



**TerraTech Services**

909 FANNIN ST,SUITE 3100,HOUSTON,TX 77010

Phone 713-759-1200

Fax 713-759-0510

PO Number: MHT 542

Buyer Name:

Requisitioner:

Approver ID:

AFE/WBS:

Well/Lease:

Plant/Loc:

Cost Center:

Sales Office: TERRATECH SERVICES  
HOUSTON OFFICE

INVOICE:

Invoice Date: 08-Dec-2020

Discount Date:

Discount: 0.00

Net Due Date: 07-Jan-2021

Sales Order:

System Shipped Date:

Actual Shipped Date:

Salesperson:

Bill To: 20708  
MILE HIGH TUBULARS, LLC  
2585 TRAILRIDGE DRIVE EAST, STE 200  
LAFAYETTE,CO 80026

Ship To: CO - Prowers - Lamar - Outside City Limits  
Shipped Via:

SO Line	Item Description	Yard	UOM	T/E	Disct	Quantity	Unit Price	Extended Amount
1	FREIGHT/60688M- 2 DROPS( JT) FOB: - Lamar, CO Delivery:	9999	EA	E	0.00%	1.00	0	
Sub Total								
<b>Tax Summary</b>		State:	0.00	County:	0.00	City:	0.00	Tax Amount: 0.00

Remit by Check to:  
909 FANNIN ST,SUITE  
3100,HOUSTON,TX 77010

Remit by Wire to:  
Bank Name:  
S.W.I.F.T Code:  
Routing Number:  
Account Number:  
Account Name:

Total USD	
Payments & Other Credits	0.00
Balance : 09-Dec-2020	

## **1. DEFINITIONS**

**Advice:** assistance, information, opinion, recommendation or advice concerning, or in connection with connections, accessories, Goods or Services (including, without limitation, string design, material selection, torque and drag analysis, fatigue analysis and any other analysis or calculus either simple or complex such as finite element analysis related to tubular material, body, connections or both).

**Affiliate:** of any specified person: any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, control when used with respect to any specified person means the power to direct the management and policies of such person directly or indirectly, through the ownership of voting securities or the right to elect the majority of the members of the board of directors of such person; and the terms controlling and controlled have meanings correlative to the foregoing.

**Agreement:** the contract relating to the sale of Goods or performance of Services binding the Parties upon Customer's express or implied acceptance of Supplier's commercial offer/quotation (Supplier's proposal terms including these Terms for the sale of Goods or performance of Services).

**Confidential Information:** any confidential, non-public information, documentation, research and development information, technologies, intellectual properties, software, patents, trade secrets, proprietary information, technical or non-technical information or data in written, oral, tangible or intangible form including information stored in or transmitted by computer disc, electronic transmission or other storage or transmission medium, in whatever form or medium provided, consisting of, without limitation, the following: Supplier's, its subcontractor's and/or its or their Affiliates' business or operations information, records or data; engineering or technical data; lists or sources of potential customers; product pricing lists, profit margins, price structure and data, including production, manufacturing, shipping and related cost information; business plans and development strategy; software (including engineering and technical software), formulas, patterns, designs, concepts, drawings, specifications, methods or plans relating to the business and operations of Supplier, its subcontractor's and/or its or their Affiliates and all technology, intellectual property (whether protected by patent or copyright or not), data, information, or software, in any form whatsoever including information relating to the activities of Supplier, its subcontractor's and/or its or their Affiliates; and all information generated by Customer which is derived from, contains, reflects, or incorporates the foregoing.

**Customer:** the person to whom Goods or Services are provided under the Agreement, including its successors and assigns.

**Goods:** the goods to be provided in accordance with the Agreement.

**Intellectual Property:** all rights over inventions, patents, utility models, copyright and related rights, trademarks, service marks, trade names, domain names, industrial designs, computer software, databases, integrated circuit topographies, confidential information, know-how, trade and industrial secrets, and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals, continuations, substitutions, revalidations, reissues or extensions of such rights, and all similar or equivalent rights or forms of protection in any country or region of the world.

**NORM:** naturally occurring radioactive material.

**Order:** the document issued by Customer requesting the supply of Goods or the performance of Services.

**Order Acknowledgment:** the acknowledgment form containing these Terms delivered by Supplier to Customer in response to an Order.

**Parties:** collectively, Customer and Supplier.

**Services:** the services to be provided as specified in the Agreement. Services do not include technical running assistance or running services, or, unless agreed otherwise, threading services.

**Supplier:** the company providing Goods or Services under the Agreement.

**Terms:** these general terms and conditions for the supply of Goods or performance of Services.

## **2. ENTIRE AGREEMENT**

2.1 The Agreement represents the entire agreement of the Parties in relation to the sale of Goods or the performance of Services, and supersedes any and all prior agreements with respect to the subject matter thereof. Customer's acceptance of Supplier's offer or quotation containing these Terms, or receipt of an Order Acknowledgement without giving written objection thereto within five (5) business days from receipt of the same shall constitute acceptance by Customer of the Agreement.

2.2 No representations other than those set forth in the Agreement shall be deemed made. Any conflicting terms contained in any written document (including any correspondence between Customer and Supplier), unless incorporated herein by a typed or handwritten addition hereto expressly accepted by an authorized Supplier representative or a document signed by an authorized Supplier representative making reference to this clause, are expressly rejected, shall be of no force or effect and these Terms shall apply. Supplier's failure to object to provisions contained in any communication from Customer will not be deemed a waiver of the provisions of these Terms.

## **3. APPLICABILITY**

These Terms shall apply to all sales of Goods or performance of Services agreed with Customer, unless expressly provided otherwise in writing.

## **4. DELIVERY, VARIATIONS AND SPECIFICATIONS**

4.1 Each delivery term used in the Agreement or otherwise by the Parties in the course of their dealings with one another shall have the respective meaning specified for each of those terms by Incoterms 2020, the International Chamber of Commerce official rules for the interpretation of trade terms published in 2020. Unless otherwise mutually agreed in writing by the Parties, delivery of Goods (including third-party products on which Services were performed under the Agreement) shall occur FCA (Supplier's named facility), whereby Supplier shall load Goods (including third-party products, as applies) on the means of transport. In the event that it becomes impossible to deliver Goods within the agreed terms, the Parties shall make their best efforts to agree on new delivery terms. If, however, Goods are stored at the request of Customer, they shall be deemed delivered upon arrival at the storage site (which may be Supplier's facility) and full payment shall be made in accordance with Article 6. In addition, Customer shall pay Supplier reasonable storage charges calculated at the market rate. Customer shall be responsible and pay any taxes assessed on the Goods after delivery to the storage site, in accordance with Article 7. Any accumulated and unpaid storage charges are payable before Goods are removed from storage.

4.2 All Goods to be delivered under the Agreement will be subject to tolerances and variations consistent with usual trade practices regarding dimensions, straightness, section, composition and mechanical properties as well as normal variation in surface and internal conditions and quality.

## **5. TITLE AND RISK**

5.1 Title, risk of loss, destruction or damage, to Goods will pass from Supplier to Customer upon delivery of Goods to Customer in accordance with Article 4.

5.2 In the event that Supplier is requested by Customer to leave the trailer and Goods at the delivery destination, the Customer will assume all risk and costs in connection with any and all damage to the trailer or Goods during such time.

5.3 If Customer has requested that Supplier store their own pipe on Supplier's premises, or in any way delays the original delivery time, title to said goods shall pass to Customer upon initiation of such storage or delay and all associated liabilities including, but not limited to, risk of loss or damage shall remain the responsibility of the Customer.

## **6. PAYMENT**

6.1 Except as otherwise provided in the Agreement, Supplier may invoice Customer upon delivery of Goods or performance of Services, and Customer shall pay Supplier within thirty (30) days of the date of Supplier's invoice. Except as otherwise provided in the Agreement, any amounts owed hereunder by Customer shall be paid by check or wire transfer, in immediately available funds, to the bank account designated by Supplier in the invoice.

6.2 All Orders and deliveries are subject to the determination of Customer's creditworthiness by Supplier at its sole discretion. In addition, Supplier shall at all times be entitled to require from Customer all payment guarantees it may deem necessary.

6.3 Interest shall accrue on the unpaid portion of the invoice at a rate of one and one-half percent (1.5%) per month (18% per annum), or, if lower, the highest rate permitted by law on past due accounts. Interest shall be compounded on a monthly basis.

6.4 In addition to the remedies set forth in Article 6.3, in the event of non-payment and/or unauthorized cancellation of the Agreement by Customer, Customer agrees to pay to Supplier: (i) all costs of collection and incidental damages incurred by Supplier, including, but not limited to, reasonable attorneys' fees and expenses; (ii) any charges, expenses or commissions incurred in stopping delivery, including, but not limited to,

## GENERAL TERMS AND CONDITIONS (SUPPLY OF GOODS OR SERVICES)

manufacturing mill cancellation and/or suspension charges and liquidated damages; (iii) additional transportation charges; and, (iv) Supplier's net additional expense incurred for the care and custody of Goods in connection with their return or resale. Supplier shall maintain a purchase money security interest in Goods for any portion of the purchase price not paid at the time of delivery and shall retain this interest until Customer has paid the full purchase price. Supplier may apply any payment by Customer to any past due indebtedness. In the event of any claim or legal action brought by Customer for any cause whatsoever, Customer shall have no rights of retention or set-off. In addition, in the event of a payment default hereunder, Supplier shall have all rights available at law to assert and file liens on the properties of Customer to which Goods and Services were provided.

6.5 In the event that Supplier is requested by Customer to leave the trailer and Goods at the delivery destination, as noted in Article 5 above, Supplier has the right to bill Customer for the full amount of material shipped within 48 hours of original delivery time. Additionally, to the extent that the trailer has not been returned within 30 days, Supplier has the right to invoice the Customer for said trailer at such time.

### **7. TAXES**

Any taxes, including, but not limited to sales, use, excise, Goods and Services Tax (GST) and Value Added Tax (VAT), that Supplier is required to collect or pay with respect to the sale, shipment or delivery of Goods, or the provision of Services, pursuant to the Agreement are the responsibility of Customer, and Customer agrees to either provide Supplier with written proof of exemption from such taxes, pay such taxes directly or reimburse Supplier should Supplier be required by law to collect and remit such charges.

### **8. INSPECTION, CLAIMS AND RETURNED GOODS**

8.1 ABSENT SUPPLIER AUTHORIZATION (I) THE AGREEMENT IS NONCANCELLABLE; AND (II) UNDAMAGED AND CONFORMING GOODS OR SERVICES ARE NOT RETURNABLE. IF CUSTOMER WRONGFULLY REJECTS, OR, REVOKES ITS ACCEPTANCE OF UNDAMAGED OR CONFORMING GOODS OR SERVICES, OR, DOES NOT PROVIDE EVIDENCE OF THE ALLEGED DAMAGE OR NON-CONFORMANCE WITHIN THE CLAIM PERIOD, SUPPLIER SHALL HAVE THE RIGHT TO RECOVER ALL COSTS AND EXPENSES INCURRED AS A CONSEQUENCE OF, OR, IN CONNECTION WITH SUCH CLAIM.

8.2 Supplier may, at its sole discretion and unless stated otherwise on the face of any Order Acknowledgement attached to the face hereof, authorize returns up to 90 days from date of delivery and issue a: (i) 90% credit for material returned in new, prime condition with thread or storage compound applied to both ends of joint and both pin and box protectors installed ("Prime Material"); provided, that, any non-Prime Material will be considered Thread Reject Material; (ii) 50% credit for American Petroleum Institute Thread Reject Material; (iii) scrap credit of \$100 per ton for all premium and semi-premium Thread Reject Material; or (iv) scrap credit of \$100 per ton for used material. Any credit issued hereunder, may, at Supplier's sole discretion, be less any necessary repair charge. Unless agreed otherwise, Customer shall, at its sole cost and risk of loss, deliver any authorized return to Supplier's stocking location. Supplier reserves the right to deduct any inspection and/or transportation charges incurred by Supplier from any such credit.

8.3 Customer shall (i) inspect Goods for transportation-related damage or shortage immediately upon delivery; (ii) describe any such damage or shortage on the bill of lading; and (iii) immediately report the damage or shortage to Supplier and transporter's local representative (if any). Customer may not reject or revoke the acceptance of Goods or fail to make payment for Goods without filing a claim with proof of such damage or non-conformance. The claim must include photographs and a copy of the original bill of lading signed by Customer noting in detail the claimed damage or non-conformance.

8.4 Customer shall provide written notice of non-transportation-related claims within five (5) days from the date of discovery of any hidden damage or non-conformance or from the date on which a diligent purchaser should have discovered the hidden damage or non-conformance; and within fifteen (15) days from the date of delivery of Goods in case of patent damage or non-conformance. Failure to give written notice within the aforesaid period shall release Supplier from any liability thereof.

8.5 Customer agrees to set aside, protect and hold such damaged or non-conforming Goods, at Customer's sole cost, for thirty (30) days. After thirty (30) days, Customer will take a credit for any such Goods not removed from Customer's property and to the extent the Goods remain on Customer's property, a storage charge may be billed to Supplier in an amount equal to the rate as stated in Section 6.3 hereof on the invoiced value of the damaged or non-conforming Goods.

8.6 Upon notification that Customer wishes to make a return for damaged or non-conforming Goods,

Customer shall submit its proofs of claim to Supplier, as well as any additional information that Supplier may reasonably require to establish the validity of the claim. Supplier reserves the right to require the submission of a sample of the damaged or non-conforming Goods.

8.7 All third party inspection charges are for Customer's account.

### **9. WARRANTY**

9.1 Subject to the limitations hereafter set forth, Supplier warrants that:

(i) Goods manufactured and Services performed by Supplier will meet specifications set forth in the Agreement, and be free from defects in materials and workmanship for a period of twelve (12) months from delivery;

(ii) Supplier shall have no warranty obligations with respect to Goods manufactured or Services performed by third parties, including, but not limited to: accessories or modified tubing or casing; provided, to the extent transferrable, Supplier will assign any third party warranties to Customer.

9.2 EXCEPT FOR THE WARRANTIES CONTAINED HEREIN, NEITHER SUPPLIER NOR ITS SUBCONTRACTORS MAKE ANY OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, RESULT, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE WARRANTIES CONTAINED IN THIS ARTICLE 9 ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, REPRESENTATIONS, GUARANTEES OR LIABILITIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY, AND SUCH OTHER WARRANTIES, TERMS, REPRESENTATIONS, GUARANTEES OR LIABILITIES, BASED IN LAW, STATUTE, COMMON LAW, CONTRACT, TORT, EQUITY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE) ARE DISCLAIMED. SUPPLIER'S (INCLUDING ITS SUBCONTRACTOR'S) WARRANTY OBLIGATIONS HEREUNDER, AND CUSTOMER'S REMEDIES (EXCEPT AS TO TITLE) ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS ARTICLE 9.

9.3 CUSTOMER ACKNOWLEDGES AND AGREES THAT SHOULD SUPPLIER, ITS AFFILIATES OR SUBCONTRACTORS PROVIDE ANY ADVICE, SUCH ADVICE SHALL NOT BE INTENDED TO CONSTITUTE PROFESSIONAL OR ANY OTHER TYPE OF ADVICE AND SHALL BE PROVIDED ON AN AS-IS BASIS. IF ANY ADVICE IS PROVIDED BASED ON INFORMATION DELIVERED BY CUSTOMER, SUPPLIER SHALL NOT INDEPENDENTLY VERIFY SUCH INFORMATION. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER SUPPLIER NOR ITS AFFILIATES OR SUBCONTRACTORS MAKE ANY REPRESENTATION OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR RESULT OR AS TO THE AVAILABILITY, ACCURACY, RELIABILITY OR COMPLETENESS OF ANY ADVICE PROVIDED. ALL WARRANTIES, TERMS, REPRESENTATIONS, GUARANTEES OR LIABILITIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, AT LAW, STATUTE, COMMON LAW, IN CONTRACT, IN TORT, EQUITY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE) ARE DISCLAIMED. NEITHER SUPPLIER NOR ITS AFFILIATES OR SUBCONTRACTORS ASSUME ANY LIABILITY OF ANY KIND FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM, OR IN CONNECTION WITH ANY ADVICE PROVIDED OR THE USE THEREOF.

9.4 Liability of Supplier (including its subcontractors) under this warranty shall be limited, at Supplier's election, to (i) repair (ii) replacement of Goods (iii) reperformance of Services or (iv) credit for non-conforming Goods or Services that were manufactured or performed by Supplier.

9.5 Products not manufactured, or, services not performed by Supplier, are guaranteed in the manner and to the extent guaranteed by the actual manufacturer or service provider, and then only to the extent that Supplier is reasonably able to enforce it.

9.6 Neither Supplier nor its subcontractors shall have any warranty obligations with respect to any Good, or part thereof, which: (i) is normally consumed in operation, (ii) has a normal life inherently shorter than the warranty period specified herein, (iii) is not properly stored, installed, maintained or repaired, or is modified other than pursuant to Supplier's instructions or approval, (iv) is provided used and/or "as is" or (v) has been subjected to any other kind of detrimental exposure, or has been involved in an accident for which Supplier could not be responsible.

## GENERAL TERMS AND CONDITIONS (SUPPLY OF GOODS OR SERVICES)

9.7 To the extent that Goods delivered hereunder were purchased by Supplier from a third party ("Third Party Provider"), Customer shall save, defend, indemnify and hold Supplier and the Third Party Provider harmless for any and all demands, claims, suits, damages, losses, judgments and liabilities, including, but not limited to, reasonable attorneys' fees, expenses and other costs of litigation, fines, penalties or assessments asserted against Supplier or Third Party Provider, in excess of the limitations and exclusions of liability and warranties set forth under this Agreement.

### **10. REMOVAL, DISPOSAL OR TREATMENT SERVICES**

Neither Supplier nor its subcontractors are required to provide removal, disposal or treatment services for any part of Goods, including, but not limited to, couplings, connections, accessories, thread protectors, or any additions to the same. If Customer requests Supplier to provide such services, Customer and Supplier shall negotiate in good faith the terms and conditions of a separate written agreement for such services.

### **11. TERMINATION FOR DEFAULT**

11.1 In the event that (i) Customer becomes voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other legal procedure for the relief of financially distressed debtors, or is unable, or, admits in writing its inability, to pay its debts as they mature, or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets, or (ii) Supplier, in its sole but reasonable judgment, otherwise deems itself to be insecure, then Supplier will be entitled to immediately terminate all Agreements with Customer by giving it written notice of termination.

11.2 If Customer defaults in any of its obligations under the Agreement, Supplier shall be entitled to immediately (i) terminate totally or partially its obligations under the Agreement and any other agreements with Customer or (ii) suspend totally or partially deliveries of Goods or performance of Services under the Agreement and any other agreements with Customer.

11.3 Any legal action arising from the Agreement, based on any grounds whatsoever, must be brought by Customer within twelve (12) months from the date of delivery to Customer of the respective Goods or performance of the respective Services.

### **12. LIABILITIES AND INDEMNITIES**

12.1 Customer acknowledges that it has a superior knowledge of the ultimate use of Supplier's Goods or Services and Customer acts as a learned intermediary in regards to such ultimate use. Customer shall save, defend, indemnify, and hold Supplier (and its successors and assigns) harmless, and their respective directors, officers, employees and agents from and against all demands, claims, suits, damages, losses, judgments and liabilities of whatever kind or nature, including, without limitation, reasonable attorneys' fees, expenses and other costs of litigation, fines, penalties or assessments asserted against or suffered by the indemnitees by reason of, arising out of, or in any way related to, Customer's use (or any subsequent end-user's use) of Supplier's Goods or Services, or Customer's negligence or willful misconduct. Without limitation, Customer's obligation to save, defend, indemnify and hold indemnitees harmless shall exist with respect to accidents, occurrences, disease, injuries to persons (including death), environmental or other property damage, property or economic losses, and violation of applicable law or regulation.

12.2 SUPPLIER'S LIABILITY, IN EXCESS OF THE COST TO REPLACE OR REPAIR NON-CONFORMING GOODS AND SERVICES (IF ANY), FOR DAMAGES, COSTS, EXPENSES AND LOSSES HOWEVER ARISING FROM OR RELATED TO THE FULFILLMENT OR THE NON-FULFILLMENT OF THE AGREEMENT, WHETHER BASED IN LAW, STATUTE, COMMON LAW, CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE LIMITED TO THE COMPENSATION OF DIRECT DAMAGES, COSTS, EXPENSES AND LOSSES AND SUCH COMPENSATION SHALL BE LIMITED TO THE GREATER OF (I) THE INVOICED VALUE OF SUCH NON-CONFORMING GOODS AND SERVICES OR (II) THE AMOUNT OF INSURANCE PROCEEDS ACTUALLY RECEIVED BY SUPPLIER.

12.3 NEITHER PARTY SHALL BE LIABLE FOR DAMAGES FOR LOSS OF PROFITS, INCOME, REVENUE OR PRODUCTION, NOR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODS OR OTHER PRODUCTS, FINANCIAL LOSS, COST OF CAPITAL, COST INCURRED IN CONNECTION WITH LABOR, OVERHEAD, GENERAL ADMINISTRATION, TRANSPORTATION, SUBSTITUTE FACILITIES, SUPPLY SOURCES) OR OTHER SIMILAR DAMAGES, WHETHER ANY SUCH LIABILITY WOULD BE BASED IN LAW, STATUTE, COMMON LAW, CONTRACT, TORT, EQUITY OR OTHERWISE.

12.4 IN NO EVENT SHALL SUPPLIER BE LIABLE FOR (I) POLLUTION, CONTAMINATION OR RADIATION DAMAGE (INCLUDING THE COST OF CONTAINMENT, CLEANUP AND DISPOSAL), AND (II) SUBSURFACE LOSS OR DAMAGE, INCLUDING LOSS OF OR DAMAGE TO ANY RESERVOIR, FORMATION, STRATA, WELL, OR BOREHOLE OR IN-HOLE EQUIPMENT, OR IMPAIRMENT OF ANY PROPERTY RIGHT TO WATER, OIL, GAS OR OTHER MINERAL SUBSTANCES, AND (III) DAMAGE, LOSS OR DESTRUCTION, OR PERSONAL INJURY OR DEATH ARISING ON THE SURFACE AS A RESULT OF SUBSURFACE OCCURRENCE (INCLUDING DAMAGE TO OR LOSS OR DESTRUCTION OF ANY EQUIPMENT, DRILLING RIG, PLATFORM OR OTHER FIXED OR FLOATING STRUCTURE AT OR AROUND THE WELL SITE), AND (IV) KILLING OR REGAINING CONTROL OF A WILD WELL, OR REDRILLING, REWORKING OR FISHING (INCLUDING THE COST THEREOF).

12.5 In no event shall Supplier be responsible for retrieving damaged or non-conforming Goods, delay or curtailment of operations, pollution or cost of dismantling and removal of Goods to be repaired or replaced, resulting from non-conforming material, faulty workmanship or otherwise.

12.6 Should Goods (including third-party products on which Services were performed under the Agreement) be subjected to transformation including mechanical and technical procedures other than by Supplier, Customer shall save, defend, indemnify and hold Supplier harmless from, against, for and in respect of any loss, liability, claim, damage asserted or incurred by Customer or a third-party by reason of any defects in Goods (or third-party products, as applies) attributable to such transformation.

12.7 CUSTOMER SHALL SAVE, DEFEND, INDEMNIFY AND HOLD SUPPLIER HARMLESS FROM, AGAINST, FOR AND IN RESPECT OF ANY CLAIM, LOSS, LIABILITY OR DAMAGE (INCLUDING CONSEQUENTIAL OR INCIDENTAL) ASSERTED AGAINST SUPPLIER BY ANY THIRD-PARTY: (I) IN EXCESS OF THE LIMITATIONS OF LIABILITY SET FORTH UNDER THESE TERMS; OR, (II) DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OTHER SUPPLIER OF PRODUCTS UPON WHICH SERVICES ARE PERFORMED.

12.8 If Supplier receives a claim for which Customer is obligated to provide indemnification under this Article 12, Supplier shall notify Customer of such claim and Customer shall provide Supplier with the sums necessary to discharge the amounts payable by Supplier (including reasonable attorneys' fees and all expenses and costs related thereto).

12.9 Customer acknowledges that these Terms include provisions for the indemnification or exoneration of Supplier against the consequences of its own negligence or fault, and agrees that these Terms comply with the express negligence rule, are conspicuous and afford fair notice.

12.10 The limitations and exclusions of liability hereunder shall extend to Supplier's subcontractors.

### **13. INTELLECTUAL PROPERTY INDEMNITY**

13.1 In case Goods and Services are alleged to infringe or misappropriate third-party's Intellectual Property, Supplier shall then at its own expense and option: (i) procure for Customer the right to continue using Goods and receiving Services; (ii) replace or modify Goods and Services so that they do not infringe or misappropriate third-party's Intellectual Property; (iii) await a final decision by a court of competent jurisdiction so as to take at Supplier's sole option one or more of the actions under (i) and (ii).

13.2 Customer warrants that it shall save, defend, indemnify and hold Supplier (and its successors and assigns) harmless, and their respective directors, officers, employees and agents, from and against all demands, claims, suits, damages, losses, judgments and liabilities of whatever kind or nature, including, without limitation, reasonable attorneys' fees, expenses and other costs of litigation, fines, penalties or assessments asserted against or suffered by Supplier by reason of, arising out of, or in any way related to, any actual or alleged infringement of Intellectual Property which might arise out of information, instructions, designs or specifications provided by Customer, regardless of the form in which such information, instructions, designs or specifications are communicated, and even if the demands, claims, suits, damages, losses, judgments, liabilities, expenses and costs result from the sole or concurrent negligence of Supplier (including its subcontractors).

13.3 In no event shall Supplier be responsible for any actual or alleged Intellectual Property infringement directly or indirectly based on or arising out of products manufactured by third-parties, or Supplier's non-proprietary products, or services not performed by Supplier.

### **14. MILL TEST CERTIFICATES**

Customer agrees that it will not alter, remove, tamper or otherwise improperly deal, nor will it allow any third

-party to alter, remove, tamper or otherwise improperly deal, the trade-marks, mill certification numbers, mill test certificates or any other stencil information coming into the possession or custody of Customer in connection with the Agreement. Should Customer breach in any way the provisions under this Article 14, Supplier shall be entitled, in addition to any other remedy it may be entitled at law or equity, to immediately terminate the Agreement without any liability whatsoever towards Customer. Customer agrees that it will maintain a complete, clear and accurate record of its activities in relation to Goods purchased under the Agreement. Supplier shall have the right to inspect and audit all such books and records and make copies thereof, provided, however that the information obtained will only be used to enforce Supplier's rights and determine whether Customer is in compliance with the terms and conditions of this Agreement. Any such audit shall be conducted upon not less than seven (7) days' notice at Customer's offices during regular business hours and in such a manner as not to unreasonably interfere with Customer's normal business activities. However, if Customer alters the Goods and the stencils are removed, Customer will replicate stencils immediately. Goods with illegible stencils provided by Supplier to Customer will be set aside by Customer. Supplier will have seven (7) days after notification of illegible stencils to restencil said Goods. Payment terms will begin after legible stenciling is performed.

#### **15. FORCE MAJEURE**

The Agreement is subject to price, delivery or quantity adjustment and/or cancellation, at Supplier's sole discretion, as a result of any governmental action, trade investigation (including Section 232 of the U.S. Trade Expansion Act), trade suit, tariff and/or any contingency beyond Supplier's reasonable control, including, but not limited to, acts of God or of the public enemy, acts of government, war, mobilization, riots, fires, floods, unusually severe weather, earthquakes, epidemics, pandemics, quarantine restrictions, sabotage, accidents, strikes, freight embargoes, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid (including, but not limited to, priorities, requisitions, quotas, allocations, and price adjustment restrictions), and inability to obtain or delay in obtaining material, equipment or transportation. If, due to any such contingency, Supplier is unable to supply Customer's total demand for any goods specified in this contract, Supplier will have the right to allocate its available supply among its customers and its departments and divisions in its sole discretion. In the event of the occurrence of any such contingency, under no circumstances will Supplier be obligated, in order to enable it to deliver goods to Customer hereunder, to purchase goods from sources other than those originally contemplated by Supplier.

#### **16. ASSIGNMENT AND SUBCONTRACTING**

Supplier may assign, license or subcontract to any of its Affiliates or subcontractors all or any part of its rights and obligations under the Agreement without Customer's consent, provided Supplier remains liable as primary obligor under the Agreement unless otherwise noted on the face of a purchase order provided by Customer to Supplier. Customer may not assign or in any way dispose of its rights or obligations under the Agreement without the prior written consent of Supplier

#### **17. EXPORT CONTROL**

Any sale hereunder shall at all times be in strict conformity with all relevant export control laws and regulations, Customer shall at all times in connection with the performance of this Agreement be in compliance with all economic sanctions and export control regimes applicable to any party to the Agreement, including but not limited to the United Nations, United States, and European Union regimes. Customer shall not make any disposition by way of trans-shipment, re-export, diversion or otherwise, of Goods, except as said laws and regulations may expressly permit, and no such disposition or transfer will be made other than to the ultimate country of destination specified in the Order or as declared as the country of ultimate destination on Supplier's invoice. In the event any act or omission or failure of Customer to act in compliance with the foregoing results in Supplier, including its Affiliates, or any of the parties involved in the transaction (Indemnified Parties) being subject to any governmental authority investigation or violation of applicable laws, including, without limitation, the imposition of fines and penalties, Customer shall reimburse all Indemnified Parties for and release, defend, indemnify and hold harmless the Indemnified Parties (including banks involved) against any claim, demand, liability, loss or damage imposed by the applicable governmental authority arising from such an action, omission or failure to act or as a result of Customer's breach of its obligations under this Article 17. Neither Supplier nor any of the Indemnified Parties assume any liability to Customer or to any other person for Customer's acts of non-compliance with export control laws, sanctions, restrictive measures and embargoes.

#### **18. CONFIDENTIALITY**

18.1 Customer acknowledges that in connection with the sale of Goods or the performance of Services, Customer has received or will receive from Supplier certain proprietary and Confidential Information, which is of substantial proprietary value to Supplier.

18.2 Customer agrees to hold in strict confidence, and not to disclose to third-parties or use for any purpose other than the purpose of this Agreement, any Confidential Information.

18.3 Customer shall be liable for any loss or damage to any Confidential Information, and shall not be released from its obligations of confidentiality, non-use and non-disclosure until and unless: (i) Confidential Information becomes non-confidential information without any breach of this Agreement or (ii) Supplier releases Customer from its confidentiality obligations hereunder by written notice.

18.4 All technical documents developed by Supplier and to be provided to Customer as part of the obligations assumed hereunder, including any copyright therein, shall be the sole property of Supplier and shall always be treated as Confidential Information.

#### **19. SEVERABILITY**

If any term or other provision of the Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of the Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated thereby is not affected in any adverse manner to either Party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify the Agreement so as to affect the original intent of the Parties hereto as closely as possible in an acceptable manner, to the end that the transactions contemplated in the Agreement may be fulfilled to the extent possible.

#### **20. DISPUTE RESOLUTION/GOVERNING LAW**

The Agreement and its terms will be governed by and construed in accordance with the laws of the State of Texas, excluding the United Nations Convention on Contracts for the International Sale of Goods. Customer and Supplier agree that any legal action or proceeding under or with respect to the Agreement shall be brought in the courts of the State of Texas or the United States having jurisdiction in Houston, Texas; and for the purpose of any such legal action or proceeding, Customer hereby submits to the non-exclusive jurisdiction of such courts. Customer hereby agrees not to raise and waives any objection, or any defense based upon (a) the venue of such courts; or (b) an inconvenient forum. Customer also agrees not to bring any legal action or proceeding under or with respect to the Agreement outside Houston, Texas, unless the courts of the State of Texas and the federal courts having jurisdiction in Houston, Texas refuse or do not have jurisdiction in the matter.