



## **W INTERNATIONAL, LLC PURCHASE ORDER TERMS AND CONDITIONS**

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

1.1. The documents ("Contract/Subcontract Documents") that form the contract (hereinafter the "Contract") between Buyer and Seller are the Buyer's purchase order (the "PO") issued to Seller; all documents referenced in the PO (including without limitation drawings, specifications, instructions, quality assurance requirements and any other referenced documents); all drawings, specifications, and other documents referenced in the Buyer's request for quotation/proposal issued to Seller for the Contract (unless and to the extent such documents are excluded from the Contract by express provisions in, and not by mere omission from, the PO); supplements to the PO issued to Seller by Buyer;; Buyer's Terms and Conditions documents;; and all documents referenced in any Contract. What is required in any one Contract Document shall be deemed required by all Contract Documents and the Contract. Where there is any conflict or inconsistency between the provisions in one or more of the Contract Documents, the ORDER OF PRECEDENCE: set forth in clause 30 below shall control and shall govern the Seller's performance obligations, unless otherwise agreed in a writing signed by Buyer's Authorized Procurement Representative (the issuer of the purchase order or manager within Buyer's Procurement organization) who issued the PO as part of the Contract. Contracts issued under a US Government Defense Contract or Subcontract are subject to the FAR/DFAR clauses set forth in the Buyers Purchase Order, all applicable Purchase Order provisions are set forth on W International website at [www.w-international.com](http://www.w-international.com). The Seller shall flow down to its sub-tier suppliers the applicable Quality Clauses and Terms and Conditions requirements contained in the Contract, including key characteristics of the drawings and Technical Data Package (TDP) where required.

### **2. ACCEPTANCE:**

2.1. The acceptance by Seller that forms the Contract shall be deemed conclusively to have occurred upon Seller's acknowledgement and acceptance of the PO, Seller's shipment of any goods, Seller's performance of any services, or Seller's commencement of any work on supplies or Goods covered by the Contract. For government Defense Priorities and Allocations System (DPAS) rated purchase orders, Seller shall accept or reject in writing DX-rated purchase orders within ten (10) working days and DO-rated purchase orders within fifteen (15) working days. By acceptance of the PO, Seller agrees to comply with all terms and conditions and specifications in the Contract Documents, including those contained in all documents incorporated into the PO or any other Contract Document by reference. Any acceptance by Seller on purported terms and conditions that differ in any way from the provisions of the Contract shall be effective to form and bind Seller to the Contract, but such terms and conditions shall not become part of, or in any way alter, amend, or otherwise modify any of the provisions of, the Contract. Any shipment of goods, performance of services, or commencement of work on supplies by Seller shall be deemed to be only upon the terms and conditions contained in the Contract, except to the extent that Buyer may otherwise expressly consent in a writing signed by Buyer's Authorized Procurement Representative. Seller agrees that Buyer's acceptance or payment for any shipment of Goods or similar act of Buyer shall not be claimed or construed to constitute such consent.



**3. DELIVERY:**

- 3.1. Unless otherwise agreed to in the Contract, all shipments from Seller shall be F.O.B. Buyer's facility.
- 3.2. Purchase order delivery schedules must be strictly adhered to. Early/late and/or over/under shipments to scheduled deliveries are not permitted. Any deviation to this policy, unless authorized by Buyer's Authorized Procurement Representative, could result in material being returned at the Seller's expense. Buyer does not recognize any "Industry Shipping Tolerances." Seller shall strictly adhere to the shipment or delivery schedules specified in the Contract and delivery shall be made by Seller at such times and places and of such items and quantities as Buyer may from time to time specify.
- 3.3. In the event of any anticipated or actual delay, Seller shall promptly notify the Buyer in writing of reason for and provide a recovery schedule.
- 3.4. If requested by Buyer, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, unless the Seller is excused from prompt performance via an "Excusable Delay". Seller will be solely responsible for paying the difference between the method specified by Buyer and actual air or expedited rate incurred.

**4. SELLER'S NOTICE OF DISCREPANCIES:**

- 4.1. Seller shall immediately notify Buyer in writing when discrepancies in Seller's process or Goods are discovered or suspected regarding Goods delivered or to be delivered under the Contract.

**5. OVER SHIPMENT:**

- 5.1. Contractual Goods (herein, "Goods") shall not be supplied in excess of quantities and shipping tolerances, if any, specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities, and unless Seller agrees to pay for such costs, the over shipped material will be retained by Buyer at no cost.

**6. PRICES:**

- 6.1. Unless otherwise specified, prices are shown on the face of the PO in US dollars and are net of state sales and usage taxes.
- 6.2. Seller warrants that prices, charged for Goods are not higher than those charged to any other customer, including the US Government, for goods of like grade and quality in similar or lesser quantities.

**7. PAYMENT:**

- 7.1. Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for services, materials and/or supplies delivered to and accepted by Buyer. Seller must invoice each line item exactly as shown on Purchase Order/Release to ensure prompt payment. Invoice must show: Seller's name, Purchase Order Number/Release, Line-Item Number, Part Number, Quantity Shipped and Price. Each invoice shall include Buyer's Purchase Order number. Any adjustments in Seller's invoice due to shortages, rejection, or other failure to comply with the provisions of the Contract, or under any other order or contract between Buyer and Seller, may be made by Buyer before payment. Unless otherwise stipulated on the Purchase Order, payment terms are Net 30 days.



## **8. WARRANTY:**

8.1. Seller warrants that Goods ordered to specifications will conform thereto and to any drawings, samples, or other description furnished or adopted by Buyer, and will be fit and sufficient for the purpose intended; and that all Goods are merchantable, 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 Goods and shall run to Buyer, its successors, assigns, customers at any tier, and ultimate 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 by ultimate user. 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. Buyer, at its option, and in addition to other remedies available at law, may

8.1.1. return for credit

8.1.2. require prompt correction or replacement of the defective or nonconforming goods

8.1.3. have the defective items corrected or replaced at Seller's expense and deduct the cost from any monies due Seller.

8.1.4. The return to Seller of any defective or nonconforming Goods and delivery to Buyer of any corrected or replaced Goods shall be at Seller's expense. Additional special or unique warranties are not reimbursable under this contract.

## **9. BUYER'S FURNISHED PROPERTY:**

9.1. Buyer may from time to time furnish property to Seller for performance of this Contract. Such property shall be and remain the property of Buyer, and Seller shall indemnify and save harmless Buyer from all liens and claims upon said property arising from any cause. Property other than material shall not be modified without Buyer's written consent. Such property shall be plainly marked or otherwise adequately identified by Seller as property of Buyer (by name) and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work under the Contract or as authorized in writing by Buyer's Authorized Procurement Representative. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk. To the extent such property is not material consumed in the performance of this Contract, it shall be subject to inspection and removal by Buyer.

## **10. CHANGES:**

10.1. Buyer may at any time, by a written notice to Seller, and without notice to sureties or assignees, make changes within the general scope of this Contract in any of the following: technical requirements, shipment or packaging methods, delivery, inspection/acceptance, quantity adjustments, schedules, or Buyer furnished materials.

10.2. 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. Buyer shall modify this Contract in writing accordingly. Unless directed otherwise in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within twenty (20) days of receiving directions from the Buyer and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within sixty (60) days after Seller's receipt of such direction. Buyer may, at its



sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of disposition of such property. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction. The amount of any price increase from a change shall be based on the actual reasonable and allowable cost to perform the change. The amount of any price decrease from a change shall be based on the reduction in the Seller's cost that reasonably should have occurred as a result of the change. Seller shall maintain complete and accurate accounting records properly documenting the foregoing cost and such records shall be produced for examination and copying by Buyer within ten (10) days of a request by Buyer. Failure to agree to any adjustment shall be a dispute under DISPUTES clause. However, nothing in this paragraph shall excuse the Seller from proceeding with the Contract as changed. Any action taken by Seller which affects any provision of this Contract, including delivery and price, whether or not accomplished with the concurrence of Buyer's employees, shall not entitle Seller to an equitable adjustment in accordance with this paragraph, unless such action has been specifically directed by Buyer's Authorized Procurement Representative's written notice.

- 10.3. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.

#### **11. STOP WORK ORDER:**

- 11.1. 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) days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work 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 to which the parties shall have agreed, Buyer shall either cancel the Stop Work Order, or terminate the work covered by the Contract as provided in the TERMINATION FOR DEFAULT clause, the TERMINATION FOR CONVENIENCE clause, whichever may be deemed appropriate in Buyer's sole discretion. Seller shall resume work upon cancellation or expiration of any Stop Work Order.

#### **12. NOTICE TO BUYER OF LABOR DISPUTES:**

- 12.1. 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.

#### **13. CONTRACT CANCELLATION:**

- 13.1. By written notice, Buyer may cancel the whole or any part of this Contract in the event of Seller's default of any or all of the requirements of this Contract or in the event of 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 or any assignment, reorganization or arrangement by Seller for the benefit of creditors.





#### **14. TERMINATION FOR DEFAULT:**

- 14.1. if Seller fails to make delivery of the Goods or to perform this Contract within the time specified by this Contract or any extension thereof.
  - 14.1.1. if Seller fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms and does not cure such failure within a period of ten (10) days or longer period (as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
  - 14.1.2. In the event Buyer terminates this Contract in whole or in part as provided in subparagraph 14.1.1 above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or 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.
  - 14.1.3. If this Contract is terminated as provided above, Buyer, in addition to any other rights provided in this Contract, may require Seller to transfer title and deliver to Buyer or the Government, in the manner and to the extent directed by Buyer:
    - 14.1.3.1. any completed Goods, partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (here in after called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated.
    - 14.1.3.2. Seller shall, upon direction of Buyer, protect and preserve property in Seller's possession in which Buyer or the Government has an interest.
  - 14.1.4. If, after notice of termination of this Contract under these provisions, it is determined for any reason that Seller was not in default under the provisions above, or that the default was excusable under the EXCUSABLE DELAYS clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the TERMINATION FOR CONVENIENCE clause.

#### **15. TERMINATION FOR CONVENIENCE:**

- 15.1. Buyer may at any time by written notice terminate all or any part of this Contract for Buyer's convenience. If this Contract is terminated, in whole or in part, for Buyer's convenience, 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 to the effective date of termination, plus a reasonable profit thereon, provided that no amount shall be paid to Seller for
  - 15.1.1. any anticipatory profits related to work under this Contract not yet performed,
  - 15.1.2. costs incurred due to Seller's failure to terminate work as ordered on the effective date of termination. In no event shall the total amount paid under the provisions of this paragraph exceed the prices set forth in this Contract for the work terminated.

#### **16. DATA:**

- 16.1. All drawings and specifications, furnished or paid for by Buyer shall be the property of Buyer, shall be subject to removal at any time without additional cost upon demand by Buyer, shall be used only in filling orders from Buyer, and shall be kept separate from other drawings and specifications, and identified as the property of Buyer. The information contained in reports, drawings, documents, or other records which are furnished to Seller by Buyer relative



to this Contract, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion of this Contract, in which event the Seller shall have the same obligation of nondisclosure. Upon completion, termination, or cancellation of this Contract, Seller shall return all data, including without limitation, drawings and specifications to Buyer, in the event Buyer requests return of any such items, within thirty (30) days after the effective date of completion, termination, or cancellation of this Contract. Any such data of Buyer retained by Seller shall remain subject to the foregoing restrictions on use, reproduction, and disclosure.

16.2. Seller may not disclose the existence of this Contract or the items to be supplied under the Contract without Buyer's Authorized Procurement Representative's written consent, except to subcontractors who shall have the same non-disclosure responsibility.

16.3. Buyer may provide data to the Seller that is considered Proprietary to the Buyer. Seller will be required to execute a Proprietary Data Agreement (PDA) or Non-Disclosure Agreement (NDA) which will detail the conditions and obligations of the Seller.

**17. U.S. EXPORT CONTROL LAWS (ITAR AND EAR COMPLIANCE):**

17.1. Technical data, as defined in 22 CFR 120.10 and the Export Administration Regulation 799.1 Supplement 3, which may be acquired or generated under this Contract, may be subject to either the International Traffic in Arms Regulations (ITAR), 22 C.F.R. parts 120-130, or Export Administration Regulations (EAR), 15 C.F.R. parts 730-780, ("export-controlled data") and may require authorization from the Department of State, Directorate of Defense Trade Controls (DDTC), or Department of Commerce, Bureau of Industry and Security (BIS), or other applicable authority, before it may be released or disclosed to a foreign person. Seller shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. Seller shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

17.2. 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 the Seller's officers, employees, agents, or subcontractors.

**18. PATENTS AND COPYRIGHTS:**

18.1. Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and 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 Goods furnished under this Contract and not attributable to Seller's compliance with specific written instructions issued by Buyer's Authorized Procurement Representative.

**19. WORK ON BUYER'S DESIGNATED PREMISES:**

19.1. In the event that Seller, Seller's employees, agents' or subcontractors enter Buyer's designated premises for any reason in connection with this Contract, Seller and such other parties shall observe all military security requirements and 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, save and except for damage caused by the sole negligence of Buyer. Seller, and any subcontractor used by Seller in connection with this Contract, shall carry Workmen's Compensation and Employees' Liability Insurance to cover Seller's and subcontractor(s)' legal liability on account of accidents to their employees. Seller and its subcontractor(s) shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering accidents to their employees. Seller and its subcontractor(s) shall carry adequate 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) days' prior written notice of cancellation of the coverage.

**20. ASSIGNMENT AND SUBCONTRACTING:**

20.1. Seller shall not assign this Contract or any portion of this Contract, nor shall Seller subcontract for completed or substantially completed Goods or services purchased under the Contract without the prior express written consent of the Buyer's Authorized Procurement Representative. If Buyer consents, Seller is in no way relieved from complete performance under this contract.

**21. NOTICES:**

21.1. All notices required or permitted to be given under the Contract shall be deemed properly given if delivered in writing personally 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.

**22. WAIVER:**

22.1. 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.

**23. DISPUTES:**

- 23.1. The Parties agree that any controversy or claim arising out or relating to the Buyer's contract, or breach thereof, shall be settled to the extent possible by good faith negotiations.
- 23.2. Pending resolution of any dispute between Buyer and Seller related to the Contract in accordance with the ARBITRATION clause, Seller shall proceed diligently with the performance of work under the Contract, including the delivery of Goods in accordance with Buyer's direction.
- 23.3. If this Contract is under Buyer's prime contract with the U.S. Government (USG), Seller shall not acquire any direct claim or course of action against the U.S. Government, except as





expressly set forth within the applicable terms and conditions with the USG Contracting Officer's express consent.

- 23.4. The cost of any disputable resolution proceedings, including judicial proceedings, as well as reasonable attorney fees will be borne by the non-prevailing party.

**24. APPLICABLE LAW AND VENUE:**

24.1. The validity, performance and construction of this Contract shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its choice of law rules, jurisdiction and venue for any suit between the parties arising out of or connected with this Contract, as if fully performed thereunder.

24.2. 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 Buyer's contracts.

**25. ARBITRATION:**

25.1. Any and all claims, disputes, or other matters in question arising out of, or relating to, this Contract or the breach shall be decided by arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules"). Notice of the demand for arbitration shall be filed in writing with the American Arbitration Association and served on the other party in accordance with the AAA Rules within one (1) year after final delivery under the Contract.

**26. FORCE MAJEURE/AND EXCUSABLE DELAYS:**

26.1. Any delay or failure of Seller to perform its obligations hereunder shall be excused if, and to the extent that it is caused by any event or occurrence beyond the reasonable control of the Seller without its fault or negligence. Such event or occurrence may include but it's not limited to acts of God, action by way of any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdown), inability to obtain power, material, labor, equipment or transportation, or court injunction or order. Under no circumstances shall Seller be responsible for consequential and/or incidental damages of any kind or nature. Excusable delays provision AR 52.249.14 is incorporated into this Contract by reference except "Contractor" means "Seller" and "Government" or "Contracting Officer" means "Buyer."

**27. INDEMNIFICATION:**

27.1. Seller shall indemnify Buyer against and hold Buyer, its Directors, Officers, Employees, Agents, and Subsidiaries, harmless from all claims, , legal suits , demands , expenses, and losses, brought forth by third parties or arising out of Seller's failure to comply with applicable rules, regulations, and to perform or observe any of its covenants or obligations hereunder, in connection with any covered contracts.

27.2. If the Buyer's contract is issued under a US Government contract, Seller shall indemnify Buyer against and hold the Buyer harmless for any and all claims, expenses, and losses, arising out of Seller's failure to comply with the applicable FAR or DFAR provisions.

**28. HAZARDOUS MATERIAL:**

28.1. Buyer requires that all items procured through Buyers contract be free of the following materials, unless otherwise specified on Buyer controlled drawings; Asbestos, Beryllium, Cadmium, Class1 and Class II Ozone Depleting Substances, Hexavalent Chromium, Lead,



Mercury, Radioactive Materials, and Group 1 Agents classified as carcinogenic to humans by the International Agency for Research on Cancer (IARC). Monographs must not be present on any newly designed materials, required for the operation and sustainment of the system, or used in final system manufacture and assembly processes.

**29. TOXIC SUBSTANCES CONTROL ACT (TSCA):**

29.1. The Seller hereby certifies that all chemicals to be delivered under the Contract comply with the requirements of the Toxic Substance Control Act (TSCA) 15 USCA 2601-2629.

**30. ORDER OF PRECEDENCE:**

30.1. The Contract constitutes the entire, fully integrated agreement of the parties as to the subject matter hereof. In the event of any inconsistency among the Contract Documents, the inconsistency shall be resolved by giving precedence in the following order:

30.1.1. the Purchase Order for the Contract

30.1.2. the terms and conditions listed in this document

30.1.3. the Purchase Order Quality Clauses (QC)

30.1.4. the Supplier Quality Manual

30.1.5. the specifications included among the Contract Documents and any other documents incorporated into any Contract Document by reference.

30.2. Contracts issued by the Buyer under a US Government Prime Contract or Subcontract are subject to the Federal Acquisition (FAR) and Department of Defense FAR Supplements (DFARS) included with the Purchase Order or as set forth on the W International website.

**31. CONFLICT MINERALS DISCLOSURE**

31.1. Seller certifies that, regardless of whether Seller is publicly traded or not, Seller does not procure Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (the "Rule"). Seller certifies and warrants that all products that will be delivered to W International by Seller under this Order are DRC Conflict Free. As defined by and consistent with the Rule. Seller agrees that, if required by the Rule, it has made and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to Buyer pursuant to this Order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to W International pursuant to this Order, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule. Seller agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to W International under this Order) to furnish information to Seller necessary to support Seller's obligations under this Section 31. Seller will maintain records reviewable by W International to support its certifications above. Seller acknowledges that W International may utilize and disclose Conflict Minerals information provided by the Seller in order to satisfy its disclosure obligations under the Rule. If Buyer determines that any



certification made by the Seller under this Section 31 is inaccurate or incomplete in any respect, then Buyer may terminate this Order pursuant to the provision under section 14 TERMINATION FOR DEFAULT.

### **32. COUNTERFEIT PARTS PREVENTION:**

#### **32.1. Definitions:**

##### **32.1.1. Authentic – shall mean**

32.1.1.1. genuine.

32.1.1.2. purchased from the Original Equipment Manufacturer (“OEM”), Original Component Manufacturer (“OCM”) or through the OEM’s/OCM’s authorized dealers.

32.1.1.3. manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

32.1.2. Authorized Dealer – A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM’s/OCM’s products.

32.1.3. Counterfeit Part - means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

32.1.4. Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM). - An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.

32.1.5. Non-Franchised Source – Any source that is not authorized by the OEM or OCM to sell its product lines. Non-franchised sources may also be referred to as brokers or independent distributors.

#### **32.2. Terms and Conditions:**

32.2.1. Seller represents and warrants that only new and authentic materials are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers (“OEMs”), Original Component Manufacturers (“OCMs”) or the OEM’s/OCM’s authorized dealers. Seller represents and warrants to Buyer that all parts/components delivered under the Contract are traceable back to the OEM/OCM. Seller must maintain and make available to Buyer, at Buyer’s request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Buyer’s Authorized Procurement Representative. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus



procured are legitimate parts. Buyer's approval of Seller request(s) does not relieve Seller's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.

32.3. Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and Buyer approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's authorized dealers. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.

32.4. If it is determined that counterfeit parts or suspect counterfeit parts were delivered to Buyer by Seller, the suspect counterfeit parts will not be returned. Buyer reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the Government Industry Data Exchange Program (GIDEP) and other relevant government agencies. Seller shall promptly reimburse Buyer for the full cost of the suspect counterfeit parts and Seller assumes responsibility and liability for all costs associated with the delivery of suspect counterfeit parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the suspect counterfeit parts. The remedies in this section shall apply regardless of whether the warranty period or guarantee period has ended and are in addition to any remedies available at law or in equity.

32.5. If the procurement of materials under the Contract is pursuant to, or in support of, a contract, subcontract, or task order for delivery of Goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with the Contract may be punishable, as a Federal felony, by up to five years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

32.6. Seller shall flow the requirements of this clause ("Counterfeit Parts Prevention") to its suppliers at any tier who render performance or supplies to be used in support of the Contract, even if Seller itself or its suppliers are

32.6.1. exempt from Cost Accounting Standards

32.6.2. are a small business

32.6.3. offer commercial items for Electronic Parts or assemblies containing Electronic Parts.

32.7. Seller agrees to provide records, including traceability records, to Buyer to substantiate Seller's compliance upon Buyer's request. Seller agrees to cooperate in good faith in the event Buyer or Buyer's customer(s) have a need to audit Seller's compliance.

### **33. SPECIAL TOOLING /SPECIAL TEST EQUIPMENT**

33.1. Special Tooling (ST) means jigs, dies, fixtures, molds, patterns, taps, gauges or other equipment and manufacturing aids, all components of these items, and replacement of these items such that are of such a specialized nature that, without substantial modifications or alteration, their use is limited to the development or production of particular supplies or parts thereof or performing particular services.



- 33.2. Special Test Equipment (STE) means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing under the Contract.
- 33.3. Title to ST/STE acquired by Seller under a Contract will vest with Buyer (or US Government a applicable). Upon payment by Buyer, Seller will maintain such ST/STE in serviceable condition and preserve and administer it for the exclusive use of the Buyer, except the Seller may utilize it on a rent-free, non-interference basis with the Buyers prior written permission.
- 33.4. Payment for any ST/STE under the Contract assumes that parts made from or tested by the ST/STE will be acceptable dimensionally and functionally. Buyer reserves the right to withhold payment until samples from the ST/STE are fully approved by the Buyer. All parts made from such ST/STE are subject to clauses ;8 WARRANTY and 34. INSPECTION.

### **34. INSPECTION**

- 34.1. Buyer and Buyer's Customer shall have the right to inspect and test any goods supplied under the contract any reasonable time during manufacture or fabrication thereof at Seller's facility 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 will be after delivery to the delivery point designated by Buyer, Seller should provide reasonable facilities and assistance to the inspection personnel.
- 34.2. Buyer may reject all goods supplied under the contract that are found to be defective and may return the goods to Seller at Sellers expense.
- 34.3. 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 goods, relieve Seller of any obligation to fully comply with all requirements of the contract, including the obligation to deliver goods that conform to all requirements of drawings, specifications, and other contract documents.
- 34.4. At Buyer's request, Seller shall repair or replace defective goods at Seller's expense. Failure to inspect goods, failure to discover defects in goods, or payment for goods shall not constitute acceptance or limit any of Buyer's rights or remedies, including, without limitation, those under warranty. In the event inspection reveals any defect and schedule urgency requires that the defect be corrected by Buyer, all cost of such correction, including installation and removal, will be charged to Seller. Such charges will include time and material and appropriate indirect and overhead expenses incurred by Buyer.
- 34.5. Seller shall maintain an inspection system acceptable to Buyer. Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability. Seller shall maintain evidencing inspections during contract performance period and for seven years after last contract payment.

### **35. REMEDIES:**

- 35.1. In addition to other remedies established the contract or under separate law, if the goods or part or portion thereof, in Buyer's judgement fail to pass inspection, fail to meet warranty, or fail to conform to the requirements of the contract, including with timeliness of delivery Buyer may



35.1.1. Reject or return non-conforming goods Seller may promptly, at its expense repair or replace the goods. Seller will be responsible for Buyer's cost to remove and reinstall Seller's goods.

35.1.2. If, Seller fails to promptly repair or replace the non-conforming goods, Buyer may cancel the contract and/or purchase goods or services in substitution for those due from Seller and recover from Seller the difference between the cost to contract cost incurred and the contract price together with any incidental or consequential damages.

35.1.3. Accept or retain non-conforming goods and either equitably reduce the purchase price of those goods or repair them at Seller's expense.

### **36. SEVERABILITY**

36.1. If any provision of the contract issued 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.

### **37. DAMAGES**

37.1. Notwithstanding any other provision contained herein, where Seller misrepresents or breaches Seller's duty and obligations under this contract or engages in negligence or willful misconduct, Seller shall be liable for all special/consequential, incidental, collateral, exemplary, indirect, 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 duties or obligations.

### **38. COMPLIANCE WITH LAWS**

38.1. Seller shall comply with all applicable national, federal, state, provincial, and local laws, ordinances, rules, and regulations applicable to performance under the contract, including without limitation:

38.1.1. the manufacture or provisioning goods and supply of services.

38.1.2. the shipping of goods.

38.1.3. the configuration or content of goods or services for the intended use under the contract.

### **39. ASSIGNMENT, CHANGE IN CONTROL, AND SUBCONTRACTING**

39.1. Seller shall not without prior express written consent of Buyer's authorized procurement representative:

39.1.1. Transfer or assign the contract or any rights of the contract in whole or part.

39.1.2. Delegate any obligations of the contract in whole or part.

39.1.3. Subcontract for completed or subsequently completed end item goods, in whole or part.