Master Purchasing Terms & Conditions
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1.0 DEFINITIONS

1.1 “Goods” shall mean all materials and equipment, supplies, parts, components, devices, and all other tangible property to be furnished by Seller including all applicable documentation pursuant to the Purchase Order described in Exhibit ___ of the Purchase Order.

1.1 “Intellectual Property” shall mean all intellectual property rights, including without limitation the following: i) patents, copyrights, and trade or service marks, trade or service names, ii) data and data base rights, rights in confidential information including non-public corporate and financial information, iii) technical and other know-how, trade secrets, proprietary information, iv) technology, inventions, designs, drawings, plans, technical specifications, processes and procedures, software, mask works, formulas, computer programs, source and object codes, programs, works of authorship, discoveries, developments, techniques, systems, and, as to all of the foregoing, all modifications, improvements or enhancements thereto and whether or not registered, including all applications for any of them, all equivalent rights in all parts of the World, whenever and however arising for their full term and any renewals or extension thereof.

1.2 “Purchase Order” shall mean Purchaser’s purchase order #____ dated _____ for ____.

1.3 “Purchaser” shall mean Trendsetter Engineering, Inc., a Texas corporation.

1.4 “Services” shall mean all work, activities, services or ___________ performed by Seller pursuant to the Purchase Order and as described in Exhibit ___ to the Purchase Order.

1.5 “Seller” shall mean __________________________, a ___________.

2.0 ACCEPTANCE

2.1 Seller shall comply with all terms set forth herein and in the Purchase Order, to which these terms are attached and/or are expressly incorporated by reference (collectively, the “Purchase Order”), including amendments, specifications and other documents referred to in this Purchase Order. Unless otherwise stated on the face of the Purchase Order or in a separate written supply agreement between the parties, the terms herein shall prevail over conflicting terms. If any other terms that are included or embedded with the goods or services supplied by Seller, including software, those other terms will be of no force and the term of the Purchase Order will prevail. ANY ACCEPTANCE OR ACKNOWLEDGMENT OF THE PURCHASE ORDER BY SELLER (INCLUDING WITHOUT LIMITATION BY BEGINNING PERFORMANCE OF ANY OF THE WORK OR ACTIVITIES CALLED FOR IN THE PURCHASE ORDER), EVEN IF CONTAINING OR REFERENCING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THE PURCHASE ORDER SHALL BE DEEMED AS A FULL ACCEPTANCE BY SELLER OF THE PURCHASE ORDER, AND THE INCONSISTENT OR ADDITIONAL TERMS SHALL BE DEEMED INEFFECTIVE, UNLESS THEY WERE SPECIFICALLY AND EXPRESSLY ACCEPTED BY BUYER IN WRITING.
3.0 COMPLETE AGREEMENT

3.1 The Purchase Order and these Terms and Conditions, together with all documents, schedules or exhibits attached to either and/or separate but incorporated by reference, including drawings (“Drawings”) or specifications (“Specifications”), shall collectively form the entire agreement between the Purchaser and Seller. All prior negotiations, proposals, and/or writings in any way related to the Purchase Order are hereby superseded. Any references to Seller’s quotation, bid document, or proposal are for information or clarification purposes only, and do not constitute acceptance of any term, condition or instruction contained in any such document.

3.2 No terms and conditions stated in or attached to Seller’s communications to Purchaser, including, but not limited to, acknowledgements, or invoices, are applicable to the Purchase Order in any way, and are not to be considered to be Seller’s exceptions to the provisions of the Purchase Order and these Terms and Conditions. The Purchase Order has been issued subject to and conditioned upon these Terms and Conditions, which are incorporated by reference into the Purchase Order.

3.3 Trade custom, trade usage, and past performance are superseded by this Purchase Order and shall not be used to interpret or contradict this Purchase Order.

3.4 Anything that may be called for in the Specifications and not shown on the Drawings, or shown on the Drawings and not called for in the Specifications, shall be considered to be called for on both. In the event of any ambiguities, conflicts or discrepancies between the Purchase Order and any schedule or exhibit thereto, including the Specifications, Drawings or other documents which are part of the Purchase Order, Seller shall immediately notify Purchaser and shall comply with the written instructions of Purchaser to resolve the matter.

4.0 CHANGES

4.1 Purchaser shall have the right, at any time, to make changes to the provisions of the Purchase Order, including without limitation, changes to: i) the Specifications, Drawings or designs, or ii) the Goods or Services covered by the Purchase Order including quality or quantity, or iii) the method or shipping, schedule or point of delivery, or iv) inspection or acceptance, by delivering written notice to Seller and Seller shall not proceed to implement any change unless and until such change is provided in writing by Buyer in the form of a Purchase Order revision or other written authorization to proceed by an authorized representative of Purchaser. If Seller believes that such change(s) causes a material increase or decrease in the cost and/or time required for the performance of any work under this Purchase Order, an equitable adjustment shall be mutually agreed in writing and reflected in the Purchase Order price and/or delivery schedule. Any Seller claim for adjustment under this clause will be deemed waived unless asserted within ten (10) calendar days from Seller’s receipt of the change notification and may only include reasonable, direct and documented cost incurred as a direct result of the change. If the parties fail to agree, Purchaser shall have the option to terminate the Purchase Order.
4.2 No substitutions shall be made in the Purchase Order without the prior written authorization of Purchaser. No agreements or understandings modifying the conditions or terms of the Purchase Order shall be binding upon Purchaser, unless and until agreed to by Purchaser in writing.

4.3 Seller shall notify Purchaser in writing in advance of any and all: (a) material process changes; (b) material plant and/or equipment/tooling changes or moves; (c) transfer of any work hereunder to another site; and/or (d) material changes to its procurement of goods/services in connection with the Purchase Order. No such change shall occur until Purchaser has had the opportunity to conduct such audits, surveys, and/or testing necessary to determine the impact of such change on the goods and/or services and has approved such change in writing. Seller shall be responsible for obtaining, completing and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by Purchaser.

5.0 PRICE AND PAYMENT

5.1 The prices on the Purchase Order are firm and are inclusive of all taxes, fees and/or duties applicable to the goods and/or services provided under the Purchase Order. No change to the Purchase Order price will be allowed unless specifically agreed to in writing by Purchaser by the issuance of a Purchase Order revision pursuant to Section 4.0.

5.2 Unless stated otherwise on the face of the Purchase Order, Seller shall only issue an invoice for goods and/or services ordered under a Purchase Order once these goods and/or services have been delivered as per Section 7.0. Once Delivery of the goods and/or services has been achieved as defined in Section 7.2, Seller shall prepare and submit an invoice to Purchaser for payment. Unless stated otherwise on the Purchase Order, payment of all non-disputed amounts shall be due by Purchaser 30 days after receipt of a proper invoice for which Goods have been delivered or Services performed at invoicing address detailed on the Purchase Order. Invoices shall be rendered separately for each delivery, cover not more than one Purchase Order, include the Purchaser order number and description of the goods/services and attach a copy of the receipt for transport charges.

5.3 Seller shall submit invoices no later than 60 days once Goods are delivered or Services are performed. To the maximum extent permitted by Law, Purchaser shall be entitled to reject Seller’s invoice without liability if Seller fails to issue any invoice after the time set forth above.

5.4 Purchaser may withhold any amount of an invoice that is disputed in good faith.

5.5 Progress payments, if agreed or specified in the Purchase Order, will be paid only when the Good or Service subject to the progress payment has been rendered as identified in the Purchase Order and title has passed to Purchaser, free from third party claims.

5.6 Payment for Goods shall not be deemed acceptance thereof.
6.0 INSPECTION

6.1 All Goods and Services shall be subject to inspection or verification by Purchaser or its authorized agent(s) during the period of manufacture, prior to shipment and at destination, notwithstanding any prior payment, inspection or term of shipment. Purchaser shall have the right to reject any Goods that are Nonconforming (as defined below) and in addition to rights and remedies provided elsewhere in this Agreement, return such Non-conforming Goods to Seller at Seller’s cost and require Seller to correct such Nonconformity.

6.2 Purchaser shall have the right to inspect and/or witness any tests of Seller of Goods or Services conducted by Seller. Purchaser shall be granted reasonable access to all portions of the Seller’s facilities or Seller’s subsupplier facilities which are related to or involved with the manufacturing or processing of Goods subject to the Purchaser Order.

6.3 Purchaser’s inspection of Goods or Services, or failure to inspection Goods or Services, or witnessing or inspection of testing or lack of witnessing or inspection of testing, or lack of response to notice of testing, or acceptance of Goods or Services by Purchaser, shall in no event limit, discharge or release the Seller from any obligations related to the Purchase Order including warranty, indemnity or otherwise.

6.4 Purchaser reserves the right to review and approve Seller’s Quality Assurance and Quality Control Procedures.

6.5 Seller and/or Seller’s Subsupplier(s) will notify Purchaser at least 5 (five) calendar days in advance of the date any inspection or test is to be made. IF for any reason the inspection should be delayed, Seller shall immediately notify Purchaser.

6.6 NO GOODS SHALL BE SHIPPED BY SELLER ON THIS PURCHASE ORDER WITHOUT A FINAL INSPECTION BY PURCHASER OR A WRITTEN WAIVER OF INSPECTION BY PURCHASER. VIOLATION OF THIS REQUIREMENT SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

7.0 DELIVERY

7.1 Seller shall deliver all goods and services, including all required information and documentation, to the delivery location and per the delivery terms detailed on the Purchase Order. Upon receipt of the goods and/or services, Purchaser shall inspect the goods and/or services to ensure that they are in full compliance with the requirements detailed in the Purchase Order and shall document all such non-conformances. All non-conforming goods and/or services shall be rejected by Purchaser and returned to Seller at Seller’s sole cost with instructions to correct the non-conformances and deliver the repaired goods and/or services or updated documentation as the case maybe per the delivery terms detailed on the Purchase Order.
7.2 Delivery of the goods and/or services will be considered achieved upon (1) goods and/or services have been received at the delivery location detailed in the Purchase Order, (2) Purchaser has completed the receipt inspection of the goods and/or services, (3) Purchaser has completed the review of all applicable product documentation as required per the Purchase Order and (4) Purchaser has accepted the goods and/or services along with all information and applicable product documentation required per the Purchase Order.

8.0 ASSIGNMENT

8.1 Seller may not assign or novate (including by change of ownership or control, by operation of Law or otherwise) this Purchase Order or any interest herein including payment, without Purchaser’s prior written consent. Sell shall not subcontract or delegate performance of all or any substantial part of the work called for under this Purchase Order without Purchaser’s prior written consent. Any agreed to assignee/noratee of Seller shall be bound by the terms and conditions of this Purchase Order. Purchaser reserves the right to assign this Purchase Order to Purchaser’s affiliates without such consent. Seller’s use of domestic subsidiaries or affiliates of Seller to provide portions of the goods shall not be considered an assignment of this Purchase Order if such use is a normal part of Seller’s operation at the effective date of this Purchase Order.

9.0 CONFIDENTIAL INFORMATION

9.1 “Confidential Information” shall include: i) Purchaser’s Intellectual Property, ii) any other proprietary or trade secret, non-public data or material supplied to the Seller by Purchaser, including financial information and iii) any information regarding Purchaser’s customers or suppliers, and iv) any information, data, documents, records and materials or Intellectual Property of any nature developed by Seller in connection with performance of the Purchase Order, and v) any information, data, record or document of any nature or in any medium marked as confidential or proprietary.

9.2 During the term commencing on the Purchase Order release date and extending for a period of 10 years after Delivery of the goods and/or services under the Purchase Order, Seller shall retain the Confidential Information in absolute confidence and not under any circumstances disclose it to any third party or make public disclosure. Seller shall use the Confidential Information only as necessary for the performance of the Purchase Order. Seller shall not disclose the Confidential Information to any subsupplier without first requiring this same agreement in writing from the subsupplier and written consent from Purchaser. Seller shall return all Confidential Information and copies thereof to Purchaser upon completion of Seller’s obligations under the Purchase Order, or upon Purchaser’s written request at any earlier time.

9.3 Purchaser shall have no obligation of confidentiality with respect to documents, records, data or information supplied by Seller, without regard to labeling or notations on the face thereof, absent a separate written confidentiality agreement.
10.0 DEFAULT

10.1 Purchaser may terminate this Purchaser Order for cause, or at any time after any of the following events, which constitute a material breach of Seller’s obligations under the Purchase Order, have occurred: (i) Seller files bankruptcy or an involuntary bankruptcy proceeding is commenced against Seller, (ii) Seller makes a general assignment for the benefit of its creditors; (iii) If any receiver is appointed for Seller’s business; (iv) Seller fails to perform within the time specified in the Purchase Order or on any other written extension granted by Purchaser; (v) Seller files to make progress which, in Purchaser’s reasonable judgment, endangers the performance of the Purchase Order in accordance with its terms; (vi) Seller violates or allows a violation of any legal requirement or applicable Law or lawful requirements of any competent authority or instructions of Purchaser or (vi) Seller breaches any of the terms and conditions of the Purchase Order.

10.2 Such termination shall become effective if the Seller does not cure such default event within 5 calendar days after receipt of the notice of default from Purchaser or immediately if such breach is incapable of cure.

10.3 Termination by Purchaser under Article 10 does not in any way prejudice any other rights or remedies which Purchaser may have.

10.4 Upon termination, Seller shall immediately discontinue the terminated work and place no further contracts or subcontracts in respect to the terminated work. Seller shall inventory, maintain and turn over to Purchaser all materials and any work-in-progress including all supporting documentation. Purchaser, without incurring any liability to Seller, may procure at Seller’s expense and upon terms it deems appropriate, goods and/or services comparable to those so terminated. Shell shall continue performance of this Purchase Order to the extent not terminated and shall be liable to Purchaser for any excess cost incurred by Purchaser required to secure such comparable goods and/or services from others however such excess cost shall not exceed 110% of the value of the good and/or services that are the subject of the termination.

10.5 Purchaser may retain any monies owed to Seller for work completed prior to termination of this Purchaser Order to offset anticipated additional expenses incurred in completion of performance or other damages incurred by Purchaser as a result of Seller’s default.

10.6 Purchaser may choose to waive any default by Seller without relinquishing the right to enforce Article 10.0 in the case of later defaults by Seller.
11.0 TERMINATION

11.1 At any time, Purchaser may terminate for its convenience all or any separable part of this Purchase Order by giving written notice to Seller. On the date notice of such termination is received by Seller, Seller shall: discontinue all work so terminated, shall place no additional orders, shall terminate all subcontracts to the extent they relate to work terminated, shall preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Seller’s and in its sub suppliers plants including all designs, drawings, specifications, other documentation and material required or produced in connection with such work pending Purchaser’s written instructions, and shall dispose of same in accordance with Purchaser’s written instructions.

11.2 Seller and Purchaser shall promptly and mutually agree to a termination payment, if any. Such payment shall be based upon that portion of the work satisfactorily performed through the date of termination, including reimbursement for reasonable profit on such work, plus reasonable and necessary expenses resulting from the termination and as documented to Purchaser’s satisfaction. Seller shall not be entitled to any loss of prospective profits, contribution to overhead on terminated work or incidental, consequential or other damages because of such termination. Seller shall deliver or assign all goods with all applicable warranties or dispose of goods as directed in writing by Purchaser prior to final payment.

12.0 INDEMNIFICATION – INTELLECTUAL PROPERTY

12.1 For all items furnished under this Purchase Order, if the design of an item was not furnished by the Purchaser, Seller shall indemnify, defend, release and hold harmless Purchaser, and its successors and assigns, from all judgments for damages resulting from any claims or suits for infringement of United States patents, copyrights, trademarks, or other intellectual property rights. Seller shall defend all such suits and shall pay all related costs. If the use of such item is enjoined, Seller shall, at its sole expense and subject to Purchaser’s sole discretion, procure the right to continue use of the item, modify the item to render it non infringing, replace the item with a non-infringing item, or remove the item completely and refund the purchase price plus all related transportation, Installation and dismantling costs to Purchaser.

13.0 INDEMNIFICATION – GENERAL

13.1 Seller shall release, indemnify, defend, and hold harmless Purchaser Group from and against all claims, demands, proceedings, damages, cost (including legal cost), losses, liabilities, and expenses arising out of or related to this Purchase Order hereafter referred to as “Claims” for: (1) injury, sickness or death of Seller Group personnel; (2) Loss of or damage to Seller’s Group property; (3) Seller’s failure to comply with any and all Applicable Laws, codes, ordinances, or regulations; or (4) pollution (including clean-up cost) emanating from Seller Group's property and equipment whether owned, leased or hired.
13.2 Purchaser shall release, indemnify, defend and hold harmless Seller Group from and against all Claims for: (1) injury, sickness or death of Purchaser Group personnel; (2) loss of or damage to Purchaser Group property except for property that is free issued to Seller that is in the care, custody and control of Seller; (3) pollution (including clean-up cost) emanating from Purchaser Group property and equipment whether owned, leased or hired.

13.3 Seller shall release, indemnify, defend, and hold harmless Purchaser Group from and against all Claims resulting from any infringement or alleged infringement of any patent, registered design, copyright, trademark, or other intellectual property right or trade secret misappropriation arising out of or in connection with the performance or use of the Services under any Purchase Order.

13.4 Each party shall release, indemnify, defend, and hold harmless the other party from and against all Claims for indirect, special, punitive, exemplary, or consequential damages or losses including, but not limited to, damages or losses for lost production, lost revenue, lost product, lost profits, lost business, or business interruptions ("Consequential Losses") suffered by the other party except for any liquidated damages as specified in the Purchase Order.

13.5 Each party shall release, indemnify, defend, and hold harmless the other party from and against all Claims for (1) personnel injury, sickness, or death or third parties; and (2) loss of or damage to or loss of use of property of third parties caused by or resulting from the negligence of each party. In the event of joint or concurrent negligence or fault of both parties, each party’s obligation hereunder shall be limited to its allocable share of such joint or concurrent negligence or fault. Any party guilty of willful misconduct or gross negligence will not be indemnified.

14.0 WARRANTIES

14.1 Seller warrants that all Goods and components thereof furnished hereunder by Seller or any of its subcontractors shall be: (i) new and of merchantable quality, fit for the purpose intended, and (ii) in strict conformity with Specifications, Drawings and all other requirements of the Purchase Order, and (iii) free from defects in materials, workmanship and design, and (iv) manufactured with proper materials, sizes and capacity to perform satisfactorily under the full range of operating and/or design conditions specified. In addition, Seller will cause any lien or encumbrance asserted to be discharged, at its sole cost and expense, within 15 calendar days of its assertion provided such liens do not arise out of Purchaser’s failure to pay amounts not in dispute under this Purchase Order.

14.2 Seller acknowledges that it is fully aware of the purposes for which Buyer intends to use the Goods. Seller represents the design, manufacture, production, testing, sale and delivery of the Goods, and Seller’s performance of its obligations under this Order will comply with all applicable laws.
14.3 Seller also warrants that all Services performed hereunder by Seller or any of its subcontractors shall be: (i) performed with due diligence and in a safe workmanlike, and competent manner and in accordance with all provisions of the Purchase Order and applicable law; and (ii) shall meet the descriptions and/or specifications provided and/or agreed to by Purchaser. In addition, Seller shall obtain, at its sole expense, before performing any Services all the necessary certificates, permits, licenses and authorizations to conduct business and perform the Services and it shall ascertain, before performing any Services, whether any drawings and/or specification are at variance with applicable law and good engineering and operational practices, notify Purchaser of such variances, and with Purchaser’s agreement ensure that necessary changes are made.

14.4 The foregoing warranties shall apply for a period of twelve (12) months from date of shipment of the goods or the completion of the services first (the “Warranty Term”). The warranty herein shall also apply to any replaced or corrected good(s) or re-performed services.

14.5 If any of the goods and/or services are found to be defective or otherwise not in conformity with the warranties in this Section during the Warranty Term, then Purchaser, in addition to any other rights, remedies and choices it may have by law, contract and/or at equity, and in addition to seeking recovery of any and all damages and costs emanating therefrom, at its discretion and at Seller’s expense may (i) require Seller to inspect and repair or replace/re-perform nonconforming goods and/or services with goods and/or services that conform to all requirements of this Purchase Order; (ii) take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with all requirements of this Purchase Order, in which event all related costs and expenses (including, but not limited to, material, labor, and handling cost and any required re-performance of value added machining, fabrication or other services as may be required) and other reasonable charges shall be for Seller’s account, (iii) reject and return all or any portion of such goods and/or services. Any repaired or replaced good, or part thereof, or re-performed services shall carry warranties on the same terms as set forth above.

14.6 If at any time during the performance of the work the representations, warranties or guarantees set forth in this Warranty section are found to have been breached Seller shall immediately begin and diligently proceed to complete the remedy of the breach, except where prevented or delayed due to Force Majeure. Should Seller not begin and diligently proceed to complete said remedy, Purchaser after so advising Seller in writing shall have the right to perform or have performed by third parties the necessary remedy, and all documented costs thereof shall be borne by Seller.
14.7 Seller shall utilize its best efforts to obtain warranties from Seller’s subcontractors in favor of Purchaser that are substantially similar as Purchaser’s Warranty. Seller shall utilize best efforts to require that the subcontractor warranties be made expressly or the benefit of Purchase as well as Seller. Seller shall utilize best efforts to ensure that such subcontractor warranties are assignable to Purchaser and shall utilize best efforts to execute any assignments or other documents reasonable necessary to assign to Purchaser any such warranties.

15.0 COMPLIANCE WITH LAWS

15.1 As a material element of this Purchase Order, Seller covenants that it will comply with: (i) all Laws; and (b) good industry practices, including the exercise of that degree of skill, diligence, prudence and foresight which can reasonably be expected from a competent Seller who is engaged in the same type of service or manufacture for the oil and gas industry. Seller holds the full responsibility of compliance with this document and to determine all the country/local applicable installation requirements, regulations, other requirements, codes and standards that relate in any way to the scope of supply, and comply with the foregoing. Seller’s non-compliance with country/local applicable installation requirements, regulations, other requirements, codes and standards shall be considered a breach of warranties in Section 14.

16.0 TITLE

16.1 Seller warrants full and unrestricted title to Purchaser for all Goods and/or Services furnished by Seller under this Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. If Purchaser makes progress payments to Seller under this Purchaser Order title to the goods and/or Services, but not risk of loss or damage, shall pass pro rata to Purchaser at the time that Purchaser pays each milestone payment and as soon as the Good(s) is\are rendered such that it is identifiable under the Purchase Order. All such Goods shall be adequately marked as being the property of Purchaser. Or at Purchaser’s election title shall pass when Purchaser pays 100% of outstanding balance.

16.2 Title to Goods shall pass to Purchaser no later than the time of Delivery as defined in Section 7.0, provided that passage of title shall not waiver or prejudice Purchaser’s right to reject defective or non-conforming Goods or any other right Purchaser may have, including warranty or indemnity claims.

17.0 SCOPE OF REMEDIES

17.1 The rights and remedies provide hereunder are in addition to and in no way limit any and all rights or remedies that Purchaser may have by law, in contract or at equity. Purchaser shall be entitled to recover all direct costs or damages associated with any defective or non-conforming Good or Service or any breach of the warranty hereunder. Purchaser may withhold and offset all costs or damages incurred by Purchaser hereunder against any sums due to Seller.
17.2 Provided, that neither party shall be liable to the other for any indirect or consequential damages, including lost profit, loss of business, unless caused by the willful conduct of the party.

18.0 OFFSET

18.1 Purchaser reserves the right to withhold from Seller’s payment (i) any amount owned to Purchaser by Seller or its affiliates under this Purchase Order or any other agreement, or (ii) any amount imposed on Purchaser by a third party as a result of Seller’s actions or inactions pursuant to the Purchase Order.

19.0 INTELLECTUAL PROPERTY

19.1 All Intellectual Property, including drawings, field notes, specifications, computer programs (data files and other software in whatever form), and any other documents, records, and materials, in whatever form, developed or conceived by Supplier in connection with a Purchase Order (“New IP”), shall be considered works for hire by Seller for Purchaser and will be the property of Purchaser. Supplier shall provide the original and all copies of the New IP to Purchaser when Goods are delivered or Services are completed or earlier upon Purchaser’s written request. Supplier hereby assigns and agrees to assign in the future as necessary the New IP to Purchaser, and shall require its employees and subcontractors assign the New IP also, including any patent rights, copyrights or trade secret information or technology.

19.2 Seller hereby grants to Purchaser an irrevocable worldwide royalty free transferable license to Seller’s Intellectual Property that is necessary to the use and operation of the Goods or Services.

19.3 Purchaser shall retain ownership of its Intellectual Property.

20.0 SHIPMENT

20.1 Partial shipments are not allowed unless expressly stated in the Purchase Order. Partial shipments must be accompanied by identifying documents, but such shipments shall not be interpreted to make the obligations of Seller severable. No charge will be allowed for inspection, packing, shipments, freight, or handling unless expressly stated in this Purchase Order. All shipments and packages shall be properly packed according to the applicable transport to protect against damage and deterioration. Seller shall pay for damaged goods resulting from improper packing or marking. Each package shall be numbered and labeled with the Purchase Order number, and itemized packing lists must accompany each shipment. Purchaser’s count will be accepted as conclusive on shipments not accompanied by Seller’s itemized packing list.
20.2 All risk of loss or damage to the Goods will remain with Seller until delivered to and accepted by Purchaser at the point specified for delivery in the Purchase Order, unless Purchaser and Seller agree otherwise in writing. Unless otherwise agreed by Purchaser, all deliveries shall be made to Purchaser’s facility on Rodgers Road in Houston, Texas.

21.0 NO WAIVER

21.1 Any action by Purchaser with respect to inspection of or payment for the goods and/or related services covered by this Purchase Order shall not prejudice Purchaser’s right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Purchaser of the goods or services, or effect in any way Seller’s obligation under this Purchase Order notwithstanding Purchaser’s opportunity to inspect the goods and/or related services, nor Purchaser’s earlier failure to reject the foods or services.

21.2 No waiver of any right or privilege or Purchaser will occur upon Purchaser’s failure to insist on performance or any term, condition, or instruction, or failure to exerciser any right or privilege or its waiver of any breach.

22.0 HAZARDOUS MATERIALS

22.1 Seller shall notify Purchaser in writing upon acceptance of this Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances; or when disposed of, to regulations governing hazardous wastes, or to any other applicable environmental or safety and health regulations. Seller shall furnish without limitation all appropriate and required shipping, handling and use certifications, instructions, labeling, lists and goods representations for shipping, safety handling, exposure and disposal in a form sufficiently clear for use by Purchaser’s non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. In addition to the above, the following certification MUST be made on the bill of lading: “This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations.”

23.0 FORCE MAJEURE

23.1 Neither Purchaser nor Seller shall be liable for failure to perform hereunder if such failure is due to any event beyond the reasonable control of the affected party, such as: acts of God (except weather or storms of the ordinary seasonal nature), tornadoes, hurricanes, floods, earthquakes, war; riot, civil commotion, terrorist attacks, insurrection, government orders, floods, or fire (a “Force Majeure Event”); provided that such party has used all reasonable efforts and due diligence to avoid, prevent, mitigate and overcome the effects of such occurrence and to make up any resulting delay.
23.2 In the event that Seller is unable to perform for reasons beyond its control, Seller must notify Purchaser in writing within forty-eight (48) hours of the occurrence producing the Force Majeure delay. Such notice shall include a description of the event of Force Majeure in reasonable details and shall set for the anticipated impact of such event on the scheduled delivery date for the goods and/or services. Seller shall forfeit its exclusion from liability under this article if Seller’s fails to submit such required written notice. After receipt of such notice, Purchaser shall have the right either to accept Seller’s delay in ability to perform or require Seller to initiate corrective actions to overcome the delay or terminate the order in accordance with Article 9 above.

24.0 GOVERNING LAW

24.1 The Purchase Order, these Terms and Conditions and all disputes between the parties shall be governed by and subject to the laws and jurisdiction of the State of Texas and venue for all purposes shall lie in Harris County, Texas.

25.0 VALIDITY OF PROVISIONS

25.1 In the even any provision, or any part or portion of any provision of the Purchaser Order or these Terms and Conditions shall be held to be invalid, void, or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

26.0 RIGHTS OF THIRD PARTIES

26.1 These Terms and conditions are for the benefit of Purchaser and Seller and no third party shall be entitled to claim any of the benefits or rights hereunder.

27.0 SURVIVAL

27.1 The parties agree that the termination of the Purchase Order or completion of any work or provision of services under a Purchase Order shall not release the parties from the obligations which expressly or by their nature survive or extend beyond the Purchase Order termination or completion of the work.

28.0 TIME IS OF THE ESSENCE
28.1 Timely delivery of Goods and timely performance of Services is a material part of the required performance of Seller under the Purchase Order, even if not expressly stated by the Purchase Order. Seller shall begin performing the work pursuant to the Purchase Order immediately and shall prosecute the work continuously and diligently so as to achieve completion of the work on or before the scheduled delivery date detailed on the Purchase Order. Seller shall provide information concerning the progress of the work and shall notify Seller of any difficulties Seller may have in achieving the scheduled delivery date. If Purchaser, in its sole opinion, believes that the rate of progress by Seller is too slow to ensure performance and completion in accordance with the scheduled delivery date, Purchaser shall notify Seller of such schedule delay and Seller, at Seller’s sole cost and expense, shall remedy such schedule delay by working additional overtime and/or engage such additional personnel and/or take such other measures as maybe necessary in order to complete the work in accordance with the delivery schedule.

29.0 HSE

29.1 Seller acknowledges Purchaser’s strong commitment to health, safety and the protection of the environment (HSE) and warrants that it has a written HSE policy signed by an authorized officer of Seller and is actively supported and endorsed by Seller’s management. Seller further warrants that its HSE policy is widely disseminated and understood among Seller Personnel. In the performance of the Work, Seller shall take all necessary precautions to protect the safety of Seller’s Personnel and Purchaser’s Personnel, and all other persons on or about the Work Site. Seller shall comply with the Health, Safety, and Environmental Requirements attached hereto as Exhibit “A”, as amended from time to time by Purchaser. Seller will provide, at its sole cost and expense, all necessary safety clothing and equipment for the performance of the Work under this Agreement. Seller will report all safety related accidents or incidents at any level of seriousness to Purchaser within 24 hours of the event. Seller will adhere to all safety condition as detailed on attached Exhibit A.
APPENDIX 1 EXHIBIT A

HEALTH, SAFETY, & ENVIRONMENTAL REQUIREMENTS

MINIMUM HSE RESPONSIBILITIES (All Sellers)
Seller shall meet the following health, safety and environmental (HSE) requirements, at a minimum, as appropriate based on the Work being performed by Seller. Compliance with these requirements is the direct responsibility of Seller, unless otherwise stated herein. Seller is to conduct its Work in a manner that protects the health and safety of all Seller’s Personnel, Purchaser’s Personnel, third parties and the environment.
Seller Shall:

- Comply with all: (1) Applicable Laws and regulations, (2) industry standards and best practices, (3) permit stipulation(s), (4) all applicable governmental programs, plans, approvals and conditions, and (5) Purchaser HSE requirements as specified herein;
- Have and comply with a written HSE policy, HSE management system (HSEMS), and necessary HSE program/plans/procedures that are acceptable to Purchaser; upon request submit to Purchaser for review and comment prior to initiation of Work; should a Seller not have written HSE policy, HSEMS or the necessary HSE programs/plans/procedures, at Purchaser’s sole discretion, Seller may be allowed to follow some or all of Purchaser’s HSE policy, HSEMS, HSE programs/plans/procedures in lieu of developing its own;
- Upon request of Purchaser, participate and cooperate fully with Purchaser in Bridging Process (see Section II) to ensure adequate alignment of these requirements;
- As appropriate, or as requested by Purchaser, and based on the Work being performed, the Seller shall provide, at Seller’s sole cost and expense, all necessary life-saving equipment, as may be agreed to in the Bridging Document, and ensure proper operation of such life-saving equipment, for the protection of Seller’s Personnel, Purchaser’s Personnel and third parties;
- Comply with any reasonable HSE, security and social requirement required by Purchaser in the future;
- Immediately comply with any stop Work order by the Purchaser or Purchaser’s Personnel, Seller’s Personnel or third party to protect health, safety and the environment;
- Provide Purchaser’s Personnel access to operations, personnel, facilities, and documents to conduct audits, validations and/or inspections;

SECTION II – BRIDGING PROCESS (At Discretion of Purchaser)
Purchaser has the right, but not the obligation, at its sole discretion, to require Seller to engage in the Bridging Process with Purchaser. The Bridging Process will consist of an evaluation of Seller’s HSE policy, programs, plans and procedures (including security and social), as appropriate, based on the Work being performed or provided by Seller, and any other reasonable HSE, requirement imposed by Purchaser.

Upon request, Seller shall engage in the HSE Bridging Process. Seller shall fully and completely participate, cooperate and provide all relevant documentation for review by Purchaser. Seller shall also designate an HSE Bridging point of contact, if requested by Purchaser, and complete in a timely manner the Bridging Questionnaire provided by Purchaser.

The Bridging Process will result in a document (the “Bridging Document”) that outlines how the Seller and Purchaser’s HSSSE policy, programs, plans and procedures will be aligned. In the event of a difference, Purchaser has the right, and not the obligation, to require that Seller comply with the more stringent HSE requirement.
The Bridging Document, upon completion, shall be executed by Seller. Seller shall be obligated implement the corrective actions outlined in the Bridging Document. Failure to resolve any deficiency or gap or to follow the agreed Bridging Document, to the reasonable satisfaction of Purchaser, may be deemed a breach of Seller’s contract with Purchaser and/or may result in a “stop work” order by Purchaser until such time as the deficiency is resolved to the reasonable satisfaction of Purchaser. Seller shall ensure that Seller’s Personnel know, understand and comply with the Bridging Document. Work being performed: