

# INNIO Waukesha TERMS AND CONDITIONS FOR SALE OF PARTS AND SERVICES

## 1. DEFINITIONS

**"Buyer"** means the entity to which Seller is providing Parts or Services under the Contract.

**"Buyer's Equipment"** means Buyer's equipment on which the Services will be performed.

**"Contract"** means either the contract or the purchase order signed by parties for the sale of Parts and Services together with these terms and conditions and any other documents incorporated by reference.

**"Confidential Information"** means all information that is disclosed by the Disclosing Party and its affiliates to the Receiving Party and its affiliates in connection with the Work and is identified as 'confidential' or 'proprietary'. Confidential Information does not include information that: (i) is or becomes generally available in the public domain other than from disclosure by the Receiving Party, its representatives or its affiliates; (ii) is legitimately made available to the Receiving Party on a non-confidential basis from a third party; (iii) is independently developed by the Receiving Party; or (iv) is required to be disclosed by law, a valid legal process or a government agency (in which case the Receiving Party shall notify the Disclosing Party in advance so that the Disclosing Party may seek any appropriate protective order).

**"Contract Price"** means the price for the Work set forth in the applicable contract or purchase order.

**"Hazardous Materials"** means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

**"Field Services"** means technical advisory or field engineering services such as testing, adjustment, programming, borescope inspections, package calibrations, general turbine maintenance, mapping, troubleshooting and other similar services. Unless otherwise specified in the Seller's proposal, Field Services do not include supervision or management of Buyer's employees, agents, or other contractors.

**"Part(s)"** means all equipment, parts, materials, supplies, components, and other goods which Seller has contracted to supply to Buyer under the Contract.

**"Repair Services"** means service shop work performed in a service shop or at the Site, such as, but not limited to: machining; welding; grinding; polishing; cleaning; inspection; disassembly, reassembly and machine tool work (*i.e.* lathe work or vertical bore mill work).

**"Seller"** means the entity providing Parts or Services under this Contract and its successors and permitted assigns.

**"Services"** means Field Services, Repair Services and any other services Seller has agreed to perform for Buyer under the Contract.

**"Site"** means the premises where the Buyer's Equipment is located.

**"Software"** means a computer program or compilation of data that is fixed in any tangible medium of expression, or any storage medium from which the program may be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, and shall include without limitation any of Seller's proprietary operating Software provided for the ordinary operation of Buyer's Equipment, any optional Software to enhance the operation of Buyer's Equipment, as well as any upgrades or revisions of this material provided by Seller.

**"Work"** means the supply of the Parts and/or the performance of the Services, and any corrective actions pursuant to the Seller's warranty obligations in Article 6.

## 2. PAYMENT, TAXES

2.1 Buyer shall pay Seller for the Parts and Services by paying all invoiced amounts in U.S. Dollars, without any deduction, retention, withholding or set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. All prices are exclusive of taxes and Buyer shall be responsible for taxes imposed on sale of Parts or Services to Buyer, including sales, use, excise, value-added, works contract or other similar taxes or duties. For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

2.2 If Seller reasonably determines that Buyer's financial condition or payment history (including its failure to pay by the due date) does not justify continuation of Seller's performance, Seller may require payment security, and/or suspend or terminate the unperformed portion of the Contract, including Seller's warranty obligations.

2.3 Any debt under this Contract, that exceeds a maturity of beyond 30 days from date of invoice shall entitle Seller to terminate this Contract with immediate effect.

2.4 Buyer must ensure that payment terms down Buyer's distribution chain do not exceed a maturity period beyond 30 days from date of transfer of title for goods or from final invoice for services. Buyer must notify Seller within ten (10) days of any payments down Buyer's distribution chain that exceed 30 days' maturity from that point in time. Failure to comply with this provision shall entitle Seller to terminate this Contract with immediate effect.

## 3. DELIVERY, TITLE TRANSFER, RISK OF LOSS

3.1 Unless otherwise agreed, delivery to Buyer shall be: (1) FCA Seller's facility or warehouse (where no export involved) or (2) FCA Port of Export (where export involved).

Incoterms 2010 shall apply. Partial deliveries are permitted. Seller may deliver Parts in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the Work without interruption. If Parts delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) business days after receipt and Seller shall promptly rectify such shipping invoice or documentation.

3.2 Title and risk of loss shall pass to Buyer, and amounts shall be payable to Seller, upon (a) delivery of the Parts or (b) invoicing by Seller for the Parts where Buyer is unable to accept delivery on the scheduled date. Notwithstanding the foregoing, Seller grants only a license, and does not pass title, for any software provided by Seller under this Contract, and title to any leased equipment remains with Seller.

3.3 When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities.

3.4 Title to Services shall pass to Buyer as performed.

If Repair Services are performed at Seller's repair facility, the following shall apply:

(i) Buyer shall be responsible for all actions and costs related to transporting the Buyer's Equipment to and from the Site and the Seller's repair facilities. Notwithstanding any other provisions in the Contract, including any reference to Incoterms, Buyer shall bear risk of loss for Buyer's Equipment during the term of the Contract, whether at the Site, the repair facilities or in transit to or from the repair facilities. Buyer shall be solely responsible for providing adequate insurance for the Buyer's Equipment during the term of the Contract.

(ii) Upon notification by Seller that the Repair Services have been completed, Buyer shall arrange for the removal of the Buyer's Equipment from the repair facilities within ten (10) days of such notification. Buyer shall reimburse Seller at Seller's then current storage rate for any additional days the Buyer's Equipment remains at the repair facilities.

## 4. EXCUSABLE DELAYS

Neither party shall have any liability or be in breach or default of its obligations under the Contract to the extent that its performance is delayed or prevented by any cause beyond its reasonable control (an "Excusable Delay"). If Seller is delayed by Buyer, its other contractors or suppliers, Seller shall also be entitled to an equitable price adjustment. The affected party shall notify the other party of any Excusable Delay. In no event will an Excusable Delay relieve either party of its obligation to make any payment hereunder when due. If any Excusable Delay extends for more than one hundred eighty (180) days and the parties have not agreed upon a revised basis for continuing the Work at the end of the Excusable Delay, including adjustment of the Contract Price, then either party (except where Excusable Delay is caused by Buyer, in which event only Seller) may, upon thirty (30) days' written notice, terminate the applicable purchase order with respect to any Part to which title has not yet passed, whereupon Buyer shall promptly pay Seller the termination charges specified in Seller's proposal for the Work.

## 5. COMPLIANCE WITH LAWS & DUAL USE

5.1 Seller shall comply with laws applicable to the manufacture of Parts and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Parts and Services. All transactions under the Contract shall at all times be subject to and conditioned upon Buyer's compliance with the USA, the EU and any other applicable trade control laws and regulations.

5.2 If Seller exports Parts outside the U.S. or European Union that are likely to be considered "dual use", Buyer shall, upon Seller's request, immediately provide Seller with an "End User Statement".

5.3 Restricted End-Users: The Buyer commits to ensure that it will not involve, directly or indirectly, and shall not lease, rent, or otherwise provide direct or indirect access, possession or control of items subject to this Contract to or for the benefit of any natural or legal person that is named on any relevant sanctions list, including but not limited to the OFAC List of Specially Designated Nationals and Blocked Persons ("SDN") list, the U.S. Bureau of Industry and Security Entity and Denied Persons lists, the OFAC Sectoral Sanctions (SSI) list, or the Consolidated list of persons, groups and entities subject to EU financial sanctions, in a manner that directly or indirectly causes a violation of law. The Buyer commits to ensure that the present Contract and the implementation thereof will not in any way involve or benefit, directly or indirectly, any natural or legal person that is named on the OFAC SDN list. The Buyer further commits to ensure that no employee or other natural or legal person involved in the transactions resulting from this Contract or any subsequent Contract stemming from this Contract (together, the "Transactions") is named on any sanctions list, such as the SDN list. For avoidance of any doubt, the term "involve" includes, but is not limited to, having a role in approving the Transactions, participating in negotiations, signing documents relating to the Transactions, or otherwise directing the Transactions. If the Buyer becomes aware of any involvement addressed by this Article, Buyer ensures to immediately notify Seller about such circumstance. In such case, Seller

shall have the right to terminate this Contract or any subsequent Contract stemming from this Contract with immediate effect. Payment of any termination fee shall not be required.

5.4 **Restricted End-Use:** The parts and services provided and performed hereunder are not intended for application and shall not be used, in their entirety or in part, directly or indirectly, in connection with any of the following uses: any nuclear installation or activity; any use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons; the provision, exportation, or reexportation, directly or indirectly, of goods, services, or technology in support of exploration or production for deepwater (greater than 500 feet), Arctic offshore, or shale projects; military use or by any military end-user in the Russian Federation, Crimea, or Sevastopol; the provision, exportation, or reexportation, directly or indirectly, to Crimea or Sevastopol; support to construction of Russian energy export pipelines; support to a person (including any entity) that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation, including the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation or the Federal Security Service of the Russian Federation; or any end use prohibited under U.S. or EU sanctions and export control laws and regulations.

5.5 **Audit Rights:** The Buyer shall keep complete and accurate records pertaining to the sales and other activities undertaken pursuant to this Contract. With reasonable notice and during usual business hours, Buyer agrees to allow Seller, or its designated Third Party, access to any and all records relating to sales or other activities undertaken pursuant to this Contract to ensure compliance with the terms of this Contract.

5.6 **Export Controls and Sanctions:** The Buyer hereby certifies that the equipment, software, technology, and/or services to be delivered to the Buyer according to this Contract will not be re-exported, transferred, or diverted to any government, corporation, organization or individual (together, "Third Parties") in violation of any sanctions or export and re-export laws and regulations of the United States of America, the EU, the EU member states or any other relevant jurisdiction, including but not limited to the US Commerce Department Export Administration Regulations and the US Treasury Department Office of Foreign Assets Control Regulations. The Buyer hereby certifies that it will not export, reexport, or transfer equipment, software, technology, and/or services to be delivered to the Buyer according to this Contract to the comprehensive sanctioned countries under the laws and regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), as of the date of this Contract, Cuba, Iran, North Korea, Syria, and the Crimea Region of Ukraine. The Buyer commits to ensure that the Contract and implementation thereof will not involve, directly or indirectly, any natural or legal person that is named on any relevant sanctions list, including but not limited to the OFAC List of Specially Designated Nationals and Blocked Persons ("SDN") list, the US Bureau of Industry and Security Entity and Denied Persons lists, the OFAC Sectoral Sanctions (SSI) list, or the Consolidated list of persons, groups and entities subject to EU financial sanctions, in a manner that would directly or indirectly cause a violation of law. The Buyer commits to ensure that the present Contract and the implementation thereof will not in any way involve or benefit, directly or indirectly, any natural or legal person that is named on OFAC's SDN list. Violation of this Section constitutes grounds for immediate termination of the Contract by [Company], notwithstanding any other provision of this Contract. If at any point performance of this Contract would constitute a violation of the sanctions or export and re-export laws and regulations of the United States of America, the EU, the EU member states or any other relevant jurisdiction, the Contract shall become null and void.

5.7 **Consent requirement:** The Buyer will not conduct any rental, lease, provision of direct or indirect access, possession, or control, or other transactions with the equipment, software, technology, and/or services to be delivered to the Buyer according to this Contract without Seller's prior approval. In order to obtain Seller's approval Buyer must provide all information showing that the planned transaction complies with all applicable legal requirements including the requirements as mentioned under this Contract.

## 6. WARRANTY

6.1 Seller warrants that Parts shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. The warranty shall expire for: (i) Parts, one (1) year from first use or eighteen (18) months from delivery, whichever occurs first; (ii) Services (except for Field Services), one (1) year after performance of the Service, (iii) Field Services, thirty (30) days after performance of the Field Services (the "Warranty Period"). If Parts or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the Warranty Period. Seller shall (i) at its option, repair or replace defective Parts and (ii) re-perform defective Services. Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de installation, decontamination, re installation and transportation of defective Parts to Seller and back to Buyer. If despite Seller's reasonable efforts, a non-conforming Part cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Parts or Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. The warranties and remedies are conditioned upon (a) proper storage, installation, use, INNIO Waukesha Terms and Conditions for Sale of Parts & Services 09-2019

operation, and maintenance of Parts, (b) Buyer keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Seller access to those records, and (c) modification or repair of Parts only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear including that due to environment or operation, type or quality of fuel, detrimental air inlet conditions or erosion, corrosion or material deposits from fluids.

6.2 **THIS ARTICLE SETS FORTH THE EXCLUSIVE REMEDIES FOR ALL CLAIMS BASED ON FAILURE OF OR DEFECT IN PARTS OR SERVICES PROVIDED UNDER THE CONTRACT, REGARDLESS OF WHEN THE FAILURE OR DEFECT ARISES, AND WHETHER A CLAIM, HOWEVER DESCRIBED, IS BASED ON CONTRACT, WARRANTY, INDEMNITY, EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

## 7. INDEMNIFICATION

7.1 **General Indemnity.** Each party (each the "Indemnifying Party") shall indemnify and hold harmless the other party (each the "Indemnified Party") from and against any loss or expense arising by reason of physical damage to the property of third parties or bodily injury, including death, of persons to the extent that such damage or injury results directly from the negligence of the Indemnifying Party or its subcontractors in relation to this Contract and to the extent the Indemnifying Party is liable to the third party or injured person under applicable law. If damage or injury is caused by the joint or concurrent negligence of the Parties, their officers, employees, agents, or subcontractors, these Parties shall bear the loss in proportion to their or their officers', employees', agents' or subcontractors' percentage of negligence. The indemnities provided in this Article shall apply only if the Indemnified Party gives the Indemnifying Party prompt notice of any claim and provides the Indemnifying Party all necessary information and assistance so that the Indemnifying Party may, at its option, defend or settle the claim. For purposes of Seller's indemnity responsibility under this Article 7.1, no portion of Parts, Buyer's Equipment or Site is considered third party property.

7.2 **Patent Indemnity.** Seller shall indemnify Buyer against any claim by third party alleging that Parts manufactured by Seller and furnished under this Contract infringe a patent in effect in the U.S. or an EU member state, provided that Buyer does not take any position adverse to Seller, gives Seller sole authority to control defense and settle the claim, and provides Seller with its reasonable assistance. Seller shall not be liable and this indemnity shall not apply if such claim is based on modified Parts, a Buyer failure to implement any update provided by Seller that would have prevented the claim, unauthorized use of Parts or Parts made or performed to Buyer's specifications. If Seller is unable to procure Buyer with a non-infringing Part, Seller may take back infringing Parts or Services and refund the price received by Seller attributable to the infringing Parts or Services. This Article 7.2 states the entire liability of Seller for patent infringement of any Parts.

## 8. INSURANCE

8.1 **Seller's Insurance.** During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (i) Worker's Compensation, Employer's Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; (ii) Automobile Liability insurance with a combined single limit of \$2,500,000; and (iii) Commercial General Liability or Public Liability insurance for bodily injury and third party property damage with a combined single limit of \$2,500,000 per occurrence and \$5,000,000 in the aggregate annually. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

8.2 **Buyer's Insurance.** The Buyer's or owner of the facility's All Risk Property / Builder's Risk Insurance Policy shall include a waiver of rights of subrogation against the Seller.

## 9. LIMITATION OF LIABILITY

9.1 **LIMITATION.** THE TOTAL LIABILITY OF SELLER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THIS CONTRACT OR USE OF THE WORK SHALL NOT EXCEED THE PORTION OF THE CONTRACT PRICE ALLOCABLE TO THE PARTS OR SERVICES GIVING RISE TO THE CLAIM. ALL LIABILITY OF SELLER ON ALL CLAIMS OF ANY KIND SHALL TERMINATE UPON EXPIRATION OF THE WARRANTY PERIOD, PROVIDED THAT BUYER MAY ENFORCE A CLAIM OF SUCH LIABILITY ACCRUING DURING THE WARRANTY PERIOD BY AN ACTION TIMELY COMMENCED IN ACCORDANCE WITH THE APPLICABLE STATUTE OF LIMITATIONS AND/OR STATUTE OF REPOSE, BUT IN NO EVENT GREATER THAN ONE YEAR AFTER THE EXPIRATION OF THE WARRANTY PERIOD.

9.2 **CONSEQUENTIAL DAMAGES.** SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF REPLACEMENT EQUIPMENT OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES.

9.3 **SALE, TRANSFER, ASSIGNMENT TO THIRD PARTY.** IF BUYER IS SUPPLYING

PARTS TO A THIRD PARTY, OR USING PARTS AT A FACILITY OWNED BY A THIRD PARTY, BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FOR AND AGAINST ANY LIABILITY ARISING OUT OF CLAIMS MADE BY THE THIRD PARTY IN EXCESS OF THE LIMITATIONS AND EXCLUSIONS PROVIDED IN THIS CONTRACT.

9.4 **BUYER'S PROPERTY.** EXCEPT TO THE EXTENT SELLER HAS RESPONSIBILITY UNDER ARTICLE 6 (WARRANTY), BUYER WAIVES RIGHTS OF RECOVERY FOR LOSS OR DAMAGE TO THE PROPERTY OF BUYER.

9.5 **LIMITATIONS TO PREVAIL.** FOR THE PURPOSES OF THIS ARTICLE, THE TERM "SELLER" SHALL MEAN SELLER, ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS OF ANY TIER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, WHETHER INDIVIDUALLY OR COLLECTIVELY. THE LIMITATIONS IN THIS ARTICLE SHALL APPLY REGARDLESS OF WHETHER A CLAIM IS BASED IN CONTRACT, WARRANTY, INDEMNITY, EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND SHALL PREVAIL OVER ANY CONFLICTING TERMS, EXCEPT TO THE EXTENT THAT SUCH TERMS FURTHER RESTRICT SELLER'S LIABILITY.

#### 10. SUSPENSION, TERMINATION

Either party can terminate the Contract for material breach of the other party not cured in a reasonable period. Seller can suspend the Contract performance if Buyer fails to comply with any payment obligations under the Contract. Upon termination, Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope and Buyer shall pay Seller for all Parts completed, lease fees incurred and Services performed before the effective date of termination. The foregoing are the sole and exclusive suspension and termination rights of the parties.

#### 11. DISPUTE RESOLUTION, GOVERNING LAW

11.1 For International Transactions, this Contract shall be governed, construed and interpreted in accordance with the laws of England and Wales, without regard to its choice of laws rules (the "Governing Law"). In the event of any dispute arising out of or in connection with this Contract, such dispute shall be finally settled by arbitration without recourse to common or commercial courts in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be held in London and shall be conducted in the English language.

11.2 For US Transactions, this Contract shall be governed, construed and interpreted in accordance with the laws of the State of New York, without regard to its choice of laws rules (the "Governing Law"). In the event of any dispute arising out of or in connection with this Contract, such dispute shall be finally settled in the United States District Court for the Southern District of New York or, if such court lacks jurisdiction, in the Supreme Court of the State of New York in New York County. Each party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such action or proceeding brought in these courts and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding is brought in an inconvenient forum.

#### 12. CONFIDENTIALITY, INTELLECTUAL PROPERTY

12.1 Seller and Buyer (both as to information disclosed, a "Disclosing Party") may each provide the other (both as to information received, a "Receiving Party") with Confidential Information. The Receiving Party agrees: (i) to use the Confidential Information only in connection with this Contract and permitted use(s) and maintenance of the Equipment, (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, officers, agents or financing parties ("Representatives") (or those of its Affiliates) who have a need to know for the Receiving Party to perform its obligations under this Contract or to use and maintain the Equipment, and (iii) not to disclose the Confidential Information to any other party and in no case to a competitor of the Disclosing Party. The Receiving Party shall obtain a written commitment from any third party recipient of Confidential Information to comply with the terms of this Article. The restrictions of this Article shall expire ten (10) years after the date of disclosure of the Confidential Information. Buyer agrees that Seller may also access, collect, maintain, process and use machine, technical, system usage and related information, including, but not limited to, information about Buyer's Equipment that is gathered periodically to facilitate the provision of parts, services, product support and training to Buyer. Seller or its affiliates may use this information to provide, develop or improve Seller's products or services.

12.2 All know-how, patents, copyrights, designs, or other intellectual property made available by Seller, or developed during the Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by, and vest in, Seller. Buyer shall not itself, and shall not allow any person or entity to, reverse engineer the Buyer's Equipment, Parts, Services or parts thereof.

#### 13. HEALTH AND SAFETY MATTERS.

13.1 Buyer agrees to comply with all applicable health, safety, security and environmental laws and will maintain a safe working environment for Seller's personnel at Site. Seller has the right to review and inspect procedures and conditions at Site.

13.2 Seller may suspend performance or evacuate its personnel at any time, without liability, if it reasonably believes its personnel may be a risk.

13.3 Buyer agrees to manage and dispose of all waste generated during the course of the Services on the Site.

13.4 Buyer shall inform Seller of, and Seller shall have no liability for the pre-existing condition of Buyer's Equipment or the Site.

13.5 Buyer agrees to provide site security measures and on-site first aid support for Seller's personnel at Site.

13.6 Buyer shall release, defend, indemnify and hold harmless Seller against any and all claims arising from Buyer's breach of its obligations under Article 13.

Buyer shall provide security equipment, facilities, measures and procedures adequate to protect Seller personnel against potential threats to their safety or well-being. Such measures shall include, but are not limited to, fencing and security barriers, control of access to and throughout the Site, a sufficient number of qualified guards, surveillance and monitoring, screening of personnel, alarms, and emergency response procedures.

13.7 Seller may review Buyer's security program at any time. If Seller determines Buyer's security program is insufficient then Seller may (i) make recommendations regarding changes and Buyer shall implement all reasonable recommendations, and/or (ii) Seller may provide additional security measures directly and Buyer shall reimburse Seller for additional expenses incurred at cost plus 15 percent, and/or (iii) Seller may suspend performance or evacuate its personnel at any time, without liability.

13.8 **Secure Transportation.** As part of its security program, Buyer shall provide safe, secure, and reliable transportation, satisfactory to Seller, for Seller personnel for all movements between airport, Site and Seller's accommodations.

13.9 **Secure Housing.** As part of its security program, Buyer shall furnish clean, safe and secure on-site living accommodations and welfare arrangements, satisfactory to Seller, for Seller's personnel at the Site.

13.10 **New Circumstances.** In addition to Seller's other rights, in the event that facts or circumstances arise, are discovered, or become known to Contractor which actually or potentially result in safety or security risks not actually known to Seller on the Contract effective date, and which make it necessary for Seller to take additional safety or security measures, the additional costs incurred shall be charged to and paid by Buyer at cost plus 15 percent.

#### 14. SOFTWARE LICENSE

Seller grants to Buyer a non-exclusive and irrevocable right to use Software, to the extent necessary to properly use the Parts. This right shall be non-assignable and non-transferable (except Buyer may assign to any subsequent purchaser of the Parts). Seller is under no obligation to provide Software upgrades or revisions, unless previously agreed to in writing. Buyer may make one copy of the Software in machine-readable form for backup purposes only. Buyer may not (i) disassemble, decompile, reverse engineer, or otherwise attempt to reconstruct or discover the source code of the Software; (ii) remove any product identification, copyright, trademark, or other notice from the Software; (iii) modify, adapt or translate the Software. If Buyer believes that it is entitled to reverse engineer Software as a matter of local law (e.g., the Council Directive of May 14, 1991, of the Council of the European Communities, as amended), Buyer agrees that it shall first inform Seller about such intent and request technical information from Seller. Buyer shall use any technical information delivered by Seller only for purposes of ensuring "interoperability" and compatibility and shall treat such technical information as Seller's Confidential Information. Use of any third party software shall be governed by the terms of that third party software.

#### 15. GENERAL CLAUSES

15.1 **Prohibition on Nuclear Use.** THE PARTS AND SERVICES SOLD HEREUNDER ARE NOT INTENDED FOR APPLICATION, AND SHALL NOT BE USED, IN CONNECTION WITH ANY NUCLEAR INSTALLATION OR ACTIVITY, AND BUYER SHALL INDEMNIFY SELLER AGAINST ANY SUCH LIABILITY OR CLAIMS, ARISING AS A RESULT OF ANY SUCH USE.

15.2 **Changes.** Seller is not obligated to proceed with any change unless agreed in writing, providing documentation that describes the changes in scope and schedule, and the resulting changes in price, and other provisions, as agreed.

15.3 **Assignment.** Seller may assign or novate its rights and obligations under the Contract to any of its affiliates and Seller may assign any of its accounts receivable under this Contract to any party without Buyer's consent.

15.4 **Change of Control.** Buyer shall notify Seller immediately upon any change in the ownership of more than fifty percent (50%) of Buyer's voting rights or in Buyer's controlling interest.

15.5 **Invalidity.** The invalidity of any part of this Contract shall not affect the validity of the remainder of this Contract.

15.6 **Third-Party Beneficiaries.** Except as provided in Article 9, these provisions are for the benefit of the parties hereto and not for any other third party.

15.7 Government Funded Work. Any Part or Service provided hereunder shall be considered a "commercial item" as defined in FAR PART 2, 2.101 Definitions and in accordance with FAR 52.244-6. If the reasonableness of the price cannot be established through the presence of adequate price competition or price elaboration, or if cost or pricing data should be required for any other reason, or if the Part or Service cannot be considered a "commercial item", Seller reserves the right to withdraw the proposal or cancel the Contract without penalty.

15.8 Entire Agreement. This Contract, including its attachments, is the result of mutual negotiation of the Parties and represents the entire agreement between the parties and supersedes in its entirety all prior agreements concerning the subject matter hereof. No modification, amendment, revision, waiver, or other change shall be binding on either party unless consented to in writing by the Party's authorized representative. Any oral or written

representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either party. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in this Contract.

15.9 Survival. The following Articles shall survive termination of the Contract: Taxes, Warranty, Patents, General Indemnity, Limitation of Liability, Confidentiality, Intellectual Property, Dispute Resolution, Governing Law, Compliance with Laws & Dual Use, Software License, and General Clauses.

15.10 Special Terms & Conditions. These Terms and Conditions for the Sale of Parts and Services may be supplemented by Special Terms and Conditions (including Software and Nuclear Special Terms and Conditions) and, in the event of conflict, the Special Terms and Conditions shall prevail.