

**SIERRA NEVADA CORPORATION  
TERMS AND CONDITIONS  
COMMERCIAL CONTRACT**

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**1. ACCEPTANCE**

Any of the following acts by Seller shall constitute unqualified acceptance and shall create a binding Agreement between Seller and Buyer, which shall be governed by the terms and conditions of the Purchase Order or Subcontract, as defined below: (i) signing and returning a copy of the Agreement, (ii) beginning performance of the Agreement or (iii) accepting payment. Buyer objects to, and is not bound by, any terms and conditions stated in Seller's acceptance unless accepted in writing by Buyer.

**2. DEFINITIONS**

The following terms shall have the meaning set forth below:

- (a) "Agreement" means the entire agreement between the parties, including the purchase order or subcontract agreement, any statement of work and schedule, these Terms and Conditions, Buyer's specifications /drawings, and any documents incorporated by reference.
- (b) "Buyer" means Sierra Nevada Corporation, its divisions or subsidiaries, as represented by an authorized representative.
- (c) "Prime Contract" means the contract, if any between Buyer and Buyer's customer.
- (d) "Product" means those services, goods, supplies, materials, articles, items, parts, component or assemblies described in the Agreement.
- (e) "Seller" means the party with whom Buyer is contracting.
- (f) "Terms and Conditions" means this document.
- (g) "Work" means all required articles, materials, supplies, goods and services constituting the subject matter of the Agreement and ordered by Agreement.

**3. PRECEDENCE**

All documents in the Agreement shall be read so as to be consistent. In the event of conflict, the order of precedence is:

- 1. The Subcontract document or Purchase Order;
- 2. These Terms and Conditions;
- 3. The Subcontract Schedule;
- 4. The Statement of Work;
- 5. The Buyer's Specification/Drawing;
- 6. Any documents incorporated herein by reference.

**4. PACKING AND SHIPPING (*applies only to goods*)**

- (a) Unless otherwise agreed to in writing, Seller shall pack all Products required under the Agreement in accordance with best available commercial practices and in compliance with transportation regulations, to ensure safe and timely delivery to destination.
- (b) Seller shall provide the item description, item number, and the serial number of the Product on the Packing List.
- (c) All Products shall be prepared for shipment and suitably packed to prevent damage or deterioration. Seller is solely liable for packaging design.
- (d) Seller shall ship all Products to the destination specified by Buyer in the Agreement.
- (e) Each shipment must include a complete packing list.
- (f) Interior and exterior containers, Bills of Lading, packing sheets, and all other shipping documents and labels shall

be marked with the Purchase Order or Subcontract number.

- (g) All shipping documents, shipping labels and packing sheets must also show full and complete information as to the appropriate consignee, if any.
- (h) Buyer reserves the right to specify the mode of shipment.
- (i) Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking or method of shipping shall be reimbursed by Seller. Associated Seller costs shall not be recoverable under this Agreement.
- (j) If any transportation charges paid by Seller are subject to reimbursement, Seller shall show such charges on its invoice as a separate line item with the freight bill receipt attached accordingly.
- (k) Unless otherwise specified, Seller shall make one daily shipment of all Products by the same means of transportation.
- (l) Seller will notify Buyer, before shipping, of any conflict between Buyer and carrier's packaging requirements.

**5. DELIVERY**

**Time is of the essence.** Delivery shall be strictly in accordance with the specified quantities and schedule. In the event of any anticipated or actual delay, Seller shall (i) immediately notify Buyer in writing of the reasons for the delay and the action being taken to overcome or minimize the delay; and (ii) provide Buyer with a written recovery schedule detailing how Seller will make up the time lost through delay. If, for any reason, Seller does not comply with Buyer's delivery schedule, Buyer may, at its option and without limitation of any other remedies available in law and equity, approve a revised delivery schedule, hold the Seller in default, and/or cancel the Agreement. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. If Seller is late, Seller shall pay the added premium transportation cost. Seller shall not deliver Products prior to the scheduled delivery date without the prior written consent of Buyer.

**6. INVOICE AND PAYMENT**

Unless specifically set forth in Seller's proposal or quote and accepted by Buyer the stated contract price shall include all charges for packing, shipping, hauling, storage, and transportation to the point of delivery. No separate or additional charges for these items will be accepted.

Unless otherwise authorized by Buyer, Seller shall not issue an invoice prior to the actual delivery date of products. Seller shall forward to Buyer, with the invoice, receipt or Bill of Lading signed by the carrier, evidencing the fact that shipment has been made. Payment due dates, including discount periods, shall be calculated from the date of the later of the scheduled delivery date, the actual delivery date, or the date of receipt of a corrected invoice. The cash discount period to Buyer, if any, will date from the later of (1) the receipt of a compliant invoice (not from date of the invoice) (2) the actual date of acceptance of the Products, or, (3) the delivery date specified in the Agreement. Payment of

invoices will be made in accordance with the term of the Order. Unless freight and other charges are itemized, any discount shall be taken on the full amount of the invoice. Invoices shall be supported by such documents in such form as Buyer requests and shall bear such certification as may be required by law, regulations or the Agreement.

All payments are contingent on acceptance of the goods or services by Buyer. Seller shall issue separate invoices for each shipment showing the amount of material shipped. The Subcontract or Purchase Order number shall appear on all invoices, packages, crates or boxes, bills of lading, express receipts, correspondence and other instruments used in connection with the Agreement. Invoices shall be emailed to Buyer at [sncaccountspayable@sncorp.com](mailto:sncaccountspayable@sncorp.com) within ten days after shipment. All containers, drums, carboys, etc., to be returned shall be shipped on a no charge or consignment basis unless otherwise specified in the Agreement. Buyer shall pay for only such containers that it does not return within a reasonable time. Payment shall not constitute acceptance of the products.

Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer any amounts paid in excess of amount due Seller.

Invoices which do not agree with prices or other terms of the Agreement will be returned to Seller for corrections. Payment schedule shall commence upon receipt of the corrected invoice by Buyer.

If Technical Data/Software or any part thereof as required by the Agreement is not delivered within the time specified or is deficient upon delivery, Buyer may, until such data is accepted, withhold payment to Seller of twenty percent (20%) of the total Agreement. Payments shall not be withheld nor any other action taken pursuant to this clause when Seller's failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of Seller.

Notwithstanding anything else contained herein, Buyer's receipt of payment under the Prime Contract is an express condition precedent to Buyer's obligation to make payment to Seller under this Agreement. If Buyer makes any payments to Seller prior to receipt of final payment under the corresponding prime contract, those payments by Buyer shall be considered interim in nature and subject to adjustment if the prime contractor determines that Buyer is not entitled to the full amount requested under the prime contract.

All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer, for any set off or counterclaim arising out of this or any other of Buyer's Orders with Seller whether such set off or counterclaim arose before or after any such claim or assignment by Seller.

- 7. F.O.B., TITLE AND RISK OF LOSS** (*applies only to goods provided under the Agreement*)  
Unless otherwise specified, F.O.B. shall be Buyer's facility. Title to any goods covered by the Agreement shall pass to Buyer upon final inspection and acceptance, regardless of when or where Buyer takes physical possession.

Risk of loss or damage to articles shall remain with Seller until:

- (a) Delivery of the goods to an authorized carrier, if delivery is F.O.B. Origin; or
- (b) Final acceptance by Buyer or receipt of goods by Buyer at the destination specified in the Agreement, whichever is later, if transportation is F.O.B. Destination.

Notwithstanding the above, the risk of loss or damage to goods that fail to conform to the Agreement so as to give rise to a right of rejection, shall remain with Seller until cure or final acceptance.

**8. NEW MATERIALS**

Unless expressly authorized in writing, all work to be delivered hereunder shall consist of new materials.

**9. FORCE MAJEURE**

Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of any government authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without fault or negligence of either of them, Seller shall not be liable to Buyer in damages unless the articles or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) calendar days after the beginning of any such cause.

**10. CHANGES**

- (a) Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement to any one or more of the following:
  - (1) Drawings, designs, or specifications
  - (2) Method of shipment or packing.
  - (3) Place of delivery, inspection or acceptance
  - (4) Description of services to be performed
  - (5) Time of performance
  - (6) Place of performance
  - (7) Delivery schedule
- (b) Seller shall comply immediately with such direction. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of work under this Agreement, Seller may request an equitable adjustment in the
  - (1) price, the delivery or completion schedule, or both

- (2) amount of any fixed fee
- (3) other affected terms and the Agreement shall be modified accordingly.
- (c) Seller must submit any “proposal for adjustment” (hereinafter referred to as “proposal”) under this clause within twenty (20) days from the date of receipt of the written order. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the order.
- (d) If Seller’s proposal includes the price of property made obsolete or in excess by the change, Buyer shall have the right to prescribe the manner of disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse Seller from proceeding with the order as changed.
- (f) Notwithstanding the terms and conditions of parts (a) and (b) above, the price of this Agreement and, if this Agreement is incrementally funded, the funds allotted for the performance of this Agreement shall not be increased or considered to be increased except by specific written modification of the Agreement indicating the new price and, if this Agreement is to be incrementally funded, the new amount allotted to the Agreement. Until this modification is made, Seller shall not be obligated to continue performance or incur costs beyond the original price of the Agreement and, if this Agreement is incrementally funded, beyond the amount of funds originally allotted for the performance of this Agreement.
- (g) When costs are a factor in any determination of an equitable adjustment, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation as in effect on the date of the Agreement.

#### **11. CONTRACTUAL DIRECTION**

Sole authority to make changes in or amendments to the Agreement and to effect deviations (by way of addition or deletion) from the work specified herein is hereby granted to Buyer’s Authorized Representative identified in the Agreement. All contractual direction, in order to be valid, must be written and signed by Buyer’s Authorized Representative.

#### **12. PROPRIETARY INFORMATION**

In the event Buyer and Seller have entered into a Non-Disclosure (Proprietary Information) Agreement (NDA/PIA) for the Program which the Subcontract has been issued against and that NDA/PIA remains in effect, the NDA/PIA shall govern the treatment of proprietary information. In such an event, the parties hereby (1) extend the term of the NDA to cover the period of performance of this Agreement, inclusive of all options and extensions; and (2) include within the purpose of the NDA or the permitted uses of information exchanged thereunder performance of this Agreement and any related prime contracts.

If no NDA has been executed or if an NDA has expired, the following terms shall govern proprietary information exchanged between the parties. Buyer and Seller anticipate that under the Subcontract it may be necessary for either to disclose to the other information of a proprietary nature. Proprietary information that may be disclosed under this Subcontract includes, but is not limited to, drawings, specifications, non-public product information, and other technical capabilities. Proprietary information shall be clearly identified by the disclosing party at the time of disclosure. All written proprietary information shall be marked as proprietary prior to disclosure.

Each of the parties agrees to use the same reasonable efforts to protect such information as is used to protect its own proprietary information, but in no case less than reasonable care. Disclosures of such information shall be restricted to those individuals who have a need to know and are directly participating in Subcontract efforts.

Neither party shall make any reproduction, disclosure, or use of such proprietary information except as follows:

- (a) Such information furnished by Buyer may be used by Seller in performing its obligations under the Agreement.
- (b) Such information furnished by Seller may be used by Buyer in performing its obligations under the Agreement and in performing its obligations under Buyer’s Prime Contract. Buyer’s use of Seller’s information to perform Buyer’s obligations under Buyer’s Prime Contract expressly includes delivering information furnished by Seller to Buyer’s customers. Under such circumstances, Buyer will affix appropriate restrictive legends to the extent that Seller specifically requests and that such legends are permitted by the Prime Contractor’s requirements.
- (c) Such information may also be used in accordance with any written authorization received from the disclosing party.

The limitations on reproduction, disclosure, or use of proprietary information shall not apply to, and neither party shall be liable for, reproduction, disclosure, or use of proprietary information with respect to any of the following conditions:

- (a) If, prior to the receipt thereof under the Agreement, the information has been developed independently by the party receiving it, or was lawfully known to the party receiving it, or has been lawfully received from other sources, including the Government (provided such other source did not receive it due to a breach of this clause) or was in the public domain prior to disclosure hereunder.
- (b) If, subsequent to receipt thereof under the Agreement, (i) the information is published by the party furnishing it or is disclosed by the party furnishing it to others without restriction; or (ii) it has been lawfully obtained by the party receiving it from other sources, including the Government, provided such other source did not receive

it due to a breach of this clause; or (iii) if such information otherwise comes within the public knowledge or becomes generally known to the public.

- (c) If any part of the proprietary information has been or hereafter shall be disclosed in a United States patent issued to the party furnishing the proprietary information hereunder, then, after the issuance of said patent, the limitations on such proprietary information as disclosed in the patent shall be only that afforded by United States patent laws.
- (d) If the proprietary information is furnished orally, unless such proprietary information was identified as proprietary at the time of disclosure and reduced to writing and marked proprietary within fifteen (15) days of original disclosure and such writing is forwarded to the receiving party and actually received within fifteen (15) days of original disclosure.
- (e) If such proprietary information is obligated to be disclosed under order of a court of competent jurisdiction so long as prompt notice of the order is given to the other party.
- (f) If such proprietary information is disclosed with the written approval of the originating party.

The furnishing of any proprietary information by either party shall not be construed as granting to the other party either expressly, by implication, estoppel, or otherwise, any ownership or license right (other than the limited license to use the information internally for the purpose for which it was provided) under any invention, patent, trade secret, trademark, or copyright now or hereafter owned or controlled by the party furnishing same. The foregoing shall not impact any license or ownership right in information identified and set forth elsewhere in this document.

Seller shall upon Buyer's request or upon completion of this Subcontract, whichever occurs first, promptly at its option: (1) destroy all proprietary information furnished in connection with the Subcontract and certify such destruction; or (2) return all proprietary information furnished in connection with the Subcontract, together with all copies or reprints then in Seller's possession and control, and Seller shall thereafter make no further use of nor disclose to others any such data or documents or any information derived therefrom without Buyer's prior written consent

Notwithstanding anything to the contrary elsewhere in this Agreement (inclusive of this provision) or an associated NDA, nothing in this Agreement or in an associated NDA restricts, limits, or otherwise impacts any rights, licenses, or conveyances granted to Buyer elsewhere in this Agreement. To the extent that language in this Agreement or an associated NDA could be interpreted as creating such a restriction, limitation, or impact, the language pertaining to the granted rights, licenses, or conveyances shall govern.

### **13. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY**

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fee and/or costs), liabilities, damages, costs, and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including but not limited to, any right in a patent copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacturing, sale or use of products delivered under the Agreement by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any claims, suits or actions; and Seller shall, at its own expense, fully defend such claims, suit or action on behalf of indemnities, obtain such licenses as are necessary to remove such infringement, or replace the infringing Product.

In the event that a court of law, administrative body, or other entity convened for the purpose of resolving such a matter, including through the use of alternative dispute resolution, determines that Seller has violated the protections afforded to a third party's intellectual property under statute, regulation, or contract, Seller shall use all reasonable efforts to obtain a license for Buyer that permits Buyer's use of any intellectual property included in a deliverable or otherwise necessary to the performance of the Agreement. If Seller is unable to obtain such a license, Seller shall, at its own expense, modify performance of this Agreement to eliminate the need for the infringing intellectual property. If Seller becomes responsible for modifying performance under this provision, Seller shall first propose an alternate method of performance that is at least as beneficial to Buyer and Buyer's customers as the method of performance originally contemplated in the Agreement. Such a Seller proposal shall be first approved by Buyer prior to Seller commencing its effort to modify performance.

### **14. RIGHTS IN INTELLECTUAL PROPERTY**

Seller hereby assigns to Buyer all rights in, title to, and ownership of patents, trade secrets, technical data, and other intellectual property created, conceived, or first reduced to practice under this Agreement. This specifically includes, but is not limited to, original works of authorship fixed in any tangible form, including software and software improvements, enhancements, derivative works and mask works, whether specially ordered or commissioned, made by Seller alone or jointly with others in connection with the Agreement. Seller further warrants that it will obtain such rights and title, on Buyer's behalf, from all employees or subcontractors in a way that facilitates Seller's transfer of such rights and title to Buyer or Buyer's assigns.

Seller shall not incorporate any data or other intellectual property which was not first produced in the performance of the Agreement into Products delivered under the Agreement

unless Seller: (1) arranges for and provides to Buyer and Buyer's customers at any tier a non-exclusive, irrevocable license for unlimited use and disclosure of the data or other intellectual property sufficient to allow Buyer to comply with its obligations to its Customer; or (2) receives prior approval from Buyer to incorporate such data or intellectual property.

**Buyer-Provided Intellectual Property:** Any intellectual property, technical data, or other information owned by or provided by Buyer to Seller under this Agreement shall remain the exclusive property of Buyer. Seller shall treat this Buyer-provided or Buyer-owned intellectual property, technical data, and other information in accordance with the terms of the applicable non-disclosure agreement or Agreement provision concerning proprietary information. If there is no non-disclosure agreement or Agreement provision concerning proprietary information, Seller shall receive a limited, nonexclusive, revocable, non-transferrable, nonsublicensable license to this Buyer-provided or Buyer-owned intellectual property, technical data, and other information only for the period of performance of this Agreement and only permitting the intellectual property, technical data, and other information to be used to perform this Agreement.

**Buyer Name, Trademarks, and Images:** Nothing in this Agreement permits Seller to use publically or with any third parties SNC's name, trademarks or Buyer-owned images. Seller can only receive the right to use such names, trademarks, or images through a separate agreement with SNC. If Seller receives such a right to use SNC names, trademarks, or images, such use must be consistent with SNC's usage guidelines, which will be provided if and when Seller is permitted to use Buyer names, trademarks, or images.

#### **15. BUYER PROPERTY**

Seller shall clearly mark, maintain an inventory of and keep segregated or identifiable all Buyer property and all property to which Buyer acquires an interest by virtue of the Agreement. Except for ordinary wear and tear, Seller assumes all risk of loss, destruction, or damage to such property while in Seller's possession, custody, or control, and will not use such property other than in performance of the Agreement without Buyer's written consent. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller will notify Buyer if Buyer property is lost, damaged, or destroyed. As directed by Buyer, upon completion, termination, or cancellation of the Agreement, Seller shall deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. At the request of Buyer, Seller shall execute any documents, including but not limited to financial statements, required by Buyer to protect its interest in this property. If, in the performance of the Agreement, Buyer furnishes Seller with components or other concerns to be incorporated by Seller in the Products to be delivered to Buyer, Buyer does not waive its right to require the level of quality specified for the Products to be delivered by Seller.

Seller agrees to replace any components or other items furnished by Buyer that are damaged by Seller or Seller's agents, or to reimburse Buyer for the same. Seller agrees that all dies, tools, jigs, fixtures, designs, drawings, patterns and other special items, which are furnished by Buyer without charge, shall be the Property of Buyer.

#### **16. INSURANCE**

Seller, its subcontractors, and lower-tier subcontractors, agree to procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts that are consistent with industry practice and the specific loss potential related to performance of this Agreement, and such other insurance as Buyer may require. Seller shall provide Buyer thirty (30) calendar days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's insurance under this provision. Seller shall provide Buyer with a "Certificate of Insurance" evidencing Seller's compliance with this provision. Seller shall name Buyer as an additional insured for the duration of the Agreement. Insurance maintained under this provision shall be considered primary with respect to the interest of Buyer and is not contributory with any insurance Buyer may carry.

#### **17. SITE REQUIREMENTS**

In the event that Seller, its employees, agents, or subcontractors enter Buyer's and/or its customer's premises for any reason in connection with the Agreement, Seller shall comply with all applicable security requirements.

#### **18. INSPECTION**

- (a) Seller shall perform all examinations, inspections and tests, or assume responsibility for others to do so, necessary to ensure that the Products furnished are in complete conformity with all requirements of the Agreement.
- (b) All Products entering into the performance of the Agreement may be inspected and tested at all times and places, before, during or after manufacture, by representatives of Buyer and/or its customer. If inspection and/or test is made on the premises of Seller or its supplier, Seller shall furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay the work. Final inspections shall be on Buyer's premises unless Buyer directs otherwise in writing.
- (c) In case any of the Products are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of the Agreement, Buyer shall have the right to reject the same or require that such Products be corrected or replaced promptly. Nonconforming Products shall be identified by Seller and removed from normal production flow until correction or replacement is complete. Only Buyer may authorize deviations from control documents and such deviations must be authorized in writing by Buyer.

Products rejected, as not conforming to the Agreement shall be returned at Seller's expense including packaging, transportation and handling costs. If Buyer rejects the Products or if Seller, when requested by Buyer, fails to proceed promptly with the replacement or correction thereof, Buyer either may terminate the Agreement for default or may replace or correct such Products and in either event may charge Seller the cost or damages occasioned by Products which do not conform to the requirements of the Agreement, including delivery schedule. Seller's liability shall include any reduction in value of non-conforming Products and any other incidental or consequential damages which Buyer may suffer on account of Seller's failure to conform with the requirements of the Agreement. If Buyer elects to accept such non-conforming Products, the parties will negotiate in good faith for a downward equitable adjustment in price and payments will be withheld during the pendency of such negotiations.

- (d) Seller shall provide and maintain an inspection system in accordance with sound business practice and as otherwise specified in the Agreement. Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of the Agreement and for three (3) years after final payment or in such manner as may be specified elsewhere in the Agreement.
- (e) The methods of inspecting and testing for purposes of Buyer's acceptance of the Products shall be determined in Buyer's sole discretion and shall include statistical sampling methods. Acceptance of any Products shall not waive, modify, limit or constitute compliance with any of the warranty obligations imposed herein on Seller.
- (f) Seller acknowledges that the nature of Buyer's business requires Buyer to reserve the right to terminate the Agreement for default if Seller fails in any respect to meet the entire requirement of the Agreement. Buyer shall have the right, at its election, to cancel the Agreement in its entirety for any late delivery, cancel the remaining portion of the Agreement for default because of said late delivery, or both. Buyer may determine which units are acceptable and which are not, in which event Buyer shall have the right to charge and deduct from the price otherwise due Seller all of Buyer's direct costs associated with handling and testing the units to the extent those costs exceed the testing costs originally contemplated by Buyer, together with a reasonable allowance for overhead, unless Buyer elects to reject all or any part of a lot. Whenever any commercial unit within such lot (or installment) fails acceptance testing, and regardless of whether Seller offers to cure any nonconformity, Buyer shall have the right to cancel the remainder of the Agreement for default.

#### **19. BUYER APPROVALS AND REVIEWS**

The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or documents prepared hereunder shall not relieve Seller of any of its obligations under the Agreement, nor excuse or constitute a waiver of any defects or nonconformities in any articles furnished under the Agreement, nor change, modify, or otherwise affect any of the provisions of the Agreement, including but not limited to, the prices and delivery schedules contained herein.

#### **20. WARRANTY**

Seller warrants all Products to be free from defect in design, materials, and workmanship and to conform strictly to the specifications, drawings or samples specified or furnished; to be new and of the most suitable grade of their respective kinds; to be suitable for the purpose intended; and to meet all of the performance requirements. Seller warrants all services provided to be performed at a level of skill consistent with best practices within the related industry. The aforesaid express warranties shall be in addition to any standard warranty or guarantee of Seller, shall be construed as conditions as well as warranties and shall not be exclusive. All warranties shall run to Buyer, its successors, assigned customers, and the users of the Products. Seller agrees to replace or to correct promptly without expense to Buyer, including transportation and handling costs, any Products not conforming to the foregoing requirements when notified by Buyer during a period of twelve (12) months after the Product is placed in service or within twenty-four (24) months of when the Product is delivered to Buyer, whichever is earlier. If Seller, upon notice of any defect, fails promptly to correct or replace Products as required herein, Buyer may, without further notice, correct or replace such Products and Seller agrees to reimburse Buyer for all costs incurred thereby. Products that have been rejected, shall not thereafter be tendered for acceptance unless the former rejection and correction is identified and approved by Buyer. Repaired or replacement Products shall be subject to the provisions of this article to the same extent as the original supplies. All warranties shall then run from the latter delivery date. Seller shall obtain from its suppliers, subcontractors, and vendors sufficient warranties to ensure that the entire Product, as delivered to Buyer, is covered by a warranty that complies with the terms of this Agreement.

Seller warrants that to the best of its knowledge, information, and belief, the prices charged for supplies/services covered by the Agreement are not in excess of the prices permitted by any applicable law or regulation.

#### **21. STOP WORK**

Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by the Agreement for a period of ninety (90) days after the order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of such an order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

Within a period of ninety (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period which the parties shall have agreed, Buyer shall either;

- (a) Cancel the Stop Work Order, or
- (b) Terminate the work covered by such order as provided in the "Termination/Cancellation" clause of this Agreement.

If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work. Seller may request an equitable adjustment in the delivery schedule, or the Agreement price, or both, and modify the Agreement in writing accordingly, if

- (1) The Stop Work Order results in an increase in the time required for, or in Seller's cost properly allocable to the performance of any of the Agreement; and
- (2) Seller asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if Buyer decides the facts justify such action, Buyer may receive and act upon a proposal submitted at any time before to final payment under the Agreement.

If a Stop Work Order is not canceled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

If a Stop Work Order is not canceled and the work covered by such order is terminated for the convenience of Buyer, Buyer shall allow all reasonable costs already incurred in performance of the work cancelled, resulting from the Stop Work Order in arriving at the termination settlement.

If a Stop Work concludes with Buyer issuing to Seller a termination for cause, Seller shall not be entitled to any compensation or reimbursement of costs under this clause. This is in addition to any rights or remedies that Buyer may have elsewhere in the document.

## 22. TERMINATION/CANCELLATION

Termination for Cause - Performance of work under the Subcontract may be terminated by Buyer, in whole or in part, if, within ten days of Buyer's notice to Seller, Seller fails to: (1) cure any material failure to perform, discharge or fulfill its obligations under the Subcontract including, but not limited to failure to observe or comply with any of the other instructions, terms, conditions, or warranties applicable to the Subcontract, (2) fails to make progress so as to endanger performance of the Subcontract, or (3) fails to provide adequate assurance of future performance. Additionally, Buyer may terminate the Subcontract immediately if Seller fails to deliver according to the Schedule or violates any Federal, state, local, or law pertaining to performance of the Subcontract. Default involving delivery schedule delays shall not be subject to cure provisions. Buyer shall not be liable for any work not accepted prior to termination. Buyer may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings Seller

has specifically produced or acquired for the terminated portion of the Subcontract. Seller shall continue all work not terminated.

Without Cause - For work not specially performed under the Subcontract, Buyer may terminate in whole or in part the Subcontract for its convenience by giving written notice to Seller and Buyer's only obligation to Seller shall be payment of mutually agreed upon restocking or service charges. For work specially performed for Buyer, Buyer may terminate in whole or in part the Subcontract for its convenience by giving written notice to Seller. Seller shall be entitled to a percentage of the price of this Subcontract reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer using its standard record keeping system, have resulted from the termination Buyer is not liable for work performed or costs incurred by Seller after notice of termination, which reasonably could have been avoided. In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Subcontract price or not-to-exceed amount. Seller's termination claim shall be submitted within ninety (90) calendar days from the effective date of the written notice of termination. Seller shall continue all work not terminated.

## 23. SURVIVABILITY

If the Agreement expires, is completed, or is terminated, Seller is not relieved of the obligations contained in the following clauses:

- Proprietary Information
- Patent, Trademark & Copyright Indemnity
- Warranty
- Disputes
- Termination/Cancellation
- Independent Contractor Relationship
- Counterfeit or Suspect Parts
- Record Retention
- Defective Cost or Pricing Data
- Indemnity and Reimbursement
- Choice of Law
- Compliance with Laws
- Rights & Remedies

## 24. BANKRUPTCY

In addition to the rights set forth in the Termination/Cancellation clause above, Buyer may terminate the Agreement for default, in whole or in part, by written notice to Seller if (i) Seller becomes insolvent or makes a general assignment for the benefit of creditors or (ii) a petition under any bankruptcy act or similar statute is filed by or against Seller and not vacated within ten days after it is filed.

## 25. INDEPENDENT CONTRACTOR RELATIONSHIP

Seller is an independent contractor in all its operations and activities under this Agreement. Seller shall be responsible for any costs or expenses including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers,



employees, agents, suppliers, or subcontractors at any tier, in the performance of the Agreement.

## 26. ASSIGNMENTS AND SUBCONTRACTING

Neither the Agreement, nor any interest herein, nor any claim hereunder, may be assigned or delegated by Seller, nor may Seller further subcontract all or substantially all of the Agreement without the prior written consent of Buyer. Buyer's consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

If Seller has relied on the statement that no further subcontracting opportunities exist under this Agreement as a reason for not submitting to Buyer a small business subcontracting plan, Seller shall notify Buyer of any subcontracting that occurs under this Agreement. If requested, Seller shall provide to Buyer a small business subcontracting plan under such circumstances.

Without Buyer's written consent, Seller shall not subcontract for the design, development, or procurement of any substantial portion of goods or services under the Agreement. This limitation does not apply to Seller's purchase of standard commercial supplies or raw material.

Notwithstanding the above, Seller may, without Buyer's consent, assign monies due or to become due hereunder provided Buyer shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the Agreement, without notice to or consent of the assignee. Buyer shall be given written notice of any assignment and all invoices shall refer to the assignment.

## 27. CUSTOMERS COMMUNICATION, NEWS AND PUBLIC STATEMENTS OR RELEASES

Buyer shall be solely responsible for all communication with Buyer's customer. Seller shall not make, deny or confirm any public statements, news releases, advertisements, media interviews or public announcements (collectively, "Public Release") concerning the Order, the subject matter of the Order or any phase of the program hereunder unless Buyer, in its sole and absolute discretion, provides Seller with advance written approval of such Public Release. In furtherance of the foregoing, Seller shall submit the requested Public Release and detailed information concerning the applicable forum, publication or media outlet in writing to Buyer no later than fifteen (15) business days prior to the requested release date. Buyer's approval of a specific Public Release hereunder shall not operate or be construed as an approval of any previous or subsequent Public Release by Seller. This provision shall not apply to any disclosure deemed by a Seller's legal counsel to be required by law or by regulation of any federal, state or local government agency.

## 28. TAXES

All prices provided herein include all federal, state, and local taxes.

Seller shall provide Buyer with the appropriate IRS Form W-8 (e.g., W-8BEN, W-8BEN-E, W-8IMY, etc.) if the Seller is a non-US entity or IRS Form W-9 if the Seller is a US entity. If Seller fails to provide one of these forms, Buyer may be required under by the Internal Revenue Code to withhold a portion of the amounts due to the Seller. If Buyer is required by law or regulation to make such a withholding, Seller hereby consents to the withholding and agrees that it shall not constitute a breach of this Agreement.

## 29. COMPLIANCE WITH LAWS

Seller warrants that it shall comply with all Federal, State, local, and international laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit requirement applicable to its performance under the Agreement, including those pertaining to United States Export Controls.

The foregoing paragraph expressly includes compliance with the Foreign Corrupt Practices Act and similar anti-corruption laws and regulations. To the extent that Buyer has a reasonable belief that Seller has violated such laws, Buyer may immediately suspend performance of this Agreement and subsequently terminate this Agreement for cause if Seller fails to demonstrate compliance with the relevant anti-corruption laws and regulations.

Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of the Agreement with Seller, and/or may demand from Seller payment (in whole or in part) of the corresponding amounts if: (i) any fines, penalties or interest are assessed on Buyer; or (ii) Buyer incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier. Seller shall promptly pay amounts so demanded.

## 30. CHOICE OF LAW

The Agreement shall be governed by and construed and enforced in accordance with the law of the State of Nevada, excluding choice of law rules.

## 31. DISPUTES/ARBITRATION

The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement, or any alleged breach of this Agreement, by mediation. If the matter has not been resolved pursuant to mediation, or if either party will not participate in a mediation, such controversy or claim shall be resolved by means of binding arbitration before a single neutral arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association, including the Optional Rules for Emergency Measures of Protection. The parties shall mutually agree upon the individual who shall act as arbitrator. If the parties are unable to agree upon a neutral arbitrator, a list of potential arbitrators (no more than 10) shall be obtained by Buyer from the American Arbitration Association. The parties, starting with Buyer, will alternately strike names from the list until only one name remains; the remaining person shall be the arbitrator.

No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation. The arbitration shall be held in Washoe County, Nevada or any other place agreed upon at the time by the parties. The arbitrator shall issue a reasoned award. Judgment upon the arbitrator's award may be entered in any court having jurisdiction. The arbitrator is not authorized to award punitive or other damages not measured by the prevailing party's actual damages. An award of damages shall include pre-award interest at the legal rate of interest from the time of the act or acts giving rise to the award.

A party may apply to the arbitrator for injunctive relief until an arbitration award is rendered or the dispute is otherwise resolved. A party also may, without waiving any other remedy, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party pending the arbitrator's appointment or decision on the merits of the dispute. The arbitrator's compensation and costs shall be shared equally by the parties.

The arbitrator shall require exchange by the parties of (i) the name and, if known, address and telephone number of each person likely to have knowledge of relevant information, identifying the subjects of the information, and (ii) non-privileged documents, including those in electronic form, that are relevant to the issues raised by any claim, defense or counterclaim or on which the producing party may rely in support of or in opposition to any claim, defense or counterclaim. The arbitrator shall limit such production based on considerations of unreasonable expense, duplication and undue burden. These discovery exchanges shall occur no later than a specified date within 60 days following the appointment of the arbitrator. At the request of a party, the arbitrator may at his or her discretion order the deposition of witnesses. Depositions shall be limited to a maximum of three depositions per party, each of a maximum of four hours duration, unless the arbitrator otherwise determines. The arbitrator may allow such other discovery as he or she determines is reasonably necessary for a fair determination of the dispute. Any dispute or objections regarding discovery or the relevance of evidence shall be determined by the arbitrator. All discovery shall be completed within 120 days following the appointment of the arbitrator, unless the arbitrator otherwise determines.

The prevailing party in any such arbitration shall be entitled to recover its reasonable attorney fees and costs incurred in such proceeding from the non-prevailing party.

Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Agreement as directed by Buyer.

### **32. RIGHTS AND REMEDIES**

Except as otherwise limited in the Agreement, the rights and remedies of the parties set forth in the Agreement are

cumulative and in addition to any other rights or remedies in law or equity. When multiple remedies are available to Buyer under the Agreement, or otherwise, Buyer has the option to choose which remedy or remedies to pursue.

### **33. NON-WAIVER**

Any failure at any time of a party to enforce any provision of the Agreement shall not constitute a waiver of such provision or prejudice the right of the party to enforce such provision at any subsequent time, including any technical requirements, specifications or drawings or a waiver of a default provision.

### **34. PARTIAL INVALIDITY**

If any provision of the Agreement is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

### **35. SUPPLEMENTARY INFORMATION**

Any specifications, drawings, notes, instructions, engineering notices or technical data referred to in the Agreement shall be deemed to be incorporated herein by reference as if wholly set forth. In case of any discrepancies or questions on any matter arising from the Agreement, Seller shall request from Buyer a decision, instruction or interpretation of such matters.

### **36. SPECIAL TOOLING**

If the Agreement includes special tooling, payment of Seller's invoices for said special tooling is contingent upon Buyer's inspection, testing and acceptance the first piece produced by the special tooling.

### **37. LIENS**

Seller shall immediately discharge or cause to be discharged any liens or the right in rem of any kind, other than in favor of Buyer which at any time exists or arises in connection with Products furnished under the Agreement. If any such lien or right in rem is not immediately discharged, Buyer may discharge or cause to be discharged such lien or right at the expense of Seller. Seller agrees to insert this clause in any subcontracts issued hereunder.

### **38. NOTICE AND DESIGNATION OF RESPONSIBLE INDIVIDUALS**

Notices given under the Agreement must be in writing signed by an authorized officer of Buyer or of Seller and will be effective upon receipt if sent by certified mail return receipt requested, by email, by facsimile transmission, or by a nationally recognized courier providing receipted delivery.

Notices to be given under the Agreement shall be addressed to the parties' addresses set forth in the Agreement or to such other addresses as a party may properly, by written notice, designate.

### **39. INDEMNITY AND REIMBURSEMENT**

Seller shall indemnify, and hold Buyer harmless, from any and all liability claims and/or demands based upon, connected with or arising out of the performance of this Agreement by or for Seller; and Seller shall defend Buyer from any and all such claims, actions and demands. Seller agrees that in the event Buyer's customer withholds, reduces, recoups,

disallows, and/or deletes the cost, overheads, and/or profits of Buyer due to any action or inaction on the part of Seller, Seller shall immediately repay Buyer for any such customer claim and/or loss.

**40. ELECTRONIC SIGNATURE**

If this Subcontract is transmitted electronically, the parties agree that neither party will contest the validity of this Subcontract, or any acknowledgement thereof, based on the fact that such Subcontract or acknowledgement contains an electronic signature or electronic image of an actual signature.

**41. EXPORT CONTROL**

Seller agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the Arms Export Control Act, 22 U.S.C. §§ 2751-2799, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. §§ 120-130, the Export Administration Act, 50 U.S.C. §§ 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. §§ 730-744. In addition, Seller agrees that it will not transfer any export controlled items, data, or services, to include the transfer to a foreign person employed by or associated with Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption/exception. Seller agrees to notify the Buyer's Authorized Representative if any Product under this Order is restricted under export control laws or regulations, if Seller becomes listed on any restricted party list including, but not limited to, the Denied Persons List, Unverified List, Entity List, Specially Designated Nationals List and Debarred List, or if Seller has any export privileges denied, suspended, or revoked by the government. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any violation of the above laws and regulations, or breach by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, of the obligations under this clause.

**42. DISCONTINUANCE**

Buyer may wish to place additional orders for Products purchased under this Subcontract. Seller agrees to provide Buyer with a "Last Opportunity to Buy Notice" at least twelve (12) months before any action to discontinue any Products purchased under the Subcontract.

**43. ENTIRE AGREEMENT**

The terms set forth within the Agreement constitute the entire agreement of the parties and supersede all previous verbal or written representations, agreements, and conditions with respect to the subject matter hereof. No modification of the requirements of the Agreement, and no communications which vary from or add to any terms of the Agreement will be binding unless in writing and signed by an authorized representative of Buyer.

**44. RECORD RETENTION**

Seller agrees to retain all documents and records associated with performance under this Agreement for three (3) years

after the completion of work under this Agreement, or a longer period if specified elsewhere in this Agreement or relevant regulations. Seller will provide Buyer with timely access to these records, at no cost, upon request.

**45. CONFLICT MINERALS**

In compliance with Dodd-Frank Act Section 1502, Seller recognizes the potential applicability of the SEC Reporting Requirements for Issuers Using Conflict Minerals, and shall provide Buyer with any and all information designated, identified or otherwise delineated in such rules within forty-five (45) days of Buyer's written request for such information. "Conflict minerals" are: columbite-tantalite (coltan), cassiterite, wolframite, and gold, or their derivatives tantalum, tin, and tungsten.

**46. AFFIRMATIVE ACTION**

Seller acknowledges that as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal opportunity and affirmative action which may also be applicable to Seller. Accordingly, Seller shall, to the extent they apply, abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

**47. PROHIBITION ON KASPERSKY LAB**

Seller warrants that no articles obtained through this procurement include or contain hardware, software, components, or services that have been developed or provided, in whole or in part, by Kaspersky Lab, any successor entity to Kaspersky Lab, any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or any entity of which Kaspersky Lab has a majority ownership.

In the event the Seller identifies an article developed or provided by Kaspersky Lab, or any associated entities, or the Seller is notified of such by a subcontractor or supplier at any tier or any other source, the Seller shall report in writing to SNC Procurement Compliance at ProcureCompliance@sncorp.com. The Seller shall report the following information:

A. Within 1 business day from the date of such identification or notification:

- 1) The Subcontract or Purchase Order number; any related release order number(s), if applicable;
- 2) Supplier name;

- 3) Brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number);
- 4) Item description; and any readily available information about mitigation actions undertaken or recommended.

B. Within 10 business days of submitting the report: Any further available information about mitigation actions undertaken or recommended. In addition, the Seller shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

#### 48. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The following clauses are incorporated by reference, as if fully set forth herein, and apply to the extent indicated therein: FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, FAR 52.204-26 Covered Telecommunications Equipment or Services—Representation, DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation, DFARS 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, and DFARS 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services.

If the Seller is notified of any prohibited activity, by a supplier at any source, Seller will report this in writing to SNC Procurement Compliance at [ProcureCompliance@SNCorp.com](mailto:ProcureCompliance@SNCorp.com).

Within one (1) business day from the date of notification, Seller will provide:

- 1) Purchase Order number and any related release order number(s), if applicable;
- 2) Supplier name, unique entity identifier (if known), and supplier CAGE code (if known);
- 3) Brand; model number OEM number, manufacturer part number, or wholesaler number;
- 4) Item description; and
- 5) Any readily available information about mitigation actions taken or recommended.

Within ten (10) business days of submitting the report:

- 1) Any further available information about mitigation actions taken or recommended in this instance;
- 2) Description of the efforts Seller took to prevent use of covered telecommunications or video surveillance equipment or services from the

People's Republic of China and the Russian Federation; and

- 3) Any additional efforts which Seller will make to prevent future use.

#### 49. COMBATING TRAFFICKING IN PERSONS

Seller agrees to prohibit trafficking in persons during the performance of this Agreement. This includes all activities involving trafficking in persons, the procurement of commercial sex acts, and the use of forced labor as outlined in U.S. laws and regulations, including but not limited to the Trafficking Victims Protection Act of 2000 (22 U.S.C. 78) and Executive Order 13627.

If Seller becomes aware of any prohibited activity, they will immediately notify Procurement Compliance as [ProcureCompliance@SNCorp.com](mailto:ProcureCompliance@SNCorp.com) including:

- 1) The known details of the prohibited trafficking activity, including type of activity, timeframe and location and the occurrence(s), and any other information Seller used to assess the credibility of the detection or notification of the activity;
- 2) Any actions Seller has taken to remediate; and
- 3) Any actions Seller has taken to refer the trafficking related activity information to law enforcement or other public authorities.

Seller's failure to comply with this provision may be considered a material breach of this Agreement.