



OSI MARITIME SYSTEMS LTD.

TERMS AND CONDITIONS OF PURCHASE ORDER

1. ACCEPTANCE OF PURCHASE ORDER / TERMS AND CONDITIONS

1.1. Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Agreement.

1.2. Unless expressly accepted in writing by Buyer, additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document are rejected by Buyer and have no effect.

2. DEFINITIONS

2.1. "Agreement" means these Terms and Conditions of Purchase Order and any other document the parties have agreed to form part of Buyer's purchase of the Work, including the purchase order ("Purchase Order" or "PO").

2.2. "Amendment" means a variation or modification of this Agreement or of any of its provisions agreed to by both parties.

2.3. "Background Intellectual Property" or "BIP" means all Intellectual Property owned or controlled by a party prior to the Effective Date or that is developed or acquired independently of this Agreement by a party after the Effective Date and includes any corrections or minor modifications to any such Intellectual Property.

2.4. "Buyer" means OSI Maritime Systems Ltd. purchasing Work from the Seller under the Agreement.

2.5. "Confidential Information" means any information and know how related to the technical, scientific and business interests of a party that is not generally available to third parties. Confidential Information includes but is not limited to:

- a. Intellectual Property;
- b. software (source and executable or object code), algorithms, computer processing systems, formulae, compilations of information (databases), drawings, proposals, job notes, reports, records, specifications, and related documentation in any media, including all modifications, enhancements, updates and derivatives;
- c. unique software and hardware configurations, design concepts and all materials developed therefrom;
- d. business plans, sales and marketing information (including customer contacts and information), and any other materials or information relating to the business of a party, or its subsidiaries, owners, affiliates and divisions;
- e. trade secrets (any expression, tangible or otherwise, of unique ideas or specialized compilations of data that are not generally known and that are commercially useful, or that have economic value as a result of not being generally known).
- f. Sensitive Information;
- g. any information in any media that is owned by a third party and that is provided to a party under an obligation of confidentiality;
- h. any other information that a party protects as confidential but that is determined by a court of competent jurisdiction not to rise to the level of a trade secret under applicable law.

2.6. "Customer" means the entity to whom Buyer will deliver the Work or on whose behalf Buyer has arranged for the Work to be performed.

2.7. "Day" or "day" means a normal business working day in the jurisdiction of the obligated party, unless clearly identified otherwise in the Agreement.

2.8. "Effective Date" means the date the Agreement comes into full force and effect as defined in the Agreement.

2.9. "Foreground Intellectual Property" or "FIP" means all Intellectual Property produced directly as a result of the Work under this Agreement that is not Background Intellectual Property.

2.10. "Incoterms" means the official rules for the interpretation of trade terms published by the International Chamber of Commerce as Incoterms 2010.

2.11. "Intellectual Property" or "IP" means intangible property falling within the scope of a party's patents, copyrights, trademarks, trade secrets, publicity rights, moral rights and rights against unfair competition, including commercially valuable information, inventions or know-how, in concrete or abstract form, that are or could be the subject of copyright, patent, or trade secret protection and that are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

2.12. "material" in the context of any requirements, obligation, term, condition, or covenant in the Agreement means any act or failure to act that provides sufficient cause for the other party to be relieved of its obligations under the Agreement or that substantially frustrates or renders it impossible for the other party to perform its obligations under the Agreement.

2.13. "Month" means a Gregorian calendar month.

2.14. "Notice", "Notify", "Notification" all mean a formal written notification by one party to another as required under this Agreement.

2.15. "reasonable" as applied in this Agreement shall be taken to mean "in keeping with prevailing trade practices among reputable and responsible business and commercial enterprises engaged in the same or a similar business acting in good faith" and as consistent with sound business practices.

2.16. "Seller" means the seller of the Work.

2.17. "Sensitive Information" means information that might result in loss of an advantage or level of security if disclosed to a third party.

2.18. "Technical Data" means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

2.19. "Term" means the period beginning on the Effective Date and ending on the later of: the end date, if specified in the Agreement; or the date on which all obligations of the parties have been fulfilled.

2.20. "Week" means a seven calendar day period.

2.21. "Work" means all activities, goods and services to be done, delivered or performed by Seller as set out in the Agreement including all extra work, changes, substitutions and variations ordered by Buyer.

2.22. Unless the context otherwise requires, the singular includes the plural, the masculine includes the feminine or neuter, and vice versa. Any reference to any statute includes any re-enactment, consolidation and/or renewal thereof and any reference to a statute or statutes in general includes any order, plan, regulation, permission or direction made or issued thereunder. When calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a business working day in the jurisdiction of the obligated party, the period shall end on the next business day in that jurisdiction.

3. ACCEPTANCE / REJECTION

3.1. Acceptance shall only be accomplished after receipt, inspection and approval of the Work by Buyer in accordance with acceptance criteria and/or procedures specified in the Agreement or otherwise agreed in writing between Buyer and Seller.

3.2. Any approval or acceptance by Buyer of all or part of the Work, including specifications or other documentation requiring Buyer approval, shall not relieve Seller of its obligations under the Agreement.

3.3. No act of payment by Buyer shall be considered an approval or acceptance of any or all of the Work.

3.4. Buyer may reject any of the Work that does not conform to the requirements contained in the Agreement.

3.5. Rejected Work may, at the option of Buyer, be returned to Seller or held pending disposition instructions from Seller, the cost of which shall be borne by Seller.

3.6. On re-delivery of any rejected Work Seller shall disclose the previous rejection and the corrective action taken.

3.7. Repair, replacement or other corrective action shall be completed within the original delivery schedule or such additional time as Buyer may reasonably allow.

4. AMENDMENTS

4.1. Amendments to this Agreement shall only be effective and binding on the parties when made in writing and signed by both parties.

5. APPLICABLE LAW

5.1. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of British Columbia, Canada excluding its conflicts of laws principles.

5.2. The parties hereby agree to exclude application of the British Columbia Sale of Goods Act, the Uniform Commercial Code (UCC) and any similar applicable laws or statutes in any relevant jurisdiction.

5.3. The parties hereby agree to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to the supply of any goods or services under this Agreement.

6. ASSIGNMENT

6.1. No party shall assign this Agreement, or any rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party(ies). Such consent shall not be unreasonably withheld. This restriction shall not apply to assignments to a parent company, wholly owned subsidiary or an affiliated company that is effectively controlled by the party or its parent company.

6.2. Any attempt to assign this Agreement without such consent shall be null, void and of no effect.

6.3. Unless otherwise agreed in writing no assignment shall:

- a. relieve the assigning party from any of its obligations under the Agreement;
- b. prejudice any of the other party's (parties') rights against the assigning party, whether arising before or after the date of any such assignment; or
- c. impose any liability on the other party(ies).

7. CHANGES IN THE WORK

7.1. Buyer may, within the general scope of this Agreement and in writing, make reasonable changes in the Work including, but not limited to:

- a. the goods or services to be provided;
- b. the specifications, requirements or quantity of the Work;
- c. quantity or specifications for any customer furnished assets;
- d. the time, place, or method of delivery, inspection, or acceptance.

7.2. If any change results in an alteration to the cost of or time required for Seller performance of its obligations, an equitable adjustment will be negotiated and the Agreement amended accordingly.

7.3. No action, instruction, interpretation or decision by Buyer that results from an error, mistake, or omission of Seller in the provision of the Work shall be considered as a change.

8. COMPLIANCE WITH LAW

8.1. All parties shall comply with all applicable federal, provincial, state, municipal, county or other local laws and regulations.

9. CONFIDENTIAL INFORMATION

9.1. This Article shall apply if and to the extent it does not contradict the provisions of any applicable confidentiality agreement or similar agreement.

9.2. The parties agree to treat Confidential Information disclosed to them as proprietary and confidential, and to protect same from disclosure to others with, as a minimum, the same degree of care used to protect their own Confidential Information.

9.3. Confidential Information shall not be used by a receiving party for any purpose inconsistent with this Agreement or for the creation of any product or service that is directly or indirectly based on, derived from, or uses the Confidential Information, except as provided for in this Agreement.

9.4. A receiving party shall not, without the prior written consent of the disclosing party or contrary to the provisions of this Agreement, directly or indirectly disclose, allow access to, transmit, or transfer Confidential Information disclosed to it to a third party and shall restrict access to the Confidential Information to those of its employees, consultants and contractors who have a need to know in order for the receiving party to fulfil the purpose of or meet its obligations under the Agreement.

9.5. Notwithstanding any other provisions of this Article, the restrictions on the use of Confidential Information shall not apply to information that:

- a. is lawfully in the public domain at the time of disclosure under this Agreement, or becomes lawfully within the public domain after disclosure without breach of this agreement; or
- b. was lawfully received from a third party without restriction; or
- c. was already in a receiving party's possession in fully recorded form without an obligation of confidentiality at the time of disclosure under this Agreement; or
- d. is required to be produced pursuant to a court order or other Government action, provided the disclosing party has been Notified at least two (2) weeks prior to such disclosure.

9.6. If a receiving party believes that any of the events or conditions in the preceding paragraph that remove restrictions on the use, disclosure and reproduction of Confidential Information apply, the receiving party shall promptly Notify the disclosing party of such belief prior to acting on such belief, and, in any event, shall Notify the disclosing party prior to any unrestricted use, disclosure or reproduction of any such information.

9.7. Termination, or breach of this Agreement by a party, shall not relieve a receiving party from its continuing obligation to preserve, safeguard and protect the Confidential Information disclosed hereunder.

10. CONTACT WITH THE CUSTOMER

10.1. Buyer shall be the prime contact with the Customer for matters related to the subject matter of this Agreement.

10.2. Any necessary contact with the Customer initiated by Seller shall be made through Buyer.

10.3. Seller shall immediately advise Buyer of all Customer initiated contact and discussions related to the subject matter of this Agreement.

10.4. Buyer shall keep Seller advised of all Customer contact and discussions concerning Seller's area of responsibility as described in this Agreement.

11. COUNTERFEIT PARTS

11.1. "Counterfeit Parts" means material whose origin, age, composition, configuration, certification status or other characteristics (including whether or not the material has been used previously) has been falsely represented by:

- a. misleading marking of the materiel, labelling or packaging;
- b. misleading documentation; or
- c. any other means, including failing to disclose information.

11.2. The Seller shall not deliver Counterfeit Parts or suspect Counterfeit Parts to the Buyer under this Agreement.

11.3. The Seller shall only purchase products to be delivered to the Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Parts shall not be acquired from independent distributors or brokers unless approved in advance in writing by the Buyer

11.4. Only new and authentic materials are to be used in Work delivered to Buyer.

11.5. If the Seller becomes aware or suspects that it has furnished Counterfeit Parts or suspect Counterfeit Parts or if the Buyer determines, including as a result of alerts from any Government, or other relevant authorities, that the Seller has supplied Counterfeit Parts or suspect Counterfeit Parts to the Buyer and so notifies the Seller, the Seller shall immediately replace the Counterfeit Parts or the suspect Counterfeit Parts with parts acceptable to the Buyer and conforming to the requirements of this Agreement.

12. CUSTOMER FURNISHED ASSETS (CFA)

12.1. Buyer may provide certain documentation, equipment, materials, supplies or other items (collectively referred to as Customer Furnished Assets or "CFA") as set out in the Agreement.

12.2. All rights and title to CFA shall remain with Buyer.

12.3. Seller shall Notify Buyer of any shortages, defects or inadequacies in the CFA and the impact of these on the conduct of the Work within five (5) Days of receipt of the CFA, or where other events or information are pre-requisites to determining the adequacy of the CFA, within five (5) Days of the occurrence of such events or the receipt of such other information.

12.4. Should any failure to deliver, late delivery, shortage, defect or inadequacy in the CFA result in a change in the time required or the cost of the Work, such failure to deliver, late delivery, shortage, defect or inadequacy shall be a change in accordance with the Article entitled CHANGES IN THE WORK.

12.5. If the required items can be procured from an alternate source Seller shall so advise Buyer. Any procurement from an alternate source authorized by Buyer shall be a change in accordance with the Article entitled CHANGES IN THE WORK.

12.6. In the event of any missing or inadequate CFA, Buyer, where this is practical, may direct Seller to proceed with the Work, making due allowance for the impact of the missing or inadequate CFA. Any such direction shall be a change in accordance with the Article entitled CHANGES IN THE WORK.

12.7. During any delay in obtaining direction or authorization from Buyer with respect to CFA Seller shall be entitled to a suspension of its performance obligations in accordance with the Article entitled FORCE MAJEURE.

12.8. All CFA not consumed during the production of the Work or incorporated into the Work shall be returned to Buyer on completion of the Work.

12.9. Seller shall assume responsibility for the care and custody of the CFA from receipt until it is delivered as part of the Work or returned to Buyer.

12.10. Seller shall be liable to Buyer for any loss of or damage to the CFA, reasonable wear and tear excepted, while it is in Seller's custody.

13. DEFAULT

13.1. A party shall be in default under this Agreement if it fails to comply with any material requirement, obligation, term, condition, or covenant of the Agreement, and does not correct such failure within twenty (20) Days after receipt of a Notice from the non-defaulting party setting out the failure.

13.2. Deemed acts of default by a party shall include but not be limited to its:

- a. indicating that it is unable or unwilling to substantially comply with and observe the provisions of the Agreement; or
- b. ceasing to carry on its business in the ordinary course; or
- c. insolvency, bankruptcy, or making of a general assignment for the benefit of its creditors; or
- d. taking the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors; or
- e. being placed under the control of a custodian, receiver or similar person unless the appointment of such person is being disputed in good faith and such proceedings effectively postpone enforcement of such appointment.

13.3. The defaulting party shall be liable for all direct losses, costs, damages, and expenses, including reasonable attorney's fees incurred by

the non-defaulting party(ies) as a result of such default, whether in contract, tort or otherwise.

13.4. Failure to comply with the requirements of the Article titled CONTACT WITH THE CUSTOMER shall be sufficient cause for termination of this Agreement for default.

13.5. Where Seller is the defaulting party, Seller shall be liable for Buyer's re-procurement costs (if applicable).

13.6. Any failure to pay a disputed invoice shall be considered and resolved as a dispute and not an act of default.

14. DELIVERY

14.1. Unless specified otherwise in the Agreement all Work shall be delivered DAP, OSI facilities, Burnaby, Canada, Incoterms 2020. In the event of any conflict between this Agreement and Incoterms this Agreement shall govern.

15. DISPUTE RESOLUTION

15.1. Any dispute that cannot be amicably settled by the parties within thirty (30) calendar days of presentation of a Notice of Dispute setting out the details of the dispute shall be referred to arbitration in Vancouver, British Columbia, Canada, in accordance with the rules of the British Columbia International Commercial Arbitration Centre (BCICAC) in effect as of the date of the Notice, in English, by a single arbitrator, whose decision shall be final and binding upon the parties.

16. ENTIRE AGREEMENT

16.1. This Agreement, including any items attached or referenced herein, comprises the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous statements, representations or agreements whether written or oral, express or implied.

16.2. Any Work done or payment made under an Authorization To Proceed issued in anticipation of this Agreement shall be considered as having been done or made under this Agreement and subject to all of the terms and conditions in this Agreement. In the event of any conflict this Agreement shall take precedence.

17. ENUREMENT

17.1. Each and every provision of this Agreement shall apply to and enure to the benefit of and bind the respective legal representatives, successors and permitted assigns of the parties hereto.

18. ENVIRONMENTAL COMPLIANCE

18.1. Seller shall comply with all requirements imposed by any law or regulation applicable to the production, use, repair, maintenance, transport, disposal and/or sale of the Works, including but not limited to the following:

- a. Restriction of Hazardous Substances Directive 2011/65/EU, (RoHS 2) issued by the European Union;
- b. Waste Electrical and Electronic Equipment Directive (WEEE) 2012/19/EU;
- c. Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

18.2. The Work shall also meet any other requirements agreed upon in writing.

19. EXPORT APPROVAL

19.1. The parties acknowledge that:

- a. the information to be exchanged or the goods and services to be delivered under this Agreement, or portions thereof, may be subject to the provisions of the Canadian Export and Import Permits Act (CEIPA), the Canadian Controlled Goods Registration Program (CGRP) and/or to the U.S. International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR);
- b. these laws and regulations impose restrictions on export and transfer to third countries of certain categories of data and articles;
- c. licenses and/or registrations from the relevant government departments may be required before such articles and data can be provided hereunder; and

d. such licenses may impose further restrictions on use of such articles and data.

19.2. The exporting party shall be responsible for obtaining any export approvals, registrations permits or licenses, including technical assistance agreements, required from any governmental authority by the exporting party, or any of its subcontractors or suppliers, to be in compliance with any applicable export control laws.

19.3. The importing party shall, at no cost to the other party, provide information and/or certificates as reasonably required by the exporting party to enable it to comply with export control laws and regulations.

19.4. The importing party shall be solely responsible for obtaining any import approvals, registrations, permits or licenses required from any governmental authority by the importing party to be in compliance with any applicable import control laws.

19.5. The exporting party shall, at no cost to the other party, provide information and/or certificates as reasonably required by the importing party to enable it to comply with import control laws and regulations.

19.6. Notwithstanding any limitations of liability specified in this Agreement, the exporting party shall be responsible for any and all costs or delays resulting from failure to obtain any necessary export approvals, registrations, permits or licenses.

20. FORCE MAJEURE / EXCUSABLE DELAY

20.1. A party shall not be in default under this Agreement from any failure to perform any of its obligations under this Agreement if such failure arises from any cause that could not have been prevented by means reasonably available to the party and that was beyond the control of and without the fault or negligence of the party. Such causes include but are not limited to: acts of God or of the public enemy; acts of Government in either its sovereign, legislative or contractual capacity; fire; flood; landslide; earthquake; epidemic; quarantine restrictions; freight embargo; strike; lockout; sabotage; labour dispute; or unusually severe weather.

20.2. The affected party shall as soon as reasonably possible give Notice to the other, including all relevant information that it has available, regarding any such actual event that is impacting or any potential event that threatens to impact the affected party's performance of its obligations under the Agreement.

20.3. If a suspension under this Article has lasted for a period exceeding ninety (90) calendar days, Buyer shall be entitled, by providing Notice to Seller, to terminate the Agreement with respect to the remaining Work. Such a termination shall be treated as a Termination for Convenience.

21. HEADINGS

21.1. Any headings in the Agreement are for convenience only and shall not have the effect of modifying, amending, or altering any provision of the Agreement.

22. INDEMNIFICATION

22.1. Seller shall at all times defend, indemnify and hold Buyer (and its Customer(s), if applicable) harmless from and against all damages, costs and expenses, (including legal fees), that Buyer may sustain, pay, or incur as a result of any cause, action, suit, proceeding or claim that may be brought or made against Buyer:

- a. arising from Seller's negligent performance or non-performance of the Work;
- b. as a result of or in connection with any alleged or actual infringement of any letters patent, copyright, trademark or proprietary right of any third party resulting from the use or sale of the Work.

22.2. Seller shall have the right, at its discretion, to conduct the defence of the claim.

22.3. In the event of an alleged or actual infringement of any letters patent, copyright, trademark or proprietary rights of a third party Seller may, at its option:

- a. obtain for Buyer the right of continued use of the Work; or

- b. deliver and install without charge a non-infringing modification or replacement; or
- c. grant Buyer a credit for the depreciated value of the infringing portion of the Work and accept the return of same.

22.4. Buyer shall:

- a. provide Seller with timely written notice of any cause, action, suit, proceeding or claim;
- b. co-operate fully with Seller in furtherance of Seller's obligations herein;
- c. not settle a claim without the written agreement of Seller.

23. INDUSTRIAL REGIONAL BENEFITS (IRB); INDUSTRIAL TECHNOLOGICAL BENEFITS/VALUE PROPOSITION (ITB/VP)

23.1. This Purchase Order is in direct support of Buyer's desire to support and satisfy IRB and ITB/VP requirements under Canada's National Shipbuilding Strategy (NSS) and Canadian defence and security procurements. Furthermore, this Purchase Order is in direct support of Buyer's desire to satisfy the IRB requirements under the Arctic Offshore Patrol Ship (AOPS) Program, and/or the IRB requirements under the Joint Support Ship (JSS), and/or the ITB/VP Requirements under the Canadian Surface Combatant (CSC) Program, and any future ITB/VP Obligations.

23.2. The overarching IRB, ITB/VP and economic benefit credits resulting under this Purchase Order, attributable to Buyer, are the property of Buyer. These credits are to be applied to NSS programs (AOPS, JSS and CSC) or any future ITB/VP programs in Canada for Buyer's benefit.

23.3. The Seller agrees to assist and support Buyer in preparing appropriate IRB and/or ITB/VP transactions for Innovation, Science, and Economic Development Canada if/as required.

23.4. The Seller shall report all Direct and Indirect Canadian Content to Buyer upon request. Seller agrees to support the verification of any transactions if/as required by Innovation, Science, and Economic Development Canada.

24. INJUNCTIVE RELIEF

24.1. In the event of a breach or threatened breach by a party of any material obligation under this Agreement, any other party shall, in addition to and not in substitution for any other remedy available to it in respect of such breach, be entitled to injunctive relief which restrains the party in breach from committing or continuing such breach.

25. INSPECTION

25.1. Seller shall maintain an inspection system and inspection records acceptable to Buyer. As a minimum the inspection system and records shall be consistent with those in general usage in the trade and be reasonably calculated to ensure the degree of quality required by the Agreement.

25.2. Seller shall inspect and test in accordance with its inspection system and as required in the Agreement.

25.3. Buyer or Customer may at any time view Seller's performance under the Agreement or, on a non-interference basis, conduct independent tests or inspections of the Work. Seller agrees to:

- a. cooperate fully with such activities;
- b. allow access to its facilities and those of its subcontractors or vendors as reasonably required for such activities;
- c. furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these activities.

25.4. Any inspections, tests, reviews, or comments by Buyer, its representatives, or Customer shall not relieve Seller of any of its obligations.

26. INSURANCE

26.1. Seller will maintain in force during the term of this Agreement insurance with the following minimum limits:

- a. General Liability of \$5,000,000;
- b. Professional Errors and Omissions of \$2,000,000; and

c. Worker's Compensation - as required in any jurisdiction in which work is to be performed.

26.2. Seller agrees any commercial general liability policy will provide an endorsement naming Buyer, its customer, officers, agents, affiliates and employees as additional insureds with respect to liability arising out of the Seller's work, including on-going and completed operations.

26.3. Upon request, Seller shall provide Buyer evidence with adequate proof of maintaining the above listed insurance.

27. INTELLECTUAL PROPERTY

27.1. Except as expressly permitted herein, nothing contained in this Agreement shall be deemed, by implication, estoppel or otherwise, to grant to another party any right or license in respect of any Intellectual Property that is owned by, or within the control of, a party prior to the Effective Date of this Agreement or that is acquired thereafter independently of this Agreement.

27.2. Background Intellectual Property. To the extent that any Background Intellectual Property, including but not limited to technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Work or deliverable items and not owned by Buyer pursuant to this or a previous agreement with Seller, Seller grants to Buyer, its subcontractors and customers an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) transfer, use, execute, reproduce, display, perform, and distribute (internally) copies of, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing provided that doing so is necessary for the Buyer to enjoy the rights to the related Foreground Intellectual Property.

27.3. Foreground Intellectual Property. Seller agrees that Buyer shall be the owner of all Foreground Intellectual Property, including but not limited to inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Buyer's request and expense, all documentation necessary to perfect title therein in Buyer. Seller shall maintain and disclose to Buyer written records of, and otherwise provide Buyer with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Buyer and subject to the protection provisions of the clause entitled "Confidential Information". Seller shall assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

27.4. Technical Data. Seller grants to Buyer, and to Buyer's subcontractors, suppliers, and customers in connection with the Work, a perpetual, irrevocable, nonexclusive, paid-up, worldwide license in Seller's Technical Data to reproduce, distribute copies of, display publicly, and make derivative works from the Work and related information and materials that is owned or controlled by Seller at any time before or during the term of this Agreement.

27.5. Seller hereby waives all claims with respect to any moral rights Seller may have in the Work or its use, including the right to restrain or claim damages for any distortion, mutilation or other modification of the Work or any part of the Work, and the right to restrain the use or reproduction of the Work in any context, or in connection with any product or service.

28. LANGUAGE

28.1. The definitive language of the Agreement and the language to be used in all communications written or otherwise between the parties in connection with this Agreement shall be English.

29. LIMITATION OF LIABILITY

29.1. IN NO EVENT SHALL THE BUYER BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE,

SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THE AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY.

29.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY AMOUNT IN EXCESS OF THE AMOUNT TO BE PAID BY BUYER TO SELLER UNDER THIS AGREEMENT OR ANY WORK ORDERS ISSUED UNDER THIS AGREEMENT.

30. LIQUIDATED DAMAGES

30.1. If Seller fails to deliver the Work within the time specified in the Agreement, Seller agrees to pay to Buyer liquidated damages in the amount of five percent (5%) of the total amount payable under the Agreement for each calendar week of delay or portion thereof. The total amount of the liquidated damages is limited to fifteen percent (15%) of the total amount payable under the Agreement.

30.2. Buyer and Seller agree that the amount stated above is their best pre-estimate of the loss to Buyer in the event of such a failure, and that it is not intended to be, nor is it to be interpreted as, a penalty.

30.3. Buyer will have the right to hold back, drawback, deduct or set off from and against the amounts of any monies owing at any time by Buyer to Seller, any liquidated damages owing and unpaid under this Article.

30.4. Nothing in this Article must be interpreted as limiting the rights and remedies which Buyer may otherwise have under the Agreement.

31. NOTICES

31.1. Notices shall be submitted in writing to the address indicated in the Agreement or otherwise provided.

31.2. Notices may be delivered: personally; by registered mail, return receipt requested; by overnight courier; by facsimile, or by electronic mail.

31.3. A notice shall be deemed to have been given and received if specifically acknowledged in writing by the receiving party or:

- a. if delivered by hand, at the time of delivery;
- b. if sent by registered mail, at the time of receipt;
- c. if sent by overnight courier, on the following Day;
- d. if sent by email, on the following Day; or
- e. if sent by facsimile, at the time of transmission if this falls within the normal working hours at the location of receipt and on the next working day at that location if received at any other time.

31.4. Where either party requests written confirmation of any communication that does not constitute a notice such request shall not unreasonably be refused.

32. PACKAGING AND MARKING

32.1. Seller shall employ the most suitable methods of packaging for the Work to ensure that it is not damaged under normal handling during transit.

32.2. Weight and size limitations for standard air transport (IATA regulations) shall be adhered to.

32.3. Marking shall be in accordance with applicable regulations and any Buyer instructions.

33. PAYMENT

33.1. Following delivery to, and acceptance of the Work or a portion of the Work, by Buyer, Seller shall submit an invoice in a form satisfactory to Buyer and accompanied by such supporting documentation as Buyer may reasonably require.

33.2. Buyer shall pay each invoice within forty-five (45) calendar days of the later of:

- a. receipt of a satisfactory original invoice; or
- b. acceptance of the Work covered by the invoice; or
- c. receipt by Buyer of payment from Customer for the portion of the Work covered by the invoice.

33.3. Payments may be made via electronic funds transfer.

33.4. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

34. PERMITS AND LICENCES

34.1. Seller shall obtain and maintain any authorizations, registrations, licences or permits required by any national, state, provincial or local authority for the performance of the Work.

35. PREVAILING TERMS

35.1. If prime contract terms and conditions are identified in the Agreement as being applicable, the greater of or additional requirements contained in any of the terms and conditions shall apply.

36. PRICES AND FEES

36.1. The prices are firm and fixed unless otherwise expressly agreed in writing.

36.2. All prices shall be inclusive of all fees or other charges and shall include all costs associated with suitable packaging and preparation for shipment.

37. PUBLICITY

37.1. Except as required by any applicable law or regulation, Seller shall not release any information concerning this Agreement or disclose or use Buyer's name for purposes of advertising or soliciting business, including, but not limited to, press releases, brochures, photographs, or verbal announcements without the prior written permission of the Buyer.

38. SECURITY

38.1. Seller shall at all times comply with Buyer's security requirements and shall, to the maximum extent possible, honour Buyer's security obligations to its Customer.

38.2. Seller may be required to obtain a security clearance issued by the applicable national agency.

39. SENSITIVE INFORMATION

39.1. The parties acknowledge that loss, misuse, modification, or unauthorized access to Sensitive Information can adversely affect the privacy or welfare of an individual, trade secrets of a business or even the security and international relations of a nation depending on the level of sensitivity and nature of the information.

39.2. The parties agree to treat Sensitive Information disclosed to them in accordance with the security controls and associated assessment procedures defined in NIST 800-53 (Level 3) Recommended Security Controls for Federal Information Systems and Organizations, as amended.

40. SEVERABILITY

40.1. If any provision of the Agreement is held to be invalid, illegal or unenforceable, in whole or in part, by a court or other lawful authority of competent jurisdiction, the remainder of the Agreement shall be severable and remain valid and in full force and effect.

40.2. The parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

41. STATUS OF THE PARTIES

41.1. Each party shall at all times be an independent contractor.

41.2. This Agreement shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, agency, master/servant relationship, partnership or formal business organization of any kind.

41.3. All persons employed by a party to perform its obligations under the Agreement shall be that party's employees, servants or agents and shall not be considered the employees, servants or agents of any other party.

42. SUBCONTRACTING

42.1. Seller shall not subcontract any of the Work without the prior written permission of Buyer. Such permission shall not be unreasonably withheld.

42.2. Permission to subcontract shall not relieve Seller of any of its obligations under the Agreement.

42.3. Seller shall preserve and protect the rights of the parties hereto under any and all subcontracts or purchase orders issued in support of the Work.

42.4. Seller shall ensure that any obligations or restrictions contained herein that could reasonably be expected to apply to subcontractors shall be included in any subcontracts or purchase orders issued in support of the Work.

42.5. Nothing in this Agreement shall constitute or create any contractual relationship or commitment between any of Seller's subcontractors and Buyer.

42.6. This article does not limit Seller's ability to purchase standard commercial services, supplies or raw materials.

43. SURVIVAL

43.1. Any provisions contained in this Agreement with respect to the following shall survive termination of this Agreement for any reason:

- a. Confidential Information;
- b. Indemnification;
- c. Limitation of Liability;
- d. Warranty;
- e. any other right or obligation, which by its nature, might reasonably be expected to so survive.

44. SUSPENSION

44.1. Buyer shall at all times have the right to suspend performance by Seller of all or part of the Work.

44.2. Upon Receipt of a Notice of Suspension Seller shall promptly comply with such Notice and make all reasonable efforts to minimize any costs associated with the suspension.

44.3. Within ninety (90) calendar days, Buyer will either:

- a. cancel the suspension and direct Seller in writing to resume performance of all or part of the suspended Work; or
- b. terminate, in whole or in part, the suspended Work pursuant to the termination provisions of this Agreement.

44.4. If the suspension results in an increase or decrease in the cost of the Work or the time required for the performance of the Work an equitable adjustment shall be made in the schedule and/or compensation for the Work and in any other affected provisions of the Agreement and the Agreement amended accordingly.

44.5. A claim for an adjustment under this Article must be submitted to Buyer within thirty (30) calendar days after the end of the suspension.

45. TARIFFS

45.1. Duties, taxes or other charges payable upon export or import of the Work shall be paid by the parties as set out in Incoterms. If a specific term is not identified in the Agreement then the following shall apply:

- a. Seller shall pay all export related duties, taxes and other charges associated with delivery of the Work; and
- b. Buyer shall pay all import related duties, taxes, and other charges associated with delivery of the Work.

46. TAXES

46.1. Unless set out otherwise in the Agreement, all prices shall be exclusive of all applicable sales, use, value added, business transfer, excise or any similar taxes.

46.2. Seller shall be responsible for paying all applicable corporate or personal income taxes, and any other assessments, taxes or source deductions required in any jurisdictions where Seller is located or the Work is performed.

46.3. If Seller is located in a different country than Buyer, Buyer reserves the right to withhold from payments to Seller any amount that applicable tax authorities require be withheld from payments to foreign entities.

47. TECHNOLOGY EVOLUTION

47.1. Obsolescence

47.1.1. Until the expiration of the warranty period, Seller shall immediately notify Buyer of any present or future obsolescence, in any material or component(s) used in the fabrication or assembly of products supplied to Buyer and provide Buyer with a last-chance-buy opportunity. Details and timetable for the obsolescence as well as any recommended substitution or other solution to address the obsolescence should also be included in the notification.

47.2. Updated Technology

47.2.1. During the term of this Agreement Seller shall advise Buyer of technology developments that, if incorporated into the Work, would result in improved performance and capabilities.

47.2.2. Seller shall not incorporate any technology developments into the Work unless and until so directed by Buyer in an Amendment to this Agreement.

47.3. Updated COTS Items

47.3.1. Where Commercial-off-the-Shelf (COTS) items (including hardware and software) are to be delivered as part of the Work or to be incorporated into the Work, such items shall be as identified in this Agreement except that Seller shall be permitted to substitute newer, compatible items that will meet form, fit and function requirements specified in this Agreement.

47.3.2. There shall be no increase in the cost to Buyer of the Work as a result of any such substitution unless specifically agreed to in writing.

48. TERMINATION

48.1. Termination for Convenience

48.1.1. Buyer may at any time and without cause terminate all or a portion of the Agreement.

48.1.2. Upon receipt of a Notice of Termination for Convenience Seller shall:

- a. immediately discontinue work on the date and to the extent specified in the Notice and place no further purchase orders or subcontracts related to the terminated Work;
- b. inventory, maintain and turn over to Buyer all materials, plant, tools, equipment and property furnished by Seller or its subcontractors or provided by Buyer for performance under the Agreement;
- c. co-operate with Buyer in the disposition of any work in progress; and
- d. continue to perform in accordance with all of the terms and conditions of the Agreement those portions of the Work that are not terminated.

48.1.3. Seller shall submit a final invoice within sixty (60) Days after receipt of the Notice of Termination for Convenience. The final invoice shall include, in addition to the value of all Work delivered but not previously invoiced for:

- a. all costs and expenses reimbursable in accordance with this Agreement that have not been paid for prior to the effective date of termination and such of these costs as may continue for a reasonable time thereafter;
- b. all costs of settling claims arising from the termination of subcontracts and/or purchase orders related to the terminated Work;
- c. reasonable and unavoidable costs for settlement, including but not limited to, accounting, legal, clerical and other expenses reasonably necessary for the preparation of Seller's claim and for storage, transportation and other expenses in connection with the protection and disposition of inventory; and
- d. normal overheads and a reasonable profit on the foregoing.

48.1.4. Notwithstanding the foregoing the total amount to be paid to Seller shall not exceed the amount that Seller would have received had the Agreement not been terminated for convenience.

48.2. Termination for Default

48.2.1. Upon default by a party the non-defaulting party may terminate all or a portion of this Agreement.

48.2.2. Upon termination of this Agreement for default, Buyer shall have no liability to Seller other than payment for that portion of the Work delivered to and accepted by Buyer.

48.2.3. If, after a Notice of Termination for Default has been issued by Buyer, it is determined or agreed by Buyer that such Notice was invalid, in whole or in part, or that the default was beyond the reasonable control of Seller, then the Agreement shall be deemed to have been terminated in accordance with the Termination for Convenience provisions.

49. TITLE

49.1. Except as specified otherwise in the Agreement, Buyer shall acquire title to all Work:

- a. For any creation, design, report, etc. upon its being reduced to any recorded format;
- b. for any material or component upon its identification as part of or to be incorporated into the Work.

49.2. Seller warrants that it has good and marketable title or legal licensed rights to the Work, and that the Work will be free from any claims, liens, charges or encumbrances of any kind.

49.3. Seller shall retain a proportional security interest in the portion of the Work for which it has not received full payment.

50. WAIVER

50.1. Waiver by a party of the strict performance of all or part of any term, condition or covenant in the Agreement shall not of itself constitute a waiver of or abrogate that term, condition, covenant or agreement, nor be a waiver of any subsequent breach of that or any other term, condition or covenant.

50.2. No failure to exercise or delay in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy.

50.3. No provision of this Agreement shall be deemed waived amended or modified by a party unless such waiver, amendment or modification is in writing and signed by the waiving party.

51. WARRANTY

51.1. Seller warrants that, for a period of not less than one (1) year from the date of acceptance, the Work is and shall be:

- a. new and shall meet standard industry quality where no quality is specified
- b. free from defects in design, materials and workmanship
- c. shall comply with published performance specifications and any requirements, specifications or drawings incorporated into the Agreement or otherwise agreed in writing
- d. in conformance with the specifications, and
- e. fit for their intended purpose.

51.2. Where goods or materials not manufactured or produced by Seller are incorporated into the Work any warranty given by the manufacturer of such goods or materials shall be transferred to Buyer.

51.3. Seller shall pay all costs of remedying any defect in the Work.

51.4. The warranty period shall be extended by the length of time that the Work is unavailable as a result of a defect.

51.5. Seller warrants that Seller is competent to perform the Work and that Seller has the necessary qualifications including knowledge, skill and experience, to perform the Work and the ability to use those qualifications effectively for that purpose.

51.6. If any nonconforming Work is identified within the warranty period, Seller, at Buyer's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at Seller's expense. If repair, or

replacement, or reperformance of Work is not timely, Buyer may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at Seller's expense.

51.7. Where the Work includes the provision of services, Seller warrants that it has and will maintain sufficient trained personnel to promptly and efficiently execute the Services contemplated under this Agreement. Seller

further warrants that the Services shall be performed to high professional standards reasonably expected of similar service providers in Buyer's geographic region.

51.8. This warranty entitlement shall enure to the benefit of both Buyer and Buyer's customer.