

## STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

**1. Terms:** Definitions: “Goods and/or Services” – the Goods and/or Services described in a purchase order issued by Buyer or written agreement signed by the parties.

“Seller” – The entity identified by Buyer on a purchase order or other written agreement to provide Goods and/or Services to Buyer.

“Buyer” – Southwest Steel Casting Company, LLC, a subsidiary of American Railcar Industries, Inc.

These Standard Purchase Order Terms & Conditions For Goods and/or Services (the “**Terms**”) apply to all quotes, purchase orders, acknowledgements and written agreements between Buyer and Seller, and are the only standard terms and conditions that apply to the Goods and/or Services as defined herein regardless of whether the sale occurs under the terms of a written agreement or pursuant to a purchase order. Any additional, different or inconsistent terms in any acknowledgment, website or other document provided by Seller, including any terms and conditions referenced therein, are hereby rejected by Buyer. Buyer will not be deemed to have waived these Terms, in whole or in part, if it fails to object to any terms or conditions appearing in, incorporated by reference in, or attached to any document provided by Seller. These Terms, in whole or in part, may only be waived through a written waiver signed by an authorized representative of Buyer. Seller shall be deemed to have accepted the Terms unless Seller notifies Buyer in writing of its specific objection within two (2) business days of Seller’s receipt of the Terms.

By accepting a purchase order, Seller waives all terms and conditions contained in its quotation, acknowledgement, website, invoice or other documents that are different from, inconsistent with or additional to those contained herein and all such terms and conditions shall be null, void and of no effect. If the parties mutually agree to amend these Terms it may only be done through a writing signed by both parties. To the extent the signed writing conflicts with these Terms, the Terms shall control. If the parties wish for the signed writing to control, the signed writing shall refer to these Terms and identify the section(s) of the Terms the signed writing is intended to replace.

Upon its acceptance of the Terms by Seller in accordance with this Section 1, or when the Seller enters into performance thereof, whichever occurs sooner, Buyer’s purchase order including these Terms, the pertinent drawings and specifications, specifically referenced in the purchase order, if any, shall constitute the entire agreement between the parties hereto and supersedes all oral or written prior offers, negotiations, and agreements relating to the subject matter hereof. No “customs or usages” of any trade or business shall apply.

In the event that Buyer desires to facilitate the processing of transactions covered by a purchase order or agreement using an electronic data interchange, Seller agrees to utilize the electronic data interchange in accordance with such procedures as Buyer establishes provided that Buyer informs

Seller of such procedures, including but not limited to, execution by Seller of an electronic data interchange agreement if Buyer so requires.

**2.Acknowledgement:** All Terms as herein set forth shall be binding upon Seller unless Seller specifically rejects in writing any of said Terms as set forth in Section 1. An acknowledgement or attempted acceptance that contains conflicting or additional provisions to the Terms or a specific rejection of any term or condition shall be deemed to be a counter offer to Buyer and shall not be binding upon Buyer unless acceptance thereof is made in a writing signed by Buyer and provided to Seller, and in such event the agreement between the parties shall include the purchase order, including these Terms, and such additional terms accepted by Buyer as indicated in the signed writing provided by Buyer to Seller. Performance by Seller, in the absence of written acceptance of such counter offer by Buyer, shall be deemed to be performance in accordance with these Terms and the purchase order.

**3.Prices:** Seller represents that the prices of the Goods and/or Services are not in excess of Seller's lowest prices in effect at the date they are provided to Buyer for the same or comparable items.

**4.Quality of Goods and/or Services:** Seller shall follow the highest industry standards in the design, manufacture and/or furnishing of Goods and/or Services, including but not limited to, applicable technical or professional standards and in addition, in accordance with all laws, regulations and standards applicable to the railcar industry, or such other industry in which the Goods and/or Services will be utilized at the time the specific Goods and/or Services are provided. Where the Goods and/or Services are to be utilized by Buyer in the manufacture of railcar(s), the applicable laws, regulations and standards, include but are not limited to, the U.S. Department of Transportation, Federal Railroad Administration and American Association of Railroads and similar governmental bodies in Canada. The Goods and/or Services shall be in accordance with any applicable specification and/or design.

**5.Buyer's Equipment:** All dies, tools, patterns, drawings, fixtures, equipment or materials used in connection with the Goods and/or Services furnished to or specifically paid for by Buyer are the property of Buyer and are subject to removal upon Buyer's request. Seller is not permitted to use the same for any other customer without Buyer's express written approval.

**6.Changes:** Buyer shall have the right from time to time, by written change order, to make changes in the Goods and/or Services, including but not limited to, drawings, specifications, instructions in connection with the Goods and/or Services, place of delivery, time or method of delivery, to require additional work or to direct the omission of work, and Seller agrees to comply with such change orders. If such changes cause any increase or decrease in Seller's cost or in the time for performance, Seller will notify Buyer in writing of such increase or decrease, and, if acceptable to Buyer, equitable adjustment in the price and time for performance will be made and the order will be modified in a writing signed by Buyer accordingly; provided that any claim for increase in price or time shall be asserted by Seller within thirty days after the change is ordered. No change to the Goods and/or Services whatsoever shall be made except upon written change order signed by Buyer and issued by Buyer's Purchasing Department.

Buyer's employees, including but not limited to, Buyer's engineering and technical personnel, may exchange information with Seller's personnel. Any such exchange is understood not to affect the Goods and/or Services, or to change the price for the Goods and/or Services, unless first authorized by Buyer's Purchasing Department in a writing signed by Buyer.

**7. Seller Representations and Warranties:** Seller represents and warrants that: (a) Seller owns all rights, title and interests in the Goods and/or Services and has the legal authority to sell, license or otherwise transfer the right to use or sell such items to Buyer; (b) the Goods and/ Services are of good and merchantable quality and free from defects in design, material, and workmanship, meet the standard of quality set forth in Section 4 herein, are safe and conform to applicable specifications, drawings, samples, descriptions, and associated documentation provided to Buyer in writing; (c) the Goods and/or Services, and the production and sale thereof, and all warranties, guarantees, representations by Seller made or authorized to be made in connection therewith are in all respects in compliance with all applicable international (including applicable import and export regulations), federal, state, local laws, statutes, standards, rules, and regulations, including but not limited to, if applicable, laws, statutes, standards rules and regulations of the U.S. Department of Transportation, Federal Railroad Administration, Association of American Railroads, and similar governmental bodies in Canada; (e) the Goods and/or Services are fit for the use intended; (f) in the case of a purchase of Services, Seller shall provide all work in a safe, proper and workmanlike manner, and any equipment used in the performance of Services shall be in good and safe working condition, and shall be fit for its intended use with respect to the Buyer; and (g) neither the Goods and/or Services, nor their sale or use will infringe any United States or foreign letters patents, trademarks, copyrights, trade secrets, or similar intellectual property rights of any third party. The foregoing warranties shall survive inspection and acceptance by Buyer. If the terms of any warranty are not met, Seller shall, at Buyer's option, either (i) promptly repair or replace the defective Goods and/or Services at the Seller's cost, or (ii) issue a full refund (including shipping and any other expenses incurred by Buyer). If Seller does not replace rejected Goods or Services within a reasonable time, Buyer may purchase substitute goods or services elsewhere. If the cost of purchasing such substitute goods or services exceeds the price stated in the order, then Seller shall pay the difference to Buyer. This payment shall not prejudice any other rights Buyer may have against Seller. NONE OF THE REMEDIES AVAILABLE TO BUYER FOR THE BREACH OF ANY OF THE WARRANTIES SET FORTH HEREIN MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY BUYER IN A SEPARATE SIGNED AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER.

Seller must provide Safety Data Sheets (SDS) for products as required by law. All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of the order.

Seller may not negate, exclude, limit or modify and warranty otherwise available to Buyer under this section. Any attempts to do so are ineffective and shall not in any way bind Buyer.

**8. Cancellation Due To Default or Breach By Seller:**

Buyer reserves the right to cancel all or any part of the undelivered portion of Goods and/or Services if Seller fails to properly perform in accordance with or otherwise meet, any of the Terms, or if Seller breaches any of the terms hereof, or in the event of insolvency of Seller, filing by or against Seller any petition in bankruptcy, appointment of receiver or trustee for Seller, the execution by Seller of an assignment for the benefit of creditors, or discontinuance of business by Seller. Such cancellation shall not constitute a waiver of any of Buyer's rights for damages arising from such default.

In the event of any such cancellation, in addition to any other rights Buyer may have in law or in equity, Buyer shall have the following rights: (i) to refuse to accept delivery of the Goods or performance of the Services; (ii) within one (1) year of delivery of the Goods, to return to Seller at Seller's expense any Goods already delivered and, at Buyer's option, either recover all payments made therefore and expenses incident thereto or, at Seller's expense, to receive replacement therefore, except that the rights set forth in this subsection (ii) shall not be available upon cancellation by Buyer because of the occurrence, alone, of any of the events set forth in the preceding sentence above; (iii) to recover any advance payments to Seller for undelivered or returned Goods and/or Services not fully performed; and (iv) to purchase replacement Goods and/or Services elsewhere and charge Seller with any loss incurred as a result thereof. Seller's right to return Goods is not affected by any assignment by Seller of monies due or to become due hereunder.

9. For Work on Purchaser's or its Customer's Premises:

If Seller's Goods and/or Services involve operations by Seller within or about the premises of Buyer or third parties, Seller shall take all necessary precautions to prevent accident or injury to employees, contractors, persons, or property on, adjacent to or about the work area and abide by safety rules and regulations of Buyer or such third party during the progress of such work and shall indemnify Buyer against all loss which may result in any way from any act or omission of the Seller, its agents, employees or subcontractors, and Seller.

**10. Delivery/Performance:** Time is of the essence with respect to delivery of Goods or performance of Services listed in the purchase order. Seller must immediately advise Buyer if any Goods or Services cannot be shipped, delivered, and/or performed as ordered by the stated date. Buyer reserves the right to cancel the order or any portion thereof if shipment is not made when and as specified or if performance of Services is not made on time, in each case without cost or liability to Buyer. Acceptance by Buyer of a late delivery or performance of either the whole or part of the Goods or Services under the order shall not constitute a waiver of Buyer's claim for any damages resulting from the late delivery or performance, as the case may be. Seller shall, upon notice from Buyer, take all steps necessary to timely cure any deficiency in delivery of Goods or performance of Services, including without limitation shipping additional material or providing both transportation of any nonconforming material from Seller's designated destination and timely transportation of conforming replacement goods to Buyer's designated destination and/or taking other corrective measures to cure such deficiency..

11. **Indemnification/Limitation on Liability:** Seller shall indemnify and hold harmless Buyer from and against any and all claims, actions, suits, and/or liabilities for actual damages or injuries, indirect, incidental, consequential, special punitive and/or exemplary damages (including all reasonable attorney's fees and costs of litigation), for injury or damage to person or property, including but not limited to Buyer or third parties, arising in tort, contract, or otherwise, and in any way connected with the Goods and/or Services (including, but not limited to, if applicable, any property handled or transported in railcars that are subject to the Goods and/or Services), as a result of (i) the failure of Goods and/or Services purchased from Seller to conform to the warranties contained herein; (ii) the breach by Seller of any of the Terms hereof or representations contained herein; (iii) the performance of any labor or Services performed hereunder by the Seller, its employees or subcontractors; (iv) any other act or omission of Seller;

(v) any claim or action arising out of any actual or alleged death or injury to any person, or any damage or destruction of property attributable to Seller's Goods and/or Services; or (vi) willful misconduct or negligence of Seller or an authorized Seller representative/dealer. Such indemnification obligations shall survive the termination or expiration of the order. Seller's duty to indemnify as set forth herein shall commence at the time of the act or incident giving rise to the claim, action, suit, or liability, and shall continue until Buyer's obligation(s), if any, to claimant(s), monetary or otherwise, are fully paid or discharged. Seller's duty to indemnify Buyer as set forth herein exists whether or not it is claimed and/or determined that any of the damages alleged resulted solely, partially, or not at all from the conduct, acts, or omissions of Seller.

Seller shall not settle any such claims or actions in a manner that would require any action or forbearance from action by Buyer without the prior written consent of Buyer.

LIMITATION OF LIABILITY: UNDER NO CIRCUMSTANCES WHATSOEVER WILL BUYER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSSES RESULTING FROM BUSINESS INTERRUPTION, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. NO LIMITATION ON LIABILITY OR ON DAMAGES FOR BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHER LIABILITY SHALL APPLY TO THE SELLER, EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY BUYER IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF COMPANY.

**12. Force Majeure:** Buyer will be excused for delays in accepting delivery if unable to do so because of causes beyond Buyer's control, such as, but not limited to strikes, wars, or damaged plant facilities that prevent manufacture. Seller will be excused for delays in delivery by reason of the same causes as stated above provided they are beyond the control and without fault or negligence of Seller if Seller notifies Buyer in writing of the cause of such delay within three (3) business days of the date Seller first becomes aware of the delay, and is excused in writing by Buyer. In the event performance of either Buyer or Seller is excused as provided in this Section, time of performance for Buyer or Seller, as applicable, shall be extended for such period of time as the condition exists; provided, however, that in the event force majeure prevents Seller's performance for any period of time, Buyer may immediately cancel part or all of an order by providing written notice to Seller and in such event, Buyer shall have no liability or responsibility for any loss experienced by, or payment to, Seller.

**13. Non-Assignability:** Seller will not assign or subcontract any order, or any interest therein, in whole or in part, or any money due or to become due there under, or assign or subcontract any material part thereof, except as expressly authorized in writing signed by the Buyer. In no event shall such consent act to release Seller from any of its obligations and liabilities, including but not limited to, those assigned or subcontracted with Buyer's express written authorization.

**14. Intellectual Property:** Seller shall disclose and furnish promptly to Buyer any and all technical work product, including, but not limited to, inventions, improvements, designs, specifications, drawings, records, documentation, writings, drawings, photographs, models,

works of authorship or other creative works, knowledge or data, written, oral or otherwise expressed (“Work Product”), originated or developed by Seller or received by Seller for the performance of the Services or providing of Goods. With respect to Work Product that is computer software, such Work Product shall include a copy of the source code, object code and documentation therefore. All such Work Product shall be Buyer property, shall be deemed Buyer Confidential Information (as defined herein), and may not be used for other purposes except upon such terms as agreed to by Buyer in writing.

All Work Product prepared and developed by Seller in furtherance of its performance the Services or providing of Goods shall be deemed to have been prepared for Buyer and shall be considered as works made for hire and all rights comprised in the copyright thereof shall be owned by Buyer. To the extent that title to any such Work Product, or any intellectual property right therein, may not, by operation of law, vest in Buyer or such works may not be considered to be work made for hire, all right, title and interest therein (including without limitation all intellectual property rights) shall be, upon payment by Buyer of all undisputed outstanding invoices for Seller’s services in developing and creating such Work Product, irrevocably assigned to Buyer. All such materials shall belong exclusively to Buyer with Buyer having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Seller agrees to give Buyer and any person designated by

Buyer, at Buyer’s expense any reasonable assistance required to perfect and enforce the rights defined herein.

15. **Intellectual Property Indemnification**: Seller agrees to indemnify and save harmless Buyer, its successors, assigns, customers and users of the items manufactured or supplied under this Agreement from any and all loss, damage, liability, claims, demands and suits at law or in equity for actual or alleged infringement of any patent, trademark or copyright rights arising from the purchase, use or sale of Services or Goods covered by this Agreement as well as to pay all royalty and license fees required for the continued use and/or sale of said items. Notwithstanding the foregoing to the contrary, Seller shall have no indemnification obligation under this Section 15 to the extent that such claim arises out of any portion of a Specification, design or other requirement is provided by Buyer and if the particular Goods or Services would have been non-infringing but for such portion of a specification, design or other requirement that was provided by Buyer, nor shall Seller have any such indemnification obligation to the extent that such claim arises from the combination of third party products with the Goods or Services, including Buyer-supplied parts. In such instance of claims arising from Buyer directed Specifications, designs or requirements and/or Buyer-supplied parts, Buyer shall in like manner assume responsibility to defend, indemnify and hold harmless Seller hereunder. Prompt notice in writing shall be given by Buyer of any such claim and Seller shall promptly undertake and assume the defense thereof with legal counsel reasonably acceptable to Buyer.

16. **Shipments**: In the event the Goods and/or Services require that materials or equipment be shipped to Buyer, the following shall apply:

(A)Observe carefully the shipping instructions and unless otherwise specifically stated, ship the least expensive way. No charges are allowed for boxing, packing or carriage unless authorized

by the Buyer. On the date of shipment, email bill of lading and invoices showing order numbers for each shipment to the Buyer's Accounting Department.

If invoices have cash discount available if paid within an applicable timeframe, cash discount period will begin the day bills are received by the Buyer's Accounting Department.

(B)F.O.B. destination, cash discount terms, purchase order number, and item numbers must also be shown on all invoices; purchase order number must also be shown on all packages, bill of lading, statements, shipping notices and tags. Complete packing list must be sent with each shipment. If this information is lacking, discount period for payment of invoices will begin upon receipt of this information by the Buyer's Accounting Department.

(C)Transportation must be prepaid on all shipments.

(D)Charges for prepaid transportation must be substantiated by attaching to the invoice original transportation bills received by the carrier.

(E)C.O.D. shipments are not accepted.

(F)Title and risk of loss shall pass upon delivery to Buyer at such facility as Buyer designates.

**17. Taxes:** Seller shall not impose on the Buyer any responsibility for payment or reimbursement of any tax or taxes now or hereafter imposed by federal, state, municipal or other government authority, including political subdivisions of the foregoing, upon the transaction(s) herein, unless the Seller in its price quotation(s) expressly specifies the nature and amount of the tax to be added thereto and such additional amount is further agreed to by the Buyer. Seller shall be responsible for remitting to the taxing authority any taxes assessed on the Goods and/or Services.

**18. Termination for Convenience:** (A) Notice of Termination: Buyer may at its option and for its convenience, terminate any order in whole or in part, by written notice to the Seller. Such termination shall be effective in the manner and upon the date specified in said notice. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to an order.

(B)**Terms of Settlement:** Upon the termination of work under Section 18(A), full and complete settlement of all claims of the Seller with respect to the terminated work shall be made as follows:

1.As compensation to the Seller for such termination, unless such termination is for default or breach by Seller, Buyer shall pay Seller as its full compensation in connection with the Goods and/or Services, a proportionate part of the total price based on the work completed. This shall be Seller's sole and exclusive remedy for Buyer's termination pursuant to this Section.

2.Upon Buyer's payment to Seller in accordance with this Section, title to all equipment, materials, scrap, wastage, work- in-process, finished products, plans drawings, specifications, information, special tooling, tangible items of a direct charge nature, and other things for which Seller is paid, which had not already vested in Buyer, shall vest in Buyer.

3. In arriving at the amount due the Seller under this article, there shall be deducted any claim that Buyer may have against the Seller in connection with any order. Nothing contained in this paragraph shall be construed to limit or affect any remedies which the Buyer may have as a result of a default or breach by the Seller.

**19. Inspection:** All Goods and/or Services shall be subject to inspection and rejection by Buyer or Buyer's customer in a reasonable time, place and manner. Upon completion of requested Goods and/or Services, Seller shall notify Buyer in writing with reasonable specificity of the Goods and/or Services that are ready for inspection by Buyer or Buyer's customer. In addition, Payment by Buyer for any Goods and/or Services shall not affect Buyer's or its customer's right to inspect. Seller shall provide such information as Buyer may reasonably request in order to ensure that Buyer or its customer is able to adequately perform an inspection of the Goods and/or Services. With respect to Goods, sampling plans shall be defined with an AQL (acceptance quality level) of 2.5 or tighter. The AQL for class "A" (Critical) parts is 1.0 or tighter. Any deviation from this requirement must be submitted in writing to Buyer for prior approval. All Goods and/or Services or material shall be in accordance with the latest revision of the specifications appearing in the order and may be subject to inspection either at Buyer's plant or at a third party facility, where Buyer or its designee shall be entitled to access to the extent practicable at any and all times during manufacturing or providing of Goods and/or Services, and at any or all places where such manufacturing or providing of Goods and/or Services is carried on, in order to enable Buyer or its customer to observe Seller's manufacturing of Goods or providing of Services. Seller will provide, without additional charge, all reasonable facilities and assistance for any inspection or tests made on its premises. Inspection of the Services being provided or manufacturing of Goods while being performed does not relieve the Seller from its responsibility hereunder for any inferior Goods and/or Services or material furnished or workmanship done or defects. Continued unsatisfactory performance will be cause for Seller to be removed from Buyer's approved Seller list.

**20. Test Data:** When test data is required for the Goods and/or Services, payments to Seller shall be withheld until receipt of such data in specified and acceptable written form. Withholding payment shall not affect the discount period that will start when all test data in acceptable form has been received.

**21. Non-Waiver:** Any failure on Buyer's part to insist upon the strict performance of any term or condition of an order shall not be deemed a waiver of any of Buyer's rights or remedies hereunder for any prior or subsequent default or breach, nor of its right to insist upon the strict performance of the same or of any terms of an order in the future. No waiver of any condition of an order shall be valid unless in writing signed by Buyer's Purchasing Department. If Buyer provides Seller with an opportunity to cure its performance, such shall not be construed as a waiver of any or all of the terms and conditions of the order or any other rights or remedies of Buyer provided by law.

**22. Confidentiality:** Seller acknowledges that it is, may be or will be privy to Confidential Information (as defined below). Seller agrees it will use the Confidential Information only in furtherance of this order and shall not transfer or otherwise disclose the Confidential Information to any third party except as provided for herein. Seller shall: (i) give access to such Confidential Information solely to those of its employees with a need to have access thereto in furtherance of



or in connection with this agreement, or as required by applicable law; and (ii) take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that Seller takes with its own confidential information but, in no event, shall Seller apply less than a reasonable standard of care to prevent such disclosure or unauthorized use.

As used herein, "Confidential Information" means any and all information relating to Buyer, and any of its respective affiliates that may be received by or be provided to Seller from time to time, including, without limitation, equipment and business specifications, business records or data, trade secrets, confidential planning or policy matters, business strategies, internal policies and procedures, matters subject to attorney-client privilege, any financial or accounting information, the existence of this or any other agreements or communications between Seller and Buyer and the terms of any such agreement, all data, reports, interpretations, forecasts and records containing or otherwise reflecting information concerning any such person or entity, together with analysis, compilations, studies or other documents, whether prepared by Seller or Buyer that contain or otherwise reflect such information.

**Non-disclosure:** Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the existence of any order or the fact that it has furnished or contracted to furnish Buyer the Goods and/or Services set forth in any order. Goods and/or Services made or developed to Buyer's design shall not be supplied to anyone else without the prior written consent of Buyer. Seller shall not reveal any specifications, designs or other information supplied to it by Buyer nor disclose to third parties any of the details of any order without the prior written consent of Buyer.

### 23. **Insurance:**

(A)Required Coverages. Without limiting any other obligation or liability of Seller, Seller agrees that, for all Goods and/or Services, Seller shall obtain and maintain without lapse insurance coverage with limits and conditions not less than those specified below, and will have Buyer named as additional insured under each of the following policies.

(B)Commercial General Liability Insurance. Commercial general liability insurance with a per occurrence limit of not less than one million dollars (\$1,000,000); two million dollars (\$2,000,000) general aggregate and an umbrella liability coverage of five million dollars (\$5,000,000);

(C)Worker's Compensation and Employer's Liability insurance, with statutory limits for workers' compensation and Employer's Liability limits of one million dollars (\$1,000,000) per accident; and

(D)Automobile Liability Insurance in the event that Seller will use an automobile in connection with its performance of the Services or delivery of the Goods, with a per accident limit of not less than one million dollars (\$1,000,000) for all owned, non-owned, hired, and permissive use vehicles.

(E)In the event Buyer requests, Professional Liability insurance in such amounts as Buyer requests.

(F) Additional Requirements. The above-described insurance policies will be issued by insurance carriers with an A.M. Best Rating of at least A- with a financial category size of at least VII, and shall contain a waiver of subrogation. Seller will not be deemed to be relieved of any liability or responsibility because of the fact that it maintains (or does not maintain) insurance. The insurance policies required of Seller shall be primary and non-contributory over any insurance or self- insurance maintained by Buyer.

(G) Certificates of Insurance. Before Seller begins to perform work on Goods or Services, and upon renewal of the required insurance policies, Seller agrees to provide a Certificate of Insurance evidencing the insurance required herein. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. All policies on which Buyer is added as additional insured as required hereunder shall include a mandatory minimum 30 day notice to Buyer before the policy may be terminated.

(H) Buyer's Options Upon Cancellation. Notwithstanding anything to the contrary contained in any order or agreement, in the event that any insurance coverage required of Seller is cancelled, it will be considered a material breach of the Agreement.

(I) Notice of Damage/Injury. Seller will advise Buyer of all damages to property of Buyer or of other entities, and of all injuries to persons, of which Seller may become aware in connection with its performance of the Services and its other obligations pursuant to this Agreement and will do so promptly after it becomes so aware.

#### 24. Conflict Minerals

Seller covenants, warrants and represents that, after reasonable inquiry, no tantalum, tin, tungsten and/or gold ("Conflict Minerals"), contained in any Goods subject to this order, originated from Angola, Burundi, Central African Republic, Democratic Republic of the Congo, Rwanda, South Sudan, Uganda, United Republic of Tanzania, The Republic of the Congo or Zambia, unless the Conflict Minerals were processed by a facility listed as compliant pursuant to the EICC-GeSI Conflict-Free Smelter Program. Seller agrees to abide by the terms and conditions in Purchaser's Conflict Minerals Policy and make every effort to responsibly source all of its materials to ensure they are conflict free, and to work towards defining, implementing and communicating to its sub- suppliers, its own policy outlining its commitment to responsible sourcing, legal compliance and measures for implementation. Seller agrees to cooperate and work with its sub-suppliers to ensure traceability of Conflict Minerals at least to smelter or refiner level, to maintain and record all Conflict Minerals traceability documentation for five years, and to provide such documentation to Buyer upon request.

**25. Applicable Law/Venue:** These Terms and any order or written agreement will be interpreted pursuant to the laws of the State of New York without regard to choice of law principles. The venue for any action or proceeding arising out of or in relation to the Goods and/or Services shall be the federal courts of New York, or if federal jurisdiction is not found, the state courts of New York, and Seller consents to personal jurisdiction and venue in such courts. If any provision of these Terms or any written agreement or order is deemed unenforceable, it shall be severed and

the rest of the terms shall continue in force. The remedies set forth herein are exclusive and exclude all other remedies to which a party may be entitled at law.