

## **INDIRECT SERVICES PURCHASE ORDER TERMS AND CONDITIONS**

***84-005-0810 dated "12/01/18"***

### **1. THE CONTRACT:**

The Contract ("Contract") is defined as the Purchase Order ("PO") issued by General Dynamics Land Systems Inc. ("Buyer") to Seller and all documents referenced therein, including without limitation: drawings, specifications, instructions, quality assurance requirements, and any other document referenced therein. Buyer may from time to time include new or updated documents or exclude documents to add clarity to the Contract. Seller shall only rely on written instructions given by Buyer's Authorized Procurement Representative. For purposes of these Purchase Order Terms and Conditions, the term "Services" shall mean any services and/or technical data ordered by Buyer from the Seller under the Contract.

### **2. ACCEPTANCE:**

The acceptance by Seller that forms the Contract shall be deemed conclusively to have occurred upon Seller's acknowledgement and acceptance of the PO, or Seller's performance of any Services under the PO, whichever occurs first. By acceptance of the PO, Seller agrees to an unqualified acceptance and to comply with all terms and conditions of the Contract. Any terms or conditions that Seller proposes that are in addition to or differ in any way than those contained in these Purchase Order Terms and Conditions shall be void, unless agreed to in writing by Buyer's Authorized Procurement Representative. Seller agrees that Buyer's acceptance of or payment for any Services or similar act of Buyer shall not be claimed or construed to constitute agreement or consent to any additional or differing terms or conditions proposed by Seller or a waiver of any of these Indirect Services Purchase Order Terms and Conditions.

### **3. DELIVERY:**

(a) Contract delivery schedules are a material condition of this Contract, and Seller's failure to meet Contract delivery schedules shall be considered a material breach. Any acceptance of deliveries late to the Contract delivery schedule will not waive Buyer's rights.

(b) If Seller fails to perform in accordance with the Contract delivery schedule, Buyer will have the option of terminating this Contract in accordance with ¶ 17, TERMINATION FOR DEFAULT, or assessing 0.5% of the total contract price per day, as liquidated damages and not as a penalty. Any such liquidated damages shall start no sooner than the fifth (5th) day after the Purchase Order Promise Date, and continue until and including the date on which the Service is completed not to exceed 20% of the unit price. Any liquidated damages assessed to Seller will be debited from Seller's account and may be set off against any other amount owed to Seller by Buyer. For the avoidance of doubt, liquidated damages or termination are the agreed-upon remedies for delay, but are without limitation as to other remedies available to Buyer under the contract at law or equity for other breaches of contract.

(c) In the event of any anticipated or actual delay in meeting the Contract delivery schedule, Seller shall:

(i) Promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; and

(ii) Provide Buyer with a written recovery schedule.

(d) Any information provided by Seller regarding any anticipated or actual delay in meeting the Contract delivery schedule is informational only and shall not be construed as a waiver by Buyer of any of Buyer's rights or remedies provided by law or the Contract.

#### 4. CONTRACT FLOWDOWN

Seller must flow down to any sub-tier suppliers: all applicable Quality Clauses, these Indirect Services Purchase Order Terms & Conditions, Contract Flowdowns, and if required, any key characteristics of drawings.

#### 5. INSPECTION:

(a) Buyer and Buyer's customer shall have the right to inspect any Services performed under the Contract at any reasonable time during the performance of Services at Seller's facilities or elsewhere. Such inspection may include, without limitation, raw materials, components, work in process, and completed products as well as drawings, specifications, and released data. Final inspection and acceptance shall be after delivery to the delivery point designated by Buyer. If any inspection or test is made by Buyer at Seller's facility or elsewhere, Seller shall provide reasonable facilities and assistance for the inspection personnel. Buyer may reject all Services supplied under the Contract that are found to be defective or otherwise nonconforming to the Contract. Under no circumstances will any inspection, examination, or test, or any approval given in connection with any such inspection, examination, or test, whether by Buyer or Buyer's customer and whether under the Contract or another contract for the same or similar Services, relieve Seller of any obligation to comply fully with all requirements of the Contract, including the obligation to perform Services that conform to all requirements of the drawings, specifications, and other Contract documents. At Buyer's request, Seller shall re-perform defective or nonconforming Services at Seller's expense. Failure to inspect Services, or payment for Services shall not constitute acceptance or limit any of Buyer's rights or remedies, including, without limitation, those under ¶ 7, WARRANTY. In the event inspection reveals any defect or nonconformance and schedule urgency requires that the defect or nonconformance be corrected by Buyer, all cost of such correction, including, without limitation, installation and removal, will be charged to Seller. Such charges will also include time and material and appropriate indirect and overhead expenses incurred by Buyer.

#### 6. PRICES, TAXES, & PAYMENT:

(a) **Prices:** Seller warrants that prices charged for the Services are not higher than those charged to any other customer, including the Government, for Services of like grade and quality. Unless otherwise specified, prices are FCA (Incoterms 2010) the place shown on the face of the PO, and are exclusive of state sales and use taxes. No charge will be allowed for packing, crating, drayage, or storage.

(b) **Taxes:** Buyer holds a direct pay permit for sales and use tax in the following states: Alabama (Permit #725), Florida (Permit # TPP-1018), Michigan (Permit #54-0582680), Ohio (Permit #98-002244), and Pennsylvania (Permit #00174). No such taxes shall be included in Seller's quotation or invoice, unless exemption is not accorded by state law. Additionally, Buyer is authorized to provide a Resale Certificate on purchases of tangible personal property intended for resale in the following states: Florida (Certificate #47-8013872895-2) and South Carolina (License #008234378). Except for the foregoing, the Contract price includes all other applicable taxes and no price adjustments may be claimed by Seller therefore.

#### (c) Payments:

Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for Services accepted by Buyer. Seller must invoice each line item exactly as shown on the PO to ensure prompt payment. The invoice must show: Seller's name, PO number, line item number, price, and Buyer's prime contract number, if applicable.

Buyer reserves the right to make any adjustments in Seller's invoice due to the rejection of Services, or other failure of Seller to comply with the provisions of the Contract. Payment adjustments may be made by Buyer under any other order or contract between Buyer and Seller. No charges or changes will be honored unless specified on the face of the PO. If transportation or travel is payable as a separate item on the Contract, invoices must be accompanied by transportation or travel receipt. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. In the situation of an overpayment, Seller shall promptly repay to Buyer any amounts paid in excess of amounts due to Seller under the Contract.

**7. WARRANTY:**

Seller warrants that Services ordered to specifications will conform to the Contract, including all specifications and drawings, and will be fit and sufficient for the purpose intended, and that all Services performed are of good material and workmanship, and free from defect. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the Services and shall run to Buyer, its successors, assigns, customers at any tier, and ultimate end user and joint users. Notices of any defects or nonconformity shall be given by the Buyer to the Seller within fifteen (15) months after acceptance. Buyer's rights and remedies concerning latent defects shall exist indefinitely and shall not be affected in any way by any terms and conditions of this Contract, including this ¶ 7.

**8. REMEDIES:**

In addition to any other remedies established in this Contract or under applicable law, if the Services or any part or portion thereof, in Buyer's judgment, fail to pass inspection, fail to meet warranty, or fail to conform to the requirements of the Contract, including with respect to timeliness of delivery, Buyer may do any or all of the following:

(a) Reject Non-Conforming Services. As to rejected Non-Conforming Services, Seller shall promptly, at its expense, and at Buyer's election, re-perform such Non-Conforming Services. Seller shall be responsible for all costs and expenses (including without limitation labor costs and third party inspection costs) incurred by Buyer in connection with the inspection and discovery of such Non-Conforming Services, identifying and correcting the cause of any Non-Conformance, and all other activities reasonably undertaken by Buyer to obtain conforming Services.

(b) Upon rejection of Non-Conforming Services or Seller's failure to promptly re-perform such Non-Conforming Services, Buyer may cancel this Contract and/or purchase services in substitution for those due from Seller and recover from Seller the difference between the cost of cover and the Contract price together with any incidental or consequential damages, notwithstanding anything to the contrary in this Contract.

**9. BUYER'S ASSISTANCE AND COOPERATION:**

(a) During Seller's performance of this Contract, Buyer may, but has no obligation to, provide assistance to, or cooperate with, Seller in activities that facilitate the proper performance and completion of this Contract by Seller. Such assistance and cooperation may include without limitation: (i) providing engineering or other analysis or advice on correcting manufacturing deficiencies or other problems; (ii) acquiescing in a change of manufacturing facilities or location; (iii) refraining from strict enforcement of time schedule requirements under the Contract; (iv) permitting use of test materials or documentation not performed or produced under this Contract; or (v) engaging with or providing assistance to Seller's subcontractors. Such assistance or cooperation by Buyer shall not be construed, and Seller agrees that it will not claim that any such assistance or cooperation operates, to relieve Seller from complete, proper and punctual performance of all of Seller's obligations under this Contract. Under no circumstances will Buyer be liable to Seller for any damages arising out of Buyer's assistance or cooperation.

**10. BUYER'S PROPERTY:**

(a) Any materials, drawings, tools, jigs, dies, fixtures, or any other property supplied or paid for by the Buyer will remain the property of Buyer and must be returned to Buyer upon Buyer's request.

(b) Seller shall not use any such Buyer's property except for performance of work under the Contract or as authorized in writing by Buyer's Authorized Procurement Representative.

(c) All such Buyers' property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at Seller's expense, in an amount equal to the replacement cost with loss payable to Buyer. If Buyer's property has been damaged, stolen, destroyed, or is malfunctioning, Seller shall notify Buyer in writing within two (2) business days once discovered or known.

- (d) Seller must clearly mark Buyer's property, maintain inventory, and keep the property segregated.
- (e) Any scrap generated from or by Buyer furnished property shall be segregated from Seller's property and placed in a separate area or container. Before removal of the container or its contents, Seller shall request directions from Buyer's By-Products Department. Seller will prepare shipping documents denoting date, contents, weight, and recipient of the scrap material. Shipping documents shall be sent directly to Buyer's By-Products Department. Under no circumstances shall scrap material be removed from Seller's premise without Buyers By-Products Department approval.

**11. SPECIAL TOOLING/SPECIAL TEST EQUIPMENT:**

- (a) Special Tooling ("ST") means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.
- (b) Special Test Equipment ("STE") means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. STE consists of items or assemblies of equipment, including standard or general purpose items, or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes.
- (c) Title to ST/STE acquired by Seller under this Contract will vest in Buyer or the Government, as applicable, upon payment by Buyer. Seller will maintain such ST/STE in a serviceable condition and will preserve and administer it for the exclusive use of Buyer, except that Seller may use such ST/STE on a rent-free, non-interference basis in the performance of Government contracts with Buyer's prior written consent. If the ST/STE is attached to or made part of any other equipment or facility, Seller will be responsible for its removal and delivery in serviceable condition to Buyer upon written notification from Buyer.
- (d) Payment for ST/STE assumes that parts made therefrom will be acceptable dimensionally and functionally, and Buyer reserves the right to withhold payment until samples from such ST/STE are fully approved by Buyer. All parts made from such ST/STE are subject to and covered by ¶ 5, INSPECTION and ¶ 7, WARRANTY.

**12. CHANGES:**

- (a) Buyer may at any time, by written notice to Seller, make changes under this Contract, including without limitation changes to quantity, schedule and/or specifications. If such change increases or decreases the cost or time required to perform this Contract, the parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease.
- (b) Seller shall assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within twenty (20) calendar days of receiving direction of a change from the Buyer and shall deliver a fully supported proposal to Buyer's Authorized Procurement Representative within sixty (60) calendar days after Seller's receipt of such direction.
- (c) Based on the Seller's claim, Buyer reserves the right to:
- (i) Accept Seller's claim and amend the PO accordingly;
  - (ii) Dispose of obsolete or excess property as a result of the change; and/or
- (d) For any claim \$100,000 or greater, Seller shall be required to submit a signed certificate that states as follows:

*I certify that the claim is made in good faith that the supporting data are current, accurate, and complete to the best of my knowledge and belief, that the amount requested accurately reflects the Contract adjustment for which {Seller} believes Buyer is liable, and that I am duly authorized to certify the claim on behalf of {Seller}.*

(e) Seller must perform in accordance with Buyer's direction pending the submission and resolution of any claim for adjustment. Under no circumstances shall a failure of the parties to agree upon any adjustment excuse the Seller from performing in accordance with Buyer's direction.

**13. STOP WORK ORDER:**

Buyer may at any time, by written notice to Seller, require Seller to stop all or any part of the work called for by this Contract for a period of up to ninety (90) business days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall immediately comply and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) business days after a Stop Work Order is delivered to Seller, or within any extension of that period to which the parties have agreed, Buyer shall either cancel the Stop Work Order, or terminate the work covered by the Contract as provided in ¶ 17, TERMINATION FOR DEFAULT or ¶ 18, TERMINATION FOR CONVENIENCE, whichever may be deemed appropriate in Buyer's sole discretion. Seller shall resume work immediately upon cancellation or expiration of any Stop Work Order. If Seller delivers to Buyer a request for equitable adjustment to the Contract's delivery schedule or price (or both) within the period set forth in ¶ 12, CHANGES, Buyer may agree to an adjustment if the Stop Work Order has resulted in an increase in the time required for the performance of the PO or in Seller's costs properly allocable to the PO. The amount of any adjustment in the Contract price shall be determined as provided in ¶ 12, CHANGES.

**14. EXCUSABLE DELAYS:**

If the performance of Services under this Contract is prevented, restricted, or interfered with, by reason of acts of God or the public enemy, earthquake, fire, flood, labor strike, riot, explosions, terrorism, or a similar occurrence or condition beyond the reasonable control of the Seller, the Seller, upon giving prompt notice to the Buyer, may be excused from such performance during such prevention, restriction, or interference and any failure or delay resulting therefrom if the Buyer determines the failure to perform results from the causes identified. If the Buyer determines the Seller's failure to perform meets the requirements of this ¶ 14, the Buyer may update the delivery schedule if determined necessary.

**15. NOTICE TO BUYER OF LABOR DISPUTES:**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Seller shall immediately give notice, including all relevant information, to Buyer.

**16. CONTRACT CANCELLATION:**

By written notice and without a cure period, Buyer may cancel the whole Contract, or any part of this Contract, in the event of the suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, any assignment, reorganization, or arrangement by Seller for the benefit of creditors, or the debarment or suspension of Seller by any Government agency. Buyer's remedies in the event of a cancellation of the Contract pursuant to this ¶ 16 shall be the same as set forth in ¶ 17, TERMINATION FOR DEFAULT.

**17. TERMINATION FOR DEFAULT:**

(a) Buyer may, by written notice to Seller, terminate all or any part of this Contract for default if Seller fails to: (i) perform this Contract within the time specified in the Contract; (ii) perform Services that conform in all respects with the specifications and quality requirements set forth in the Contract; (iii) perform any of its other obligations set forth in the Contract; or (iv) take any action or inaction that endangers performance of this Contract and fails to cure such situation within a period of ten (10) calendar days after receipt of notice from Buyer. If only part of the Contract is terminated, Seller is not excused from performance of the non-terminated part of the Contract.

(b) In the event Buyer terminates this Contract in whole or in part as provided in subparagraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, Services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for the same, including without limitation all costs and expenses of the type specified ¶ 7, WARRANTY.



(c) Buyer, in addition to any other rights and remedies provided by applicable law or under this Contract, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer for any materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "Manufacturing Materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated.

(d) Seller shall, upon direction of Buyer and at Seller's own cost, mark, separate, protect, and preserve property in Seller's possession in which Buyer or the Buyer's customer has an interest.

(e) Payment for completed Services delivered to and accepted by Buyer shall be at the Contract price. Payment for Manufacturing Materials delivered to and accepted by Buyer pursuant to subparagraph (c) above shall be in an amount agreed to by Buyer and Seller, and failure to agree to such amount shall be a dispute concerning a question of fact within the meaning ¶ 28, DISPUTE RESOLUTION. Seller must transfer title and deliver Manufacturing Materials in accordance with Buyer's direction even if the parties have not yet agreed on terms of Payment. Under no circumstances shall a failure of the parties to agree upon payment terms excuse the Seller from performing in accordance with Buyer's direction. Buyer may withhold from amounts otherwise due to Seller, such sum as Buyer reasonably determines to be necessary to protect Buyer or Buyer's customer against loss due to or resulting from outstanding liens or claims of former lien holders or for damages otherwise caused by Seller's failure to perform its obligations under this Contract.

(f) If, after notice of termination of this Contract under the provisions of this ¶ 17, it is determined for any reason that Seller was not in default under the provisions above, or that the default was excusable under ¶ 14, EXCUSABLE DELAYS, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to ¶ 18, TERMINATION FOR CONVENIENCE.

(g) The rights and remedies of Buyer provided in this ¶ 17 shall not be exclusive and are in addition to any other rights and remedies provided by applicable law or under this Contract. For the avoidance of doubt, nothing in this ¶ 17 shall limit in any way Buyer's rights under subparagraph (b) of ¶ 3, DELIVERY.

#### **18. TERMINATION FOR CONVENIENCE:**

(a) Buyer may, by written notice to Seller, terminate all or any part of this Contract for convenience and without cause. If only part of the Contract is terminated, Seller is not excused from performance of the non-terminated part of the Contract.

(b) In the event of a termination for convenience by Buyer, Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the actual reasonable cost paid by Seller for the actual labor and material reasonably used by Seller to perform the work under this Contract up to the effective date of termination, plus a reasonable profit. Buyer will not pay for anticipatory profits related to work under this Contract not yet performed or costs incurred due to Seller's failure to terminate work as ordered as of the effective date of termination. Under no circumstances will the total amount paid under the provisions of this paragraph exceed the prices set forth in this Contract for the work terminated.

(c) Buyer, in addition to any other rights and remedies provided by applicable law or under this Contract, may require Seller to transfer title and deliver to Buyer or to Buyer's customer, in the manner and to the extent directed by Buyer for any Manufacturing Materials as Seller has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated.

(d) Seller shall, upon direction of Buyer, mark, separate, protect, and preserve property in Seller's possession in which Buyer or the Buyer's customer has an interest.

(e) Payment for completed Services delivered to and accepted by Buyer pursuant to subparagraph (c) above shall be at the Contract price. Payment for Manufacturing Materials delivered to and accepted by Buyer pursuant to subparagraph (c) above, or for the protection and preservation of property in Seller's possession pursuant to subparagraph (d) above, shall be in an amount agreed to by Buyer and Seller, and failure to agree to such amount shall be a dispute concerning a question of fact within the meaning ¶ 28, DISPUTE RESOLUTION. Seller must transfer title and deliver Manufacturing Materials in accordance with Buyer's direction even if the parties have not yet agreed on terms of Payment. Under no circumstances shall a failure of the parties to agree upon payment terms excuse the Seller

from performing in accordance with Buyer's direction.

**19. DATA:**

(a) All drawings, models, and specifications furnished or paid for by Buyer shall be:

- (i) The property of Buyer;
- (ii) Subject to removal by Buyer at any time without additional cost;
- (iii) Used only by Seller in filling orders from Buyer; and
- (iv) Identified and marked as the property of Buyer.

(b) Any information contained in reports, drawings, documents, or other records which are furnished to Seller by Buyer relative to this Contract shall not be disclosed by Seller to any third party, except to Seller's subcontractors as necessary for completion of this Contract who shall have the same non-disclosure responsibility. In the event Buyer requests return of any data, including without limitation, drawings and specifications, Seller shall return all data within thirty (30) calendar days of such request. Any data furnished or paid for by Buyer that is retained by Seller shall remain subject to the foregoing restrictions on use, reproduction, and disclosure. Upon termination of this Contract for any reason: (i) Seller shall, at Buyer's option, destroy or return to Buyer all data, including without limitation, drawings and specifications, furnished to Seller by Buyer relative to this Contract; and (ii) Buyer may use, on a non-exclusive basis, all drawings, documents or other records created by Seller in relation to this Contract without further compensation to Seller.

**20. COMPLIANCE WITH U.S. EXPORT CONTROL LAWS:**

- (a) Seller shall comply with all applicable laws and regulations regarding export-controlled items and technology, including but not limited to the International Traffic in Arms Regulations and the Export Administration Regulations. For any Seller providing a non-Buyer designed part, component, accessory, attachment or software to Buyer, the Seller shall provide a completed Supplier Commodity Classification Worksheet (SCM 075) for each individual item. The Seller's technically qualified representative shall complete, sign and submit the worksheet to [exportcontrolreform@gdls.com](mailto:exportcontrolreform@gdls.com). The worksheet may be found at <http://www.gdls.com/index.php/suppliers/transportationtrade-compliance.html>.
- (b) Seller shall indemnify Buyer for all liabilities, losses, penalties, damages, costs, or expenses that may be imposed on or incurred by Buyer in connection with any violations of export or import laws and regulations by Seller or by Seller's officers, employees, agents, or subcontractors.

**21. PATENTS ANDCOPYRIGHTS:**

Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and its agents against any liability, including without limitation costs, expenses and attorney's fees, for or by reason of any actual or alleged infringement of any patent or copyright arising out of the manufacture, use, sale, delivery or disposal of Services furnished under this Contract, except to the extent attributable to Seller's compliance with specific written instructions issued by Buyer's Authorized Procurement Representative. The provisions of this ¶ 21 shall apply to each notice or claim of patent or copyright infringement relating to the performance of this Contract of which Seller has knowledge, regardless of whether or not Buyer has given Seller notice of such claim.

**22. WORK ONBUYER'SDESIGNATED PREMISES:**

In the event that Seller or Seller's employees, agents or subcontractors enter Buyer's premises for any reason in connection with this Contract, Seller and such other parties shall observe all military security requirements including citizenship/immigrant status, all plant safety, plant protection, and traffic regulations. Seller shall defend, indemnify, and hold Buyer harmless from all claims, actions, demands, loss, and causes of action, arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees, agents, or subcontractors, except when such damage, injury or death is caused by the gross negligence of Buyer.

**23. INSURANCE:**

Seller and any subcontractor or agent used by Seller in connection with this Contract shall carry:

- (a) Workmen's Compensation and Employees' Liability Insurance to cover Seller's and subcontractor(s)' legal liability on account of accidents to their employees.
- (b) Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering accidents to their employees.
- (c) Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering legal liability of Seller and the subcontractor(s) on account of accidents arising out of the operations of Seller or the subcontractor(s) and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property.

At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) business days' prior written notice of cancellation of the coverage.

**24. ASSIGNMENT, CHANGE IN CONTROL AND SUBCONTRACTING:**

- (a) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- (b) Seller shall not:
  - (i) Transfer or assign this Contract or any rights of this Contract, in whole or part;
  - (ii) Delegate any obligations of this Contract, in whole or part; or
  - (iii) Subcontract for Services, in whole or part,without the prior express written consent of Buyer's Authorized Procurement Representative. The parties agree that any attempted assignment in violation of this provision shall be void.
- (c) No assignment or subcontract by Seller, including any assignment or subcontract to which Buyer consents, shall in any way relieve Seller from any of its obligations under the Contract, including without limitation complete and punctual performance of this Contract and Seller's obligations under ¶ 7, WARRANTY.
- (d) Seller must notify Buyer's Authorized Procurement Representative at least thirty (30) days prior to any change in Seller's ownership or control, any change in Seller's name. Seller must provide the identity of the potential new owner controlling party along with information on such party and the transaction as Buyer may request. Seller's notification to Buyer pursuant to this subparagraph (d) shall not relieve Seller from the restrictions set forth in subparagraph (b) above.

**25. NOTICES:**

All notices required or permitted to be given under the Contract shall be deemed properly given if delivered in electronic mail or sent by United States certified or registered mail addressed to Seller or Buyer, as the case may be, at the addresses set forth on the face of the PO, with postage fully prepaid. The effective time of notice shall be at the time of mailing.

**26. WAIVER:**

No waiver by Buyer of any breach of any term in this Contract or grant of an extension for performance under the Contract shall be deemed to be a waiver of any other or subsequent breach. Seller agrees that it will not claim that Buyer has waived any of Seller's performance requirements under this Contract, and no such waiver shall be effective to relieve Seller from complete and punctual performance of such requirements, unless such waiver is expressly stated in writing and signed by Buyer's Authorized Procurement Representative.

**27. APPLICABLE LAW AND VENUE:**

ALL QUESTIONS CONCERNING THE VALIDITY, INTERPRETATION, PERFORMANCE AND CONSTRUCTION OF



THIS CONTRACT AND/OR THE RIGHTS AND OBLIGATIONS OF THE PARTIES ARISING UNDER OR RELATING TO THIS CONTRACT OR THE SUBJECT MATTER HEREOF SHALL BE GOVERNED BY THE LAWS OF MICHIGAN WITHOUT REGARD TO ITS CONFLICT OF LAW PRINCIPLES. ANY LEGAL ACTION TO SEEK DECLATORY/INJUNCTIVE RELIEF OR TO ENFORCE ¶ 28, DISPUTE RESOLUTION, SHALL BE FILED IN A STATE OR LOCAL COURT LOCATED IN MACOMB COUNTY, MICHIGAN, UNITED STATES.

The parties expressly intend and hereby exclude the United Nations Convention on Contracts for the Sale of Goods of 1980 and any amendments thereto from the application to this Contract.

**28. DISPUTE RESOLUTION:**

(a) Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, including as appropriate its Procedures for Large, Complex Commercial Disputes or its International Dispute Resolution Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to the Federal Arbitration Act.

(b) Claims shall be heard by a single arbitrator, unless the claim amount exceeds \$3,000,000, in which case the dispute shall be heard by a panel of three arbitrators. Within 15 days after the commencement of an arbitration to be decided by a panel of three arbitrators, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. In all disputes submitted to arbitration, the arbitrator(s) shall be licensed attorneys actively engaged in the practice of law as advocates and/or arbitrators for at least 20 years.

(c) The place of arbitration shall be Macomb County, Michigan, United States. The arbitration shall be governed by the laws of the State of Michigan, exclusive of choice of law rules.

(d) The arbitrator(s) will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute.

(e) Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration.

(f) The award of the arbitrator(s) shall be accompanied by a reasoned opinion. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

**29. INDEMNIFICATION:**

(a) Seller shall indemnify, defend and hold harmless Buyer and its affiliates, and its and their respective directors, officers, employees, partners, contractors or agents, from and against all claims, demands, suits, actions or other proceedings brought by third parties (“Claims”), and from and against all damages, payments made in settlement, and other liability payable to such third parties, and all costs and expenses incurred (including without limitation reasonable attorneys', accountants' and experts' fees and expenses), as a result of such Claims (collectively, “Losses”), to the extent such Claims: (i) arise out of or are or were caused by the Seller's breach of its obligations under this Contract, or (ii) are for damages to any property or bodily injury to or death of any person arising out of or caused by Seller's negligence or willful misconduct.

(b) Seller will defend, at its own expense, any Claim against Buyer or its customer based on an assertion that Buyer's or its customer's use of the Services furnished under this Contract in the as delivered condition infringes any third party intellectual property rights. In lieu of foregoing sentence, Seller may, at its option, procure either for Buyer or its customer the right to use said items or substitute an equivalent item acceptable to Buyer, or modify such items to render them non-infringing, provided the modification does not affect the product specification, functionality or performance. However, Seller shall have no obligation to defend a Claim or pay any Losses to the extent such Infringement Claim results from, arises out of or is caused by: (i) the use of item other than as permitted by this Contract; or (ii) the use of any

item furnished in combination with other products where the infringement would not have occurred but for such combined use.

(c) This provision for indemnification is in addition to any other provision for indemnification in any document made part of this Contract.

(d) This ¶ 29 shall survive any termination or expiration of this Contract for any reason.

**30. FOREIGN OFFSET:**

If the Contract is issued to a non-U.S. Seller and/or if the work is being performed by a non-U.S. Seller in whole or in part, all offset credits resulting from this Contract will be the sole property of Buyer. Seller agrees, at no cost, to assist Buyer (or Buyer's parents or affiliates if requested) in securing appropriate offset credits from the respective government authorities.

**31. PUBLICITY:**

Seller, along with Seller's subcontractor(s) at any tier, shall not release any publicity, advertisement, news release, or any other public statement regarding the Contract without prior written approval by Buyer. Seller shall be liable to Buyer for any breach of such obligation by Seller and/or any of its subcontractors.

**32. CONFIDENTIALITY:**

(a) It is contemplated that Buyer may disclose to Seller certain business, financial, legal, technical and other information (collectively, the "Proprietary Information") for use solely in connection with this Contract.

(b) The term Proprietary Information includes all information, in whatever form or medium, provided in connection with this Agreement which is identified as proprietary by the disclosing party as follows: (i) written documents and permanent records are to be marked with a restrictive legend of the discloser such as "proprietary", "confidential" or the like and (ii) oral or visual information shall be identified as proprietary at the time of disclosure and so confirmed in writing within ten (10) days of the presentation, such writing to contain a restrictive legend and a summary of the Proprietary Information delivered at the oral or visual presentation. Notwithstanding the foregoing, this Agreement does not restrict disclosure or use of any information which would otherwise be considered "Proprietary Information" if the receiving party can demonstrate: (i) the information is published or generally known by the public (other than as a result of the breach of this Section); (ii) the information was known by it at the time of disclosure as evidenced by competent proof; (iii) the information has become lawfully available to the receiving party from a third party without restriction on disclosure; (iv) the disclosing party approved in writing the public release by the receiving party; or (v) the information was developed or discovered by the receiving party without access to or use of any Proprietary Information provided by the disclosing party.

(c) Seller agrees: (i) to use the Buyer's Proprietary Information solely for purposes of carrying out Seller's obligations under this Contract; (ii) not to disclose or reveal to any third party, without Buyer's prior written consent, any portion of Buyer's Proprietary Information or any notes, summaries or other information derived from the Proprietary Information; (iii) to disclose Buyer's Proprietary Information or portions thereof only to those employees or subcontractors of Seller who need to know such information for the purpose of carrying out this Contract, it being understood that prior to such disclosure such persons will be informed of the confidential nature of the Proprietary Information and will agree to be bound by the provisions of this ¶ 32; (iv) not to use any portion of Buyer's Proprietary Information for personal gain or to advance or support Seller's other business ventures or the business ventures of others; (v) to use at least the same degree of care in safeguarding Buyer's Proprietary Information as it uses to safeguard its own similar, confidential information that it does not wish to disclose, provided such degree of care is reasonably calculated to prevent inadvertent disclosure and unauthorized use thereof; and (vi) to notify the Buyer immediately upon discovery of any inadvertent disclosure or unauthorized use of Proprietary Information and to promptly use reasonable efforts to prevent any further inadvertent disclosure or unauthorized use. Seller will be deemed responsible for any breach of the provisions of this Section by any of its employees or other persons to whom it discloses Proprietary Information.

(d) Notwithstanding anything to the contrary in this agreement, Seller may disclose Proprietary Information to the extent required by law (by subpoena, investigative demand, Securities and Exchange regulations or otherwise) provided it first, to the extent permitted by law, gives the disclosing party sufficient notice to provide it with a reasonable opportunity to obtain a protective order to govern such disclosure.

(e) Upon expiration or termination of the Contract, Seller will promptly return to Buyer or destroy, at the option of Buyer, all of the Proprietary Information disclosed or provided to Seller, together with all copies, reproductions, summaries, analyses or extracts thereof or based thereon (in whatever form or medium) in its possession or in the possession of any of its representatives, and will cause any other person to whom it has disclosed such Proprietary Information to do the same.

(f) Seller recognizes and agrees that the Proprietary Information is of a character which gives it a special value the loss of which cannot be adequately compensated in damages, and that a breach of this ¶ 32 will cause irreparable harm to Buyer. Seller, therefore, expressly acknowledges and agrees that Buyer shall be entitled to injunctive and/or other equitable relief to prevent a breach of any provision of this ¶ 32, in addition to any other remedies available to Buyer under law or this Contract.

### **33. ORDER OF PRECEDENCE:**

The Contract constitutes the entire, fully integrated agreement of the parties. In the event of any inconsistency or conflict in the Contract documents or other terms and conditions associated with this Contract, precedence shall be given in the following descending order of priority:

- (a) the PO for the Contract, including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to any of them;
- (b) these Services Purchase Order terms and conditions 84-005-0810
- (c) the terms and conditions in the 84-05-0809 Request for Quote General Requirement;
- (d) other applicable terms and conditions, such as 84-005-1032 P.O. Terms & Conditions, Time and Material or Domestic Contract Labor (CL) Terms and Conditions for CL type subcontracts/POs; and
- (e) any other documents incorporated into any Contract Document by reference.

The Contract may not be modified except in the event of a signed writing executed by Buyer's Authorized Procurement Representative.

### **34. FOREIGN ACCOUNT TAX COMPLIANCE ACT ("FATCA")**

Seller shall provide a current withholding certificate, executed on the latest version of the applicable IRS form, to document Seller's status for purposes of both Foreign Account Tax Compliance Act ("FATCA") and non-resident alien ("NRA") withholding. Generally the withholding certificate will be in the form of a W-9 (if a U.S. individual, partnership, or a corporation), a W-8BEN (if a foreign individual), a W-8BEN-E (if a foreign entity), or a W-8ECI (if a foreign entity with effectively connected US income). The most current form applicable to Seller's situation may be obtained from the IRS at <http://www.irs.gov>. Seller's failure to provide a current U.S. withholding certificate may result in potential delays of payment processing and/or US tax withholding under FATCA or NRA provisions which otherwise may be unnecessary.

### **35. SEVERABILITY**

If any provision in this Contract is held to be invalid, illegal, or unenforceable, the remaining provisions shall not be affected in any way and shall remain in full force and effect. Any provision held to be invalid, illegal, or unenforceable, shall be negotiated in good faith by the parties to maintain the original intent of the parties to the fullest extent permitted by applicable law.

### **36. DAMAGES**

NOTWITHSTANDING ANY OTHER PROVISIONS CONTAINED HEREIN, WHERE SELLER MISREPRESENTS OR BREACHES SELLER'S DUTY OR OBLIGATIONS UNDER THIS CONTRACT OR ENGAGES IN NEGLIGENCE OR

WILLFUL MISCONDUCT, SELLER SHALL BE LIABLE FOR SPECIAL/CONSEQUENTIAL, INCIDENTAL, COLLATERAL, EXEMPLARY, INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF USE, OR BUSINESS INTERRUPTION LOSSES THAT ARISE OUT OF SELLER'S MISREPRESENTATION OR BREACH OF DUTY OR OBLIGATIONS.

### **37. COMPLIANCE WITH LAWS**

(a) Seller shall comply with all applicable national, federal, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of this Contract including without limitation (i) supply of services under this Contract; (ii) the configuration or content of services for the use intended under this Contract.

(b) **Gratuities:** Seller warrants that neither Seller, nor any of its employees, agents, or representatives, have offered or given, or will offer or give, any gratuities to Buyer's employees, agents, or representatives for the purpose of securing this Contract, and that Seller will not make or solicit kickbacks in violation of FAR 52.203-7, Anti-Kickback Procedures, or the Anti-Kickback Act of 1986 (41 U.S.C. 51 et seq.), both of which are incorporated into the Contract by reference.

(c) **Toxic Substances Control Act:** Seller certifies that all chemicals to be delivered under the Contract comply with the requirements of the Toxic Substance Control Act (TSCA) 15 U.S.C. 2601-2629.

(d) **Anti-Corruption Compliance:** Seller certifies that in pursuing the Contract and performing under it, it will fully comply with the Foreign Corrupt Practices Act, the Corruption of Public Officials Act, the United Kingdom Bribery Act, and local anti-corruption laws in the jurisdictions in which services pursuant to the Contract are performed.

(e) **Annual Representations and Certifications:** Seller warrants that it has completed the Annual Representations and Certifications in Document (SCM Form 072), located on GDLS' website <http://www.gdls.com/suppliers/terms-conditions.html> and that as of the date of this Contract, Seller's representations and certifications remain accurate. Seller shall provide immediate written notification to Buyer if Seller learns that any of its representations or certifications were erroneous when submitted, and at any time during the course of performance of the Contract or any resulting Contract, should Seller's circumstances change with respect to any of its representations and certifications. Seller shall update its Annual Representations and Certifications at least on annual basis, or as may be requested by Buyer.

(f) **Software:** Seller warrants any hardware, software and firmware delivered under this Contract is free of any viruses, malicious code, Trojan horse, time bomb, self-help code, back door, or any software code that could damage, destroy, disable, reveal, modify, or allow unauthorized access of any software or hardware.

### **38. INDEPENDENT CONTRACTORS**

The relationship between the parties is that of independent contractors and not that of principal and agent, employer and employee, joint employers or legal partners. Neither party will represent itself as the agent or legal partner of the other party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.

### **39. INFORMATION TECHNOLOGY ASSURANCE**

Seller shall maintain data protection processes and systems sufficient to adequately protect specifications, information, data, drawings, software, and other items which are (i) supplied to Seller by Buyer, or (ii) obtained or developed by Seller in the performance of this Contract or paid for by Buyer (collectively, "Buyer Data"), and to comply with any law or regulation applicable to such data. If an event occurs whereby Seller knows, or reasonably believes, that Buyer Data has been actually or potentially disclosed to, or accessed or acquired by, an unauthorized individual or individuals ("Security Incident"), Seller shall (i) use commercially reasonable efforts to investigate, contain, and remediate the Security Incident, and (ii) notify Buyer in writing promptly, but not later than seventy-two (72) hours after discovering the Security Incident. In addition, Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and its agents against any liability, including without limitation costs, expenses and attorney's fees, caused by or related to a Security Incident. The obligations contained in this Section are in addition to, and do not alter, Seller's obligations under applicable U.S. Government procurement regulations, including without limitation the FAR and DFARS.

**40. DRUG-FREE WORKPLACE/WORKFORCE POLICY:**

Seller certifies that it has implemented appropriate policies to maintain a drug-free workplace consistent with FAR 52.223-6, Drug-Free Workplace, and DFARS 252.223-7004, Drug-Free Work Force.

**41. SERVICE CONTRACT ACT COMPLIANCE:**

(a) Seller's work under this Contract may be subject to the requirements of the Service Contract Labor Standards, also known as the Service Contract Act (the "SCA"). The SCA outlines the minimum monetary wages and fringe benefits that must be paid to employees according to the applicable United States Department of Labor ("DoL") Wage Determination(s) ("WD"). In the event that Seller's work under this Contract is subject to the SCA and a wage determination is not included as an attachment to this Contract, it is Seller's responsibility to request a copy of the wage determination from Buyer. The failure to include any wage determination as an attachment or to incorporate any clauses related to compliance with the SCA, or Seller's failure to request a copy of the wage determination, shall not excuse Seller from its obligations under the SCA or operate as a defense to the Seller's indemnity obligations in the event it fails to comply with the SCA's requirements. Revised wage determinations only become applicable to this Contract after the occurrence of both of the following events: (i) the revised wage determination has been incorporated in Buyer's prime contract; and (ii) Buyer incorporates the revised wage determination into this Contract.

(b) By executing this Contract, Seller certifies that it will adhere to all requirements set forth in FAR 52.222-41, which is hereby incorporated into this Contract along with all SCA implementing regulations, including, but not limited to, the following requirements:

- (i) Paying all SCA-covered personnel at wage rates equal to or higher than the relevant rates specified in the applicable wage determination(s); and
- (ii) Providing the fringe benefits at equal to or higher than those wage rates specified in the applicable wage determination(s).

(c) Seller further agrees to make any payments required by the SCA (and its implementing regulations) and also agrees to hold Buyer harmless for any failure on the part of the Seller to comply with the SCA (and its implementing regulations) for any failure to comply with the requirements of FAR 52.222-41 and agrees to make any payments required and to hold Buyer harmless for any failure on the part of the Seller to comply with these regulations.

(d) To ensure Seller's compliance with the requirements of the SCA, Buyer reserves the right for Seller to conduct an audit of Seller's employee time and payroll records, which Seller must maintain under the recordkeeping requirements of the SCA at 29 C.F.R. § 4.6 and FAR 52.222-41. To support such audit, and as requested by Buyer, Seller agrees to provide the following information as a minimum to Buyer within five (5) calendar days of any such request from Buyer: Employee Name; Payroll period; Hours Worked; SCA Labor Category and wage rate; Base Hourly Rate; Hourly fringe benefits (i.e., "health & welfare," vacation, holiday) paid; copies of timesheets showing the days and hours worked; and, copies of actual employee pay stubs. If employees are assigned to multiple contracts during a given workweek, Seller agrees to provide a breakdown of the foregoing information by contract. Failure to provide these documents and any related information related to Service Contract Act compliance may be deemed grounds for, but not limited to, a termination of this Contract for Default.