



TERMS AND CONDITIONS OF PURCHASE

1. **AGREEMENT AND ACCEPTANCE** – These purchase order terms and conditions (these “*Terms*”) by and among Motivair Corporation (“*Motivair*” or “*Buyer*”) and the certain vendor, contractor, or service provider as specified in the respective Purchase Order (as defined below) (the “*Seller*”) governs the terms of this Agreement (as defined herein) for the purchase of goods by Buyer from Seller (the “*Goods*”) and performance of the services from Seller to Buyer (the “*Services*”). For the purposes of this Agreement, this “*Agreement*” shall mean: (i) the accompanying the purchase order between the parties (“*Purchase Order*” or “*Order*”), (ii) these Terms, (iii) Motivair’s supplemental terms and quality requirements referenced on the Order, and (iv) any plans or specifications provided by Buyer to Seller (the “*Plans*”).

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, Buyer and Seller agree as follows:

2. **PRICES** –

- (a) The respective Purchase Order shall list the price of the Goods or Services that are subject to this Agreement. The parties agree that such prices shall not exceed the amount shown in the Purchase Order, provided that, any price adjustments to the Goods or Services will be mutually agreed upon by the parties in writing.
- (b) If the price is not shown on the Order, Seller agrees that the price shall not, without the prior written consent of Buyer, exceed the last price paid by Buyer for the applicable Goods or Services.
- (c) Seller agrees that any price reduction made by Seller, with respect to the Goods or Services covered by the Order, subsequently to the date of the Order or to shipment, shall be applicable to the Order.
- (d) Payment terms shall be invoiced by Seller to Buyer at net sixty (60) days.

3. **FLOWDOWNS AND SUBCONTRACTING** –

- (a) Flowdowns. Seller shall flow down to its supply chain all applicable site-specific supplemental terms and quality requirements agreed upon by the parties and as referenced in this Agreement.
- (b) Subcontracting. Without the prior written consent of Buyer, Seller shall not subcontract the furnishing of any of the complete or substantially complete items required by the Order or any part of this Agreement. If the Buyer consents to Seller’s the use of subcontractor(s), the Seller shall flow down to its approved subcontractor(s) all applicable supplemental terms and quality requirements agreed upon by the parties and as referenced this Agreement.

4. **RIGHT OF ACCESS AND RECORD KEEPING**–

- (a) Buyer’s Right of Access. The Buyer, its employees, agents, representatives, customers, or regulatory authorities reserve the right to conduct surveillance of the Seller’s, its sub-tiers’ facilities and systems at all levels to determine and verify the quality of work and materials, at each production stage that will be incorporated into Buyer products.
- (b) Seller’s Record Keeping. Seller shall keep detailed records of all costs, including but not limited to, direct labor costs, material costs, and all other costs of the performance of the Order or this Agreement, which shall be stored either manually or electronically and protected from common disasters, such as fire or flood. In the event of termination, other equitable adjustment, or with respect to the Order for which the price is based on time and cost of material, Buyer may, in its sole discretion, audit such records held by Seller.

5. **SHIPMENTS AND RISK OF LOSS** –

- (a) Deliveries. Seller shall, at Seller’s expense, ship and deliver all Goods ordered hereunder to Buyer’s plant, via FOB Destination and delivered duty paid unless otherwise specified by the parties in the Order.
- (b) Prepayment of Shipment Costs. If Seller prepays the transportation charges, such charges must be supported documentation in form satisfactory to Buyer, including but not limited to a carrier bill. Failure to submit such documentation of Seller’s prepayment of the



transportation charges of the Goods at the time Buyer is invoiced for the Goods or within thirty (30) days after such documentation is requested by Buyer shall constitute a waiver by the Seller of its right to payment by the Buyer of such prepaid transportation charges.

- (c) Risk of Loss. Seller shall bear the risk of any loss, deterioration, or damage until the Goods are delivered and accepted by Buyer as provided herein.

6. PERFORMANCE: DELAYS AND NONCONFORMITIES –

- (a) Generally. All deliveries of the Goods shall be made strictly in accordance with the delivery schedule set out forth in the Order (the “**Delivery Schedule**”). Goods shipped to Buyer prior to the Delivery Schedule or in excess of the quantity ordered may be returned by Buyer to Seller at Seller’s expense. When an Order is delayed, the Buyer shall have the right to direct the Seller to make shipments of the Goods by the most expeditious means and the total cost of such expedited shipment and handling shall be borne by Seller.
- (b) Late Deliveries. Acceptance of any late deliveries by Buyer shall not be deemed a waiver of Buyer’s right to hold Seller liable for any loss or damage resulting from such late delivery, nor shall it act as a modification of Seller’s obligation to make future deliveries in accordance with the Delivery Schedule.
- (c) Excused Late Deliveries. Seller shall not be liable for any delays in delivery caused by: (i) circumstances beyond Seller’s control including acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes or embargoes; or (ii) an actual or potential labor dispute that is delaying or threatening to delay the performance of the Order, to the extent that Seller immediately gives notice thereof to Buyer. Notwithstanding the above, if such delays extend for more than sixty (60) days from the delivery of Goods or performance of Services dates or threatens Buyer’s delivery commitments and/or obligations under its other prime contract, Buyer may terminate such part of the Order remaining to be performed without liability to Seller except for the fair value of work already completed.
- (d) Unexcused Late Deliveries. For any unexcused delays, Buyer may collect liquidated damages from Seller for any delivery delay of Goods, including non-conforming Goods, not in accordance with the Delivery Schedule. The amount of liquidated damages will be calculated from the first (1st) day of the delay until the day the Goods are received by the Buyer’s at its facility. Buyer reserves to the right, in its sole discretion, to provide a three (3) calendar day cure period to Seller prior to assessing the liquidated damages amount. The amount of the liquidated damages will be equal to two percent (2%) per day of the Order price of the delayed Goods, but will not exceed twenty percent (20%) of the delayed Goods total Order value. For delays lasting more than ten (10) days, Buyer shall have the right to claim from Seller additional damages that Buyer incurs, including, but not limited to, those that are flowed down from its own customers.
- (e) Additional Costs. Buyer may recover from Seller any additional costs or damages that are incurred by Buyer due to Seller’s failure to deliver the Goods in accordance with the Delivery Schedule or this Agreement or failing to provide the quality of the Goods as agreed upon under this Agreement or the Order (the “**Recovered Costs**”). The Recovered Costs include, but are not limited to: (i) premium freight cost of Goods on inbound to Buyer, due to Seller delayed delivery; (ii) premium freight cost outbound of Goods to Buyer due to Seller delayed delivery; (iii) labor hours incurred by Buyer for rework of the Goods and/or to recover downtime in scheduled production of the Goods due to nonconformities in delivery or quality; (iv) customer costs, damages, or charges incurred by Buyer as a direct result of Seller failure and/or delayed delivery of the Goods or quality of the Goods or nonconformities of the Goods; (v) additional costs incurred due to over-shipment storage, return shipments, mismatched shipping documents and parts identification of the Goods; (vi) the cost of freight to return the Goods to Seller, any requested disposal of such Goods, or other costs associated to rejection of such Goods; (vii) additional administrative fees in the amount of two hundred and fifty dollars (\$250) per lot/ shipment; (viii) five hundred dollars (\$500) for each request by Seller for the use of deviant material for the Goods; and (ix) if Seller fails to deliver the Goods in a timely manner, such costs incurred by Buyer to find another supplier of the Goods, including but not limited to, the costs to qualify and any differences in price.



7. WARRANTIES –

- (a) Generally. Seller warrants that all the Goods furnished hereunder shall: (i) conform fully with all requirements of the Order and this Agreement; (ii) conform to approved Plans and samples(s), if any; (iii) are fit for the use intended by Buyer; and (iv) be free from defects in material, workmanship, design and fabrication.
- (b) Remedies Upon Discovery of Defects.
 - (i) Upon discovery of any defect of the Goods or failure of the Goods provided hereby, Buyer shall furnish written notice to Seller of the Goods involved and set forth the nature of the defect(s) or failure(s) discovered.
 - (ii) Seller shall provide in writing to Buyer the following information: (1) Acknowledgment of the notification given by Buyer of the defect or failure, (2) the corrective action to be taken by Seller to remedy the defect or failure, (3) disposition instructions regarding the defective material or equipment; (4) the date that the defective Goods will be repaired, corrected or replaced as applicable and redelivered to the appropriate destination as directed by Buyer; and (5) with the prior written consent of Buyer, submit a proposed price reduction to the Order for Buyer’s consideration pursuant to above.
 - (iii) “Epidemic Failure” shall be defined as a substantially similar Defect in Good(s), repetitively occurring indicating a common or systemic failure. “Defect(s)” means (i) a defect in design, raw materials, workmanship or the manufacturing of the Goods, (ii) a failure of the Goods to conform and/or to perform according to specifications, (iii) any other hazard (such as but not limited to safety hazard), failure (such as but not limited to Epidemic Failure), deficiency, imperfection or insufficiency in the Goods, (iv) a Good which is not fit for the intended use for which it was purchased as deriving from specifications. In addition to any other remedies Buyer may have, upon receipt of a written notification of such Epidemic Failure, Seller shall implement all appropriate and prompt technical solutions, at its own costs and risks, in order to remedy the Defect in all such Goods within the shortest time period; For the sake of clarity, this obligation to remedy shall remain valid for 3 years after the end of the warranty period as provided in section 7, and shall apply to all Goods that are or may be affected by the Defect whether in stock at Buyer’s premises, on site with a reseller or at end-user/customers’, or third parties’ premises or in transit or under process of manufacturing or ready for shipment at the Seller’s premises. If either Party or any governmental agency or court having jurisdiction finds that any Product contains a safety hazard or other hazard or Defect or condition that requires or would make advisable a field repair, user/customer notification campaign, rework or recall of such Product, each Party shall promptly communicate all relevant facts, information and data to the other Party. Seller shall then promptly undertake all necessary or required corrective actions, and shall file all necessary papers, corrective action programs, and other documents as may be required under applicable law or regulation; provided that Buyer shall reasonably cooperate with and assist Seller in any such filing or correction action, at Seller’s expense. Nothing in this section shall preclude Buyer from taking any action required under any applicable law or regulation or business purpose. Seller shall perform all necessary repairs or modifications to the Product at its sole expense. Each Party shall consult the other prior to making any statements to the public or a governmental agency concerning any recall of a Product, except where such consultation would prevent timely notification required under any law or regulation.
- (c) Latent Defects. The Buyer reserves right to corrective action by Seller for any latent defects in the Goods. Upon Buyer’s discovery of the latent defect in the Goods, Buyer shall notify the Seller of such latent defect and the corrective actions that will be required to cure the latent defect.
- (d) Approval by Buyer of Seller’s design or material used shall not relieve Seller from any obligations under the warranties set forth in this Section 7.
- (e) Any Goods corrected or replaced pursuant to this Section 7 shall be subject to all provisions of this Section 7 to the same extent as Goods initially delivered.



- (f) The aforesaid warranties as described in this Section 7 shall survive acceptance and payment and shall run to Buyer, its customers and the users of these Goods and shall not be deemed to be the exclusive rights of Buyer.

8. INSPECTION AND REJECTION OF THE GOODS –

(a) Inspection of Goods.

- (i) Upon delivery of the Goods pursuant to Section 5(a), Buyer shall have 30 days to inspect the Goods.
- (ii) If any inspection or test of the Goods is made by Buyer or its customer on the premises of Seller or a lower tier subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or customer inspectors in the performance of their duties. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests of the Goods by Buyer or its customer shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional cost of inspection and test when Goods are not ready at the time such inspection and test was requested by Seller or when reinspection or retest is necessitated by prior rejection. Unless otherwise provided herein, final inspection and acceptance or rejection of Goods shall be made as promptly as practicable after delivery to Buyer's facility. The Buyer's failure to inspect or accept or reject the Goods in a timely manner shall neither relieve the Seller from full compliance with all requirements of the Order, nor impose responsibility on Buyer thereafter.
- (iii) Inspection and test by Buyer or its customer of any Goods or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet Order requirements which may be discovered prior to acceptance or during the use of the Goods.
- (iv) If, prior to or at the time of final acceptance, it was known or should be known by Buyer that said Goods would not or did not conform to the requirements of the Order, final acceptance shall not be construed as a waiver of any rights Buyer may have with respect to the Goods purchased under the Order, notwithstanding the failure of Buyer to timely inform Seller of such nonconformance.

- (b) Rejection of Goods. In the event that Seller delivers defective or non-conforming Goods, Buyer shall have the option to: (i) reject the entire lot and an equitable adjustment will be made in the Order price, (ii) perform one hundred percent (100%) screening and accept only those Goods found to be conforming, (iii) rework defective or non-conforming Goods, while retaining all Buyer's remedies, including cancelling the Order for default as provided for in Section 19, (iv) retain such defective Goods and an equitable adjustment will be made in the Order price, (v) reject such defective Goods and require Seller to promptly remove and repair or replace such defective goods at Seller's expense, or (vi) replace such defective Goods with similar items and recover all costs associated with such replacement from Seller. If Buyer selects options (i) or (ii) above, Seller, at its own expense, shall ship conforming replacement Goods and provide a return material authorization to Buyer within one (1) day of notification by Buyer of the selected option.

- (c) Seller shall provide and maintain an inspection system acceptable to Buyer covering the Goods hereunder. Records of all test and inspection work by Seller shall be kept complete and available to Buyer and/or its customer for ten (10) years following completion of an order or subcontract.

- (d) Payment for Goods delivered under the Order shall not be deemed to constitute an acceptance thereof.

- 9. CHANGES** –Buyer may, at any time, by written instructions from its procurement department, direct Seller, make changes in the Services be performed or the Goods to be delivered hereunder in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packaging; (iii) time and/or place for delivery; and (iv) the quantity of Goods ordered. If any change under this Section 9 causes an increase or decrease in the price due under the Order or the time required to perform, an equitable adjustment shall be made, and the Order modified in writing accordingly. Any claim hereunder must be asserted by Seller in writing within fifteen (15) days from the date the change is ordered. Nothing contained herein shall excuse Seller from Proceeding without delay with the Order as changed, including failure of the parties to agree upon any adjustment to be made under this Section 9. Whether made pursuant to this Section 9 or by mutual agreement changes shall



not be binding upon Buyer, except when confirmed in writing by a member of Buyer's Procurement Department. The issuance of information, advice, approvals or instructions by Buyer's technical personnel or other representative shall be deemed expressions of personal opinion, only, and shall not affect Buyer's and Seller's rights and obligations hereunder, unless the same is in writing signed by an authorized representative of Buyer's Procurement Department and which expressly states that it constitutes an amendment to the Order. Seller agrees not to make any change in manufacturing location, suppliers, materials, processes, or design details of the Goods supplied hereunder after Buyer qualification or approval without written approval from Buyer. This shall include changes in manufacturing location, suppliers, materials, processes, or design details by Seller's subcontractors. In addition to these changes, changes which would affect the Goods supplied hereunder or any component part thereof with regards to (1) part number identification, (2) physical or functional interchangeability, or (3) repair and overhaul procedures and processes and material changes which affect these procedures without prior written approval of Buyer is prohibited. If such approval is granted, all part numbers and the originals of all drawings and data shall be revised and provided to Buyer accordingly. Any product that incorporates a change that has not been approved by Buyer in writing, shall be considered non-conforming product under this Agreement. The buyer must be notified prior to making any repairs or modifications to customer / government owned property.

10. SELLER'S RESPONSIBILITIES—

- (a) Generally. All conditions and specifications pertaining to the Purchase Order, including drawings, specifications, or other requirements specified shall be the responsibility of the Seller and such responsibility will be passed onto any of the Seller's sub-tier contractors.
- (b) Materials and Equipment. Unless otherwise specified in this Agreement or the Order, the Seller shall supply all material and equipment required to execute the Order. Any materials, which Buyer may furnish, on other than a charge basis shall be on consignment, and Seller shall pay for, such material spoiled or not otherwise used in or incorporated into Goods delivered to Buyer hereunder by Seller, or for which Seller has not otherwise satisfactorily accounted. Any material, including but not limited to, tools, dies, molds, jigs, fixtures, blueprints, designs, specifications, drawings, artwork, copy layout, consigned materials for production or repair, or any other materials furnished or leased by Buyer to Seller, or which are specifically paid for by Buyer, and any replacements thereof or attachments thereto, shall remain the personal property of Buyer. Any of the foregoing items, which are or will remain in the Seller's possession shall be kept in good repair or replaced, without charge, by Seller.
- (c) Insurance on Equipment or Materials. Seller shall maintain insurance policies, in form satisfactory to Buyer, with reputable insurance companies that are authorized to do business under the laws of the state(s) in which the work is being performed, insuring all the items listed in Section 10(b) above against loss or damage, and upon request by Buyer, provide to Buyer evidence of such insurance.
- (d) Buyer's Premises. For Seller's or its Subcontractor performing work or Services on Buyer's premises or entering Buyer's premises, Seller and such other parties shall observe all plant safety and export status regulations. Seller shall defend, indemnify, and hold Buyer harmless from all claims, actions, demands, loss and causes of action, arising from injury, including death, to any person or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees, agents or subcontractors, except when such damage, injury, or death is caused by the gross negligence of Buyer.

11. PACKING – Unless otherwise specified in the Order, Seller shall be responsible for the safe and adequate packaging of the Goods which shall conform to the requirements of carriers' tariffs or, in absence of such requirements, conform to the best commercial practices. The Seller shall separately number all cases, packages, or any other material used to package the Goods, to show the corresponding numbers on the invoices. An itemized packing slip, bearing the Order number must be placed in each container. No extra charges shall be made for packaging or packing materials unless otherwise agreed upon, in writing, by the parties.

12. PRODUCT SUPPORT—

- (a) Seller shall provide Support (as defined herein) to the Goods purchased hereunder during the operational life of the Goods or for a period of ten (10) years (whichever is longer), from the date of final shipment under the Order. For the purposes of this Section 12, "Support" includes, but is not limited to, technical service and maintenance of Seller's stock of subassemblies and spare parts as may be required to be ordered to support the operation of the items.
- (b) In the event Seller discontinues the manufacture of the Goods, subassemblies and/or spare parts, Seller shall give Buyer not less than six (6) months' notice of such decision to discontinue and upon such notice to buyer of such discontinuance, Seller shall: (i) make



available to Buyer all drawings, specifications, data and know-how which will enable Buyer or its customers to manufacture or procure and items, subassemblies and spare parts under a royalty-free license which is hereby granted, or (ii) provide Buyer with another qualified source without any interruption of supply.

13. INSURANCE, INDEMNIFICATION, INDEPENDENT CONTRACTORS –

- (a) Insurance. At all times during this Agreement or the Purchase Order, Seller, at its sole expense and cost, will maintain adequate levels of insurance, including but not limited to:
 - (i) Comprehensive general liability;
 - (ii) Comprehensive Automobile Liability insurance covering legal liability of Seller and the subcontractor(s), on account of accidents arising out of the operations of Seller or the subcontractor(s) and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property, and will provide Buyer a Certificate of Insurance as requested;
 - (iii) Worker’s compensation insurance coverage, as required by the laws of the state in which the work is performed to cover Seller’s and subcontractor(s’) legal liability on account of accidents to their employees, and such insurance shall provide waiver of subrogation against Buyer; and
 - (iv) Employer liability insurance in the amount of one million dollars (\$1,000,000).
- (b) Indemnification. Seller shall defend, indemnify and hold harmless Buyer, its subsidiaries, and their directors, officers, employees and agents (collectively, the “**Buyer Indemnified Parties**”) from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever, expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to this Agreement, the performance thereof by Seller, any subcontractor thereof or other third parties within the control or acting at the direction of Seller, or any of their respective employees. In no event shall the Seller’s obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof.
- (c) Independent Contractors. The relationship between the parties is that of independent contractors and not that of principal and agent, employer and employee, joint employers, or legal partners. Neither party will represent itself as the agent or legal partner of the other party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other party.

14. SUBCONTRACTORS – Seller’s subcontractors shall adhere to Delivery Schedule. Seller’s subcontractors will acknowledge receipt of material shipped directly to them from Buyer’s vendors. Any excess material shall be returned to Buyer. Proper material certifications are required for all raw material purchase orders by the Seller or Seller’s subcontractors.

15. FEDERAL, STATE, AND LOCAL TAXES – Seller shall be responsible for the payment, and where applicable, any federal, state, or local tax, transportation tax, or other tax which is required to be imposed upon the Goods or Services. Any such taxes included in the Order shall be itemized separately in the Seller’s invoice.

16. INTELLECTUAL PROPERTY –

- (a) Generally. The Seller warrants that neither the Goods furnished under the Order, nor the sale or use of such Goods will infringe on any existing patent trademark, or copyright of any third party.
- (b) Ownership of Intellectual Property.
 - (i) Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license to exercise all IP Rights (as defined below) in Seller-Owned IP (ad defined below) solely to the extent that such Seller-Owned IP



would otherwise interfere with Buyer, its suppliers', or its customers' use or enjoyment of the Goods, Buyer Specifications or Buyer-owned IP. Seller shall retain ownership of its Background IP and of any Foreground IP not assigned to Buyer (collectively, the "**Seller-Owned IP**").

- (ii) If Seller incorporates third-party IP into any deliverable under this Agreement, at no additional cost to Buyer, Seller shall obtain for Buyer, at a minimum, the license rights granted in Section 16(b)(i) of this Agreement in such third-party IP, at no additional cost to Buyer and hereby grant such rights to Buyer.
 - (iii) During the term of this Agreement, Buyer grants to Seller a non-exclusive, royalty-free right to exercise all IP Rights in the Buyer-Owned IP solely as necessary for Seller to perform its obligations under this Agreement. Seller shall not, without Buyer's prior consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under this Agreement, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Buyer-Owned IP. The Buyer shall retain ownership of all Buyer IP provided hereunder, including the Buyer Specifications, and of any Foreground IP assigned to Buyer (the "**Buyer-Owned IP**").
 - (iv) If the Goods are developed, modified, or redesigned pursuant to the Order, then (1) all Foreground IP shall be the exclusive property of Buyer except as set forth in Section 16(b)(iv)(4) below, (2) Seller hereby irrevocably assigns to Buyer all right, title, and interest in the Foreground IP for no additional charge. Seller shall protect Foreground IP as Proprietary Information and Materials under this Agreement and shall mark documents or portions of documents containing Foreground IP as "Motivair Corporation Proprietary" information or as otherwise directed by Buyer in writing, (3) Seller shall, within two (2) months after conception or first actual reduction to practice of any invention and prior to completion of this Agreement, disclose in writing to Buyer all inventions assigned hereunder, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all Motivair instruments and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce, and assign Buyer's Foreground IP rights. If Seller does not or cannot execute instruments or assist Buyer as described above, Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such Motivair instruments, and (4) Section 16(b)(iv)(2) and Section 16(b)(iv)(3) above shall not apply to any Foreground IP to the extent that the development of such Foreground IP was performed with funding received by Buyer under a U.S. government procurement.
 - (v) If Buyer cancels all or part of the Order for Seller default in accordance with Section 19 of this Agreement, Seller hereby grants Buyer the right to exercise all IP Rights in Seller Owned IP for the purpose of preventing interruptions to or stoppage of Buyer's production lines or delivery of Buyer's products to its customers.
- (c) Intellectual Property Indemnification. Seller agrees to indemnify, defend, and hold harmless the Buyer Indemnified Parties from and against all suits, claims, or demands alleging patent, trademark or copyright infringement or misappropriation of any trade secret arising out of or in connection with the Order. The Seller shall defend or settle at Seller's expense each suit or proceeding against the Buyer Indemnified Parties alleging such infringement or misappropriation. The Buyer Indemnified Parties may assume their own defense or join in the defense of any action in which it is made a party, in which event the foregoing indemnity and agreement to hold the Buyer Indemnified Parties harmless shall extend to all of the Buyer Indemnified Parties' costs therein, including attorney's fees and litigation costs. All royalties for patents or charges for the use of patents, which may be involved in the performance of the Order, shall be included in the cost of performance.
- (d) Definitions.
- (i) "**Background IP**" means all IP and IP Rights owned or controlled by Seller prior to the effective date or outside the scope of this Agreement.



- (ii) **“Buyer Specifications”** means performance specifications, specification control documentation, interface control documents, schematics, definitions, configurations, and certification data, and all IP Rights therein, used or intended to be used by Buyer: (1) to establish and define (x) requirements for the Goods and associated processes, specifications, certification, and configuration; and (y) architecture descriptions for the Goods and associated processes; and (2) to procure and certify Goods or similar products and to assure integration of the Goods or similar product with a product of the Buyer.
- (i) **“Foreground IP”** means IP and IP Rights conceived, developed, or created by, for or with the Seller either alone or with third parties, in the performance of the Order, including modifications to any Buyer Specification suggested by Seller.
- (ii) **“Intellectual Property”** or **“IP”** means inventions, discoveries, and improvements; know-how, works of authorship, technical data, drawings, specifications, process information, reports, and documented information; and computer software.
- (iii) **“IP Rights”** means all worldwide common law and statutory rights to the IP, including but not limited to rights under patents, industrial designs, trade secrets, copyrights, and mask work registrations.

17. ASSIGNMENT – The Seller shall not assign the Order, this Agreement, any obligation under this Agreement, or any money due hereunder, without the prior written consent of the Buyer. Any assignment or attempted assignment made without the Buyer’s prior written consent shall be void.

18. TERMINATION FOR CONVENIENCE – Buyer may, at any time during the term of this Agreement, upon notice to Seller, terminate this Agreement in whole or in part. Such notice shall state the extent and the effective date of termination. Upon receipt of such notice from Buyer, Seller shall take all necessary steps to mitigate any losses Seller might incur on account of such termination. Upon such termination, Buyer’s obligation to Seller shall be limited solely to payment for (i) Goods already shipped to Buyer, (ii) Goods produced pursuant to specifications unique to Buyer that are completed as of the time of receipt of notice by Seller of such termination and not yet shipped to Buyer, (iii) the actual costs incurred by Seller that are properly allocable under recognized commercial accounting practices to the terminated portion of the Order, including Seller’s obligations to subcontractors that are also so allocable, but excluding any charge of any nature that may be diverted to other orders, and (iv) a reasonable profit for the Services performed by Seller before receipt of the termination notice. The total payments Buyer is obligated to make hereunder shall not exceed the price of Goods or the Services to which such termination applies. Seller shall comply with Buyer’s instructions concerning Goods Seller already has furnished or partly furnished to Buyer. Buyer shall not be responsible to pay for finished Goods in production or materials fabricated or procured by Seller for producing such Goods when such material was fabricated or procured by Seller unnecessarily in advance or in excess of Buyer’s delivery schedule. Termination by Buyer hereunder shall be without prejudice to any claims Buyer may have against Seller. The payment provided under this provision shall constitute the Buyer’s only liability in the event the Order is terminated as provided herein. The foregoing shall not apply to any termination by the Buyer on account of the Seller’s default or under any of the provisions in [Section 19](#). To the extent the Order covers Goods normally carried in inventory by Seller, as distinguished from Goods specially made to Buyer’s specifications, Buyer shall have no liability for any termination hereof prior to actual shipment.

19. TERMINATION FOR DEFAULT –

- (a) Buyer may terminate this Agreement or the Order if Seller Defaults (as defined herein) on any of its obligations under this Agreement or the Order. For the purposes of this Agreement each of the following events shall constitute a default (i) the insolvency of Seller; (ii) an assignment for the benefit of creditors of Seller; (iii) the voluntary or involuntary filing of a petition order or other decree in bankruptcy by or against Seller; (iv) the commencement of any proceeding, under court supervision or otherwise, for liquidation of, reorganization of, or the composition, extension, arrangement or readjustment of the obligations of Seller; (v) failure by Seller to comply with Buyer’s reasonable instructions and Change Notices; (vi) failure by Seller to comply with any of the provisions of this Agreement; (vii) failure of the Goods to conform to Seller’s warranties contained herein or other warranties made by Seller; (viii) failure of Seller to make deliveries as scheduled, and (ix) any representations of Seller contained in this Agreement were false when made. The Buyer shall have the right to terminate the Order, in whole or in part, upon any default by Seller (each a **“Default”** and collectively, the **“Defaults”**).
- (b) In the event of any such termination of this Agreement by Buyer for a Defect by Seller, Buyer shall have the right to: (i) refuse to accept further delivery of Goods; (ii) to return to Seller at Seller’s expense any Goods already delivered and to recover from Seller all payments made therefor and all expenses of Buyer incident thereto, (iii) to recover any advance payments to Seller for undelivered, unperformed or returned Goods; (iv) to purchase substitute Goods elsewhere and charge Seller with any additional costs resulting therefrom; and



(v) recover from Seller any and all costs, damages, charges, etc., that are incurred by Buyer due to Seller's default, including, but not limited to those listed in [Section 5](#) of this Agreement. Buyer's right to return Goods shall not be affected by any assignment by Seller of moneys due or become due hereunder.

20. WAIVER – No delay or omission in exercising any right or remedy shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof, or the exercise of any other right or remedy. The rights, powers, elections, and remedies of the parties hereunder are cumulative and in addition to those which the parties have at law or in equity. Buyer's failure to object to any provision contained in any communication from Seller shall not be deemed an acceptance of such provision or a waiver of any provision of this Agreement.

21. COMPLIANCE WITH LAWS –

- (a) Generally. Seller agrees that in the performance of its obligations under this Agreement, shall comply with all applicable federal, state, and local laws, ordinances, statutes, rules, regulations, and orders thereunder.
 - (b) Fair Labor Standards Act. Seller represents and warrants that all Goods herein specified will be manufactured or furnished by Seller in accordance with the requirements of the Fair Labor Standards Act of 1938 (52 Stat. 1060), as amended. Upon reasonable request by Buyer, Seller agrees to provide a certificate, in form and substance satisfactory to Buyer, including the following language: "Seller hereby certifies that these goods were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor issued pursuant to Section 14 thereof." Seller is an Equal Opportunity Employer" as defined therein.
 - (c) Equal Opportunity. Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity (41 C.F.R. Part 60-1, to the extent not exempt); discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.
 - (d) The Dodd-Frank Act. The Seller shall comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"); and shall support Buyer's compliance with Section 1502 of the Dodd-Frank Act.
 - (e) The U.S. Foreign Corrupt Practices Act. Seller warrants and represents that it is familiar with and will strictly comply with the requirements of the U.S. Foreign Corrupt Practices Act of 1977, as amended. The Seller will not offer, pay, or promise, give, or authorize payment of any money or anything else of value to any government or public official (including political parties, officials or candidates for political office) for the purpose of influencing any act or decision of such official in his official capacity, including failure to perform his official function. The Seller agrees that no expenditures for other than lawful purposes will be made with respect to the performance of the Order.
 - (f) Import and Export Compliance. General. Seller agrees that it is knowledgeable regarding all applicable export, export control, customs and import laws and shall comply with such laws and any instructions and/or policies provided by Buyer. This shall include securing all necessary clearance requirements, export and import licenses and exemptions from such licenses, and making all proper customs declarations and filings with and notifications to appropriate governmental bodies, including disclosures relating to the provision of the Supply and the release or transfer of goods, hardware, software and technology to foreign destinations or nationals.
- 1.1 Seller agrees that it will not export, re-export or transfer, including in-country transfer any of the Supply, including, technical data, or software provided to Buyer without permission from Buyer except as authorized by law. Seller agrees that it is not suspended, debarred, or declared ineligible to export by any government entity. In the event that Seller is suspended, debarred, or declared ineligible by any government entity, Buyer may terminate this Order immediately without liability to Buyer. Seller shall indemnify Buyer against all liability, losses, damages, and expenses (including reasonable attorney's fees) resulting from the Seller's non-compliance or violations of such export and re-export controls regulations



- 1.2 Trade Restrictions. Buyer may, from time to time and for business reasons, withdraw from and/or restrict its business dealings in certain jurisdictions, regions, territories and/or countries.
- 1.3 Shipping/Documentation Requirements. With each Order shipment, Seller shall provide: (i) a shipping notification including the references and date of the Order, packing list containing the number of parcels and an exact description of the shipped Supply, Accompanied together with the certificates of conformity and the verification reports, (ii) a commercial or pro forma invoice; (iii) all required security- related information needed for the import of the goods; and (iv) copy of the bill of lading, airway bill, truck bill of lading, or other carrier certificate in transaction where the Buyer entity acts as the importer of record (IOR). The commercial/pro forma invoice shall include Buyer legal entity name; contact names and telephone numbers of representatives of Buyer and Seller who have knowledge of the transaction; Buyer's Order number; order line item; part number; release number (in the case of a "blanket order"); detailed description of the merchandise; quantity; unit purchase price in the currency of the transaction; Incoterms® 2020 and currency used in the transaction; the named place of delivery; "country of origin" of the supply; Harmonized System (HS) Tariff Codes of the country of consignment; the applicable national export control numbers (ECN/ECCN); and if the Seller is subject to U.S. export regulations, ECCN or ITAR classifications.
- 1.4 Importer Security Filing: For offshore Sellers, which will ship ocean to the U.S. only, Seller represents, warrants and covenants that it shall fulfill the information data provision requirements detailed in <https://www.cbp.gov/border-security/ports-entry/cargo-security/importer-security-filing-102> in cooperation with Buyer's named customs broker.
- 1.5 Country of Origin/Preferential Trade Agreements/Duty Drawback. Seller warrants the accuracy of its declarations of origin, including but not limited to certificates of origin and certificates under Preferential Trade Agreements such that Buyer can rely on any declarations to determine eligibility for preferential duty under free trade agreements. If Seller subsequently revokes such declarations, the Seller agrees, to the extent permitted by law, to indemnify, defend and hold Buyer harmless from and against any additional customs duty, fees, and other costs or expenses arising out of or in connection with any declared eligibility for a free trade agreement. If the Supply shall be delivered to a destination country having a Preferential Trade Agreement with Seller's country, Seller shall cooperate with Buyer to review the eligibility of the Supply for any special program for Buyer's benefit and provide Buyer with any required documentation, including declarations or certificates of origin to support the applicable Preferential Trade Agreement. If Seller is the importer of record for any Supply purchased hereunder, including any component parts thereof, upon Buyer's request, Seller shall provide Buyer with all necessary customs documentation to enable Buyer to file for and obtain duty drawback. Seller shall promptly notify Buyer of any known documentation errors and/or changes to the origin of goods or to the qualification of supply under a Preferential Trade Agreement. Seller shall indemnify Buyer for any costs, fines, penalties, or charges arising from Seller's inaccurate documentation or untimely cooperation.
- 1.6 Seller shall be certified in applicable supply chain security programs in the respective countries they operate such as; like Authorized Economic Operator (AEO or OEA), Custom Trade Partnership Against Terrorism (CTPAT), Partners In Protection (PIP). Upon Buyer's request, Seller shall provide evidence of such certification and notify Buyer within 15 business days of any status change. Seller shall use certified providers to transport Supply to Buyer, and respond to annual compliance surveys.
- 1.7 Upon Buyer's request, Seller shall promptly provide documentation to verify customs and trade compliance, including transaction records, supply chain details, and the origin of raw materials etc.
- 1.8 Seller shall promptly provide any requested declarations, documentation, or information within the specified timeline or within 15 business days if no timeline is specified.

22. ETHICAL STANDARDS OF CONDUCT – Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this Agreement, Seller shall report such behavior to appropriate Motivair representative. The Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. The seller shall not participate in any personal business, or investment activity that may be defined as a conflict of interest, whether real or perceived. In performing its obligations under the Order, Seller will not use child labor as defined by local law, will not



use forced or compulsory labor, will not physically abuse labor, and will respect employees' rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, in all wage and benefit, working hours and overtime and health, safety and environmental matters, Seller will comply with all applicable laws and regulations. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this [Section 22](#). Buyer shall have the right to inspect any site of Seller involved in work for Buyer, and failure to comply with the obligations in this [Section 22](#) shall be cause for immediate termination without penalty or further liability to Buyer.

In the event Supplier has concerns related to ethics, compliance or Schneider Electric's Trust Charter, and/or any potential violations of these policies, Supplier is welcome to make use of Schneider Electric's Trust Line. The Trust Line is a confidential channel through which Supplier can ask questions and raise concerns. Reports can be made using the link below: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>

- 23. GRATUITIES/KICKBACKS** – No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks shall be offered or given by Seller, its employees, agents or representatives to any officer or employee of Buyer or its customers (the “*Kickbacks*”). In the event that Buyer discovers any Kickbacks made by Seller, its employees, agents or representatives, Buyer may immediately terminate the right of Seller to proceed under this Agreement.
- 24. OFFSET** – This Agreement has been entered into in direct support of Buyer's international offset programs. All offset benefit credits resulting from this Agreement are the sole property of Buyer to be applied to the offset program of its choice. Seller agrees to assist Buyer in securing appropriate offset credits from the respective country government authorities.
- 25. COUNTERFEIT WORK** –
- (a) Generally. Seller agrees and shall ensure that (i) Counterfeit Work (as defined below) is not delivered to Buyer, (ii) Seller shall only purchase products to be delivered or incorporated as Work (as defined below) to Buyer directly from the Original Component Manufacturer (“*OCM*”)/Original Equipment Manufacturer (“*OEM*”), or through an OCM/OEM authorized distributor chain; unless authorized by Buyer in writing, (iii) Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work and (iv) if requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.
 - (b) Remedies. In the event that the Work delivered under this Agreement constitutes or includes Counterfeit Work, the Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Agreement. Notwithstanding any other provision in this Agreement, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including but not limited to, Buyer's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this [Section 25\(b\)](#) are in addition to any remedies Buyer may have at law, equity or under other provisions of this Agreement.
 - (c) Definitions.
 - (i) For the purposes of this [Section 25](#), “*Work*” shall mean all those parts delivered under this Agreement that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies).
 - (ii) “*Counterfeit Work*” means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair but is altered and misrepresented as acceptable.
- 26. QUALITY CONTROL SYSTEM** – Seller shall provide and maintain a quality system – to the extent necessary and appropriate for the product being provided. The Sellers Quality system shall also provide compliance to any specific product/process quality requirements identified in the Purchase Order or this Agreement.



27. SELLER QUALITY REQUIREMENTS –

- (a) Seller shall comply with all requirements and shall ensure compliance to (a minimum) UL508A and ISO9000 standards.
- (b) Where required, per AS9100, first article inspection (FAI) reports are required to include material certification reports (CMTR), post process certifications and ballooned (numbered) drawings are to be submitted and retained by the Seller.
- (c) Seller shall provide Buyer with Annual Representations and Certifications, as requested, and in the time frame stated.
- (d) Seller shall notify Buyer immediately if Seller becomes debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract, subcontract, or grant; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; or been the subject of a proceeding, at the State or Federal Level.
- (e) Seller shall notify Buyer if there is a change in their Business Type & Concern, i.e., is no longer considered a small business or loses their status.

28. CONFIDENTIALITY –

- (a) Generally. Buyer and Seller shall keep confidential and protect from unauthorized use and disclosure all Confidential Information. The Seller shall not, without the Buyer's prior written consent, disclose any information relative to the Order and this Agreement, except as may be necessary to enforce its rights hereunder. Buyer and Seller shall use Confidential Information (as defined herein) provided by the disclosing party only for the purposes of performing its obligations under this Agreement, Buyer and Seller agree not to disclose such Confidential Information to any third party, except with the written consent of the disclosing party. For the purposes of this Agreement, "**Confidential Information**" shall mean, from time to time either party may disclose or make available to the other party information about its business affairs, goods and services, forecasts, confidential information, and materials comprising or relating to intellectual property rights, trade secrets, third-party confidential information, and other sensitive or proprietary information. Such information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether marked, designated or otherwise identified as "confidential." Confidential Information does not include information that at the time of disclosure (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, by the receiving party; (ii) is or becomes available to the receiving party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the receiving party prior to being disclosed by or on behalf of the disclosing party; (iv) was or is independently developed by the receiving party without reference to or use of, in whole or in part, any of the disclosing party's Confidential Information; or (v) is required to be disclosed pursuant to applicable law.
- (b) Notwithstanding the foregoing, Seller agrees that any knowledge or information which Seller disclosed or may hereafter disclose to Buyer in connection with the purchase of the Goods or Services covered by the Order, shall not, unless otherwise specifically agreed in writing by Buyer, be deemed to be Confidential Information, and is free from any restrictions (other than a claim for patent infringement) as part of the consideration for the Order. Buyer and Seller shall use Confidential Information provided by the disclosing party only for the purposes of performing the Order, other contracts between Buyer and Seller, and Buyer's obligation and contracts with its customers. Buyer and Seller agree not to disclose such Confidential Information to any third party, except with the written consent of the disclosing party.

29. GOVERNING LAW – The validity, construction, and interpretation of the Order, this Agreement, and other documents relating to the sale of the Goods or performance of the Services specified herein, and the rights and duties of the parties to said sale, shall be governed by the laws of the State where Buyer's Purchase Order is issued to Seller.

30. JURISDICTION AND VENUE – Seller consents to the jurisdiction of the state of the Buyer placing the Order and its courts for the purpose of resolving any and all controversies and claims between Seller and Buyer arising out of or relating to this Agreement or the underlying



transactions. Seller hereby consents that any controversy or claim arising out of or relating to the Order, this Agreement, or the underlying transactions shall be resolved and submitted to the jurisdiction of the New York State Supreme Court, County of Erie, or in the United States District Court for the Western District of New York.

31. LEGAL EXPENSES – In the event that Buyer incurs legal expenses to enforce or interpret any provision of this Agreement, Buyer is entitled to recover such legal expenses, including, but not limited to, attorneys’ fees and costs.

32. MODIFICATION – No terms and conditions other than those stated in this Agreement, and no agreement or understanding, oral or written, in any way purporting to modify these terms and conditions, whether contained in this Agreement, or elsewhere, shall be binding upon Buyer unless made in writing and signed by its authorized representative.

33. DATA AND CYBERSECURITY MINIMUM REQUIREMENTS

1.1 Where Seller has access to, collects, stores or otherwise processes data from or on behalf of Buyer (e.g. including, as the case may, data from Buyer customers, resellers, or users) in connection with its provision of the Supply (“Data”), including any data that may be generated by the Supply itself, Seller shall at a minimum:

(i) Only access, collect, store or otherwise process Data for the sole purpose of fulfilling Seller’s obligations under the Order, or as otherwise expressly permitted by Buyer in writing;

Maintain reasonable and appropriate administrative, technical and organizational measures and safeguards to preserve and protect the security, integrity and confidentiality of the Data, aligned with applicable industry standards such as ISO / IEC 27001 or IEC 62443;

(ii) Should the Supply contain any software, firmware or chipsets; the development and productions of such shall demonstrably aligned with good industry practices and standards such as ISO/IEC 27001 or IEC 62443;

(iii) Comply with any other privacy or security policies or procedures that Buyer may provide or make available from time to time to the Seller as the context requires; especially when Seller has access to Buyer IT systems or network, either at Buyer location or remotely; and

(iv) Any infrastructure, systems, services, products or platforms used by Seller to access, collect, store, or otherwise process Data, including data gathered from third-parties on behalf of Buyer, shall be developed, maintained, and operated in accordance with industry-recognized security requirements and Secure Development Lifecycle practices, including but not limited to, secure application development, vulnerability management, and compliance with applicable regulations and requirements.

1.2 Seller shall maintain a reasonable and industry appropriate business continuity plan to ensure its provision of the Supply, taking into account data and cybersecurity risks included in its comprehensive risk analyses, contingency plan and solutions for its continuous delivery and operations.

1.3 In the event Seller detects a confirmed or reasonably suspected misuse, compromise, or unauthorized access, destruction, loss, alteration, acquisition or disclosure of any Data, security breach or suspected vulnerability, whether in Seller’s IT systems or network, or in relation to the Seller (“Security Incident”):

(i) Seller shall notify Schneider within twenty-four (24) hours through Schneider’s Seller Breach Notification Portal at: <https://www.se.com/ww/en/work/support/cybersecurity/report-an-incident.jsp#Suppliers>;

(ii) Such notification shall contain at a minimum: (a) a brief description of the Security Incident, (b) any Schneider Electric Systems or Data affected by the Security Incident, (c) any persons involved with the Security Incident, including any persons who made any unauthorized use or received an unauthorized disclosure, if known, (d) what Seller has done or shall do to investigate the Security Incident, to mitigate any deleterious effects, and to protect against any further harm or other similar Security Incidents; and (e) any other information requested by Schneider relating to the Security Incident;

(iii) Take prompt steps to investigate, contain, and remediate any Security Incident and cooperate with Buyer in any subsequent investigation and response in connection with the Seller’s IT systems or networks, or in relation to the Supply, and evidence demonstrating the



completion of those activities. Unless otherwise specified hereto, each party will bear its own cost in relation to its performance and action contemplated as determined herein.

- 1.4 Seller shall develop and implement policies and procedures consistent with industry standards (e.g., ISO/IEC 29174 Vulnerability Disclosure, ISO/IEC 30111 Vulnerability Disclosure, NIST Cybersecurity Framework v1.1 Reference RS.AN-5, NIST Special Publication 800-53 Rev. 4 RA-5,17 SA- 11,18 and SI-2, as may be amended) to address the notification, documentation and remediation by Seller of Vulnerabilities and material defects related to the Goods and Services provided to Schneider under the Agreement.
- 1.5 In addition to the above and in case the performance of the Order necessitates specific or enhanced protection measures for Data, the Parties will enter into a specific and appropriate addendum considering the level of cybersecurity required by the circumstances as reasonably determined by Buyer.

DATA PRIVACY

Seller will comply with all applicable laws, rules and regulations relating to the privacy and confidentiality of personal data in connection with this Order, including, but not limited to the European Union General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA), California Privacy Rights Act (CPRA), Colorado Privacy Act, the New York Shield Act, the Virginia Consumer Data Protection Act, the Data Protection Laws of Canada (the Personal Information Protection and Electronic Documents Act (PIPEDA), Personal Information Protection Act, SBC 2003 c 63 ('B.C. PIPA'), Personal Information Protection Act, SA 2003 c P-6.5 ('Alberta PIPA'), and the Canadian Anti-Spam Legislation ('CASL'), CQLR c P-39.1 ('the Quebec Private Sector Act').

- 1.6 Seller will only process personal data on behalf of Buyer for the purposes described in this Order. Seller will cooperate in good faith with Buyer to promptly implement additional contractual terms as may be required for Buyer to comply with its legal obligations under applicable requirements in the future. Seller and its subcontractors performing services on behalf of Seller in connection with the Order are strictly forbidden from further uses of personal data that are not compatible with applicable privacy law, rules and regulations and this Order. Seller shall promptly notify Buyer if it believes it cannot comply with this section.
 - 1.7 Each Party will process professional contact details and other relevant personal information related to employees or other representatives of the other Party for purposes necessary to the management of their customer-Seller relationship and in compliance with applicable laws on the protection of personal data. Seller may use personal data for marketing purposes only with respect to the personal data of their main account contact(s) at Buyer, provided that Seller complies with applicable information, consent and other legal requirements.
 - 1.8 Seller processes, as data controller, personal data provided by Buyer or at Buyer's request for the performance of the goods and services provided under the this the Order, Seller shall comply with applicable laws on the protection of personal data. Seller shall inform Buyer of any rectification or erasure of personal data processed under the Order, or any restriction of processing carried out in accordance with applicable data protection laws. Seller undertakes to delete all personal data exchanged, stored, or processed under the Order if it is no longer needed for the purposes for which it was originally processed. Seller shall ensure that any crossborder transfer of personal data under the order is performed in accordance with applicable data protection laws.
 - 1.9 A specific and appropriate addendum is required for the processing of personal data by Seller on behalf of Schneider Electric as data processor.
- 34. ANTI-CORRUPTION AND BRIBERY** – The Supplier undertakes to comply, at all times, with any and all applicable laws in relation to anti-corruption, especially but not limited to OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions dated 17th December 1997, American legislation such as "Foreign Corrupt Practices Act" of 1977, UK legislation such as "UK Bribery Act 2010", French anti-corruption legislation such as the "Sapin II Law dated 9th December 2016 and, in a general manner, any law related to the fight against corruption of agents and representatives of the private and public sector.

The Supplier hereby represents and covenants that no bribe, kickback, retro commission, gift, benefit, inducement or other advantage of any kind has been or will be paid, given, promised or offered by the Supplier itself, its suppliers or its own subcontractors to any official representative, employee, authorized representative from SE or the Customer, in order to obtain the subcontract, the main contract, any other contract or benefit.



- 35. ORDER OF PRECEDENCE** – All documents and provisions of the Order shall be read to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Order, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence: (i) the Order, (ii) these Terms, and (iii) all other attachments, exhibits, appendices, documents, or terms incorporated by reference or attached to the Order.
- 36. ENTIRE AGREEMENT** – This Agreement, together with all Purchase Orders, change orders, attachments, exhibits, supplements, specifications, schedules, and other terms referenced in or attached to the Order, contains the entire agreement of the parties, and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of the Order.
- 37. ADDITIONAL CLAUSES APPLICABLE TO GOVERNMENT CONTRACTS** – If the Order is issued pursuant to a U.S. government contract or subcontract, then the additional terms and conditions set forth will apply. The Seller's agreement with government contracts supplement shall become binding when accepted by Seller either by acknowledgement or performance of the Order. The seller shall include in each lower tier subcontract the appropriate FAR and DFAR clauses on the Order.