

## **ERMCO STANDARD TERMS AND CONDITIONS OF PURCHASE OF PRODUCTS**

The following ERMCO Limited Standard Terms and Conditions of Purchase of Products (the “**Terms**”) shall apply to the purchase of Products specified in the attached and corresponding PO, and their acceptance is an express condition of Supplier’s submission and response to the RFP. Each of Supplier and ERMCO shall each be referred to herein individually as a “**Party**”, and collectively as, the “**Parties**.” Supplier shall be deemed to have full knowledge of the Terms, and such Terms shall be binding upon the issuance of a PO (either by Supplier, or by ERMCO and acknowledged by Supplier) for the Products subject hereto. The PO together with the Specifications, Schematics, Documentation and these Terms shall collectively constitute the entire agreement between ERMCO and Supplier (this “**Agreement**”).

**1. Definitions.** Capitalized terms used herein shall have the definitions ascribed to them in the RFP, as set forth below or otherwise defined herein:

“**Accept**” shall mean ERMCO’s written confirmation to Supplier within the Inspection Period that the Products conform to this Agreement and the applicable PO. In the event that ERMCO fails to issue a written confirmation to Supplier within the Inspection Period, the Products shall be deemed accepted as of the expiration date of the Inspection Period.

“**Affiliate(s)**” means, with respect to a Party, any other party who directly or indirectly, controls, is controlled by or is under common control with such Party, where “control” shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity.

“**Delivery Date**” means the date of delivery of the Products specified on a PO.

“**Documentation**” shall mean any and all written, electronic and digital materials provided by Supplier or its Subcontractors that describe the installation, maintenance, operation, and repair of the Products, including but not limited to all user manuals, guidelines, training instructions, operating procedures, limitations, thresholds, and usage reports for the Products.

“**ERMCO**” means Electric Research Manufacturing Cooperative, Inc., together with its Affiliates.

“**Inspection Period**” shall mean a reasonable time from when the Products are delivered to ERMCO to inspect, test, and otherwise validate the Products conformity with the Agreement, which shall not be less than thirty (30) days from the date ERMCO receives the Products.

“**Intellectual Property**” means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, Specifications, reports, data, technical information, and instructions.

“**Location**” means the place of delivery for the Products as more specifically set forth on the PO.

“**PO**” means a paper or electronic document sent by either Party to the other Party initiating the ordering of Products, such as a purchase order, scheduling agreement, statement of work or other authorization, and including change notices, supplements or modifications thereto. Any and all PO’s issued by and between the Parties with respect to Products shall be governed by these Terms, and all references therein to any linked terms and conditions shall be null and void, and of no force or effect.

“**Product(s)**” means the goods, parts, materials, supplies and ancillary services thereto provided by Supplier to ERMCO under this Agreement, including all software, technology, data, and components therein, as well as all Specifications, Schematics, and Documentation related thereto.

“**Representatives**” means a Party’s and its respective Affiliates’ directors, officers, employees, and agents.

“**Schematics**” shall mean all technical documentation in support of the design and manufacture of the Products, including but not limited to Product designs, engineering and CAD drawings, and diagrams.

“**Specifications**” means the document attached to the RFP or otherwise issued from ERMCO to Supplier setting forth the plans and specifications for the provision of Products, including all functional, technical, and operational drawings, schematics, designs, equipment descriptions and other pertinent information relating to the Products.

“**Subcontractor(s)**” means any person, vendor, supplier or other entity engaged by a Party for supplies, materials, services, or the performance, in whole or in part, of such Party’s obligations hereunder.

“**Supplier**” means the legal entity providing Products or otherwise performing work pursuant to a PO.

- 2. Conflicts.** In the event of any conflict or inconsistency between the terms and conditions of the Agreement, such conflict shall be resolved in the following order of priority: (i) these Terms, (ii) the RFP, (iii) the applicable PO, then (iv) any additional documents expressly subject to this Agreement.
- 3. Specifications.** Supplier shall comply with all Specifications. Supplier shall immediately notify ERMCO, in writing, of any failure to comply with the Specifications.
- 4. Product Delivery.** Unless otherwise stated on the PO, all Products shall be delivered by Supplier or its Subcontractors DDP (Incoterms 2020®) to the Location. Supplier shall obtain at its own risk and expense necessary export licenses or other official authorizations necessary to deliver the Products to the Location, and as applicable, obtain all custom formalities necessary for the export of Products. Title and risk of loss and/or damage to Products shall pass from Supplier to ERMCO upon ERMCO's confirmed receipt and execution of a Bill of Lading following delivery of the Products, provided that vesting of title shall not constitute Acceptance of Products by ERMCO. Supplier shall suitably pack the Order, mark and identify the Order number and ship Products in accordance with any instructions from ERMCO, and in the absence thereof, in accordance with commercially recognized standards. Supplier shall be liable for any freight charges or damage to Products resulting directly or indirectly from any failure by Supplier to comply with this Agreement. If Products are deemed to be dangerous and or hazardous, Supplier shall ensure all legally required documentation is prepared and submitted to the carrier prior to shipment with copy to ERMCO. No transportation or delivery charges of any kind including packing, boxing, storage or cartage charges shall be paid by ERMCO or reimbursed to Supplier unless specifically agreed to by ERMCO in writing. Supplier shall provide a statement, or where required a certificate, demonstrating proof of origin for originating goods compliant under the respective rules of origin of any applicable free trade laws, to qualify for available duty-free or preferential duty under applicable law. Time is of the essence for all Product deliveries. Supplier shall deliver Products and perform Services by the Delivery Date. In the event delivery of the Products is delayed in respect of the Delivery Date specified in a PO for reason other than as direct and exclusive result of a Force Majeure Event, Supplier to pay for all damages ERMCO suffers or incurs as a result thereof, including all incidental, consequential, and indirect damages, losses, costs, expenses, fees, penalties, or fines, payable within thirty (30) days of ERMCO's issuance of an invoice therefor.
- 5. Inspection, Acceptance and Rejection.** All Products shall be subject to inspection and test by ERMCO during the manufacture thereof and through the Inspection Period to assess work quality, conformance with Specifications, and conformance with all of Supplier's representations, warranties and covenants herein. No such verification shall relieve Supplier of its obligations and warranties hereunder. Products shall not be deemed Accepted until after such final inspection. If any Products or parts thereof are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements set out herein, in addition to any other rights which it may have under applicable warranties, or under law, ERMCO shall have the right to reject and return such Products for either full credit or a refund (at ERMCO's discretion) at Supplier's expense including payment of shipping, packaging, and transportation charges incurred by ERMCO. Without limiting the foregoing, ERMCO shall also have the right to require that Supplier promptly and at its own expense repair, replace or restore any defective or deficient portion of Products, to ERMCO's reasonable satisfaction. If Supplier is unwilling to or unable to effect prompt replacement, ERMCO may use its own facilities or contract with a third party at Supplier's expense. All returned Products shall be at Supplier's risk of damage or loss. Neither the failure of ERMCO to inspect, nor acceptance of, nor payment for any Products shall prejudice ERMCO's rights under this Section. Products shall not be deemed Accepted unless and until the earlier of either: (i) ERMCO's written confirmation to Supplier within the Inspection Period that the Products conform to this Agreement, or (ii) in the event that ERMCO fails to issue a written confirmation to Supplier within the Inspection Period, the Products shall be deemed accepted as of the expiration date of the Inspection Period. Supplier's records relating to the manufacture or provision of Products shall be maintained for a minimum of seven (7) years following delivery unless otherwise agreed in writing by ERMCO.
- 6. Warranties.** For the purposes of this Agreement, "**Warranty Period**" shall mean, with respect to all

Products, the period commencing upon the date of Acceptance through the later of either: (i) forty-eight (48) months thereafter, or (ii) the date or time period set forth in the Specifications.

**6.1 Product Warranties.** Supplier warrants to ERMCO for the Warranty Period that all Products provided hereunder shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) free from defects in design, material, and workmanship; (iv) in strict compliance with the Specifications; (v) free from any liens or encumbrances on title whatsoever; (vi) of new and unused quality and craftsmanship (except as otherwise agreed to by the Parties); (vi) in conformance with any samples provided to ERMCO; (vii) to the extent the Products are, or contain hardware, software or technology products, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing all times and dates) and are free of viruses, malware, malicious technology and other sources of network corruption; and (vii) compliant with all applicable federal, state, and local laws, regulations, standards, and codes. Supplier warrants that all work rendered with respect to the manufacturing, design and delivery of the Products shall be in full compliance with Specifications and shall be in accordance with the best current practices in the industry and with the highest engineering or other applicable professional standards. The foregoing warranties shall survive any testing, inspection or acceptance by ERMCO of Products. The warranties set forth above shall not be subject to any disclaimer or exclusion of warranties or to any limitation of Supplier's liability herein. The warranty with respect to any corrected Products shall reset the Warranty Period with respect to such repaired or replaced Products. In addition to any other obligations set forth in this Section, Supplier shall pass through all assignable third party manufacturers' warranties applicable to Products furnished by Supplier. In the event a third party warranty is not assignable, Supplier shall enforce its warranty against a third party at Supplier's expense upon ERMCO's reasonable request. Supplier shall immediately notify ERMCO in writing of recalls of Products or safety notices that concern the Products. ERMCO shall have the right to assign all Supplier warranties under this Agreement to third parties including ERMCO's customers/end users, who shall have all rights to enforce such warranty. Supplier shall be liable for ERMCO's actual costs, expenses and damages related to or arising from Products and/or ancillary services not conforming to the warranty, including but not limited to systemic, consequential, indirect and incidental damages incurred by ERMCO.

**6.2 Technology Warranties.** Supplier represents and warrants that (i) the Products do not (a) infringe, violate or misappropriate any intellectual property right(s) of third parties or (b) violate applicable laws; (ii) Supplier has all of the rights, permits, licenses and authority necessary to perform its obligations hereunder; (iii) Products including any software, related documentation, updates furnished hereunder and the media it is delivered on, or any "Software as a Service" or "Cloud" service, have been scanned for viruses and other malicious code and have been found to be free from viruses and malicious code; and (iv) the Products do not (a) grant access to servers, systems or programs of ERMCO, its Affiliates or Representatives by person(s) other than ERMCO, its Affiliates or Representatives or (b) contain any program, routine, code, device or other undisclosed feature including but not limited to a time bomb, virus, software lock, Trojan horse, worm or trap door ("**Virus**") that is designed to delete, disable or interfere with the Products, and if any Disabling Feature is discovered or reasonably suspected to be present, Supplier shall immediately notify ERMCO and, at its sole expense, delete such Disabling Feature and carry out the recovery necessary to remedy its impact.

**6.3 Warranty Claim.** Should the Products fail to perform in accordance with the warranties provided above within the Warranty Period, Supplier shall, at ERMCO's election in its sole discretion, either: (a) repair or replace the affected Products at Supplier's sole cost and expense; or (b) refund to ERMCO the entire purchase price of the affected Products within thirty (30) days of ERMCO's election thereof. In addition, and in ERMCO's reasonable discretion, ERMCO may elect to repair damaged or defective Products through its own means, and in such circumstance ERMCO shall provide Supplier with written notice of such election, and an invoice to Supplier for the time, cost and materials arising from or related to ERMCO's repair thereof. For the avoidance of doubt, in the event of a warranty claim by ERMCO hereunder, Supplier shall bear all in-and-out costs associated arising from or related to the repair or replacement of the affected Products, including all costs, expenses and fees for the assessment, uninstallation, disassembly, transportation, maintenance, storage, and packaging of the Products, whether performed by ERMCO or its Subcontractors. In addition, Supplier shall arrange for and pay the costs of all assemblage and transportation of all affected

Products EXW (Ex Works Incoterms 2020®) at either the Location or the location of the warranted Products, as elected by ERMCO. If Products are repaired or replaced, the warranties set forth above will recommence as and to the repaired or replaced Products as of the Acceptance thereof. If Supplier fails to repair or replace the Products within a reasonable time period, as determined by ERMCO in its sole discretion, ERMCO (itself or through a Subcontractor) may repair or replace the Products at Supplier's sole costs and expense, payable by Supplier without setoff, deduction, or credit within thirty (30) days of ERMCO's issuance to Supplier therefor.

**7. Compliance with Laws.** Supplier shall comply with the Specifications and all laws and regulations applicable to the design, procurement, manufacture, delivery and operation of the Products, including without limitation, international, federal, state, municipal and local laws and codes, system standards and quality assurance requirements, privacy requirements, environmental standards and any additional technical codes, standards or customs which ERMCO may specify in writing.

**8. Fees.** Supplier shall invoice ERMCO for the fees set forth and in accordance with the applicable PO (collectively, the "**Fees**"). ERMCO shall pay to Supplier all undisputed Fees and amounts within sixty (60) days of ERMCO's receipt of an accurate and complete invoice that: (a) contains a detailed breakdown of all charges, including descriptions of services rendered, Product quantities, unit prices, dates of service, and applicable taxes; (b) reflects only those Fees, costs, expenses and taxes that have been pre-approved or are consistent with the agreed scope of work; and (c) is supported by relevant documentation, including timesheets, receipts, or other substantiating records as reasonably requested by ERMCO. No additional fees, charges, or expenses shall be payable unless expressly authorized in writing by ERMCO. Unless otherwise expressly stated in the PO, all prices quoted from Supplier to ERMCO shall be fixed in US dollars, and shall be deemed inclusive of all taxes, duties, tariffs, levies, packaging fees, shipping costs, loading expenses, carriage costs, and importation and exploration fees. ERMCO shall be entitled to set-off, reduce, or deduct against any amounts owing to Supplier, any amounts owing by Supplier hereunder.

**9. Supplier Performance.** Supplier will be responsible for providing the facilities, personnel, material, software, equipment, technical knowledge, training, expertise, and all other resources necessary for its performance hereunder. Supplier will provide status reports to the designated ERMCO representative in the form and at the times required by the PO or Specifications as applicable, or as otherwise reasonably requested by such ERMCO representative. Supplier will deliver to ERMCO all Products free and clear of any liens or encumbrances. If a lien or a stop notice is filed by an entity which has supplied services or materials in support of the Products, Supplier will, at its own expense, and at ERMCO's option, either: (a) take all action necessary to cause the lien or stop notice to be released or discharged immediately, including bearing all costs, expenses, and fees arising from or related thereto; or (b) secure and file a security bond covering the amount of the lien or stop notice.

**10. Intellectual Property.** ERMCO shall be the exclusive owner of any and all Products created, produced, developed, or submitted to ERMCO hereunder, in whole or in part. All Products, including all components, Schematics, Documentation, software, data, and other work product related thereto created, developed, or delivered by Supplier under this Agreement (collectively, "**Work Product**") shall be considered "work made for hire" as defined under the U.S. Copyright Act, 17 U.S.C. § 101 et seq., and shall be the sole and exclusive property of ERMCO from the moment of creation. To the extent that any Work Product does not qualify as a "work made for hire," Supplier hereby irrevocably assigns, transfers, and conveys to ERMCO all right, title, and interest in and to such Work Product, including all associated intellectual property rights, without further compensation. Supplier shall execute any documents and take any actions reasonably requested by ERMCO to perfect or enforce such rights. Notwithstanding the foregoing, Supplier shall maintain all rights in the underlying templates, methodologies, know-how, techniques, technologies, software and/or other tools owned or developed by Supplier prior to the date of this Agreement ("**Supplier IP**"). To the extent Supplier IP is incorporated in or to the Work Product or any Products granted hereunder, Supplier grants to ERMCO a worldwide, perpetual, fully-paid license to use, reproduce, modify, adapt, translate, distribute, monetize, publicly perform, publicly display, sublicense, assign and create derivative works therefrom for



any purpose, including any commercial use or sale.

## **11. Representations.**

11.1 **Mutual Representations.** In addition to the additional warranties provided herein, each Party represents, warrants, and covenants to the other Party:

11.1.1 It is and will be a validly existing business entity, in good standing under the laws in the state in which it is organized, and is and will be duly authorized, licensed, and qualified to carry on its present business and to conduct operations in the locations where such Party performs its obligations under this Agreement;

11.1.2 It has and will have the right, power, and authority to conduct its business, own its properties, execute and deliver the Agreement, and perform its obligations in accordance with the terms of the Agreement, and such performance will not violate applicable laws or breach any agreement to which it is a party; and

11.1.3 The execution, delivery, and performance of the Agreement have been duly authorized by all requisite action and will constitute a legal, valid, and binding obligation, enforceable against it in accordance with its terms.

11.2 **Supplier Representations.** In addition to all other representations, warranties and covenants of Supplier herein, Supplier represents, warrants, and covenants to ERMCO that:

11.2.1 To the extent any services are provided on ERMCO property, Supplier has examined all jobsites where the services will be performed, is aware of the nature of the risks involved therewith, and Supplier, on behalf of itself and all Subcontractors (as defined herein) assumes the risk pertaining to performing such services;

11.2.2 Supplier has not been a party to any current, pending, threatened, or resolved enforcement action of any governmental agency, or any consent decree or settlement with any governmental agency, private person, or entity regarding any failure in Supplier's data security safeguards or otherwise regarding information privacy or security; and

11.2.3 Supplier will immediately notify ERMCO if Supplier becomes aware of any non-compliance of any Products with the Agreement.

## **12. Confidentiality.**

12.1 **Confidential Information.** During the term of this Agreement, each Party may have access to the other Party's Confidential Information. The term "**Confidential Information**" shall mean any information, technical data, or know-how, including, without limitation, information which relates to products, services, clients, personnel, markets, research, intellectual property, inventions, processes, designs, marketing, future business strategies, trade secrets, finances, and other nonpublic information of the disclosing Party, including the details of this Agreement and all POs under this Agreement. "**Confidential Information**" does not include information that the receiving Party can establish: (i) was in the possession of, or rightfully known by, the receiving Party without a confidentiality obligation prior to its disclosure by the disclosing Party; (ii) is, or becomes, generally known to the public without breach of this Agreement; (iii) is obtained by the receiving Party in good faith from a third Party without any communicated confidentiality obligation; (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information; or (v) is authorized in writing, including email authorization or as provided for in a PO, by the disclosing Party to be released from the confidentiality obligations of this Agreement.

12.2 **Non-Disclosure.** The receiving Party shall use the disclosing Party's Confidential Information only for purposes of this Agreement and POs, and shall not disclose it to any person or entity other than its or its Affiliates' employees, directors, contractors, consultants, service providers, counsel or agents who have a reasonable need to know such information and who are bound by at least equivalent obligations of

confidentiality and non-disclosure as those under this Agreement. The receiving Party is responsible for the compliance of its authorized recipients with the confidentiality and non-disclosure obligations of this Agreement. The receiving Party will use the same standard of care to protect the disclosing Party's Confidential Information as it uses to protect its own similar confidential and proprietary information, but no less than reasonable care. Each Party agrees that damages may not be adequate to protect the other Party in the event of an actual or threatened breach of the confidentiality and nondisclosure obligations of this Agreement, and that either Party may take equitable action, including seeking injunctive relief, to enforce such obligations. The confidentiality and non-disclosure obligations under this Agreement shall survive expiration or termination of the last effective PO issued under this Agreement by two (2) years.

**12.3 Legal Disclosure.** If it becomes necessary for the receiving Party to disclose any Confidential Information to enforce this Agreement or comply with a judicial or administrative proceeding (or equivalent process), the receiving Party shall, to the extent legally permitted, provide the disclosing Party with prompt written notice so the disclosing Party may, at the disclosing Party's expense, seek a protective order or other appropriate remedy to protect such information. If such protective order or other remedy is not obtained, the receiving Party will not be in breach of this Agreement by furnishing such Confidential Information as required.

**13. Delays.** Time is of the essence with respect to the design, manufacture, and delivery of the Products hereunder. Supplier shall immediately notify ERMCO if Supplier is unable or likely unable to: (i) meet a Delivery Date; or (ii) achieve any manufacturing milestone with respect to the Products. ERMCO shall be entitled to all costs, expenses, fees and fines incurred by ERMCO to the extent arising from or related to late delivery of the Products after the Delivery Date. In the event that Supplier fails to meet a Delivery Date, milestone, or other time requirement under a PO, ERMCO may, in its sole discretion, either: (a) terminate this Agreement or any PO hereunder, and Supplier shall provide ERMCO with a full refund of all amounts prepaid to Supplier, and ERMCO shall remit to Supplier the pro-rated amount of fees due for the partially completed Products after ERMCO's receipt thereof; or (b) perform or procure the performance on behalf of Supplier, and be entitled to a credit, offset, or deduction against amounts owed or that may become owing to Supplier.

**14. Indemnification.** Supplier shall defend, indemnify and hold ERMCO, its Affiliates and each of their Representatives harmless from against any and all third party claims, demands, threats, allegations, costs, fees, expenses, damages, losses and liabilities (including reasonable attorneys' fees and costs) arising from or related to: (i) intellectual property infringement of a third party by Supplier; (ii) any personal injury, death, or property damage attributable, in whole or in part, to the Products, or any act or omission of Supplier, its Affiliates, or Subcontractor, or any of their respective personnel; (iii) the negligence, gross negligence, willful misconduct, fraud, or a violation of applicable law by Supplier, its Affiliates or Subcontractors, or any of their respective personnel; (iv) any lien or demand for payment from any Supplier Subcontractor, or Supplier's failure to remit payment to any Supplier Subcontractor; and (v) a breach under Section 12 (Confidentiality) by Supplier, its Affiliates or Subcontractors, or any of their respective personnel. Any Party asserting a claim for indemnification under this Agreement shall provide prompt written notice of such claim, provided that the failure to give prompt notice shall not relieve the indemnifying Party of its obligations hereunder except to the extent that such Party is prejudiced by the delay. The indemnifying Party shall have the right to assume the defense of or settle such claim, in which case the indemnified Party shall cooperate with such defense or settlement efforts. If the indemnified Party wishes to participate in such defense through counsel of its own choosing, such participation shall be at the indemnified Party's cost and expense.

**15. Limitation of Liability.** Except with respect to each Party's indemnification obligations under Section 14 (Indemnification), in no event shall ERMCO or its Affiliates be liable to Supplier, its Affiliates, Representatives, or Subcontractors, or the other or to any other Party for any punitive, exemplary, special, indirect, incidental or consequential damages (including but not limited to lost profits or opportunities) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the Party has been advised of the possibility of such damages or loss. In addition, the aggregate liability of ERMCO for

damages arising out of, relating to or in any way connected with the relationship of the Parties, this Agreement, its negotiation or termination, the Products or services ancillary thereto (whether in contract or tort) shall not exceed the amount of Fees paid or payable to Supplier under the applicable PO.

**16. Insurance.** For the Term of this Agreement and for two (2) years thereafter, Supplier shall maintain the following insurance coverages: (a) Worker's Compensation insurance at the statutory limits; (b) Employers' Liability at limits not less than \$500,000 per employee, \$500,000 per accident, \$500,000 policy limit; (c) Professional or Manufacturer's Errors and Omissions Liability with limits not less than \$1,000,000 per claim and \$2,000,000 in aggregate; (f) Commercial General Liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate; and (g) Umbrella/Excess with limits not less than \$2,000,000 per occurrence and \$4,000,000 in aggregate. ERMCO and its Affiliates shall be included as an additional insured on the applicable coverages listed below. Upon request, ERMCO will provide Supplier with a certificate of insurance evidencing the coverages.

**17. Audit Rights.** ERMCO, its Affiliate(s) or Representative(s) may conduct audit(s) of Supplier. Supplier and its Representatives shall maintain accurate and complete records which are reasonably sufficient to determine Supplier's compliance with this Agreement. Such records shall be kept in accordance with recognized commercial accounting practices and, except where a longer retention period may be provided in this Agreement, shall be retained by Supplier for a minimum of seven (7) years after the later of the (i) last delivery of Products or (ii) expiration of the Term of this Agreement. Such audits shall be conducted with reasonable prior notice to Supplier. In connection with such audit(s), Supplier shall reasonably make available, during normal business hours, Personnel familiar with the Records.

**18. Export Control.** Supplier shall comply with all applicable export control, customs and foreign trade regulations ("**Foreign Trade Regulations**") in its performance under this Agreement, and shall obtain all necessary export licenses, unless ERMCO or any party other than Supplier is required to apply for the export licenses pursuant to applicable Foreign Trade Regulations. Supplier will provide to ERMCO in writing, at least two (2) weeks prior to the shipment date of Products, and in case of changes without undue delay: (i) information necessary for a true, valid and complete customs declaration to be made by ERMCO; (ii) certificates and other proof of origin of Products as required hereunder; and (iii) the Export Control Classification Number for each item and any other information required under applicable laws. Supplier will immediately notify ERMCO of any investigation as to origin of Products and will fully participate and cooperate in any such review or audit, including any appeals. Supplier shall be liable for any expense, loss and/or damage incurred by ERMCO due to any breach of its obligations under this Section. ERMCO shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

**19. Force Majeure.** Neither Party shall be liable for any delay or failure of performance due solely and exclusively to a Force Majeure Event (as defined herein), provided that Supplier has given notice in writing to ERMCO of any such cause for delay or anticipated delay promptly after first obtaining notice thereof and has used its commercially reasonable efforts to make deliveries as expeditiously as possible taking such cause for delay into account. Should Supplier be unable, due to such a cause, to meet all of its delivery commitments for Products ordered herein, Supplier shall not give preference to any other customer in making deliveries of such Products. If ERMCO believes that the delay or anticipated delay in Supplier's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operations, ERMCO may at its option, and without liability to Supplier, cancel outstanding deliveries hereunder wholly or in part, and Supplier shall refund to ERMCO any and all amounts paid in advance thereof to Supplier. A Party shall notify the other Party hereto in writing within twenty-four (24) hours of the knowledge of and/or occurrence of a Force Majeure Event, and neither Party shall be considered to be in default of this Order if and to the extent that its failure or delay in performance is actually caused by a Force Majeure Event. For the purposes of this Agreement, "**Force Majeure Event**" means any unforeseeable event or circumstance, or unforeseeable combination of events or circumstances, that arises after the effective date of this Agreement, is beyond the reasonable control of, and not the result of the negligent or intentional

actions or omissions of, or caused by, the claiming Party, and is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence, including compliance with its business continuity plans, of the Party claiming the Force Majeure Event. Without limiting the generality of the foregoing, events that may give rise to a Force Majeure Event include acts of God, natural disasters, fires, earthquakes of extraordinary magnitude, Unusually Severe Weather (as defined herein), lightning, floods, Disasters, civil disturbances, terrorism, riots, war, and the action of, or failure to act on the part of, any government authority having or asserting jurisdiction that is binding upon the Parties and has been opposed by all reasonable means. Notwithstanding the foregoing, “**Force Majeure Event**” will not include weather conditions other than Unusually Severe Weather; strikes or other labor actions that are unique to Supplier or its Affiliates any material shortages, or unavailability of labor, equipment, or materials to the extent caused by the acts or omissions of Supplier; or events outside of Supplier’s control that affect the cost of labor, equipment or materials; insolvency or economic hardship (including lack of money; delays in transportation (including delays in clearing customs) other than delays in transportation resulting from Force Majeure Events; changes in applicable laws; actions of a government authority with respect to Supplier’s compliance with applicable laws; any failure by Supplier to obtain or maintain necessary permits it is required to obtain or maintain; and any other default, or failure (financial or otherwise) of any other entity. For the purposes of this Agreement, “**Unusually Severe Weather**” means (1) tornadoes, tidal waves, and named storms, in each case, affecting a location where work is being performed, (2) wildfire or other uncontrolled fires or conflagrations, or (3) any other weather event for which local officials call for mandatory public evacuations at a location where work is being performed.

**20. Assignment.** Neither Party may assign all or part of this Agreement, or any rights or obligations hereunder, without the prior written consent of the other Party, except ERMCO may assign its rights and obligations, without recourse or consent, to any of its Affiliates or a successor organization.

**21. Independent Contractor.** The Parties acknowledge and agree that Supplier is an independent contractor and not an employee, agent, partner, or joint venturer of ERMCO. Nothing in this Agreement shall be construed to create any employment, agency, partnership, or joint venture relationship between the Parties. Supplier is solely responsible for all costs and expenses incumbent with its performance of its obligations hereunder.

**22. Subcontractor.** Supplier undertakes to obtain ERMCO’s written consent prior to subcontracting any work or services to third parties other than third parties identified in the agreed upon purchase order. ERMCO reserves the right to reject any subcontractor proposed by Supplier. The term of any subcontracts will be consistent with the terms of this Contract with respect to quality, health and safety, cancellation and termination. Supplier will remain liable to ERMCO for the part of the applicable Order performed by the subcontractor.

**23. Notice.** All notices given hereunder shall be in writing and may be sent by registered mail, courier or email if also sent by regular or registered mail, and addressed to the receiving party at the address set out in the PO or as subsequently agreed between the Parties. Notices shall be deemed to be given when received by the other party.

**24. Suspension, Cancellation & Changes.** ERMCO reserves the right to: (i) suspend performance under this Agreement; (ii) cancel this Agreement or any PO, in whole or in part; or (iii) seek to revise any PO to the Product quantities through additions or subtractions to quantities upon notice in writing to Supplier. If ERMCO cancels or suspends a PO, all Fees shall remain as-is as stated in the PO to the date of delivery, without any adjustment thereto as a result of any such suspension or cancellation. Upon receipt of such notice, Supplier shall, in addition to complying with the requirements of such notice, immediately (i) stop production and delivery of all Products, and (ii) protect all Products under Supplier’s control in which ERMCO may have a full/partial interest. Supplier shall immediately comply with such notice and take all steps necessary to minimize the cost of terminating or changing the Agreement. In the event of a suspension, Supplier shall not resume performance until the suspension terminates as set forth in ERMCO’s notice, or



ERMCO otherwise issues written notice to resume performance. Except as otherwise agreed in writing, ERMCO shall not be liable for any costs, expenses, damages or fees arising from or related to any such notice of suspension or cancellation, including but not limited to consequential or incidental damages, loss of profits, or loss of opportunity.

## **25. Termination.**

**25.1 Convenience.** Subject to the terms herein, ERMCO may terminate this Agreement or any PO with sixty (60) days prior written notice to Supplier. Provided that there are no active POs under this Agreement and Supplier has fully performed all obligations due and owing from Supplier up to and including the effective date of termination, Supplier may terminate this Agreement with ninety (90) days prior written notice to Supplier. For the avoidance of doubt, in the event that Supplier owes any duties, Products, or performance to ERMCO, Supplier shall not be entitled to terminate this Agreement pursuant to this Section. In the event that Supplier seeks to terminate this Agreement or any PO under this Section 25.1 with work or Products outstanding and ERMCO consents thereto, Supplier shall: (i) provide to ERMCO all work-in-progress as of the effective date of termination, including but not limited to all partially completed Products. Upon ERMCO's receipt of the partially completed Products, ERMCO shall compensate Supplier for a pro-rated amount of Products actually rendered. In the event that ERMCO has prepaid for any Products subject to Supplier's termination under this Section 25.1, in whole or in part, Supplier shall provide to ERMCO a full refund of all amounts prepaid to Supplier, and ERMCO shall remit to Supplier the pro-rated amount of fees due for the partially completed Products after ERMCO's receipt thereof. In the event that ERMCO terminates this Agreement or any PO under this Section 25.1, Supplier shall be compensated for all Products completed, in whole or in part, as of the effective date of termination.

**25.2 Cause.** Subject to the terms herein, either Party may terminate this Agreement or any PO immediately upon written notice to the other Party if the other Party: (i) materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; (ii) Supplier fails to meet the delivery dates for any Products or milestones with respect thereto, under any PO; (iii) engages in fraud, willful misconduct, or gross negligence in connection with its obligations under this Agreement; (iv) becomes insolvent, makes an assignment for the benefit of creditors, or is subject to any bankruptcy or similar proceeding; (v) violates any applicable law, regulation, or governmental order in a manner that materially affects its ability to perform under this Agreement. In the event that Supplier terminates this Agreement or any PO under this Section 25.2, Supplier shall: (i) provide to ERMCO all work-in-progress as of the effective date of termination, including but not limited to all partially completed Products. Upon ERMCO's receipt of the partially completed Products, ERMCO shall compensate Supplier for a pro-rated amount of Products actually rendered. In the event that ERMCO terminates this Agreement or any PO under this Section 25.2, Supplier shall refund to ERMCO all amounts paid to Supplier under the applicable PO subject to such termination.

**26. Dispute.** Notwithstanding any other term in this Agreement, Supplier will not stop or delay the provision of the work or manufacture or delivery of the Products, in whole or in part, on account of any dispute with ERMCO or with any other person, and Supplier will continue to perform all of its obligations in accordance with and within the time periods required by this Agreement, notwithstanding and during any such dispute.

**27. Survival.** All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Agreement or any PO shall survive the expiration or termination of this Agreement or any PO.

**28. Waivers.** No waiver of any term, condition, or provision of this Agreement shall be effective unless made in writing and signed by the waiving Party. The failure of either Party to enforce any right or provision under this Agreement shall not constitute a waiver of such right or provision, nor shall it be deemed a waiver of any subsequent breach or default. Any waiver shall apply only to the specific instance and purpose for which it is given and shall not be construed as a continuing waiver or a waiver of any other rights or provisions. The

exercise of any remedy provided in this Agreement shall be without prejudice to the exercise of any other remedy available at law or in equity, unless expressly stated otherwise. No waiver by either Party of any breach or default shall constitute a waiver of any other or subsequent breach or default.

**29. Remedies Cumulative.** All remedies in the Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law or in equity, except as expressly provided in the Agreement.

**30. Amendment; Assignment; Severability.** This Agreement may not be amended or modified except by an agreement in writing signed by the Parties. If any provision, or any portion of any provision, contained in this Agreement is held unenforceable, then it shall, to that extent alone, be deemed omitted and this Agreement shall be construed as if such unenforceable provision had never been contained herein.

**31. Entire Agreement.** This Agreement, together with the RFP, Specifications, Schematics, Documentation, and all POs issued hereunder constitutes the entire agreement between the Parties with respect to the subject matter hereof. All prior agreements, representations, negotiations, understandings, and undertakings are superseded by this Agreement.

**32. Counterparts.** This Agreement and any PO issued hereunder may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one document.

**33. Governing Law.** In the event of any dispute arising under this Agreement, the Agreement will be governed by the laws of the State of Tennessee, irrespective of that state's conflict of laws principles. In the event either Party institutes legal action to enforce its rights under this Agreement or a PO, the prevailing Party will be entitled to recover its reasonable attorneys' fees and other costs so incurred from the non-prevailing Party. Any amounts due and owing hereunder that go unpaid shall bear late interest at the maximum rate allowed by applicable law. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.