

## TERMS AND CONDITIONS OF PURCHASE

### **1. Acceptance and Integration**

Acceptance of the Purchase Order whether by signing and returning the bottom portion of the face of the Purchase Order, by other writing, by delivery of the goods or by any other conduct which recognizes the existence of a contract, constitutes acceptance by Seller of all of the terms and conditions set forth in the Purchase Order, notwithstanding any statements to the contrary in any other writing issued by Seller, including but not limited to any proposal, quotation, confirmation, order acknowledgment, invoice or shipping document relating to this Purchase Order or to the goods and/or services sold by Seller to Buyer. The Purchase Order and these Terms and Conditions of Purchase (referred to collectively herein as the "agreement") are the final, complete and exclusive statement of the terms of the agreement between Buyer and Seller. If this agreement is a government sub-contract, Buyer may have attached additional provisions which are incorporated herein by reference. There are no other representations, promises or obligations of the Buyer other than as provided in this Purchase Order. Pursuant to UCC § 2-207 (2)(c), this Purchase Order is a notification to Seller of Buyer's objection to any additional or different terms and conditions of sale stated in any document of Seller, including but not limited to any proposal, quotation, confirmation, order acknowledgment, invoice or shipping document. Buyer's acceptance of or payment for any goods delivered under this agreement will not constitute assent to any such terms.

### **2. Modification; Severability; Waiver**

Except as provided in Paragraph 22, below, this agreement may be modified only in a writing signed by Buyer subsequent to the date of this Purchase Order. Any provision of this agreement which is prohibited by, or unlawful or unenforceable under, any applicable law of any jurisdiction will be ineffective as to such jurisdiction without affecting any other provision in this agreement. To the fullest extent, however, that the provisions of such applicable law may be waived, they are hereby waived, to the end that this agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms. No waiver will be effective against Buyer unless made in a writing signed by the Buyer. No waiver of any right or remedy in respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy in respect of such an occurrence or event on any other occasion.

### **3. Order Number and Documentation**

Seller will place Buyer's Order Number and the destination of the goods (as specified in the Purchase Order) on all packing slips, bills of lading, packages and invoices. Seller will attach invoices to original bills of lading or express receipts, properly signed by the carrier's representative, and mail the documents to Buyer not later than the day after shipment, to the attention of Buyer's Accounting Department: Sandpoint\_AccountsPayable@daher.com. Seller will place packing slips in each package marked: "Attention Receiving Department".

### **4. Identification**

Future goods to be delivered will be identified to this agreement, under UCC § 2-501, as soon as they come into existence. At the request of the Buyer, Supplier will provide an appropriate certificate stating the country of manufacture of the Supply.

### **5. Fabrication and Processing**

Fabrication and processing of the goods are governed by the shipment schedule or delivery date(s) if there is no shipment schedule, as specified on the Purchase Order. Seller is authorized to fabricate and process only as many of the goods covered by this agreement as are necessary to meet the shipment schedule (or delivery date(s) if there is no shipment schedule). Buyer assumes payment liability only for that fabrication and processing which is necessary to meet the shipment schedule (or delivery date(s) if there is no shipment schedule) but in no case will Buyer assume responsibility for materials fabricated during a period greater than thirty (30) days prior to the delivery date(s) (if there is no shipment schedule) or shipment, unless Buyer's prior approval has been obtained in writing.

### **6. Place of Delivery and Risk of Loss**

Unless otherwise stated, the goods will be delivered F.O.B Destination specified by Buyer in the Purchase Order, freight allowed. Risk of loss of the goods will pass to Buyer when they are accepted by Buyer.

### **7. Installment Deliveries**

Delivery is to be made in a single lot unless more than one delivery or shipment date is shown on the face of this Purchase Order. If installment deliveries are authorized or required by Buyer, late delivery or the delivery of nonconforming goods in any installment that will substantially impair the value of this agreement as a whole will constitute a breach of this agreement as a whole.

### **8. Delivery Before Due Date / Delay in Delivery**

Buyer's production and marketing schedules are established in reliance upon delivery as called for by this agreement. Time is of the essence, and failure to deliver will constitute a breach of this agreement. Seller shall not be entitled to deliver before the due date without Buyer's prior written authorization and will bear all costs related to any unauthorized advance delivery, including return transporting costs. In the event of late delivery or in the case of shipments made prior to the specified delivery date, all damages suffered by Buyer and any transportation or other costs incurred by Buyer due to Seller's failure to adhere to the specified delivery

schedule will be paid by Seller. Seller will be responsible for any extraordinary costs due to late delivery by Seller. In the event of late delivery, Buyer may, immediately and without notice to Seller purchase goods and/or services from a third party instead of from Seller. Any extra cost arising from this replacement order shall be borne by the defaulting Seller. Seller will notify Buyer of any delays and any actual or threatened labor dispute which delays or threatens to delay Seller's timely performance of this agreement. If Seller is unable to perform at the time by reason of strikes, labor difficulties, riot, war, fire or other causes beyond Seller's reasonable control, Buyer may (in addition to any other rights and remedies it has in this agreement and at law or in equity) take delivery of uncompleted goods, in which case Buyer will pay such proportion of the price determined under Paragraph 10, below, as the work completed bears to the total work required by this agreement, and may cancel this agreement without liability for the balance of the ordered goods.

**9. Shipping and Packaging**

Charges for packing, crating, storing, loading or transporting the goods will be paid by Seller unless separately provided for in this agreement. The method of packing, marking, preparing or handling and any loss, breakage or late delivery attributable to improper packing, marking, preparation or handling will be the responsibility of Seller, and Seller must pack, mark, prepare and handle the goods in a manner that will prevent damage or deterioration. If transportation charges are to be paid by the Buyer, Seller will prepare the goods for shipment in the manner specified. Unless Seller has obtained Buyer's written authorization, Seller may not: (a) if there is a shipment schedule, make a shipment prior to its scheduled date; or (b) if there is not a shipment schedule, make a delivery earlier than seven (7) days prior to the delivery date.

**10. Price and Payments**

Without written authorization from Buyer, Buyer will not pay a price higher than the price stated on the face of the Purchase Order or, if no price is stated, a price which is the lower of (a) the price last quoted to Buyer by Seller and (b) the prevailing market price at the time and place of delivery. (The price as determined under this paragraph is hereafter called the "agreement price"). Payment will be due net forty-five (45) days after delivery, inspection and acceptance of the goods or work invoices, whichever is later, except as otherwise stated in the Purchase Order. Buyer has the right to defer payment on authorized advanced deliveries until the time payment would have been due if the deliveries had been made as scheduled. Buyer may withhold any payment to the extent reasonably necessary to protect Buyer: (a) from loss related to defective goods or work; (b) in the event of reasonable doubt or insecurity that Seller can perform its obligations within the time period or in the manner established by this agreement including, without limitations, Seller's indemnification obligations pursuant to Paragraph 20; or (c) any other breach or default by Seller. Buyer's right to withhold payment will be in addition to any other rights or remedies provided by this agreement or applicable law, all of which will be cumulative. In addition to any right to setoff provided by law, Buyer may automatically deduct from payments made to the Supplier any and all sums due or to become due by the Supplier for whatsoever reason.

**11. Inspection**

Notwithstanding any payment, pre-delivery inspection or test, all goods delivered or work performed will be subject to final testing, inspection and acceptance by Buyer after delivery of the goods or completion of the entire work. Final testing and inspection will occur within thirty (30) days after delivery or completion. Inspection will take place at Buyer's premises or at such other place as is specifically designated in this agreement. Buyer may inspect at Seller's premises any goods being manufactured for Buyer, and Seller will provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors without additional cost. No inspection or test, whether before or after delivery of the goods or completion of the work, will be considered to serve as notice to Buyer of any defect in the goods or the work not detected at the time of testing or inspection but subsequently discovered by Buyer, regardless of whether the defect should have been detected at the time of testing or inspection.

**12. Seller's Warranties**

Seller warrants that it has absolute title to and full right to transfer the goods sold under this agreement and that there are no liens, claims, or encumbrances of any kind against the goods. Seller warrants that it has no obligation or commitment, and will not assume any obligation or commitment, that is inconsistent with its obligations under, or the terms and conditions of, this agreement. Seller also warrants that the goods sold under this agreement, and their subsequent sale or use, either alone or in combination according to Seller's specifications or recommendations, will not infringe any domestic or foreign patents, trademarks, copyrights, trade secrets, intellectual property, industrial or proprietary rights ("Intellectual Property") of any third party. Seller also warrants that the goods delivered under this agreement will: (a) be merchantable, as defined by UCC § 2-314; (b) be free from defects in material, workmanship and design; (c) conform without deviation or variation to the requirements of this agreement, including any descriptions, specifications, drawings, data, samples, or any quality insurance requirements such as, but not limited to, AS/EN9100 standards whether provided by Seller or Buyer; (d) fit for the particular purpose for which they are intended to be used by Buyer (of which Seller has been advised unless stated to the contrary in this agreement); and (e) be new and free from any used or reconditioned components. The warranties of the Seller provided in this paragraph are in addition to, rather than exclusive of, any other warranties, whether express, implied in fact or by law, or otherwise created. Seller's warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer, and shall inure to the benefit of, and will be deemed to have been made directly to, Buyer and its Affiliates (as hereinafter defined), their respective Agents (as hereinafter defined) and any other person to whom the warranties

would extend under applicable law. Seller recognizes that any breach of its warranties might result in special, incidental or consequential damages for which it will be responsible.

**13. Rejection**

In addition to any other right provided by this agreement or applicable law, Buyer may reject non-conforming tenders or deliveries and return the goods to Seller at Seller's risk and expense. Seller may not cure any nonconformity unless first agreed to by Buyer in writing.

**14. Compliance with Laws and Regulations – Export Control**

Compliance with Laws and Regulations : Seller will comply with, and the goods or work will conform to, all applicable federal, state and local laws, regulations, rules, orders and ordinances, including but not limited to: (a) the Toxic Substance Control Act of 1976, as amended; (b) the Occupation Safety and Health Act of 1970, as amended, (c) the Consumer Product Safety Act of 1972, as amended, (d) Sections 6, 7, and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219), as amended, (e) with respect to equal opportunity or discrimination in employment, Executive Order No. 11246 of September 24, 1965 and Civil Rights Act of 1964, as amended, and (f) 41 CFR-60-250 and 41 CFR-60-741. All provisions, which under any law, regulation or order, must be included in this agreement are incorporated here by reference. If Seller, with the consent of Buyer, performs services under this agreement through third parties, Seller will require each of such third parties to comply with the provisions of this Paragraph 14.

Export Control : In performing the obligations of this agreement, Supplier will comply with all applicable export, import and sanctions laws, regulations, orders, and authorizations (hereafter referred to as "Export Regulations"), as they may be amended from time to time, applicable to the export (including re-export) or import of goods, software, technology, or technical data ("Items") or services. Supplier shall obtain all export or import authorizations which are required under the Export Regulations to perform its obligations under this agreement. Each party shall reasonably cooperate and exercise reasonable efforts at its own expense to support the other party in obtaining any necessary licenses or authorizations required to perform its obligations under this agreement. Reasonable cooperation shall include providing reasonably necessary documentation, including import, end-user and retransfer certificates.

**15. Buyer's Material**

Seller will assume the risk and will be responsible for any loss or damage to any items (including materials, parts, tools, designs, specifications, drawings, patterns, equipment, dies, models, samples and written matter) belonging to Buyer or delivered to, manufactured or acquired by Seller for Buyer's account. Buyer does not have any obligation to furnish any such items. All such items will be recorded and identified as property of Buyer by Seller and retained by Seller at its premises identified on the face of this Purchase Order, subject to examination by Buyer. The property of Buyer will be maintained in good condition at Seller's expense and kept insured by Seller with loss payable to Buyer. The items will be used by Seller exclusively in the production of the goods required by this agreement and will not be used for production of quantities larger than those specified or in the production, manufacture or design of any product for any other person. Each of the items, including, but not limited to, unused items or any over-left items, will be subject to disposition by Buyer at any and all times and, upon demand or upon the termination or cancellation of this agreement, will be delivered to Buyer at Seller's expense in the condition in which it was received except for (a) reasonable wear and tear and (b) consumption in the normal performance of work under this agreement. In the event of a labor strike at Seller's plant, Buyer may enter Seller's premises and remove Buyer's materials.

**16. Confidentiality**

Seller shall protect and hold in confidence all Confidential Information (as hereinafter defined) and not disclose or use, or cause to be disclosed or used, such Confidential Information to or by any person or in any manner, except by such employees of Seller who have a need to know the Confidential Information to perform Seller's obligations under this agreement. Seller shall utilize best efforts to protect Buyer's Confidential Information. Upon completion of its performance of this agreement, Seller will promptly return to Buyer all Confidential Information then in Seller's possession or control. Seller shall obtain no rights to use any of the Confidential Information obtained by Seller except as expressly provided in this agreement, whether by reason of Seller's use or receipt of such Confidential Information or otherwise. For the purposes of the agreement, "Confidential Information" shall mean any and all information in any form (and whether tangible or intangible) that is or has been disclosed by Buyer to Seller or otherwise obtained by Seller in connection with its performance of this agreement. "Confidential Information" shall also include all specifications, drawings, samples, designs and Intellectual Property furnished by Buyer to Seller. "Confidential Information" shall not include any information that (i) is or becomes a matter of public knowledge through no act or omission of Seller, (ii) is lawfully received by, or otherwise made available to, Seller from a third party who does not owe a duty of confidentiality to Buyer, or (iii) is already in the possession of Seller at the time of receipt from Buyer, as documented by Seller's pre-existing written records. The obligations of this Paragraph 16 shall survive the discharge, termination or cancellation of this agreement.

**17. News Releases**

Unless required by law, Seller may not make any news release or public announcement relating, directly or indirectly, to this agreement or its performance hereof, or otherwise use the name of Buyer in any advertising or promotional material, without Buyer's prior written approval, which may be withheld by Buyer for any or no reason and in its sole and absolute discretion.

**18. Mechanic's Liens**

Seller will not make, file or maintain a mechanic's lien or other lien or claim of any kind against any property of Buyer. Seller will require its material men and subcontractors to promise not to make, file or maintain a mechanic's lien or other lien or claim of any kind against property of Buyer. Seller shall notify all subcontractors or material men it engages (with the consent of Buyer) of the provisions of this Paragraph 18 prior to their commencing of work or the supplying of materials by them.

**19. Subcontracting**

No goods to be delivered under this agreement, except spare parts and standard commercial supplies, will be procured by Seller from a third party in a completed or substantially completed form without Buyer's prior written consent.

**20. Indemnification**

Seller shall, at its sole cost and expense, indemnify, defend and forever hold Buyer and its Affiliates (as hereinafter defined), their respective Agents (as hereinafter defined) and all of their successors and assigns, from and against any Damages (as hereinafter defined) arising, in whole or in part, or resulting from (a) any breach by Seller or any of its Agents of any obligation, representation or warranty under this agreement, (b) any negligence, error, or omission by Seller or any of its Agents with respect to its or their obligations under or by reason of this agreement, (d) infringement of any Intellectual Property rights, (e) any goods that are defective or otherwise fail to conform to this agreement including, without limitation, product liability claims resulting therefrom and associated claims for Damages due to personal injury, property damage or death, (f) any recall or other action in connection with the goods, and (g) Seller's performance under this agreement including, without limitation, the manufacture, formulation and/or handling of the goods. Buyer may choose to be represented by counsel of its own selection, but the reasonable expenses of representation (including but not limited to attorney's fees and defense costs) nevertheless will be the responsibility of Seller. Seller's indemnification obligations will survive the discharge, termination or cancellation of all other obligations under this agreement. For the purposes of this agreement, "Affiliates" shall mean any entity that, directly or indirectly (through one or more intermediaries), controls, is controlled by or is under common control with Buyer. For the purposes of this agreement, "Agents" shall mean any officer, director, member, manager, employee, agent, contractor, customer, end-user or representative of a party. For the purposes of this agreement, "Damages" shall mean any and all liabilities, damage to persons or property (including death), fines, penalties, suits, proceedings, judgments, expenses, costs (including reasonable attorneys' fees) and losses of any kind including, without limitation, any special, incidental or consequential damages relating thereto.

**21. Insurance**

If this agreement requires or authorizes Seller to perform services on the premises of Buyer, Seller will furnish to Buyer certificates of insurance showing that Seller has adequate insurance coverage (amounts and damages) to reasonably cover all risk and liability relating to its performance of this agreement including, without limitation, coverage for products liability and contractual liability. The purchase of insurance or the furnishing of certificates of insurance will not relieve Seller of any other obligation or liability or in any way affect Seller's indemnification obligations as provided in this agreement or by law. Seller shall maintain such insurance coverage and shall notify Buyer of any cancellation or material change in such insurance coverage not less than sixty (60) days prior to the date such cancellation or material change is to take effect.

**22. Changes**

Buyer may from time to time make changes by written order to Seller, within the general scope of this agreement, to one or more of the following: (a) designs or specifications, (b) method of shipment or packing, (c) destination, and (d) delivery schedules (postponements only). Seller will proceed immediately to perform this agreement as changed. If any changes cause an increase or decrease in the cost of performance of this agreement or in the time required for its performance, an equitable adjustment will be negotiated promptly and this agreement will be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted in writing within 30 days from date of receipt by Seller of Buyer's change order, unless some other time for claim has been agreed upon in writing by the parties. Seller's claim must specify an amount and must include support cost or delay information. Seller must provide other information in support of its claim if requested by Buyer.

**23. Buyer's Remedies Upon Breach or Insecurity**

If Seller fails to fulfill any of its obligations hereunder, Buyer may cancel the agreement in whole or in part and may require Seller to deliver any raw material and unfinished goods, or any part or them, held by, ordered by or available to Seller for performance of its obligations under this agreement, in which case Buyer may either (a) complete the goods or have them completed and deduct the cost of completion from the price or (b) deduct the cost of the raw materials and unfinished goods from Buyer's damages resulting from Seller's breach. With respect to materials on order by Seller, Buyer may require Seller to deliver the materials when received or to

assign all of Seller's right to Buyer so that Buyer may take delivery directly from Seller's supplier. Any amounts paid by Buyer to Seller's suppliers will be part of Buyer's damages and will be deducted from the agreement price otherwise owed to Seller. Buyer may also take possession of or require Seller to deliver at Seller's expense any tools, dies, molds or similar items manufactured or acquired by Seller for the particular purpose of producing the goods sold under this agreement, regardless of whether Seller manufactured or acquired the items from Buyer's account or merely charges a fee with respect to them. Buyer will also have the rights provided by this Paragraph 23 upon the apparent inability of Seller to perform any of its obligations under this agreement, upon the suspension or termination of Seller's business, upon the appointment of a trustee or receiver for Seller's property or business, upon any assignment by Seller for the benefit of creditors, upon the taking of any action by or against Seller under any law for the relief of debtors, or if the financial standing or credit of Seller becomes unsatisfactory to Buyer, in its sole and absolute discretion. The remedies provided by this Paragraph 23 will be in addition to other remedies provided by this agreement or applicable law, all of which will be cumulative.

**24. Termination at Buyer's Option in Absence of Breach**

Even in the absence of grounds for cancellation or termination under Paragraphs 23 or 25 of this agreement, Buyer may terminate this agreement at any time by sending written notice to Seller. In the event of termination under this paragraph 24, with respect to any raw, semi-processed or completed goods Seller has in stock or on firm order for use fulfilling this agreement, the following will apply: (a) in the case of completed goods, Buyer, at its option, may either take delivery of all or part of the goods making payment for them to Seller at the agreement price, or may refuse to take delivery, in which case Buyer will pay to Seller the difference between market price for the goods and the agreement price, if higher; (b) in the case of raw or semi-processed goods, Buyer, at its option, may require Seller to complete and deliver all or parts of the goods at the agreement price, or may refuse to accept further deliveries in which case Buyer will pay to Seller a proportion of the agreement price for those raw or semi-processed goods attributable to this agreement based upon the stage of completion of the goods, reduced by the value of the goods at that stage of completion; and (c) in the case of materials Seller has on firm order, Buyer, at its option, may either take an assignment of Seller's rights under the order or pay the costs, if any, of discharging Seller's obligation under the order. If tooling charges were included in the agreement price, Buyer will pay to Seller the portion of those charges applicable to the number of goods actually completed. Buyer's obligation to make payments or accept goods in the event of termination under this Paragraph 24 will not exceed the obligation it would have incurred had the agreement remained in effect and had Seller fabricated and delivered the goods according to the earliest delivery schedule specified in this agreement. This Paragraph 24 does not in any way restrict or effect Buyer's rights and remedies provided in Paragraphs 23 and 25 of this agreement, or otherwise provided by this agreement or applicable law.

**25. Termination for Government Convenience**

All commitments for goods under this agreement will be subject to termination or amendment in accordance with applicable United States regulations covering termination of contracts for the convenience of the United States government. Upon the termination of any such prime contract or subcontract under which Buyer's order or subcontract with Seller is placed, Buyer will have the right at any time before completion by Seller to terminate this agreement in whole or in part by advising Seller in writing of its intention to terminate. Upon the receipt by Seller of such notice, this agreement will be terminated and all work and commitments relating to it will immediately cease (other than those that expressly survive termination as provided herein). If termination occurs, termination charges will be mutually agreed upon based upon United States regulations covering contract termination for the convenience of the United States government.

**26. Trademarks; Buyer's Insignia**

Seller shall not use the trademarks or trade names of Buyer unless expressly authorized by Buyer in writing. Material rejected or not purchased by Buyer, which utilizes any trademarks, insignia symbols or decorative designs of Buyer, or evidence or Buyer's inspection (all hereafter designated "Insignia"), will have all insignia removed prior to any sale, use or disposition of such material. This clause does not modify the provisions of Paragraph 16 relating to the disclosure of information.

**27. Taxes**

Federal manufacturers' and retailers' excise taxes, and state or municipal sales and use taxes, when applicable, will be billed as separate items on Seller's invoice.

**28. Quantity**

Buyer will not be required to accept, return or pay for any goods produced, processed or shipped in excess of the amount specified in this agreement, unless specifically accepted in writing signed by Buyer.

**29. Governing Law**

This agreement, and all issues arising under or relating hereto including, without limitation, its construction, interpretation, breach and damages for breach, shall be governed by and construed in accordance with the laws of the state from which the Purchase Order issues, excluding any conflicts or choice of law, rule or principle that otherwise might refer construction or interpretation of this

agreement to the substantive law of another jurisdiction. References in this agreement to the “UCC” are to the Uniform Commercial Code as adopted by such state.

**30. Exclusive Jurisdiction; Service of Process**

Seller irrevocably and unconditionally (a) consents to the exclusive jurisdiction, and waives any objection to the laying of venue, of the courts of the State from which the Purchase Order issues in any suit, action or proceeding relating hereto, and (b) waives any objection to the jurisdiction and venue required in this Paragraph 30 and agrees not to plead or claim in any such court that any such suit, action, or proceeding has been brought in an inconvenient forum. Seller consents to service of process by certified mail to the address of Seller specified in the Purchase Order and pursuant to the terms of Paragraph 33.

**31. Assignment; Binding Nature**

Seller will not assign any rights or delegate any obligations created by this agreement without the written consent of Buyer, and no consensual delegation will relieve Seller of any obligations hereunder. All terms and provisions of this agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and permitted assigns, including successors by reason of amalgamation or other corporate changes.

**32. Buyer’s Delay**

Buyer will not be liable for any delay, inability to accept delivery or other failure to perform or to any loss or damage, when the delay, failure to perform, loss or damage results from any cause beyond Buyer’s reasonable control, including but not limited to: (a) fire, flood or other act of God, (b) strike or other labor disagreement, (c) labor, material or energy shortages, (d) accidents at Buyer’s facilities, (e) acts or requirements of government or civil authority, (f) riot; war, epidemic, or acts of terrorism, (g) embargo or transportation delay or difficulty, and (h) the inability of Buyer’s customers to accept Buyer’s deliveries due to such causes beyond the customers’ control. If, because of such event, Buyer is unable to accept delivery of all or part of the goods or services to be provided under this agreement, Buyer, at its own option, may reschedule delivery upon giving reasonable notice to Seller or may terminate part or all of this agreement. In the event of such rescheduling or termination, Buyer will not be liable to Seller for any cost or expense suffered because of it.

**33. Intellectual property (“IP”)**

- a) For purposes of this Article, “Background IP” shall mean the intellectual property rights (i) owned or controlled by either Party prior to this agreement entering into force; or (ii) generated or acquired by either Party at any time independently from the performance of this agreement or (iii) licensed to either Party by third parties, and which are required for the full and proper performance of this agreement. “Foreground IP” shall mean any intellectual property developed or generated by a Party within the frame of this agreement.
- b) Each Party’s Background and Foreground IP is and shall remain the exclusive property of the Party. The Supplier shall not use Buyer’s Intellectual Property for any other purpose than the performance of the Supplier’s obligations under this agreement. Except as otherwise stated in this agreement, neither Party transfers to the other party any patent, trade secret, trademark, copyright or other intellectual property owned by such Party. The Parties agree that title and interest in any work product including, without limitation, all technical information, know-how, trade secrets and intellectual property developed solely by the Supplier for the manufacture of the Products shall be owned exclusively by Supplier, subject to a non-exclusive license to Buyer to use such intellectual property incorporated in the Product.
- c) Supplier grants to Buyer, its suppliers and customers in connection with Products manufactured for Supplier, an irrevocable, nonexclusive, paid-up, royalty-free, worldwide license under any Intellectual Property rights owned or controlled by Supplier at any time and existing prior to or during the term of this agreement, but only to the extent that such Intellectual Property rights would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers', or customers' use of Products as long as the Aircraft is operated.
- d) Additional License with Covenant: Buyer covenants not to exercise the following license except upon the Termination following an Event of Default by Supplier. Subject to the foregoing covenant, Supplier hereby grants Buyer a non-exclusive, worldwide, perpetual, irrevocable, royalty free license, with the right to sublicense and assign, to use any Supplier’s Background IP and Foreground IP necessary for the manufacture of Products and derivatives thereof. The Parties intend that upon filing of bankruptcy by Supplier, Buyer shall have all of the rights arising by virtue of the license granted hereunder.

**34. Notice**

All notices required or permitted under this agreement shall be in writing and shall be deemed to have been duly given when (a) delivered by hand, courier or express mail service (with written confirmation of receipt), (b) sent by means of facsimile to the numbers of the parties as set forth on the Purchase Order (with provision for assurance of receipt in a manner typical with respect to communications of that type), or (c) mailed by registered or certified first class mail, return receipt requested, at the address set forth

on the Purchase Order (or at such other address as a party may, from time to time, designate by written notice). All notices given pursuant to Paragraph 33(b) must be promptly followed by notice pursuant to Paragraph 33(a) or Paragraph 33(c) in order to be effective.

**35. Relationship of Parties**

The relationship of Seller to Buyer shall be that of an independent contractor. Nothing herein shall be construed to constitute the parties as partners or joint venturers, or as employees or agents of the other. Except as expressly set forth herein, neither party has any express or implied right or authority to assume or create any obligations on behalf or in the name of the other. It shall be the sole and exclusive responsibility of Seller to obtain insurance for its employees, and to pay all salary, benefits, and other compensation to its employees.

**36. Non-Exclusivity**

Seller understands that this agreement is non-exclusive, and that Buyer reserves the right to purchase goods and/or services of any type from other vendors.

**37. Financial Audit**

Seller agrees that all item(s) shipped and billed to Buyer are certified to be those ordered by Buyer. Seller shall maintain full and detailed records of all items shipped and billed to Buyer under this agreement. Buyer reserves the right to audit and copy, during regular business hours, the records of Seller pertaining to this agreement, including the records maintained at Seller's office such as receipts, vouchers, orders, invoices, time sheets, memorandum, and/or any other pertinent documentation which may provide Buyer with evidence that reveals any excessive charges against Buyer or noncompliance with the terms and conditions herein, for a twenty-four (24) month period after the termination of this agreement. If such audit reveals any excessive charges against Buyer, such excessive charges shall be refunded to Buyer immediately upon written notification to Seller, along with the reasonable costs of such audit as documented by Buyer, notwithstanding that Buyer may have previously paid such excessive charges for accepted goods and/or services. Seller shall be given thirty (30) days to refute or approve the findings of any such audit.

**38. Most Favored Customer**

Seller agrees to treat Buyer as its most favored customer. Seller warrants that all of the prices, warranties, benefits and other terms being provided hereunder are at least as favorable to the terms being offered to Seller's customers in comparative engagements as Buyer.

IN WITNESS WHEREOF, the parties hereto have caused these Terms and Conditions to be executed as of \_\_\_\_\_, 2020.

**BUYER:**  
**Kodiak Aircraft Company, Inc.**

**SELLER:**  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_