



## GENERAL PURCHASE ORDER TERMS AND CONDITIONS

These General Purchase Order Terms and Conditions ("General Terms") are incorporated in the ordering instrument ("Order") issued by that subsidiary of Vigor Industrial LLC specifically identified on the face of the Order as the ordering entity. All references to "*Vigor*" in these General Terms refer only to that subsidiary and only that subsidiary will incur any liability or obligation in connection with the Order to the person to which the Order is addressed and issued ("Supplier"). Vigor and Supplier may be referred to as a "Party" or collectively as the "Parties."

**1. Formation of Contract.** The Order is Vigor's offer to purchase the goods and/or services described in the Order ("Goods" and "Services") strictly according to these General Terms and the drawings, specifications, functional and/or technical requirements of the Goods and Services referenced in the Order or these General Terms (collectively, the "Specifications"). Any expression of acceptance by Supplier constitutes Supplier's unqualified acceptance of this offer as written and will result in the formation of a binding contract, including Supplier's commencement of performance, written confirmation of the Order, or failure to reject the Order in writing within 72 hours of Supplier's receipt of the Order. Vigor objects to, and will not be bound by, additional or different terms or conditions proposed by Supplier in conjunction with its acceptance.

**2. Entire Agreement.** The Order, these General Terms, and the Specifications comprise the entire agreement between the Parties relating the subject matter of those documents (collectively, this "Agreement"), except that, if Supplier's quotation, proposal, or similar document is referenced in or attached to this Agreement, then it is incorporated only to the extent it specifies the price of, or Specifications for, the Goods and Services. This Agreement replaces and supersedes all prior and/or contemporaneous understandings, agreements, and communications, written, electronic, or oral, concerning their subject matter.

**3. AMENDMENTS TO GENERAL TERMS.** ONLY A VIGOR PURCHASING REPRESENTATIVE ("PURCHASING REPRESENTATIVE") HAS AUTHORITY TO AMEND THESE GENERAL TERMS, AND THEN ONLY TO THE EXTENT SUCH AMENDMENT: (A) IS PRINTED ON THE FACE OF THE ORDER SIGNED BY THE PURCHASING REPRESENTATIVE; AND (B) SPECIFICALLY REFERENCES THE PARTICULAR PROVISION IN THESE GENERAL TERMS TO WHICH IT RELATES. FOR AVOIDANCE OF DOUBT, NO PERSON HAS AUTHORITY TO AMEND THESE GENERAL TERMS WITHIN THE TEXT OF THIS DOCUMENT ITSELF. SUPPLIER IRREVOCABLY WAIVES ANY CLAIM OR ACTION SEEKING TO ENFORCE ANY PURPORTED AMENDMENT TO THESE GENERAL TERMS THAT IS: (A) SET FORTH WITHIN THE TEXT OF THIS DOCUMENT ITSELF; OR (B) OTHERWISE NOT MADE IN ACCORDANCE THE EXPRESS REQUIREMENTS OF THIS SECTION.

**4. Provision of Work.** In this Agreement, the "Work" means all obligations to be fulfilled by Supplier pursuant to this Agreement, including, as applicable, furnishing the deliverables and other Goods and performing Services, all as described in the Order and Specifications. Supplier will: (a) bear all costs of performing the Work; (b) perform the Services and furnish the Goods and all other materials, equipment, and labor necessary, or desirable to properly perform the Work; and (c) not make any substitutions in the Work.

**5. Supplier Representations.** Supplier represents that: (a) it has all requisite resources, skill, experience, and

qualifications to perform all of the Work in a professional and worker-like manner in accordance with generally-recognized industry standards; (b) it has, based on its own independent review, ascertained the conditions required to perform the Work in accordance with the information available to Supplier in connection with this Agreement; (c) it has the full right, power, and authority to enter into and fully perform this Agreement; (d) its acceptance and performance of this Agreement will not violate, conflict with, require consent under, or result in any breach or default under any contract to which Supplier is a party; (e) this Agreement constitutes the legal, valid, and binding obligation of Supplier, enforceable against Supplier in accordance with its terms; and (f) it has obtained all licenses, authorizations, approvals, consents, or permits required by law (including the rules and regulations of all authorities having jurisdiction over the Work) to conduct its business generally and to perform its obligations under this Agreement.

### 6. Time of Performance.

**6.1** Supplier will deliver the Goods, perform the Services, and complete the Work in a prompt and diligent manner as necessary to meet the schedule, milestones, and completion date(s) in this Agreement ("Schedule"). Time is of the essence in Supplier's performance, and any unexcused failure by Supplier to strictly meet the Schedule will constitute a material breach. Supplier will not deliver Goods or perform Services in advance of the Schedule except as authorized in writing by the Purchasing Representative.

**6.2** If at any time Supplier learns of any actual or potential labor dispute or any other event or circumstance that will delay, or threaten to delay, the timely performance of this Agreement, Supplier will immediately notify the Purchasing Representative of that event or circumstance. Supplier will include in that notice the reasons for delay, its anticipated length, steps Supplier has taken and/or will take to minimize the delay, and any other information Vigor requests. Supplier's notice will not excuse its obligation of timely performance and Vigor's receipt or acceptance of late deliveries or performance will not waive of Vigor's rights and remedies.

**6.3** Supplier will not be liable for Vigor's reprocurement costs to the extent Supplier's failure to timely perform is due to causes beyond the control and without the fault or negligence of Supplier, including: (a) acts of God or the public enemy; (b) acts of the Government in its sovereign or contractual capacity; (c) fires or floods; (d) epidemics or quarantine restrictions; (e) strikes or freight embargoes; and (f) unusually severe weather ("Force Majeure Events"). If the failure to timely perform is caused by Supplier's subcontractor and that failure is beyond the control of both of them and without the fault or negligence of either, Supplier will not be

liable for Vigor's re-procurement costs to the extent caused by that failure, unless the supplies or services that subcontractor was to furnish were obtainable from other sources in sufficient time for Supplier to meet the Schedule. Supplier will use diligent efforts to: (a) cure its failure to timely perform; (b) make up or shorten any delay or threatened delay; and (c) ensure the effects of any Force Majeure Event are minimized.

**7. Packing, Shipping, and Delivery.** Supplier will pack all Goods for shipment according to Vigor's instructions or, if there are no instructions, in a manner sufficient to ensure Goods are delivered undamaged. All Goods will be delivered FOB place of destination to the address specified in the Order during normal business hours. Supplier will give written notice of shipment to Vigor when Goods are delivered to a carrier for transportation. Supplier will promptly provide Vigor all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading, and any other documents necessary to release Goods to Vigor. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence, and any other documents pertaining to the Order.

## **8. Changes to Work.**

**8.1** Only the Purchasing Representative may make changes to the Work, and then only to the extent those changes are described on the face of a revision to the Order signed by the Purchasing Representative. No other person has authority to change the Work or to direct Supplier in any way to operate in conflict with this Agreement. Supplier irrevocably waives any claim or action based on any: (a) purported change to the Work not set forth on the face of a signed revised Order; or (b) any assertion that unauthorized changes or directives are binding or enforceable against Vigor.

**8.2** The Purchasing Representative may at any time, in writing, and without notice to any sureties, make changes within the general scope of this Agreement to one or more of the following: (a) the Specifications; (b) method of shipment or packing; (c) place of delivery, inspection, or acceptance; (d) quantities or delivery schedule or both; (e) descriptions of Services to be performed; and (f) place or time of performance of Services ("**Directed Change**"). If a Directed Change causes an increase or decrease in the cost or time required for performing the Work, Supplier may prepare and submit to the Purchasing Representative a written request for adjustment to the Schedule and/or Order price, as applicable ("**Request for Adjustment**") that (a) accounts for all positive and negative cost and time impacts resulting from the Directed Change; and (b) provides reasonable documentary support for the amount of its Request for Adjustment. If Supplier fails to deliver its Request for Adjustment to Vigor within 10 days of the date of a Directed Change, Supplier will be deemed to have waived its right to receive an equitable adjustment to the Order price, Schedule, or both for that Directed Change. If Supplier's Request for Adjustment includes the cost of property made obsolete or excess by a change, Vigor may prescribe the manner of disposition of that property. If the Purchasing Representative accepts a Request for Adjustment, the Purchasing Representative will incorporate the relevant information in a revision to the Order, and will sign and deliver that revised Order to Supplier (a "**Change Order**"), and in that case, this Agreement will be amended accordingly. If the Parties are unable to reach agreement regarding an equitable adjustment to the Order price and/or Schedule in connection with a Request for Adjustment, that disagreement will be resolved pursuant to

Section 35 (Disputes), but nothing will excuse Supplier from diligently proceeding in performing the Agreement as modified by the Directed Change.

**8.3** If, during the course of the Work, Supplier learns its costs or the time necessary to complete the Work will be significantly greater due to Vigor's conduct ("**Perceived Change**"), and if Supplier cannot mitigate that increase without incurring significant additional cost, then Supplier will notify Vigor in writing promptly, and in any event within 10 days of the date on which Supplier becomes aware or reasonably should have become aware of the Perceived Change. That notice must detail Vigor's conduct underlying the Perceived Change, and the positive and negative cost and Schedule impacts resulting from the Perceived Change. If Vigor reasonably determines Supplier is entitled to an adjustment as a result of the Perceived Change, Vigor will issue a Change Order granting an adjustment to price or Schedule as Vigor deems equitable. Supplier waives all entitlement to any adjustment for which Supplier's notice was untimely or incomplete. Work that Supplier performs that is not covered by a Change Order will be at Supplier's risk and expense with no right of financial recourse against Vigor.

**9. Stop Work.** The Purchasing Representative may, at any time, in writing, instruct Supplier to stop all or any part of the Work for up to 100 days ("**Stoppage Period**"). Upon receipt of any such instruction, Supplier will immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by Vigor's instruction during the Stoppage Period. Before expiration of the Stoppage Period, Vigor will either: (a) cancel the stop-work order; (b) terminate the Work covered by the instruction per Section 10 (Convenience Termination) or, if applicable, per Section 11 (Default Termination); or (c) extend the Stoppage Period. If Vigor cancels its instruction in whole or in part, Supplier will promptly resume performing any Work not terminated, and provided Supplier submits a detailed adjustment claim within 10 days, the Purchasing Representative will adjust the Order price and/or Schedule if the Stoppage Period increased the time required for, or Supplier's costs properly allocable to, performance of the Work. Supplier waives all entitlement to any adjustment for which Supplier's notice was untimely or incomplete.

**10. Convenience Termination.** Vigor may terminate all or part of this Agreement at any time without cause by giving Supplier written notice specifying the extent of termination and the effective date. Upon receipt of notice, Supplier will immediately: (a) stop performing the Work as specified in the notice; (b) minimize costs and liabilities for the terminated Work; (c) protect, preserve, and deliver in accordance with Vigor's instructions the Goods, any Production Material (defined below), and any other property related to Vigor in Supplier's possession; and (d) continue to perform any Work not terminated. Supplier will submit a termination settlement proposal to Vigor within 10 days from the effective date of termination. After receipt of Supplier's proposal, Vigor will pay Supplier, an amount Vigor deems reasonably sufficient to reimburse Supplier for its actual, reasonable, substantiated, and allocable costs, plus a reasonable profit for Work satisfactorily performed prior to the effective date of termination. In determining the amount due, Vigor will deduct any advance payments to Supplier, as well as the proceeds of sale of any items acquired or sold by Supplier in connection with this Section and not credited to Vigor. In no event will the amount payable exceed the total Order price as reduced by the amount

of payments previously made and the Order price of Work not terminated. If Supplier fails to timely submit its termination settlement proposal, Vigor may determine, on the basis of information available, the amount, if any, due Supplier because of the termination and will pay that amount and have no further liability to Supplier.

**11. Default Termination.** Vigor may, by written notice, terminate all or part of this Agreement if Supplier fails to: (a) deliver the Goods or perform the Services strictly according to the Schedule; (b) make progress, so as to endanger performance of this Agreement; or (c) perform any other provision of this Agreement ("**Default**"). Vigor's right to terminate will become effective immediately if the Default is incapable of being cured or within 10 days of notice if the Default is capable of being cured and Supplier does not cure it. Any breach of one or more of the following Sections will constitute a Default incapable of cure: 5 (Supplier Representations), 21 (Confidentiality and Information Handling), 24 (Insurance), 31 (Compliance with Laws), 32 (Export Compliance), 33 (Business Ethics), and/or 38 (Publicity and Customer Communications). Additionally, if Supplier becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Vigor may terminate this Agreement upon written notice to Supplier. Supplier will continue all Work not terminated. Upon any termination, Supplier will: (y) transfer title to and deliver, as directed by Vigor, any completed Goods and/or partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and intellectual property and contract rights ("**Production Material**") that Supplier has specifically produced or acquired for the terminated portion of this Agreement; and (z) protect and preserve property in its possession in which Vigor has an interest. In addition, Supplier hereby grants to Vigor a license in and to all intellectual property to which Supplier has an interest, giving Vigor the right, as necessary, to enable Vigor to complete or have completed all Work terminated under this Agreement. Vigor will pay the Order price for completed Work delivered and accepted, less any damages incurred by Vigor as a result of Supplier's Default. If, after termination, it is determined there was not a Default, the rights and remedies of the Parties will be treated as if termination had been carried out according to Section 10 (Convenience Termination).

**12. Survival.** The following Sections will survive and continue in full force and effect after this Agreement expires or is earlier terminated: (a) 15 (Counterfeit Goods), 16 (Warranties), 19 (Taxes), 20 (Records Inspection), 21 (Confidentiality and Information Handling), 22 (Rights in Intellectual Property), 23 (Rights in Tangible Property), 25 (Indemnification), 35 (Disputes), 38 (Publicity and Customer Communications), 40 (Notices), and 41 (Industrial Cooperation); (b) each other provision of this Agreement that expressly or by its nature provides for rights, obligations, or remedies that extend beyond the expiration or earlier termination of this Agreement; and (c) all claims that arose before the expiration or earlier termination of this Agreement.

**13. Quality Control.** Supplier will provide and maintain a quality control system acceptable to Vigor covering the Work and will tender for acceptance only Work Supplier inspected in accordance with that system and found in conformity with this Agreement's requirements. As part of its system, Supplier will

prepare and keep complete records evidencing all inspections made and their results. Supplier will permit Vigor and/or its customer to review Supplier's procedures, practices, processes, and related documents to ascertain Supplier's compliance with this Section. This right of review does not relieve Supplier of its obligations under this Agreement. Supplier will promptly notify Vigor in writing when discrepancies in Supplier's process, including any violation of or deviation from Supplier's quality control system, or Work, are discovered or suspected regarding the Work.

**14. Inspection.** All Work will be subject to inspection and testing at all reasonable times and places, including the premises of Supplier's subcontractors, by Vigor and/or its customer before, during, and after performance and delivery. Supplier will provide reasonable support and access to Vigor in the inspection and test of the Work without additional charge. If the Work does not comply with Supplier's warranties or other requirements of this Agreement, Vigor may require Supplier to replace or correct any nonconforming Goods and re-perform any nonconforming Services without charge. Supplier will not tender for acceptance corrected or rejected Work without disclosing the former rejection and/or corrective action taken. Any approval or inspection of the Work or any procedures, processes, or schedules related to the Work, by Vigor or its customer, will not in any way limit or diminish Supplier's obligations under this Agreement.

**15. Counterfeit Goods.** In this Agreement "Counterfeit Products" means items that are an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mislabeled, misidentified, or otherwise misrepresented to be an authentic product from the original manufacturer or authorized seller. Supplier will: (a) ensure the Goods do not contain any Counterfeit Products; (b) immediately notify Vigor in writing if it becomes aware or suspects that it has furnished Goods containing Counterfeit Products; (c) at Supplier's expense, remove any Counterfeit Products and replace them with authentic items acceptable to Vigor; and (d) provide all documentation Vigor requests authenticating the origin of any parts, components, and materials contained in Goods suspected or known to be Counterfeit Products. Supplier will: (x) establish and maintain an effective system for detecting and avoiding the use of Counterfeit Products; (y) be responsible for all costs relating to the removal and replacement of Counterfeit Products and any necessary re-inspection and/or re-qualifying of any affected Goods; and (y) include equivalent provisions in its contracts with its suppliers for the delivery of items to be used with, included in, or furnished as, Goods.

## **16. Warranties.**

**16.1** Supplier's standard warranties are incorporated in these General Terms and are supplemented by the additional warranties set forth in this Section (each, a "**Warranty**" and collectively, the "**Warranties**"). For Goods, Supplier warrants they will be new and free from defects in design, materials, and worker-ship. If the Goods are or contain software, they will be free from any virus, malicious code, or any code or command intended to impair use of the Goods or any computers/networks. For Services, Supplier warrants they will: (a) comply with the prevailing standards in Supplier's industry; and (b) be performed by Resources (defined below) experienced and skilled in their profession. For all Work, Supplier warrants the Work will (x) be free from: (i) liens and encumbrances; (ii) defects in worker-ship; and (iii) defects in design to the extent the Work was designed by Supplier or its

suppliers; (y) conform to the Specifications; and (z) not infringe or misappropriate any intellectual property right of any third party.

**16.2** The Warranties will: (a) begin upon Vigor's final acceptance of the Work; (b) survive inspection of and payment for the Work; and (c) continue for the longer of the warranty period described in the Order or Supplier's standard warranty period for similar Work, but in no event less than 1 year from the date of Vigor's final acceptance of the Work ("**Warranty Period**"). The Warranties will run to Vigor and its successors, assigns, and customers. Vigor will give Supplier notice of any defects or nonconformities within a reasonable time after discovery. Supplier will, at Vigor's election and without charge, correct or replace any defective Goods and re-perform any defective Services, or provide a refund or credit ("**Remedies**"). Supplier will pay all reasonable expenses of correcting any defective Goods or returning them to Supplier and any redelivery to Vigor of those corrected or replaced Goods. The Warranty Period for any re-performed, corrected, or replaced Work will be extended for a period of time equal to the time that elapsed between Vigor's discovery of the defect and Supplier's re-performance, correction, or replacement of the defective Work. Even if the Parties disagree about the existence of a defect or nonconformity in the Work, Supplier will promptly comply with Vigor's direction to furnish any Remedies. If Vigor later determines Supplier did not breach these Warranties, the Purchasing Representative will make an equitable adjustment to Order price. If Vigor reasonably determines it is impractical for Supplier to provide the Remedies, Vigor or its customer may, after reasonable advance notice to Supplier, perform or have performed that warranty work, and in that case, Supplier will pay or reimburse Vigor or its customer for the reasonable cost of that work.

**17. Invoices.** Supplier will not issue an invoice before physical delivery of the Goods or completion of the Services. All invoices must include: (a) the Order number; (b) a description of the Goods and/or Services provided; (c) the quantity of Goods delivered and/or Services provided; (d) the unit price and the extended total price; (e) the date of shipment, shipping point, and copy of the receipt or bill of lading signed by the carrier; and (f) any supporting documentation Vigor reasonably requests.

**18. Payment.** Vigor will pay Supplier, within 45 days of Vigor's receipt of each undisputed invoice that complies with this Agreement, the prices described in the Order for accepted Goods delivered and Services performed, less any deductions provided for in this Agreement. All sums are payable in United States Dollars. Supplier will promptly repay Vigor any amounts paid in excess of the amounts due Supplier. Vigor may condition its payment on receipt of a release of liens and claims in a format reasonably requested by Vigor or its customer executed by Supplier and each of its suppliers and subcontractors. If Vigor fails to pay any amount when due, any late payment fee will not exceed the Federal funds rate.

**19. Taxes.** Supplier will include in each invoice all federal, state, and local sales and use taxes, ad valorem taxes, value added taxes, tariffs, and duties that Supplier is legally required to collect from Vigor. Supplier will remit to the appropriate governmental authorities any taxes, tariffs, or duties it receives from Vigor or is otherwise obligated to pay.

**20. Records Inspection.** Unless a longer period is specified in this Agreement or required by Law (defined below), Supplier will keep all records related to this Agreement for at

least 3 years after Supplier's receipt of final payment, including financial, proposal, procurement, production, inspection, test, quality process, shipping, and export records. To assess Supplier's compliance with this Agreement, Vigor will have the right, at all reasonable times and with advance notice, to inspect (or to cause its designated representative to inspect) records Supplier is required to keep for as long as those records are kept. Those records will be protected in accordance with Section 21 (Confidentiality and Information Handling).

## **21. Confidentiality and Information Handling.**

**21.1** In connection with this Agreement, either Party ("**Discloser**") may disclose Proprietary Information to the other ("**Recipient**") to use in performing its obligations under this Agreement ("**Purpose**"). In this Agreement, "**Proprietary Information**" means all technical and non-technical information, in any form, made available by Discloser to Recipient that is identified as Proprietary Information by Discloser, including information Recipient or its Representatives (defined below) derive from Proprietary Information. Proprietary Information, even if marked as such, does not include information Recipient can demonstrate through written evidence: (a) was generally available to the public at the time it was communicated to Recipient or thereafter became generally available to the public through no fault of Recipient; (b) was in Recipient's possession free of any confidentiality obligation; (c) was rightfully communicated to Recipient by another person, free of any confidentiality obligation; or (d) was developed by employees or agents of Recipient independently of and without reference to any Proprietary Information.

**21.2** Except as approved in writing by Discloser or otherwise specifically provided in this Agreement, Recipient will: (a) not use Proprietary Information for any purpose other than the Purpose; (b) keep Proprietary Information in strict confidence and not disclose to any third party the existence, source, content, or substance of Proprietary Information; and (c) disclose Proprietary Information only to its employees, independent contractors, agents, or Affiliates (defined below) with a need to know for the Purpose ("**Representatives**"). Recipient acknowledges and agrees that any breach of this Agreement by any of its Representatives constitutes a breach by Recipient. In this Agreement, "**Affiliate**" means any other entity that controls, is controlled by, or is under common control with a Party. Recipient will: (w) safeguard Proprietary Information using not less than the same protections Recipient uses with respect to its own valuable confidential information, and in any event not less than efforts that are customary and reasonable under the circumstances; (x) ensure its Representatives comply with this Agreement; (y) not disassemble, decompile, or reverse engineer the Proprietary Information; and (z) not remove any confidentiality, copyright, or trademark notice, or any other proprietary legend on or in any Proprietary Information.

**21.3** If Recipient is required to disclose any Proprietary Information under any subpoena, interrogatory, request for production, or other compulsory judicial or administrative process, Recipient will immediately notify Discloser so Discloser may seek protection of that Proprietary Information. Only after giving such notice may Recipient disclose that Proprietary Information and then only to the extent Recipient is legally compelled to do so. In addition to timely making any notifications required by law or regulation, Recipient will notify Discloser immediately upon discovery of any unauthorized use or disclosure of Proprietary Information

or any other breach of this Section. Recipient will cooperate with Discloser in every reasonable way to help Recipient regain possession of such Proprietary Information and prevent its further unauthorized use and disclosure. Except as required by law or regulation, Recipient will not disclose to any third party a breach of this Section without obtaining Discloser's prior written consent.

**21.4** Except as otherwise expressly provided in these General Terms: (a) each Party retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Proprietary Information; and (b) the Discloser's disclosure of Proprietary Information will not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to Recipient or any of its Representatives. Except as expressly provided in this Section, Recipient will return to Discloser, or will destroy and irrevocably erase, all Proprietary Information promptly upon Discloser's request and in any event upon completion of the Order, except that Recipient's legal counsel may retain a copy and that Proprietary Information will continue to be subject to this Section. Recipient will not be required to destroy or irrevocably erase any Proprietary Information in its backup systems as long as: (x) Recipient makes no attempt to access that Proprietary Information; and (y) that Proprietary Information has been deleted from all local hard drives and Recipient makes no attempt to recover it. Upon Discloser's request, an officer of Recipient will, under penalty of perjury, certify in writing that Recipient has complied with those obligations.

**22. Rights in Intellectual Property.** In this Agreement, "**IP Rights**" means all intellectual property rights, including patent rights, copyrights, moral rights, trademark rights, trade name rights, service mark rights, trade dress rights, trade secret rights, proprietary rights, privacy rights, and publicity rights, whether or not those rights have been filed, registered or applied for under any statute or are protected or protectable under applicable law. "**Background IP**" means IP Rights in existence before the date of this Agreement or conceived, developed, or first reduced to practice outside the scope of this Agreement. Each Party will retain ownership of its own Background IP. Vigor will exclusively own all IP Rights developed with respect to, or for incorporation into, the Goods and/or Services, that are either developed by Vigor alone, by Vigor and Supplier jointly, or by Supplier or its Resources in performing the Work under this Agreement separate from Vigor ("**Foreground IP**"). To the extent any Foreground IP consists of copyrightable works or works of authorship (including computer programs, technical specifications, documentation, drawings, designs, and manuals), the Parties agree those works are "works made for hire" for Vigor under U.S. Copyright law. For all other Foreground IP, Supplier assigns to Vigor exclusively, without any compensation other than as described in the Order, all present and future right, title, and interest in and to that Foreground IP, and they and their related benefits will immediately and automatically be the sole and absolute property of Vigor. Upon Vigor's request and at Vigor's cost, Supplier will execute and deliver to Vigor all documents necessary to perfect Vigor's right, title, and interest in and to any Foreground IP, both domestically and abroad. Supplier irrevocably designates and appoints Vigor and its duly authorized agents as Supplier's attorney-in-fact, to act for and in its behalf to execute and file those documents if Vigor is unable, after reasonable effort, to secure Supplier's assistance for any reason. Supplier will only use Foreground IP to produce Goods

and perform Services for or on behalf of Vigor. Supplier grants Vigor an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to grant sublicenses, to use Supplier's Background IP to the extent reasonably necessary for Vigor to: (a) exploit its rights in Foreground IP; and (b) perform the Order and any higher-tier contract to which it relates.

**23. Rights in Tangible Property.** All drawings, tools, jigs, dies, fixtures, materials, and other property supplied or paid for by Vigor will be and remain Vigor's property ("**Vigor Property**"). Supplier will use Vigor Property only in performing the Work and will return it to Vigor upon request. Supplier will not furnish Goods made in accordance with Vigor's specifications and drawings to any other person. Supplier will: (a) maintain all Vigor Property and all property to which Vigor acquires an interest by this Agreement and be responsible for all loss or damage to that property except for normal wear and tear; (b) within 2 working days, report to Vigor the loss, theft, damage, destruction of any such property, or if any such property is found to be malfunctioning or otherwise unsuitable for use; and (c) determine and report the root cause and all pertinent facts as soon as they become known, and corrective action taken to prevent recurrence, at no additional cost to Vigor. Supplier will clearly mark, maintain in inventory, and keep segregated or identifiable all Vigor Property.

**24. Insurance. Without limiting Supplier's other obligations under this Agreement, including any indemnification obligations, Supplier will at all times, at its own expense, maintain and ensure each of its subcontractors maintain in effect all insurance necessary to meet Vigor's standard insurance requirements at [HTTP://VIGOR.NET/CONTACT/SUPPLIER-RESOURCES](http://VIGOR.NET/CONTACT/SUPPLIER-RESOURCES), as well as any additional insurance requirements specified in the Order.**

## **25. Indemnification.**

**25.1** In this Agreement, "**Loss**" or "**Losses**" includes: (a) all reasonable attorney fees paid or payable by an Indemnitee (defined below) in defense of any claim subject to indemnification under this Section, whether prior to, at trial or any other proceeding and in any appeal, or other post judgment proceeding; and (b) all direct losses and damages and all incidental, consequential, punitive, and exemplary damages paid or payable to any other person, including for property damage, personal injury, sickness, and death; (c) all interest, costs, fines, taxes, premiums, assessments, penalties, and expenses; and (d) all other liabilities of any kind or nature.

**25.2** Supplier will indemnify, defend, and hold harmless Vigor, its affiliates and their respective officers, directors, owners, employees, agents, and customers ("**Indemnitees**") from and against all Losses arising from or relating to Supplier's (or, if applicable, its Resource's): (a) furnishing of Work that infringes or misappropriates any third-party IP rights; (b) willful, fraudulent, or negligent act or omission; (c) breach of any representation, warranty, or covenant in this Agreement; (d) violation of any applicable law or regulation; or (e) employees, principals, contractors, or subcontractors asserting claims that they are employees of Vigor; in each case, whether arising from or in connection with a demand, action, regulatory action, lawsuit, proceeding (including proceedings under the US Bankruptcy Code), judgment, settlement, appeal, or other post judgment proceeding and whether asserted in contract, tort, strict liability, or otherwise.

**25.3** The indemnification obligations described in this Section will not apply to a Loss to the extent caused by Vigor's: (a) negligent acts or omissions; (b) breach of its representations, warranties, or covenants in this Agreement; (c) intentional misconduct; or (d) violation of any applicable law. In addition, Supplier's infringement indemnification obligations will not apply to a Loss to the extent caused by Vigor's modification of the Work other than modifications contemplated by the Parties.

**25.4** Supplier's duty to indemnify Vigor under this Agreement is subject to Vigor: (a) promptly notifying Supplier of the Loss (except Vigor's failure to promptly notify Supplier will not limit, impair, or otherwise affect Vigor's rights under this Section unless Supplier is prejudiced by that failure, and then only to the extent of the prejudice); and (b) giving Supplier full and complete authority (including settlement authority) and reasonable assistance (including reasonable access to information in Vigor's possession) for the defense; provided, however, Supplier will not settle any claim without Vigor's prior written consent unless that settlement includes a full and final release of all claims against Vigor, does not impose any obligations on Vigor, and does not admit fault or guilt by Vigor.

**25.5** Without limiting Vigor's other rights, if all or any part of the Work is held to be infringing and its use is enjoined, Supplier will, at its own expense obtain a license for Vigor and its customer to continue using the Work, and pay on their behalf any fee that may be charged in connection with that license. If a license cannot be obtained on commercially reasonable terms, Supplier will modify or replace the Goods, or re-perform the Services, so they become non-infringing while giving substantially equivalent performance.

**26. LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF USE, OR EQUIPMENT DOWN TIME), REGARDLESS OF THE LEGAL THEORY UNDER WHICH THOSE DAMAGES ARE SOUGHT, AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. THE PRECEDING LIMITATION WILL NOT APPLY TO: (A) AMOUNTS PAID OR PAYABLE BY A PARTY UNDER ANY INDEMNITY PROVISION IN THIS AGREEMENT AND RELATED DEFENSE COSTS; (B) AMOUNTS THAT ARE COVERED BY THE INSURANCE A PARTY IS REQUIRED TO CARRY UNDER THIS AGREEMENT; (C) DAMAGES ARISING OUT OF A PARTY'S BREACH OF ITS REPRESENTATIONS AND WARRANTIES, SECTION 21 (CONFIDENTIALITY AND INFORMATION HANDLING), 29 (ACCESS TO INFORMATION SYSTEMS), 31 (COMPLIANCE WITH LAWS), 32 (EXPORT COMPLIANCE), AND 38 (PUBLICITY AND CUSTOMER COMMUNICATIONS); AND (D) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT.

**27. Supplier's Resources.** In this Agreement "**Resources**" means individuals who perform Services, including employees and independent contractors of Supplier and of Supplier's subcontractors. Supplier will: (a) ensure each of its Resources has all permits, licenses, work authorizations, and has passed all security screenings required to perform the Work; (b) select and supervise the performance of Resources; (c) use best efforts not to reassign Resources before completion of the Work; (d) use only adequately trained Resources; and (e) maintain a sufficient labor pool to complete the Work in accordance with the Schedule. Neither Supplier nor its Resources: (y) are or will be employees of Vigor, and nothing in this Agreement creates or is intended to create any employment or other relationship between Vigor and those Resources; and

(z) will be eligible to participate in or receive any benefit from any benefit plan or program available to Vigor's employees. Vigor will not provide workers' compensation coverage for Supplier or its Resources, and will not withhold or pay any federal, state, or local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance, workers' compensation insurance, or other employment benefit taxes or assessments on account of Vigor's payments to Supplier under this Agreement.

**28. Access to Locations.** Supplier will ensure Supplier and its Resources who work at any location owned or controlled by Vigor or its customer will at all times: (a) comply with the relevant safety and security guidelines for that location; (b) keep the premises free from debris and unsafe conditions; (c) take reasonable precautions to protect Supplier's equipment and other personal property, and the personal property of others, from damage caused by Supplier's operations; and (d) comply with Vigor's drug- and alcohol-free work environment policies and programs. Supplier acknowledges that the Work may at times require the joint occupancy, by Supplier and others who are also working on a project, of the job site or other facilities. Supplier will coordinate its Work with Vigor's work and the work of Vigor's other subcontractors and customer's contractors. Supplier will immediately advise Vigor of any unreasonable interference by Vigor or others.

**29. Access to Information Systems.** If Supplier or any of its Resources access Vigor's or its customer's information system, Supplier agrees Supplier and those Resources will: (a) do so only for the purpose of performing the Work for the benefit of Vigor; (b) not access any information that is confidential or proprietary to Vigor or its customer, or any of their respective affiliates, unless Supplier or those Resource have a "need to know" in order to perform the Work; (c) not disclose any of that confidential or proprietary information to any other person other than to Vigor and/or Supplier's other Resources with a "need to know" in order to perform Supplier's obligations under this Agreement; (d) not knowingly introduce any viruses, worms, time bombs, time locks, drop dead devices, traps, access codes, trap door devices, or any other code that is designed to disrupt, disable, erase, alter, harm, or otherwise impair Vigor or customer, or their respective information systems; and (e) not surreptitiously collect, transfer or disseminate information about Vigor's or customer's use of the Work, or about Vigor or its customer, or their affiliates, customers, suppliers, employees, or businesses.

**30. Non-Assignment.** Supplier will not assign any right or subcontract or otherwise delegate any duty under this Agreement, whether by transfer, merger, operation of law, or otherwise, without the Purchasing Representative's prior written consent. A change in control (voting or otherwise) of Supplier, or its direct or indirect parent at any tier, will be deemed an assignment for purposes of this Section. Vigor may grant, withhold, or condition its consent to assignment or delegation in its sole discretion. If Vigor authorizes an assignment or delegation, that authorization will not release Supplier from any of its obligations under this Agreement unless: (a) that authorization expressly releases Supplier; (b) the assignee or delegate agrees in writing to be bound by this Agreement for the benefit of Vigor; and (c) any agreement between Supplier and the assignee or delegate states that Vigor has the right to enforce Supplier's rights against the assignee or delegate. This Agreement will bind and inure to the benefit of each Party and its permitted successors, assigns, and delegates.

**31. Compliance with Laws.** Supplier has and will at all times comply, with all applicable federal, state, and local laws, ordinances, regulations, and executive orders (“**Laws**”) in connection with its execution, delivery, and performance of this Agreement, including all Laws concerning trade controls, anti-corruption, protecting human rights, anti-boycott compliance, conflict minerals, equal employment opportunity, occupational safety and health, taxes, environmental compliance, and hazardous substance controls. **SUPPLIER WILL ABIDE, AND WILL ENSURE THAT EACH OF ITS SUBCONTRACTORS ABIDE, BY THE REQUIREMENTS OF 41 CFR §§ 60-1.4(a), 60-300.5(a) AND 60-741(a), WHICH PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. THESE REGULATIONS REQUIRE COVERED PRIME CONTRACTORS AND SUBCONTRACTORS TO TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.**

**32. Export Compliance.** If Supplier engages in the United States in the business of either manufacturing, exporting, or brokering in ITAR-controlled defense articles or furnishing ITAR-controlled defense services, Supplier hereby certifies it has registered with the U.S. Department of State Directorate of Defense Trade Controls (DDTC). Supplier will control the disclosure, export, re-export, transfer and retransfer of, and access to, any hardware, software, controlled technical data, technology, and/or services (“**Items**”) received or produced under this Agreement to ensure that any such conduct is undertaken in accordance with U.S. export control laws and regulations. Before furnishing any Item subject to the EAR or ITAR, Supplier will provide written notice of the export classification of that Item. Supplier warrants that neither Supplier and its Resources, nor any of their parents, subsidiaries, affiliates, or lower-tier suppliers are listed on any restricted-party list of any agency of the U.S. Government, any international organization, or any state or local, nor are their export privileges denied, suspended, or revoked. Supplier will immediately notify Vigor of any change in such status of Supplier or its Resources.

**33. Business Ethics.** By its acceptance of this Agreement, Supplier represents it has not participated in any conduct in connection with this Agreement that violates Vigor’s Supplier Code of Conduct. That Code is available at <http://vigor.net/contact/supplier-resources>. If, at any time, Vigor determines that Supplier or its Resources have violated that Code, Vigor may cancel this Agreement upon written notice to Supplier and have no further obligation to Supplier.

**34. Customer Contract Provisions.** If the Order is placed in support of a contract between Vigor and its customer (“**Prime Contract**”), each provision of the Prime Contract applicable to this Agreement is incorporated herein to the extent delineated by any set of “**Customer Contract Provisions**” document separately referenced on the face of the Order. In addition, if the Prime Contract is a U.S. Government prime contract or subcontract at any tier, then Vigor’s “**General U.S. Government Flow-Down Provisions**” document is also incorporated into this Agreement. Visit <http://vigor.net/contact/supplier-resources>.

**35. Disputes.** Any dispute between the Parties arising out of or relating to this Agreement will be governed by the laws of the State of Washington, USA, without regard to its conflicts of laws principles. The United Nations Convention on Contracts for

the International Sale of Goods will not apply to this Agreement. Supplier irrevocably: (a) consents to the jurisdiction of the state and federal courts for Clark County in the State of Washington in connection with all actions arising out of this Agreement; (b) waives any objections that those venues are an inconvenient forum; and (c) will not initiate any action against Vigor in any other jurisdiction; provided, however, if the ordering entity identified on the face of the Order is Vigor Alaska LLC, then this sentence will be read to establish jurisdiction and venue in the Municipality of Anchorage in the State of Alaska. The prevailing Party in any legal proceeding, including a bankruptcy proceeding, or in any appeal, will be entitled to recover its reasonable attorney fees, costs, charges, and expenses from the other Party. Pending resolution of any dispute, Supplier will carry on the Work according to Vigor’s instructions, and if it does, Vigor will continue to make payments in accordance with this Agreement.

**36. Injunctive Relief.** Supplier acknowledges that its breach of Sections 21 (Confidentiality and Information Handling), 22 Rights in Intellectual Property), 23 (Rights in Tangible Property), 29 (Access to Information Systems), and 38 (Publicity and Customer Communications) will irreparably harm Vigor, and such harm will not be susceptible to accurate measurement for the purpose of calculating money damages. Accordingly, Vigor, in addition to seeking and recovering money damages and other remedies available at law, will have the right to obtain an injunction or other equitable relief to prevent a breach or threatened breach of such sections, without the necessity of posting a bond or other security.

**37. No Election of Remedies.** All remedies are cumulative and are in addition to any other remedies Vigor may have at law or in equity. Remedies may be exercised concurrently or separately, and the exercise of any remedy will not be deemed to constitute an election of that remedy to the exclusion of any other remedy. All claims for money due from Vigor to Supplier will be subject to setoff, recoupment, or deduction for claims Vigor may have arising from this or any other transaction with Supplier.

**38. Publicity and Customer Communications.** Supplier will not, without the express written consent of Vigor’s Director of Public Relations (which if granted, may be revoked at any time): (a) disclose to any person (other than its lenders, lawyers, and business advisors) the existence or monetary value of this Agreement; (b) make any public announcement regarding Supplier’s association with Vigor, its customer, or the project to which the Order pertains; (c) use Vigor’s name or any Vigor trademark, service mark, logo, or copyright protected work (whether or not registered) in any of Supplier’s promotional materials, marketing activities, or elsewhere; (d) identify Vigor on Supplier’s customer list or website (or on any other person’s website that identifies Supplier) or in any metatags or key words for those websites; or (e) include a hyperlink from any website maintained by Supplier to any Vigor website. Supplier will not contact or communicate with Vigor’s customer in connection with the Work or the project to which the Order relates without obtaining Vigor’s prior written consent.

**39. Independent Contractors.** Nothing in this Agreement creates between the Parties: (a) a joint venture or partnership; (b) a relationship of principal and agent or employer and employee; (c) or any other relationship of a similar nature. Each Party is an independent contractor. Neither Party will represent the other in any capacity, bind the other to any contract, or create or assume any obligation on behalf of the other for any

purpose whatsoever, except as expressly authorized by this Agreement.

**40. Notices.** Other than routine communications, which may be sent by email, each other notice, consent, request, or other communication required or permitted under this Agreement will be in writing, will be delivered personally or sent by certified mail (postage prepaid, return receipt requested), e-mail (with electronic confirmation of receipt and a confirmation hard copy sent by regular mail no later than the following business day) or by a recognized U.S. overnight courier, and will be addressed to the receiving Party at the address for that Party on the Order. Notices to Vigor under Sections 15 (Counterfeit Goods), 21 (Confidentiality and Information Handling), and 32 (Export Compliance) must be delivered by email to general.counsel@vigor.net with electronic confirmation of receipt and a confirmation hard copy sent by a recognized U.S. overnight courier no later than the following business day to Vigor Industrial LLC, Attention: General Counsel, 5555 N. Channel Avenue, Building 71, Portland, OR 97217 USA. Each Party may change its address for purposes of this Agreement by giving written notice to the other Party in the manner described above.

**41. Industrial Cooperation.** Supplier agrees to identify and retain for Vigor's use any rights to industrial cooperation and offset credits generated by its suppliers and subcontractors arising out of or resulting from this Agreement. Supplier will: (a) provide a copy of each purchase order or subcontract placed with a foreign source under this Agreement in support of Vigor's rights to these credits; (b) execute all necessary documents to evidence Vigor's right to use or assign any such credits; and (c) include the substance of this Section, in favor of Vigor, in its subcontracts issued at all tiers pursuant to this Agreement.

**42. Waiver.** Vigor's delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement. Vigor's waiver of any right granted under this Agreement on one occasion will not: (a) waive any other right; (b) constitute a continuing waiver; or (c) waive that right on any other occasion.

**43. Severability.** If any court, arbitrator, or arbitration panel finds any provision of this Agreement to be invalid or otherwise unenforceable, that provision will be modified to the extent necessary for it to be enforceable. However, that finding will not affect the validity of any other provision, and the rest of this Agreement will remain in full force and effect unless enforcement of this Agreement as modified would be grossly inequitable under all of the circumstances or would frustrate the primary purposes of this Agreement.

**44. Third Parties.** Nothing in this Agreement is intended to: (a) benefit any person other than the Parties and Vigor's customer; or (b) give any third persons any right to enforce this Agreement.

**45. Interpretation.** Both Parties have had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms. Caption headings are for convenience of reference only and will not in any way limit or otherwise affect the provisions of any section. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The words

"business day" or "working day" mean Monday through Friday except for federal holidays. Any other reference to a "day" means a calendar day. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, cooperatives, associations and other natural and legal persons. The words "will," "shall," and "must" are synonyms, and each refers to action that is mandatory rather than optional. To the extent any provision in this Agreement conflicts with any of the other Agreement documents, the conflict will be resolved by reference to those documents, as applicable, in the following order of priority: (a) the Customer Contract Provisions; (b) the General U.S. Government Flow-Down Provisions; (c) amendments to these General Terms made strictly in accordance with Section 3 (Amendments to General Terms); (d) terms of any master agreement signed by authorized representatives of both Parties and separately referenced on the face of the Order; (e) terms of any Vigor standard set of supplemental terms separately referenced on the face of the Order; (f) these General Terms; (g) Specifications; and (h) other exhibits and attachments.

*[End of General Purchase Order Terms and Conditions—  
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