

## APPENDIX A –CAPITAL / MANUFACTURING EQUIPMENT

The terms of this Appendix A shall apply for the purchase of capital / manufacturing equipment (“**Equipment**”) and services related to the production, calibration and/or installation thereof (“**services**”). Where there is a conflict or silence on the Buyer’s PO terms and conditions, this Appendix A shall govern. For any purchase of components, materials, production parts, tooling, or other goods or services, Buyer’s PO terms and conditions will apply instead of these terms.

- 1. Specifications:** Buyer’s general equipment / software specifications and source inspection and acceptance criteria (“**Equipment Specification**”) are incorporated into this PO by reference and will be used exclusively to determine performance and acceptability of the Equipment. The applicable Equipment Specification document control number and revision level will be indicated on the face of the PO. Final payment is contingent upon compliance with the Equipment Specification and successfully completing the acceptance criteria after installation at Buyer’s facility.
- 2. Pre-Installation:** Supplier will provide Buyer with Supplier’s then current installation requirements, including the location space and storage needs. Supplier shall review the Pre-Installation Conditions (defined below) with Buyer to confirm that Buyer understands such requirements. Buyer is responsible for the following: ensure the site’s compatibility with Supplier’s shipment crates; provide environmentally adequate storage space for Equipment upon arrival at Buyer’s facility and prior to installation; provide access to the facility to Supplier’s employees for pre-installation surveys, unpacking, and installation of each system; make available Buyer personnel in sufficient numbers and of adequate capabilities on site to assist Supplier during pre-installation, unpacking, and installation; use Supplier approved equipment, rigging, or other services to transport the Equipment, either assembled or in parts, to the place of installation; establish and maintain additional site conditions as indicated pursuant to Supplier’s then current installation requirements; and provide any other support or assistance as reasonably requested by Supplier (the “**Pre-Installation Conditions**”). If, as a result of Buyer’s failure to comply with the Pre-Installation Conditions, Supplier is unable to complete an installation of equipment as scheduled, Buyer and Supplier will work together in good faith to devise a plan to complete the installation.
- 3. Installation:** The Equipment shall be installed by Supplier in a good and workmanlike manner, provided that all the Pre-Installation Conditions stated in the Section 2 above have been met by Buyer. In the event installation cannot be completed within ninety (90) days of the delivery of the Equipment due to delays caused solely by Buyer, including Buyer’s failure to comply with the Pre-Installation Conditions, Supplier may invoice for any portion of the purchase price for the Equipment not previously paid by Buyer without Buyer waiving the Acceptance Criteria set out below.
- 4. Acceptance Criteria:** After on-site installation at Buyer’s premises, the Equipment will be subjected to on-site acceptance testing which Supplier and Buyer will mutually agree upon (the “**Site Acceptance Test**” or, alternatively, “**SAT**”). Supplier will be invited to attend the SAT, at Supplier’s expense. At such time as the Equipment meets the SAT, the installation shall be deemed to be completed (the “**Final Acceptance Date**”). Notwithstanding anything to the contrary in these terms and conditions, the Final Acceptance Date shall be the earlier of: (a) such time as the system passes the SAT, or (b) ninety (90) days from shipment if acceptance or use has been delayed through no fault of Supplier. Any unpaid balance of the purchase price shall thereupon become due and payable within ninety (90) days after the Final Acceptance Date, and the warranty period shall start from the Final Acceptance Date. Minor deviations from Equipment Specifications or the Buyer’s acceptance criteria, which do not affect Buyer’s ability to effectively use the Equipment will not be grounds for delayed acceptance, but shall be remedied under the terms of the applicable warranty.
- 5. Payments:** Buyer will not be obligated to make any payment to Supplier if any one or more of the following conditions exist: (a) Supplier is in material default of any of its obligations under the PO, (b) any part of such payment is attributable to work which is defective or not performed in accordance with this PO; provided however, such payment will be made as to the part attributable to work performed in accordance with this PO and which is not defective, (c) Supplier has failed to make payments promptly to Supplier’s subcontractors or for goods or services related to the Equipment for which Buyer has made payment to Supplier, (d) if Buyer reasonably determines that the portion of the amount remaining unpaid under this PO will not be sufficient to complete the work in accordance with this PO, no additional payments will be due Supplier unless and until Supplier, at its sole cost, performs a sufficient portion of the work so that such portion of the amount remaining unpaid is determined by Buyer to be sufficient to complete the work, or (e) Supplier has failed to complete the work within the time period stated in this PO. In addition, Buyer may set off from payments otherwise due under this Agreement claims arising under other contracts or purchase orders with Supplier. Upon receipt of payment from Buyer, Supplier shall promptly pay each subcontractor the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to Supplier on account of subcontractor’s work. Supplier shall, by agreement, require each subcontractor to make payments to his sub-contractors in similar manner. Buyer has no obligation to pay or to see to the payment of any moneys to any subcontractor except as otherwise may be required by law.
- 6. Equipment Warranty:** In addition to the warranty stated on Buyer’s PO terms and conditions, Supplier warrants that all Equipment supplied hereunder and all Software, parts and components thereof will be of good quality and free from defects in material and workmanship for a period of three (3) years from the Final Acceptance Date or Supplier’s published warranty, whichever is longer. Such warranties shall survive any inspection, delivery, acceptance or payment by Buyer of such Equipment and services, and shall survive the expiration or termination of the PO. Such warranties, together with all other express and implied warranties of Supplier, shall run in favor of Buyer, its successors and assigns. Buyer may charge Supplier all expenses of inspecting, unpacking, examining, repacking, storing and re-shipping any defective or nonconforming Equipment. Prior testing periods of Equipment shall not start the running of the warranty period. Supplier agrees to repair Equipment or to replace any necessary parts at Buyer’s site at no charge during the warranty period. When repairs are required the warranty period shall be interrupted for the repair period. The warranty period will resume when the Equipment is again in complete and full-time operation according to the Acceptance Criteria. In the event Supplier fails to respond to any of its obligations under this warranty within a reasonable period of time or to complete any warranty work within a timely manner as deemed by Buyer given the facts and circumstances, Buyer shall have the right to perform the necessary corrective action or repairs necessary by itself or by retaining a third party. In such cases, Supplier will be charged any and all direct costs incurred by Buyer to perform the work covered under this warranty. Notwithstanding the foregoing, where the failure or any delay to correct such failure may result or threatens to create significant liability or damages or unreasonable costs to Buyer if not immediately repaired, Buyer shall have the right, without notice to Supplier, to immediately perform the necessary repairs or corrective action by itself or through a third party, and Supplier agrees to reimburse Buyer for any and all direct costs incurred by Buyer relating to the performance of such work.
- 7. Access and Use of Premises and Property:** If Supplier performs any work on Buyer’s or Buyer’s customer’s premises or utilizes the property of Buyer or Buyer’s customer, whether on or off Buyer’s or Buyer’s customer’s premises: (a) Supplier will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (b) Supplier’s employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from Buyer’s premises at Buyer’s discretion; (c) Buyer’s employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (d) to the fullest extent permitted by law, Supplier will indemnify and hold Buyer and Buyer’s customer, and their respective agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys’ and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its customer, their respective agents, or any other person or entity to the extent arising from or in connection with Supplier’s work on the premises or Supplier’s use of Buyer’s or Buyer’s customer’s property, except to the extent caused by Buyer’s sole negligence. Supplier shall keep those portions of Buyer’s premises where Supplier is performing work or services clean of debris, and upon completion of the work shall leave the premises clean and ready for use. If Supplier fails to clean up to Buyer’s satisfaction, Buyer may do so and the cost will be charged to Supplier or deducted from the price of the PO. Supplier will coordinate all

work and services to be performed at Buyer's premises with the Buyer in advance to ensure that suitable power, materials handling equipment and other items are available.

**8. Documents and Data:** Supplier will provide Buyer at no additional cost to Buyer, with (i) a complete listing of recommended spare parts for the Equipment, (ii) operation, maintenance, and training manuals, and (iii) copies of the technical and mechanical specifications relating to the Equipment, including layouts, drawings, diagrams, software and models of the Equipment. In addition, no more than thirty (30) days after receipt of Buyer's PO, Supplier will provide Buyer with any site/facility specifications relating to the requirements necessary for the proper set up of the Equipment, including necessary floor loads to hold the Equipment, height, depth and width requirements, electrical, power, water, and heating requirements, and all other requirements necessary to properly and safely install, set up, maintain and operate the Equipment. Any and all Documentation provided to Buyer shall be written in English. Supplier further agrees, at its own cost and expense, to ensure that any Documentation provided to Buyer accurately reflects the description, design, specifications, etc. of the Equipment as of the Final Acceptance Date.

**9. Discontinued Product; Spare Parts:** Supplier shall make available to Buyer, for purchase at the prices set forth in the PO, repair and replacement parts and service tools for each component of the Equipment, for a period of fifteen (15) years after acceptance of the Equipment by Buyer or such longer period as is set forth in the PO.

**10. Insurance:** Supplier shall obtain and maintain at its expense, until the Final Acceptance Date and for one year thereafter, the following minimum insurance policies: (i) Commercial General Liability Insurance, including coverage for product liability and completed operations arising out of or related to the Equipment or Supplier's performance under this PO, with a per occurrence limit of not less than \$2,000,000, and a general aggregate of not less than \$10,000,000; (ii) Employer's Liability insurance of at least One Million Dollars (\$1,000,000.00) per person/per accident/per occupational disease; and (iii) Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage covering use and operation of owned, non-owned and hired vehicles, with carriers rated A-M Best or A-. Supplier shall name Buyer, its officers, directors, employees, or agents as additional insureds. Buyer is to be provided with certificates of insurance with respect to the required coverages.

**11. Additional Consequences of Termination:** Upon the expiration or termination of this PO for any reason each party will immediately stop using, and destroy or return to the other party, all items that contain any Confidential Information belonging to the other party, except Buyer may retain one copy of any Confidential Information necessary for the purpose of supporting the Equipment. Upon termination or cancellation of this PO, Supplier will: (a) promptly terminate all work under the PO; (b) transfer title and deliver to Buyer the finished Equipment free and clear of liens, claims and encumbrances; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Supplier's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) upon Buyer's request, cooperate with Buyer in transferring the production of Equipment to a different supplier. Notwithstanding any other provision, Buyer will have no obligation for and will not be required to pay Supplier, directly or on account of claims by Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Supplier fabricates or procures, or general administrative burden charges from termination of the PO, except as otherwise expressly agreed in a separate PO issued by Buyer. Supplier will furnish to Buyer, within one month after the date of termination, its termination claim, which will consist exclusively of the items of Buyer's obligation to Supplier that are expressly permitted by this Section 11. Buyer may audit Supplier's records before or after payment to verify amounts requested in Supplier's termination claim. Buyer will have no obligation for payment to Supplier under this Section 11 if Buyer terminates the PO or portion thereof because of a default or breach by Supplier.

**12. Preventative Maintenance:** Supplier will provide Buyer with a complete and comprehensive preventative maintenance plan for Equipment prior to final acceptance at the facility designated by Buyer. The preventative maintenance plan shall include, without limitation, at least two (2) complete sets of maintenance and operating manuals for all Equipment purchased by Buyer (including one in a foreign language, if required by Buyer), as well as a detailed bill of material. Supplier warrants to Buyer and its affiliates, their respective customers, and their successors and assigns, that the Equipment will operate safely at quoted production rate and/or cycle times for the stated expected useful life if Buyer follows the preventative maintenance plan proposed by Supplier. Supplier will provide to Buyer upon request a complete copy of (i) the source codes for any software incorporated in the Equipment purchased by Buyer from Supplier along with any additional information reasonably necessary so that a trained programmer of general proficiency may maintain and support any such software and (ii) a running object code version of such software.

**13. Technical Representatives:** The issuance of advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's or Supplier's rights and obligations hereunder. Supplier shall not make any changes or amendment to this PO except through Buyer's purchasing department and pursuant to an amendment to this PO.

**14. Training:** Supplier will provide any and all necessary training and training materials to Buyer for the Equipment at the initial stage of installation, at no additional cost to Buyer, at Buyer's facility (unless another location is designated on the PO or in the specifications provided by Buyer). Supplier will provide training in the amount and on such schedule as may be reasonably required by Buyer. Supplier will provide the training materials in a computerized format, if possible. Where Supplier obtains the Equipment or a portion of the Equipment from a third party for resale to Buyer, Supplier shall cause such third party to provide the training contemplated in this Section 21.

**15. Background Checks:** Buyer may require a background check of any of Supplier's employees, agents and subcontractors ("Supplier Personnel") who perform work on Buyer premises, and Supplier hereby agrees to conduct such investigation in accordance with background check standards to be provided by Buyer, and shall at all times comply with all laws and regulations applicable to background investigations. Buyer shall keep the results of any such investigation confidential, and provide such information only to those persons with a business need to know, or as required by applicable law. Supplier's Personnel shall observe the working rules of all Buyer premises when on such premises. Buyer reserves the right to prohibit any Supplier's Personnel from performing Services on Buyer's premises.

**16. Assignment & Delegation:** Supplier will not delegate any duties, nor assign any rights or claims under this PO, or for breach thereof, without prior written consent of Buyer. Any attempted delegation or assignment will be void. Supplier will furnish to Buyer in writing all names and addresses of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portion of the Equipment. Buyer will promptly reply to Supplier in writing stating whether or not Buyer has objection to any such proposed person or entity. Supplier will not make a substitution for any subcontractor, person or entity previously selected if Buyer objects to such substitution.

**17. Liens:** Provided that Buyer has paid Supplier for such items, (i) Supplier waives and agrees not to assert any and all liens, rights, encumbrances or claims to any, labor, services, products, parts, components, and/or materials furnished, and to be furnished, in connection with this PO, the Equipment and the services (collectively, "Liens"), and (ii) Supplier shall indemnify and hold Buyer, its parent, and any affiliates harmless from any and all Liens. Supplier further agrees to ensure that all Subcontractor agreements pertaining to the work provided under this PO will contain corresponding waivers made by the Supplier's subcontractors and indemnification by the Supplier's subcontractors in favor of Buyer and any of Buyer's affiliates. Such obligations provided herein will continue beyond the termination of this PO whether by completed performance or otherwise. Supplier shall be responsible for payment in full for all work, labor, products, services, and/or materials provided by third parties contracted by Supplier, including Supplier's subcontractors, in its performance of this PO. Any failure by Supplier to pay Supplier's subcontractors and to obtain the necessary Lien waivers may result in Buyer withholding any payment owed to Supplier under this PO until such payment is made and lien waivers are obtained from Supplier's subcontractors. Such non-payment by Buyer will not be construed as a breach by Buyer under this Agreement.