

## CARRIER CORPORATION

### STANDARD TERMS AND CONDITIONS OF PURCHASE (COMMERCIAL-U.S.)

- 1. CONTRACT OF PURCHASE.** Subject to the terms and conditions stated herein and on the order (including all drawings, specifications and other documents attached to or referred to in the order), Supplier agrees to sell and Buyer agrees to purchase from Supplier, the goods and/or services described in the order. Supplier shall acknowledge receipt and acceptance of each order or release within three (3) business days; however, if for any reason Supplier shall fail to return to the Buyer the signed acknowledgement copy of the order, any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter of the order shall constitute unqualified acceptance by Supplier of the order and all of its terms and conditions, including the terms herein. The terms of the order, including the terms herein, shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may be modified only by written instrument executed by the authorized representatives of both parties. Any terms proposed by the Supplier which add to, vary from or conflict with the terms of the order, including the terms herein, are hereby objected to. If the order has been issued by Buyer in response to Supplier's offer, and if any of the terms on the order or herein are additional to or different from the terms of such offer, then the issuance of the order by Buyer shall constitute an acceptance of such offer, subject to the express condition that the terms of the order and the terms herein constitute the entire agreement between Buyer and Supplier with respect to the subject matter hereof and the subject matter of such offer. Further, Supplier shall be deemed to have so assented and acknowledged unless Supplier notifies Buyer to the contrary in writing within (7) calendar days of receipt of the order. Any reference by Buyer to Supplier's proposal is solely for the purpose of incorporating the description and specifications of the goods and/or services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of the order.
- 2. PRICE.** The price for the goods and/or services shall be the price as shown on the order. The Supplier warrants that the agreed price is not less favorable than that currently extended to any other buyer for the same or like goods in equal or lesser quantities.
- 3. TAXES.** Unless exempt therefrom, all duties and taxes which Supplier is required by law to collect from Buyer are included in the price stated on the order; any such items included in the prices or otherwise payable by Buyer shall be separately identified on Supplier's invoice.
- 4. INVOICES.** Unless otherwise agreed in writing, invoices are paid net seventy-five (75) days from date of receipt of the goods or completion of any required services, and not on the basis of Supplier's invoice date. Seller shall issue invoices in accordance with the foregoing sentence. All invoices must contain the following information: purchase order number, item number, description of items, sizes, quantities, unit prices. Payments of invoices shall be subject to adjustment for

shortages, defects and other failures of Supplier to meet the requirements of the order. Buyer's tender of payment by check is sufficient, provided such check is honored, upon presentment by the "Payor Bank." Buyer shall have the right to reduce and set-off against amounts payable hereunder any indebtedness or other claims which Buyer may have against Supplier however and whenever arising.

5. **DELIVERY.** Unless otherwise agreed in writing, the goods shall be delivered to Buyer assembled, completed, and ready for use, and the Buyer shall accept delivery of such goods or performance of any required services at the location designated on the order. The obligation by Supplier to meet the delivery or performance date is material; time is of the essence. Upon request, Supplier shall give Buyer advance notice of when shipments will be made. Delivery of goods or performance of any required services is not complete until goods or services have been actually received and accepted by Buyer.
6. **EXCUSABLE DELAY.** Supplier shall not be deemed to be in default on account of delays in the delivery of goods or in the performance of services to the extent it is beyond Supplier's control and not occasioned by Supplier's fault or negligence, provided that promptly upon the occurrence of any event which may result in a delay, Supplier shall give notice thereof to Buyer, which notice shall identify such occurrence and specify the period of delay which may be reasonably expected to result therefrom. In the event delivery of the goods or performance of services shall be delayed due to any cause beyond Supplier's control and not occasioned by Supplier's fault or negligence for a period of more than thirty (30) days after the end of the calendar month in which delivery is otherwise required, Buyer shall have the option to terminate the order upon written notice given to the Supplier within five (5) business days after the expiration of such thirty (30) day period, and such termination shall discharge all obligations and liabilities of the parties hereunder with respect to undelivered goods, services, data or other items to be furnished hereunder.
7. **WARRANTY.** Supplier warrants to Buyer and its affiliates, its successors, assigns, customers, and users of the goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) with regard to goods designed by Supplier, free from defects in design; (v) in compliance with all applicable specifications, drawings, and performance requirements; (vi) fit for the purpose intended; (vii) free from liens and encumbrances on title; and (viii) free from infringement of third party intellectual property. Delivery, inspection, test, acceptance or use of, or payment for the goods furnished hereunder shall not affect Supplier's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use. If defects are identified before shipment to Buyer's customer, and provided Buyer elects to provide Supplier with the opportunity to make the repair or provide the replacement, Supplier agrees, at Buyer's option, to correct defects in or replace any goods not conforming to the foregoing warranty promptly, but in no event, will repair or replacement and delivery be completed more than ten (10) days from notice of such nonconformity by Buyer. A written notice specifying that such goods are corrections or replacements shall accompany deliveries of corrected or replaced goods. In the event that Supplier fails to correct defects in or replace nonconforming goods promptly, Buyer, after

reasonable notice to Supplier, shall have the right to correct or replace such goods and charge Supplier for the cost incurred by Buyer in doing so, such right to include, without limitation, Buyer's right to deduct or offset. If defects are identified after shipment to Buyer's customer, goods may be scrapped, retained, or held for Supplier's disposition, at the discretion of Buyer's customer. Supplier shall promptly reimburse Buyer for any expenses or damages incurred by Buyer regardless of the nature of such expenses or damages as a result of or relating to Supplier's failure to comply with (i)–(viii) above, including but not limited to repair, replacement, rework, removal and reinstallation costs, shipping costs, production delays, payment withholds, field service costs, recall costs, and costs of filing and complying with legal and regulatory requirements, including but not limited to those of agencies such as the Consumer Product Safety Commission. If services or technical data are to be provided by Supplier hereunder, Supplier warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner and in compliance with Buyer's instructions or other requirements. Supplier further warrants that it has the requisite power, authority and ability to execute, deliver and perform its obligations hereunder. Upon request by Buyer, Supplier shall provide Buyer with financial data demonstrating that Supplier is financially stable and capable of performing hereunder, provided that Supplier shall not provide any information to Buyer in violation of any applicable laws (including securities laws restricting disclosure of "insider information").

- 8. QUALITY OF GOODS AND SERVICES.** Any order for goods is subject to the requirements contained in the Carrier Supplier Quality Manual ("CSQM"), which is incorporated herein by reference. The CSQM is located on the Carrier Corporation website at:

[http://www.corp.carrier.com/StaticFiles/Carrier.com/Carrier%20Corporate%20Sites%20Content/Corporate-English/Files/Suppliers/SupplierTools/Supplier\\_Quality/Supplier%20Quality%20Manual.pdf](http://www.corp.carrier.com/StaticFiles/Carrier.com/Carrier%20Corporate%20Sites%20Content/Corporate-English/Files/Suppliers/SupplierTools/Supplier_Quality/Supplier%20Quality%20Manual.pdf)

Supplier acknowledges receipt, review and acceptance of the CSQM. Buyer reserves the right at its discretion to revise or amend the CSQM at any time, and Supplier agrees that any such revised or amended CSQM, as posted on the Carrier Corporation website or otherwise made available to Supplier, shall be binding on the order and Supplier. All goods sold by Supplier to Buyer pursuant to the order shall conform to Buyer's quality standards and requirements set forth in any specifications, drawings, samples or other document upon which the order is based. Prior to delivery, Supplier shall inspect and test the goods for quality in compliance with the order. The Supplier shall keep records of all such quality inspections and tests and, if so requested by Buyer, supply Buyer with copies of such records. Buyer, without prejudice to any other rights or remedies, including the right to inspect goods after delivery, shall have the right at all times to inspect and test the goods during manufacture or processing or while stored under Supplier's control. Supplier shall not make any changes during the term of the order in the quality, in the location of manufacture, or in Supplier's processes related to the goods without prior notification to and written acceptance of such changes by the Buyer. Any accepted changes shall become the controlling standard of quality for the remaining term of the order.

- 9. INDEMNIFICATION.** Supplier covenants and agrees at all times to protect, hold harmless and indemnify Buyer, its parent, its affiliated companies, and their respective directors, officers, employees, successors and assigns (“Buyer Indemnitees”) from and against any and all losses, costs and expenses arising from a breach of this agreement by Supplier, and from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against any Buyer Indemnitee, or by such other parties by or on account of any person, persons, or entities, or on account of any injuries received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of a breach of this agreement, defects in the design, manufacture, or materials used in the goods, negligence in the manufacture, or provision of the goods supplied, or performance of the services hereunder. If directed by Buyer, Supplier shall take upon itself the defense and/or settlement of all such claims and the defense of any suit, suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments entered in such suit, suits or legal proceedings, and all attorneys fees and other expenses. Supplier agrees that in any instance where such claims in any way affect Buyer’s interest under the order or otherwise, Supplier shall not consummate any settlement without Buyer’s prior written consent. Supplier’s covenants of indemnity herein shall continue in full force and effect notwithstanding the termination or expiration of the order.
- 10. PATENT INDEMNIFICATION.** Supplier will indemnify and hold Buyer Indemnitees harmless from and against all liability and expenses, including attorneys’ fees, arising from actual or claimed infringement or violation of patent, trademark, or copyright, including, but not limited to, improper, false, and/or invalid patent, trademark, and/or copyright markings, misappropriation of trade secrets, breach of confidential relationship, or other rights occasioned by the manufacture, sale or use of the goods and/or services provided under the order.
- 11. INSPECTION AND ACCEPTANCE.** Buyer may inspect all goods at any time, including during manufacture at the Supplier’s facility. Such inspection may at Buyer’s option include confirmation of Supplier’s compliance with all requirements of the order. At no additional cost to Buyer, Supplier will permit Buyer and/or its designees access to Supplier’s facilities at all reasonable times and will provide all tools, facilities and assistance reasonably necessary for such inspection and/or confirmation. All goods are subject to final inspection and acceptance at any time after delivery to Buyer. Buyer, without prejudice to any other rights or remedies, shall have the right to reject defective goods and, at Supplier’s risk (notwithstanding the terms of delivery) and expense, return the same to Supplier or dispose of the same according to Supplier’s instructions. Payment or transfer of title shall not constitute acceptance. Buyer may return any non-conforming goods to Supplier for reimbursement, credit, replacement or correction as Buyer may direct, or Buyer may correct and/or replace such goods at Supplier’s expense. If Supplier fails to correct or replace non-conforming goods, per Buyer’s direction, in a timely manner, Buyer may cancel the order as to all such goods, and in addition, may cancel the then remaining

balance of the order. Any goods rejected by Buyer will be held by Buyer temporarily at Supplier's risk and expense. Supplier will not tender goods for acceptance unless any former rejection or requirement of correction is disclosed. Supplier will reimburse Buyer for any packaging, handling and transportation costs Buyer incurs with respect to rejected goods. Buyer may revoke its acceptance of goods at any time, whether or not a substantial modification to the goods has been made, if Buyer finds a previously undiscovered defect in the goods which substantially impairs the value of the goods to Buyer.

- 12. BUYER'S CHANGES.** Buyer shall have the right at any time prior to the delivery date of the goods or services to make changes in drawings, designs, specifications, packaging, time and place of delivery, nature and duration of services, and method of transportation. Within ten (10) days after receipt of a change notice, Supplier shall notify Buyer of its proposed pricing for the change, including a cost breakdown and substantiation for the change, whether by way of increase or decrease, and the parties shall negotiate an equitable adjustment in the corresponding prices.
- 13. CANCELLATION/TERMINATION.** In addition to its other rights hereunder, Buyer reserves the right to cancel the order or any part thereof without further cost or liability if Supplier breaches any of the provisions of this agreement, or if Supplier becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or the relief of debtors. Buyer further reserves the right to terminate the order or any part thereof for the sole convenience of the Buyer. If such termination right is invoked, all reasonable costs incurred up to the date of termination will be reimbursed, provided Supplier establishes an entitlement thereto.
- 14. ASSIGNMENT.** No right or interest in this contract shall be assigned by either party to the order without the written permission of the other party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes. The assignor shall remain liable for performance notwithstanding the approval of an assignment. Any person or entity to which the order is assigned pursuant to the provisions of Bankruptcy Code 11 U.S.C., Section 101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under the order on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Buyer an instrument confirming such assumption.
- 15. BUYER'S PROPERTY.** All tools, equipment dies, gauges, models, drawings or other materials furnished by the Buyer to Supplier or made by Supplier for the purpose of the order or paid for by the Buyer, and all replacements thereof and materials fixed or attached thereto, shall be and remain the property of the Buyer. All Buyer's property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Supplier as "Property of Carrier Corporation" (or as otherwise directed by Buyer), and will at Supplier's expense be safely stored (separate and apart from Supplier's property whenever practicable) and will be kept free of all liens, claims, encumbrances and interests of third parties. Supplier will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in filling the orders of

Buyer. Upon completion of the order, or upon the written request of Buyer at any time, Supplier will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted. Buyer shall have the right, at all reasonable times upon prior notice, to enter Supplier's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any Buyer's property. Supplier shall have such responsibility for Buyer's property as is chargeable to Supplier by law by reason of its position as a bailee.

**16. BUSINESS ETHICS.** Supplier shall adopt and comply with a policy statement or code of conduct regarding business ethics ("Code"). This Code will be suitable for Supplier's business and as a minimum will require compliance with all applicable laws and regulations. The Code shall assure a safe and healthy work environment, prohibit the use of child or forced labor, provide for the protection of the environment and minimization of waste, emissions, energy consumption and the use of materials of concern and prohibit engagement in corrupt practices (e.g. facilitating, offering or paying any bribe). This provision creates no additional duties for Buyer with respect to Supplier and confers no rights on third-parties. ADDITIONALLY, SUPPLIER SHALL COMPLY, AND TAKE REASONABLE STEPS TO INSURE THAT ITS SUPPLIERS AND SUBCONTRACTORS COMPLY, WITH BUYER'S SUPPLIER CODE OF ETHICS, WHICH IS INCORPORATED HEREIN BY REFERENCE. The Buyer's Supplier Code of Ethics is located on the Carrier Corporation website at: <http://www.corp.carrier.com/vgn-ext-templating-carcom/v/index.jsp?vnextoid=21a85adc4bc05210VgnVCM1000009e81000aRCRD> Supplier warrants that it has not, and will not, either directly or indirectly, offer or give to any employee or representative of Buyer, or any third party, any gift, entertainment, gratuity, money or other thing of value, with a view toward influencing such person in connection with any order of Buyer. Any breach of this provision or Buyer's Supplier Code of Ethics shall constitute a material breach of each and every contract between Buyer and Supplier.

**17. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION.**

(A) "Confidential Information" and/or "Proprietary Information" (hereinafter referred to collectively as "Proprietary Information") shall, for the purpose of this agreement, mean: (i) information, knowledge or data disclosed by Buyer to Supplier, regardless of whether disclosed in written, tangible, oral, visual or other form and (ii) information, knowledge or data which was obtained from facility visits. In the event Buyer furnishes sample products, equipment, or other objects or material, including software, to Supplier, the items so received and any information contained therein shall be treated as Proprietary Information disclosed to Supplier under this agreement. Furthermore, any and all information obtained or derived from said items, including results from testing, shall be treated as if they were Proprietary Information disclosed pursuant to this agreement. All Proprietary Information disclosed in any documentary or tangible form, whether in written or electronic form may be marked "Proprietary" or "Confidential" and if the Proprietary Information is not so identified, it will be considered proprietary if by its very nature or the circumstances under which it is disclosed one would reasonably consider it to be proprietary. Supplier shall use Buyer's Proprietary Information solely for the purposes of supporting the

current business relationship with Buyer and not for any other purpose. Supplier shall not disclose Buyer's Proprietary Information to any third party without Buyer's express written consent. Supplier may disclose Buyer's Proprietary Information to contract workers, consultants and agents of Supplier who have a need to know and who have executed agreements with Supplier obligating them to treat such information in a manner consistent with the terms of this agreement. Supplier shall not (a) sell Buyer parts or components incorporating or containing Buyer Proprietary Information to any third party, or (b) sell any goods to any third party which have been produced using Buyer Proprietary Information.

(B) Notwithstanding the foregoing provisions, this agreement shall not restrict or affect Supplier's rights to use or disclose information: (1) which is or may hereafter be in the public domain through no fault of Supplier; or (2) which Supplier can show, as reflected by its written documents, was known to it prior to the disclosure by Buyer; or (3) which is disclosed to Supplier by a third party, without restrictions similar to those herein imposed, subsequent to disclosure by Buyer; or (4) which Supplier can show, as reflected by its documents, was independently developed by Supplier without the use of the Proprietary Information.

#### **18. INTELLECTUAL PROPERTY.**

(A) Property, Supplier Property and Background Property. All inventions, patents, copyrights, trade secrets, know-how or other industrial or intellectual property arising from or incorporated in work performed by Supplier in the design and development of goods pursuant to this agreement (hereinafter "Property") shall be and remain the property of Supplier if and only to the extent that such work was funded entirely by Supplier without the use of Buyer Proprietary Information or other resources of Buyer (hereinafter "Supplier Property"). All inventions, patents, copyrights, trade secrets, know-how or other industrial or intellectual property used in the goods, but owned by Supplier prior to entering into this agreement (hereinafter "Background Property") shall be and remain the property of Supplier. Supplier shall grant to Buyer a worldwide, exclusive, fully paid-up royalty-free perpetual license in the heating, ventilation, air conditioning, refrigeration, energy services and building controls industries to make, use, sell, offer to sell, and import Buyer products incorporating or using all or any of such Background Property or Property or Supplier Property.

(B) Buyer Property. If the work performed by Supplier pursuant to this agreement was funded wholly or in part by Buyer, or utilized or was derived from Buyer Proprietary Information, all such Property (including tooling) shall belong exclusively to, and is hereby assigned to Buyer (hereinafter "Buyer Property"), and Supplier shall have only such rights therein as Buyer may grant for the purposes of manufacturing goods on behalf of Buyer. Supplier agrees to execute such assignments and other documents which, in the opinion of Buyer, are necessary at any time to secure Buyer's rights hereunder. In the event that Supplier uses other parties in connection with the work called for by this agreement, Supplier agrees to procure from them similar rights and agreements on behalf of Buyer.

**19. COMPLIANCE WITH LAWS.** Supplier warrants that all goods and/or services supplied hereunder will have been produced or provided in compliance with, and Supplier agrees to be bound by, all applicable federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, or other

requirements which are contained in, issued under, or otherwise adopted pursuant to such laws. To this end, the provisions of 29 CFR Part 471, Appendix A to Subpart A are hereby incorporated by reference. In addition, Supplier warrants that it has complied with applicable federal and state laws, rules and regulations, included, but not limited to E.O. 11246, Section 202, 11625, 11701, and 11758 pertaining to fair employment practices or which prohibit discrimination because of age, color, sex, physical or mental handicap, race, nationality, religion or creed, or other similar federal or state laws or regulations.

**20. MATERIALS COMPLIANCE.** Supplier shall ensure that the goods comply with the requirements imposed by the European Directive 2002/95/EC of the European Parliament and of the European Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (“RoHS”), and specifically that the components do not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE), except as permitted by the Annex to RoHS. Supplier shall comply with any amendments to RoHS which the European Parliament may impose, and any further instructions given by Buyer. In addition, Supplier covenants that it will comply with Regulation EC 1907/2006 (“REACH”) in every respect. Supplier covenants that Buyer, by purchasing, processing, assembling or selling goods received from Supplier, will not violate REACH. Supplier shall ensure that any “substances” within the meaning of REACH delivered to Buyer shall be timely pre-registered or registered with the European Chemicals Agency (“ECHA”) as required by REACH. This shall apply regardless of whether such substances are delivered as such or in the form of “preparations” or contained in “articles” within the meaning of REACH. Supplier shall notify Buyer without delay, should substances contained in whatsoever form or concentrations in deliveries to the Buyer, be considered Substances of Very High Concern (“SVHC”). Supplier shall inform the Buyer if substances contained in goods delivered to the Buyer are included into the official candidate list for SVHC or when such inclusion is being discussed. To comply with the covenants above, Supplier shall undertake a complete inventory of substances contained in preparations and articles within the meaning of REACH and shall ensure that its suppliers undertake the same exercise and timely preregister and register substances to the extent required to prevent any interruption of the supply chain. Supplier shall also comply with the restrictions and obligations regulating the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer as outlined in Regulation EC 1005/2009 of the European Parliament and the Council of 16 September 2009 and subsequent updates and revisions thereto.

**21. PERFORMANCE OF SERVICES.** Supplier agrees that any services it performs constitute work in its status as an independent contractor. Supplier confirms that it exercises control over its employees, contractors, and agents, and that none are acting under the control of Buyer. Supplier agrees to indemnify and hold Buyer Indemnitees harmless against any claim by its employees, contractors or agents that they are acting under Buyer’s control and qualify in any way as Buyer’s employees.

**22. MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.** Supplier agrees to purchase a minimum seven percent (7%) of the content of goods and services



provided under this agreement from Minority Owned Business Enterprises (“MBE”) and three percent (3%) from Women Owned Business Enterprises (“WBE”). These percentages are to be based on the value of goods and services purchased for Buyer and Buyer sites. Direct and indirect MBE and WBE purchases are acceptable. For the purpose of this provision the following definitions will apply:

- Minority Owned Business Enterprise (“MBE”) – a business that is 51% owned and controlled by US citizens who are racial and/or ethnic minorities. This group includes: African Americans; Hispanic Americans; Native Americans; Asian Pacific Americans; Asian Indian Americans; or any other group classified as a minority group by the United States Small Business Administration.
- Woman Owned Business Enterprise (“WBE”) – a business that is 51% owned, operated and controlled by a woman who is a US citizen.
- Direct MBE or WBE purchases – purchases directly associated with the goods or services the Supplier provides under this agreement.
- Indirect MBE or WBE purchases – purchases not directly associated with goods or services the Supplier provides under this agreement but that are part of the burden rates properly allocated to the purchases under this agreement.

The Supplier agrees to provide completed QUARTERLY reports via Buyer’s reporting system within twenty one (21) days after the close of each quarter. Completed reports include, but are not limited to, total sales to Buyer and any Buyer sites under this agreement and MBE and WBE spend data, identification and classification. The Supplier acknowledges that Buyer may provide the names of potential MBEs and WBEs for consideration in fulfilling the terms of this provision. The Supplier agrees to consider utilizing such MBEs and WBEs in connection with this agreement. Carrier may request other diversity classifications in the future. The Supplier may be asked to participate in outreach efforts such as conferences and trade shows. After two consecutive quarters, if the Supplier has not met the percentages defined in this provision, the Supplier must provide a corrective action plan. Following four consecutive quarters of missing the percentages defined in this provision, Buyer may decide, in its sole discretion, to unilaterally reduce the quantities of goods or services under order by the amount of such goal and not to consider Supplier as a “Preferred Supplier”. Meeting the percentage requirements will be significantly weighed in the award of future business.

- 23. REMEDIES CUMULATIVE.** Buyer’s remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or equity.
- 24. TITLE/LIENS.** Title to all goods shall vest in Buyer at the point the goods are delivered to Buyer and have been accepted by Buyer. Supplier shall pay for labor, services, materials, equipment and parts thereof, and other expenses incurred by it or its suppliers in connection with the order and indemnify and defend Buyer Indemnitees against all claims and liens arising out of unpaid accounts.
- 25. INSURANCE.** Supplier will maintain the following types and amounts of insurance coverage:

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| (1) Worker’s Compensation                      | Statutory |
| (2) Employers Liability                        | \$500,000 |
| (3) Comprehensive General Liability (including |           |

blanket contractual liability):	
Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage	\$ 500,000 each occurrence
Broad Form Property Damage	
Personal Injury	\$ 500,000
(4) Comprehensive Automobile Liability:	
Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence
Property Damage	\$ 500,000 each occurrence

Supplier will furnish a certificate of insurance reflecting such coverage to Buyer upon request. Items (1), (2), and (4) shall be relevant only if Supplier enters upon Buyer's premises for the performance of this agreement.

- 26. ANTI-KICKBACK ACT.** By accepting the order, Supplier represents, covenants and warrants to and with Buyer that Supplier and all subcontractors below Supplier are in full compliance with the Anti-Kickback Act of 1986 ("The Act"). Supplier further agrees to indemnify and hold harmless Buyer Indemnitees from any violation of The Act by Supplier or any subcontractors below Supplier. All defined terms set forth in The Act apply to this clause.
- 27. AUDIT RIGHTS.** Upon reasonable notice Buyer or its duly authorized representative shall have the right to audit at Supplier's facility Supplier's compliance with any of the provisions of this agreement, including but not limited to the BUSINESS ETHICS provision.
- 28. GOVERNING LAWS.** THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS "CHOICE OF LAW" OR "CONFLICT OF LAW" RULES.
- 29. SEVERABILITY.** If any provision of this agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this agreement shall remain in full force and effect.
- 30. NO WAIVER.** The failure of a party to enforce any provision of this agreement promptly shall not be construed as a waiver of such provision or of the right of such party to enforce such provision at a later time. Acceptance of any goods or services or payment thereof shall not waive any breach.
- 31. EXCLUSION OF U.N. CONVENTION ON INTERNATIONAL SALES.** Unless otherwise agreed by Supplier and Buyer in writing, there is excluded from the order (including any amendments or changes thereto) the application of the United Nations Convention on Contracts for the International Sales of Goods.
- 32. DUTY DRAWBACK.** Upon request, Supplier agrees to furnish completed drawback certificates and retain substantiating documentation pursuant to 19 U.S.C. Section 1313.
- 33. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM ("C-TPAT").** If the goods are to be imported into the U.S., Supplier shall confirm in writing whether or not it is C-TPAT certified. If C-TPAT certified, Supplier shall also provide Buyer a copy of documentation verifying the certification. If not C-TPAT certified, Supplier shall (a) confirm in writing if Supplier participates, or has participated, in a

World Customs Organization accredited security program administered by the Customs Administration of Supplier's country, and (b) provide a security questionnaire in Buyer's approved format. Supplier shall comply with the security criteria described in this U.S. Customs & Border Protection web site: [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/ctpat/security\\_criteria/](http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/security_criteria/)

If Supplier uses or contracts for transportation or logistics services in connection with the performance of the order, it shall use only those carriers which are C-TPAT certified, or which meet C-TPAT security criteria. Supplier shall maintain documentation of the C-TPAT security compliance of such service providers. Supplier accepts responsibility for factory and container security until such time as the goods are delivered to the ocean terminal, authorized yard, or consolidation point. Supplier shall have effective controls and processes in place which are consistent with C-TPAT security criteria to insure the integrity of the shipment. These controls shall include as a minimum (a) verification of the integrity of the shipment container and its locking mechanism, (b) the use of high security seals which meet PAS ISO 17712 standards, (c) written policies and procedures regarding the control, issue, affixation, and verification of seals, (d) the presence of at least two company-authorized individuals at the time a shipment is sealed, and (e) notification to Buyer (and Buyer's customer in the case of direct shipment) of the seal number. Supplier will immediately report all seal changes and the reason for changes, or the discovery of a broken or altered seal, to Buyer (and Buyer's customer in the case of direct shipment) and to the U.S. Customs Representative at the port of shipment. Supplier shall permit Buyer's representative to review and audit Supplier's compliance with the above requirements upon reasonable notice.

34. **NORTH AMERICAN FREE TRADE AGREEMENT ("NAFTA")**. If applicable, Supplier agrees to become familiar with the requirements of NAFTA, provide annual certification to Buyer of NAFTA qualification, maintain adequate records to support such qualification, and follow all applicable regulations under NAFTA when issuing certificates of origin and/or other documents which allow Buyer to take advantage of the duty free status.
35. **IMPORTER SECURITY FILING ("ISF")**. This provision is applicable if goods will be shipped to the United States via ocean in connection with the order. If Supplier is Importer of Record ("IOR"), Supplier shall be responsible for all applicable ISF filings required by U.S. Customs and Border Protection. If Supplier is not the IOR, Supplier shall cooperate with Buyer as necessary to facilitate required ISF filings. The detailed ISF filing requirements are set forth at: [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/carriers/security\\_filing/](http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/) Supplier shall indemnify Buyer Indemnitees for any penalties or other costs assessed against or otherwise incurred by Buyer resulting from Supplier's failure to meet the obligations of this section.

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