liquidated damages.

#### **E.12 Limited Warranties**

a) Unless otherwise provided in writing by an authorized representative of the Supplier, all Products manufactured by the Supplier and sold hereunder are warranted to conform to the Supplier's published specifications (if applicable) and shall be free from defects in workmanship and material, under normal and proper use and service. The foregoing warranty shall run to the original the Customer only for a period of twelve (12) months from date of shipment, in any case, not to exceed eighteen (18) months from date of readiness for shipment at The Supplier's facility (the "Warranty Period"). Corrosion or other chemical action is specifically excluded as a defect covered hereunder. Services provided for hereunder shall be performed in a workmanlike manner, and in accordance with industry standards. The Supplier agrees during the Warranty Period specified above, (a) to repair or replace, at the Supplier's option, defective Products so as to cause the same to comply materially with the agreed specifications, and (b) to provide corrective Services so as to cause such Services to be performed in accordance with the terms hereof; provided that the Customer shall (x) promptly notify The Supplier in writing upon the dis-

covery of any defect, which notice shall provide precise details of the warranty claim, and (y) after The Supplier's review, The Supplier will either provide the Customer with a RMA or dispatch personnel to the Customer's facility. Then, if applicable, the Customer may return the defective Products to the Supplier with the costs prepaid by the Customer. Replacement parts may be new or refurbished, at the election of the Supplier. All replaced parts become the property of the Supplier. Shipment to the Customer of repaired or replacement Products shall be made in accordance with the delivery provisions of these Terms and Conditions, freight, duties and taxes charged to the Customer. If applicable, the Supplier will provide corrective Services at no labor cost to the Customer. Travel and living expenses, however, are the Customer's responsibility and the Customer shall pay all travel and living expenses or reimburse the Supplier in accordance with the service rate schedule.

- b) Notwithstanding the foregoing, Products supplied by the Supplier that are obtained by the Supplier from an original manufacturer or third party supplier are not warranted by the Supplier, but the Supplier agrees to assign to the Customer any warranty rights in such Product that the Supplier may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.
- c) In no event shall the Supplier have any obligation to make repairs, replacements or corrections required, in whole or in part, as a result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by the Customer, (iv) use of Products in a manner for which they were not designed, (v) external causes such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of Products in combination with equipment or software not supplied by the Supplier. If the Supplier determines that Products for which the Customer has requested warranty services are not covered by the warranty hereunder, the Customer shall pay or reimburse the Supplier for all costs of investigating and responding to such request at the Supplier's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN THE SUPPLIER WITHOUT THE SUPPLIER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY THE SUPPLIER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.
- d) THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO PROVIDE CORRECTIVE SERVICES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CUSTOMER IN THE EVENT OF A DEFECTIVE PRODUCT OR SERVICES. EXCEPT AS EXPRESSLY PROVIDED IN THIS LIMITED WARRANTY, THE SUPPLIER HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE SUPPLIER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT. ANY ADVICE OR ASSISTANCE FURNISHED BY THE SUPPLIER IN RELATION TO THE PRODUCTS PROVIDED FOR HEREUNDER SHALL NOT GIVE RISE TO ANY WARRANTY OR GUARANTEE OF ANY KIND, AND SHALL NOT CONSTITUTE A WAIVER BY THE SUPPLIER OF ANY PROVISIONS OF THE STATEMENT OF WORK OR THESE TERMS AND CONDITIONS, UNLESS OTHERWISE AGREED TO IN WRITING.

#### **E. 13 Shortage, Loss, Damages and Non-Conformity**

It is the Customer's responsibility to notify the freight carrier of any shortages, losses, or damage. This notification must be noted on the Bill of Lading at time of delivery. Shortage, loss, or damage claims will be disallowed if not reported within fifteen (15) calendar days of the date of readiness for shipment and the responsibility for repairs/replacement will be on the Customer. Without expanding the

Limited Warranty set forth in Section 12 hereof, the Customer shall have (i) thirty (30) days after delivery to its facility to inspect and test any Products provided hereunder for any apparent non-conformity, and (ii) fifteen (15) days after the performance of any Services to inspect such Services for any apparent non-conformity. Failure to so inspect and test, or to give notice to the Supplier of any claim during the respective periods above, shall constitute an irrevocable acceptance of the Products and/or Services, and a waiver of any defect or warranty claim that could have been discovered by inspecting and testing. The Customer shall have the right to reject or refuse acceptance of any non-conforming Products or Services during the respective periods.

#### **E. 14 Limitation of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TOTAL LIABILITY OF THE SUPPLIER UNDER THE STATEMENT OF WORK AND THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE THERETOFORE PAID BY THE CUSTOMER TO THE SUPPLIER WITH RESPECT TO THE PRODUCT(S) AND/OR SERVICES GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL THE SUPPLIER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER THE SUPPLIER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. ALL CLAIMS OF WHATSOEVER NATURE SHALL BE DEEMED WAIVED UNLESS MADE IN WRITING WITHIN NINETY (90) DAYS OF THE OCCURRENCE GIVING RISE TO THE CLAIM. MOREOVER, ANY FAILURE OF THE CUSTOMER TO NOTIFY THE SUPPLIER OF UNSATISFACTORY OPERATION OR ANY IMPROPER OR UNAUTHORIZED INSTALLATION, MAINTENANCE, USE, REPAIR, ADJUSTMENT, OR ATTEMPTS TO OPERATE THE EQUIPMENT OR PRODUCTS OUTSIDE THE DESIGN LIMITS SHALL RELIEVE THE SUPPLIER OF ANY FURTHER RESPONSIBILITIES HEREUNDER. NOTHING HEREIN IS INTENDED TO EXPAND UPON THE SOLE AND EXCLUSIVE REMEDY AVAILABLE FOR DEFECTIVE PRODUCTS OR SERVICES AS SET FORTH IN SECTION 12 HEREOF.

#### **E. 15 Inspection and Tests**

Inspection of Products in the Supplier's plant by or on behalf of the Customer shall be permitted provided that such inspection does not interfere with production and the details of the proposed inspection are submitted to the Supplier in writing at least ten (10) days in advance. Products and any components thereof shall be tested in accordance with the Supplier's standard quality assurance procedures. If acceptable to the Supplier, additional tests requested by the Customer may be conducted at the Customer's risk and expense.

#### **E. 16 Special Jigs, Fixtures and Patterns**

Unless supplied by the Customer, any jigs, fixtures, patterns, design engineering, and the like which are used for the preparation of the Customer's order requirements shall remain the Supplier's property without credit to the Customer. The Supplier shall have the right to discard and scrap such items after they have been inactive for one (1) year without credit to the Customer provided that if the Customer supplied or paid for any of the materials associated with the item, the Customer shall be given ninety (90) days' notice and the opportunity to buy such materials before discarding or scrapping.

#### **E. 17 Default by the Customer**

Time is of the essence for the Customer's obligations. The Customer shall be conclusively deemed to be in default hereunder if, at any time or from time to time: (i) the Customer fails to pay when due, whether by acceleration or otherwise, any amount now or hereafter owing to the Supplier; (ii) the Customer fails to duly observe or perform any of the obligations of the Customer, or breaches any of the covenants, terms or agreements herein or in any other agreement made between the Supplier and the Customer; (iii) the Customer commits or threatens to commit an act of bankruptcy or ceases or threatens to cease to carry on business as a going concern, or a proceeding in bankruptcy, receivership, insolvency, or reorganiza-

tion is instituted by or against the Customer or any of the Customer's property, or any compromise or arrangement between the Customer or any of the Customer's creditors is proposed, or execution or other process of any court becomes enforceable against the Customer or all or part of the Customer's property, or distress or similar process is levied upon all or part of the Customer's property; (iv) if any information provided at any time by the Customer to the Supplier is false or misleading; or (v) the Customer fails or refuses to accept delivery of the Services or Products in accordance with the Statement of Work or these Terms and Conditions.

#### **E. 18 Remedies of the Supplier**

Subject to any applicable statutory provisions, if the Customer is in default hereunder then, in addition to any other right or remedy The Supplier may have (including, without limitation, those provided to a secured party under any applicable personal property security legislation) the Supplier may, with or without legal process, notice or demand, and without any liability whatsoever to the Supplier: (i) declare all amounts owing by the Customer hereunder to be immediately due and payable; (ii) enter upon the property wherever the Products may be, take constructive possession or actual possession of, and remove, such Products selected by the Supplier as shall in its reasonable judgment have a value sufficient to satisfy the Customer's indebtedness and obligations; (iii) if any taxes, rates, levies, assessments or other charges become payable in respect of, or any mortgage, charge, lien, encumbrance or security interest is acquired against, the Products, make such payments and take such action as is necessary in the Supplier's reasonable judgment to release, discharge, subordinate or postpone same, in whole or in part; (iv) dispose of the Products by means of public sale, private sale, lease or otherwise; (v) make any commercially reasonable repairs to the Products and charge the same to the Customer's account; (vi) deduct its expenses (including legal fees and costs on a full indemnity basis) incurred in enforcing and defending its rights and in repossessing, holding, repairing and disposing of the Products from the proceeds of disposition; or (vii) enforce payment of any deficiency which exists after all amounts owing by the Customer are deducted from the net proceeds of disposition. The Supplier's rights and remedies are cumulative and the Supplier may exercise or enforce any one or more of them successively or concurrently.

#### **E. 19 The Customer's Covenants**

Until all amounts payable by the Customer hereunder are paid in full, the Customer covenants and agrees that, except as expressly consented to or agreed in writing by the Supplier, the Customer shall: (i) keep the Products free from all mortgages, charges, liens, encumbrances and security interests except for such in favor of the Supplier; (ii) keep the Products in good working order, condition and repair; (iii) not keep or use the Products in violation of this agreement, any insurance policy or applicable law; (iv) keep accurate and complete records concerning the Products and the Equipment including maintenance logs; (v) permit the Supplier to access the Products and the Equipment; (vi) not sell, lease or transfer the Products or any interest therein; (vii) notify the Supplier of any change in the Customer's name or address; (viii) for so long as amounts shall remain owing by the Customer to the Supplier, all proceeds from any sales or disposition of the Products realized by the Customer or an agent of the Customer, and all other proceeds received in respect of the Products, shall be held in trust by the Customer or such agent for the Supplier and shall on demand be forthwith paid to the Supplier.

#### **E. 20 Force Majeure**

Neither party shall be liable to the other party for failure to perform any of its obligations hereunder (except for payment of money) due to an Act of God, accident, fire, flood, riot, war, sabotage, explosion, strike or labor disturbance (however neither party shall be obligated to settle any strike or similar dispute even if able to do so), national defense requirements, governmental law, ordinance, rule or regulations, whether valid or invalid, extraordinary failure of equipment or apparatus, inability to obtain electricity or other type of energy, raw material shortage, equipment or transportation shortage or unavailability, or any other similar or different contingency beyond the party's reasonable control which would make performance impractical whether or not the contingency is of the same class as those enumerated above (the foregoing conditions and events herein referred to individually and collectively as "Force Majeure"). The party invoking Force Majeure shall provide the other party with an estimate as to when Force Majeure condition will end. The period for perfor-

mance shall be extended by the duration of any Force Majeure period, except that if such Force Majeure shall continue for a period of greater than one-hundred twenty (120) days, the party seeking performance may cancel its obligations hereunder.

#### **E. 21 Confidentiality**

Other than in the performance of the terms of the Statement of Work and these Terms and Conditions, neither party or its agents, employees, or subcontractors shall use or disclose to any person or entity any confidential information (identified as such by the disclosing party) of the other party (whether written, oral, electronic or other form) that is obtained or otherwise prepared or discovered either in the performance of its obligations hereunder, through access to the other party's assets, property, systems of whatever kind, or while on the other party's premises. The Customer agrees that all pricing, discounts, design drawings and technical information that the Supplier provides to the Customer are the confidential and proprietary information of the Supplier, whether or not otherwise identified as such. Each party warrants and represents that each employee, agent or subcontractor who performs work in connection herewith has been informed of the obligations contained herein and has agreed to be bound by them. The obligations under this Section continue perpetually and survive the termination or expiration of any underlying agreement between the parties. The provisions of this article relating to use and disclosure shall not apply to any information that is (i) rightfully known by a party prior to its disclosure; (ii) rightfully obtained by a party from any third party; (iii) becomes available to the public without restrictions; or (iv) disclosed by a party with prior written approval of the other party.

#### **E. 22 Miscellaneous**

- a) The Customer may not delegate any duties nor assign any rights or claims hereunder without the Supplier's prior written consent, and any such attempted delegation or assignment shall be void.
- b) In the event that one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain.
- c) Either party's failure to enforce, or the waiver of a breach of, any provision contained herein shall not constitute a waiver of any other or future breach of such provision.
- d) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or in the Statement of Work, or at such other address as either party may from time to time designate to the other.
- e) The Customer agrees that it will not use the Supplier name(s), logo(s) or mark(s) in any public communication or press release, or for any other marketing or promotional purpose, without the Supplier's prior written consent.
- f) Unless otherwise specifically agreed to in writing signed by an authorized representative of the Supplier neither the Customer nor any representative of the Customer, nor any other person acting for on behalf of the Customer, shall have any right to examine or audit the Supplier's accounts, books or records, or be entitled to, or have control over, any engineering or production prints, drawings or technical data which the Supplier, in the Supplier's sole discretion, may consider in whole or in part proprietary to the Supplier.

#### **E. 23 Entire Agreement**

The Statement of Work and these Terms and Conditions and any attachments referenced therein, constitute, with respect to the subject matter hereof, the complete and exclusive statement of the contract between the Supplier and the Customer. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless made in writing and signed by the Supplier and the Customer. The Supplier's failure to object to terms contained in any subsequent communication from the Customer (whether in a purchase order or other communication) will not be a waiver or modification of the terms set forth herein.

#### **E. 24 Applicable Law and Jurisdiction**

The Statement of Work and these Terms and Conditions shall be deemed an agreement made under the laws of the Commonwealth of Pennsylvania, and for all purposes shall be construed and enforced in accordance with and governed by the internal laws of the Commonwealth of Pennsylvania without reference to its conflicts of laws provisions notwithstanding delivery by the Supplier in a state or country other than Pennsylvania USA. The Customer hereby knowingly and for due consideration submits to the jurisdiction of the United States District Court for the Western District of Pennsylvania in Pittsburgh or the Court of Common Pleas of Allegheny County, Pennsylvania, and hereby waives all rights to contest the venue or jurisdiction of such courts. Any suit or judicial proceeding brought by the Customer for breach of contract, for any alleged tortious conduct or any claim whatsoever brought in law or equity must be filed within one year from the date the cause of action accrued or be forever barred. The UN Convention on Contracts for the International Sale of Goods shall not apply hereto and the parties hereby waive its application in all respects.