

**Seymour Midwest, LLC & Seymour Manufacturing Co. Inc.****Standard Procurement Terms and Conditions Rev. 00****Date: 01-December-2019****GENERAL PROVISIONS FOR DOMESTIC AND INTERNATIONAL COMMERCIAL ITEMS PROCURED  
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### SECTION I: General Provisions for All Orders

#### Section 1A: General/Administrative Provisions

##### 1. DEFINITIONS

The following terms shall have the meanings set forth below:

- a) "BUYER" means SEYMOUR MIDWEST LLC and SEYMOUR MANUFACTURING CO., INC., both legal entities identified on the face of this Contract.
- b) "BUYER's Procurement Representative" means the person authorized by SEYMOUR MIDWEST's cognizant procurement organization to administer and/or execute this Contract.
- c) "Contract" means all instruments of contracting, such as a "Purchase Order", "PO", or other such type designation, including, without limitation, these Terms and Conditions and all referenced documents, exhibits, attachments, and, in the event the Contract is incorporated into a "master" agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the release document for the Work to be performed.
- d) "Change Order" means any signed written instrument of BUYER Procurement Representative that alters the terms of this Contract.
- e) "Customer" means the entity with whom BUYER has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of the "FURNISHED PROPERTY" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions of this Contract, "Customer" shall include any higher-tier contractor(s).
- f) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- g) "PO" or "Purchase Order" means an order for purchase as used in any document constituting a part of this Contract.
- h) "SELLER" means the party identified on the face of this Contract with whom BUYER is contracting for the Work. For the purposes of the "CUSTOMER COMMUNICATION" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.
- i) "Terms and Conditions" shall mean these Standard Procurement Terms and Conditions.
- j) "Work" means all required deliverables, articles, materials, supplies, goods and services, including, but not limited to, technical data, constituting the subject matter of this Contract.

##### 2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- a) This Contract integrates, merges, and supersedes any contemporaneous and prior offers, understandings, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract, including, without limitation, the Terms and Conditions. These Terms and Conditions prevail over any terms or conditions contained in any other documentation and expressly exclude any of SELLER's general terms and conditions of sale or any other document issued by SELLER in connection with this Contract that conflict with any provision of these Terms and Conditions.

- c) **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY BUYER AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY BUYER'S PROCUREMENT REPRESENTATIVE.**

- d) Any assignment of SELLER's rights under this Contract or delegation of duties hereunder shall be void, unless prior written consent is given by BUYER. A change of control, sale or assignment of substantially all of the assets, or reorganization of SELLER shall constitute an impermissible assignment. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if BUYER is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of BUYER against SELLER. BUYER shall have the right to make settlements and/or adjustments in price without notice to the assignee. BUYER may freely assign this Contract or any of its rights or duties under this Contract.

##### 3. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (a) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special provisions of BUYER; (b) any master-type agreement (such as corporate, operating group, or blanket agreements); (c) representations and certifications; (d) any supplemental terms and conditions incorporated by operation of this Contract or expressly agreed to in writing by BUYER; (e) these Terms and Conditions; (f) statement of work; and (g) specifications or drawings.

##### 4. CONTRACT DIRECTION/CHANGES

- a) Only BUYER'S Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of BUYER. SELLER shall not implement any changes or modifications to this Contract (including specifications and quality control provisions) without first having received written authorization to do so from BUYER'S Procurement Representative.
- b) BUYER'S program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information, including current technical drawings or written specifications, with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause of this Contract and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify BUYER'S Procurement Representative and shall not accept such direction or perform said action unless authorized by BUYER'S Procurement Representative.
- c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be sent to BUYER'S Procurement Representative.
- d) BUYER may, at any time, by delivery of a Change Order, and without notice to sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
  - i. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for BUYER in accordance with the drawings, designs, or specifications;
  - ii. Method of shipment or packing;
  - iii. Place of inspection, delivery or acceptance;
  - iv. Delivery schedules; and/or
  - v. Any other matters affecting this Contract.



- e) BUYER'S Procurement Representative may elect, in its sole discretion, to attach BUYER'S own internal change documents to the Change Order for clarification purposes. When issued, these forms will be in conjunction with, not in lieu of, a Change Order. SELLER shall promptly review all changes to the part and/or service as specified in the Change Order and any attachments, if any, and notify BUYER of any effect that the change may have on the performance of the Contract.
- f) If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and the Contract shall be modified in writing accordingly. Any claim by SELLER for adjustment under this article must be asserted in writing to BUYER'S Procurement Representative no later than fifteen (15) calendar days after the date of receipt by SELLER of the Change Order. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, SELLER will diligently proceed with the Contract as modified. Where the cost of property made excess or obsolete as a result of a Change Order is included in SELLER'S claim for adjustment, BUYER shall have the right to direct the manner of disposition of such property. BUYER shall have the right to examine any of SELLER'S pertinent books and records for the purpose of verifying SELLER'S claim.

NOTE: Only BUYER'S Procurement Representative shall have the authority to direct or authorize changes or modifications to this contract. **BUYER'S PROGRAM MANAGEMENT AND ENGINEERING PERSONNEL HAVE NO AUTHORITY TO MODIFY OR OTHERWISE TO DIRECT OR AUTHORIZE CHANGES TO THIS CONTRACT.**

- g) **BUYER SHALL NOT BE LIABLE FOR ANY OF SELLER'S INCREASED COSTS OF PERFORMANCE THAT RESULT FROM SELLER'S IMPLEMENTATION OF CHANGES OR MODIFICATIONS THAT BUYER'S PROCUREMENT REPRESENTATIVE DID NOT FIRST APPROVE IN WRITING.**
- h) BUYER and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically, neither BUYER nor SELLER shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

### 5. CUSTOMER COMMUNICATION

BUYER shall be solely responsible for all liaison and coordination with the Customer, or any higher tier contractor(s) as it affects this Contract, and any related contract. Except as required by law, SELLER shall not communicate with the Customer, any higher tier contractor(s) with respect to this Contract without prior written approval from BUYER'S Procurement Representative. SELLER shall promptly notify BUYER'S Procurement Representative of any communications initiated by the Customer or any higher tier contractor(s) that affects the applicable Contract, and/or any related contract.

### 6. INFORMATION

- a) All non-public, confidential or proprietary information of the BUYER, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by BUYER to SELLER, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Contract is confidential, solely for the use of performing the Contract and may not be disclosed or copied unless authorized by BUYER'S Procurement Representative in writing. Upon BUYER'S request, SELLER shall promptly return all documents and other materials received from BUYER. BUYER

shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (i) in the public domain; (ii) known to the SELLER at the time of disclosure; or (iii) rightfully obtained by the Seller on a non-confidential basis from a third party.

- b) If the parties have entered into a Proprietary Information Agreement pertaining to the Work of this Contract, the terms and conditions of such Proprietary Information Agreement shall govern the protection and exchange of proprietary information between the Parties.
- c) SELLER shall not provide any proprietary information to BUYER without prior execution by BUYER of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.
- d) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by SELLER without the prior written approval of BUYER'S Procurement Representative.

### 7. SURVIVABILITY

If this Contract expires, is completed or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- a) Applicable Laws
  - Definitions
  - Disputes/Jury Waiver
  - Entry on BUYER or Customer Property
  - Export Control
  - Furnished Property
  - Independent Contractor Relationship
  - Information
  - Intellectual Property
  - Maintenance of Records
  - Parts Obsolescence
  - Warranty

### 8. SEVERABILITY

Each section, paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### 9. MAINTENANCE OF RECORDS

- a) Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for five (5) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records. Any such records maintained by SELLER shall remain subject to the confidentiality obligations set forth in Section 1A, Paragraph 6.
- b) BUYER and its customer shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to BUYER on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

### 10. INDEPENDENT CONTRACTOR RELATIONSHIP

Unless otherwise agreed to in writing between the parties, SELLER'S relationship to BUYER shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BUYER and SELLER or BUYER and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any



purposes be considered employees or agents of BUYER. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. BUYER assumes no liability for SELLER personnel.

### **Section 1B: Laws and Regulations**

#### **11. APPLICABLE LAWS**

- a) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Contract, all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of Indiana from which this Contract was issued, excluding its choice of law rules.
- b) The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- c) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER's expense.

(2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) SELLER shall comply with the California Civil Code 1714.43 and California's Safe Drinking Water and Toxic Enforcement Act, commonly known as Proposition 65, and SELLER shall require its lower-tiered contractors to comply with California Civil Code 1714.43 and California's Safe Drinking Water and Toxic Enforcement Act, commonly known as Proposition 65. No Work supplied under this Contract contains chemicals determined by the state of California, pursuant to Proposition 65, to cause cancer or birth defects or other reproductive harm. If any Work supplied under this Contract does include chemicals identified under Proposition 65, such Work shall bear warning labeling in full compliance with Proposition 65 or, if such chemicals are in amounts that do not require warning labeling under Proposition 65, SELLER shall provide BUYER with a certification letter stating that warning labeling is not required as well as the test protocol and test results to support such certification. SELLER shall indemnify BUYER in accordance with Section 1D for any breach of this Section.

- d) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BUYER hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended. Seller shall not deliver goods that contain any asbestos mineral fibers.
- e) SELLER shall provide to BUYER with each delivery any Safety Data Sheets (SDSs) (formerly known as Material Safety Sheets or MSDSs) (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

#### **12. EXPORT CONTROL**

- a) SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 730-774 (the "EAR"), and the regulations of the Office of Foreign

Assets Control (31 C.F.R. Parts 500-595). SELLER shall obtain all required export licenses and agreements necessary to perform SELLER's Work, as applicable.

- b) Without limiting the foregoing, SELLER shall not transfer or disclose any data furnished by BUYER until BUYER has considered the request and provided its written approval through contractually authorized channels. SELLER will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.
- c) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.
- d) SELLER shall notify in writing BUYER'S Procurement Representative if any use, sale, import or export by BUYER of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.
- e) SELLER shall immediately notify in writing BUYER'S Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- f) Where SELLER is a signatory under a BUYER export license or export agreement (e.g. Technical Assistance Agreement, Manufacturing License Agreement), SELLER shall provide immediate written notification to BUYER'S Procurement Representative in the event of changed circumstances affecting said license or agreement.
- g) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve BUYER of its obligations under this Contract. Provided that SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by BUYER without additional cost or other liability.
- h) Export Classification (When specifically requested by BUYER)
  - i. SELLER shall notify BUYER if any deliverable under this Contract, for which BUYER is not the design authority, is subject to U.S. export and import control laws and regulations described in Section 1B, Paragraph 12 Export Control. Before providing BUYER any deliverable subject to the EAR, SELLER shall provide in writing to BUYER'S Procurement Representative the export classification of such deliverables, including dual use goods and technology subject to the EAR, including any EAR 500 or 600 series' items;
  - ii. Subsequent to the initial disclosure above, SELLER shall timely notify BUYER'S Procurement Representative in writing of any changes to the export classification information of the item;
  - iii. SELLER represents that an official authorized to bind SELLER has determined that SELLER or the design, manufacturer, supplier or other source of the deliverable has properly determined their export classification.

#### **13. DISPUTES/JURY WAIVER**

- a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement, may be decided by recourse to an action at law or in equity in accordance with subparagraph (b) of this provision. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract.



- b) BUYER and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, BUYER AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE OF INDIANA; AND BUYER AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE OF INDIANA WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.
- c) **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, BUYER AND SELLER EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. SELLER AND BUYER FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.**

#### 14. WAIVER, APPROVAL AND REMEDIES

- a) Failure by BUYER to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BUYER thereafter to enforce each and every such provision(s).
- b) BUYER's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- c) The rights and remedies of BUYER in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

#### Section 1C: Quality/Product Control Provisions

#### 15. QUALITY CONTROL

- a) SELLER agrees to provide and maintain a quality control system for adherence to all BUYER engineering specification and drawings for items purchased. SELLER shall provide access to SELLER's facilities at all reasonable times by BUYER, authorized Customer representatives, and Regulatory Authorities. SELLER agrees to include, and to require its subcontractors to include, the substance of this provision, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified by BUYER in writing.
- b) Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its Customers.
- c) SELLER agrees to notify BUYER's Procurement Representative of product that does not meet the requirements of this Contract that cannot be reworked to compliance. Written approval will be required by BUYER's Procurement Representative prior to SELLER's shipment of nonconforming material to BUYER. Additionally, SELLER shall notify BUYER's Procurement Representative if SELLER discovers that previously delivered product does not meet the requirements of this Contract.
- d) SELLER agrees to notify BUYER's Procurement Representative with changes in product and/or process which affect compliance with this Contract, including, without limitation, applicable specifications, Technical Data Sheets, or reliability of the product, changes of suppliers, and changes of manufacturing facility locations.

- e) All hardware, data, other documentation, tooling and equipment required by SELLER during the performance of this order shall be maintained under configuration control. BUYER'S approval of the drawing package shall constitute a baseline release for hardware fabrication. BUYER'S approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, SELLER shall not implement any change in design, processes, controls, parts or proprietary data released to BUYER thereafter to internal functions or second-tier suppliers without BUYER'S prior written approval.
- f) SELLER shall submit Major Engineering Change Orders ("ECO's") to BUYER for written approval prior to implementing any such changes. BUYER'S approval shall in no way relieve SELLER from complying with the requirements of the order, nor shall approval relieve SELLER's technical responsibility for the design. SELLER shall further submit Minor ECO's for informational purposes. Any SELLER classification disagreements shall be referred to BUYER for a final decision.

#### 16. TIMELY PERFORMANCE

- a) SELLER's timely performance is a critical element of this Contract and time is of the essence.
- b) Unless advance shipment has been authorized in writing by BUYER's Procurement Representative, BUYER may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- c) If SELLER becomes aware of difficulty in performing the Work which impacts performance or delivery, SELLER shall timely notify BUYER, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BUYER's Procurement Representative.

#### 17. INSPECTION AND ACCEPTANCE

- a) BUYER and its Customer, at either's sole discretion, may inspect all Work at reasonable times and places, including, when practicable, during manufacture, before shipment, and on or after delivery. BUYER shall perform such inspections in a manner that will not unduly delay the Work. SELLER shall provide all information, facilities, access, and assistance necessary for safe and convenient inspection without additional charge.
- b) No such inspection (or election not to inspect) shall relieve SELLER of its obligations to furnish all Work in strict accordance with the requirements of this Contract. BUYER'S final inspection and acceptance shall be at destination.
- c) If SELLER delivers non-conforming Work, BUYER may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; (iii) reject the Work and require replacement of the rejected Work by SELLER; or (iv) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- d) If BUYER requires replacement of all or any part of the Work, SELLER shall, at its expense, within ten (10) calendar days replace the nonconforming Work and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Work and the delivery of replacement Work.
- e) When Work is not ready at the time specified by SELLER for inspection, BUYER may charge to SELLER the additional cost of inspection.
- f) BUYER may also charge SELLER for any costs of additional inspection and/or transportation when rejection makes re-inspection necessary.





- g) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.
- h) SELLER shall not tender finished Work to BUYER which have been returned from another customer without prior written approval from BUYER's Procurement Representative. Such approval requests shall include a full explanation of SELLER's verification process for such Work.

### 18. PACKING AND SHIPMENT

- a) This provision applies unless the Contract involves importation of work into the United States, in which case Section II, Paragraph 28 shall apply.
- b) Unless otherwise specified, all Work and complete POs are to be packed in accordance with BUYER'S specifications or commercially reasonable practice.
- c) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including BUYER:
  - i. Purchase Order Number
  - ii. BUYER Item number
  - iii. Quantity
  - iv. Names of consignee.
  - v. Carton count
  - vi. Bills of lading shall include reference to Purchase Order.
- d) Unless otherwise specified, delivery shall be in accordance with FOB INCOTERMS 2010 at the port or place identified in the applicable Purchase Order.
- e) Work shall not be supplied in excess of quantities specified on the Purchase Order. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

### 19. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. If any non-conformity with Work is discovered prior to BUYER commercializing the Work, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or re-performance of Work is not timely, BUYER may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All warranties shall run to the benefit of BUYER and its successors and Customer(s).

### Section 1D: Liability and Indemnification

#### 20. INDEMNIFICATION

- a) SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT BUYER'S ELECTION, DEFEND BUYER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO THE WORK OR ANY ACT OR OMISSION (WILLFUL OR NEGLIGENT) OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, RELATED TO OR AS PART OF THE EXECUTION OF WORK TO BE PERFORMED OR OTHERWISE IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.

- b) IN ADDITION TO ANY OTHER LIMITATIONS ON BUYER'S LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL BUYER, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE BY REASON OF BUYER'S BREACH OR TERMINATION OF THIS AGREEMENT OR FOR ANY BUYER'S ACTS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS OR REVENUE, WHETHER SUCH REMEDY IS SOUGHT IN CONTRACT, TORT, OR OTHERWISE.

#### 21. FURNISHED/ACQUIRED/FABRICATED PROPERTY

- a) BUYER may provide SELLER with property owned by either BUYER or its Customer ("Furnished Property"), or require SELLER to acquire ("Acquired Property") and/or to fabricate property ("Fabricated Property") specifically for Work under this Contract (collectively, "All Property"). BUYER authorizes SELLER to use All Property only for the performance of this Contract, unless authorized in advance, in writing, by BUYER'S Procurement Representative.
- b) Title to All Property shall remain with BUYER or its Customer (as applicable). SELLER shall clearly mark (if not so marked) All Property to show its ownership.
- c) BUYER and Customer Furnished Property is provided in "as-is" condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, SELLER shall be responsible for maintaining, managing, preserving, and insuring All Property in accordance with good commercial practice. SELLER shall notify BUYER promptly, but within not more than thirty (30) days, of any loss or damage to this property. SELLER shall support all BUYER or Customer investigations relative to the Loss, Damage or Destruction of this property. At BUYER'S sole option, SELLER shall immediately replace, reimburse, repair, and/or provide consideration to BUYER for such loss or damage

#### 22. INTELLECTUAL PROPERTY

- a) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- b) If an injunction is obtained against BUYER'S use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for BUYER and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. The indemnity and hold harmless provision of this Contract shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.
- c) SELLER grants and agrees that BUYER shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to enable BUYER to satisfy its contractual obligations to its Customer, to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, business information and other information, conceived, developed, generated or delivered in performance of this Contract. SELLER shall provide all assistance reasonably required and execute all documents necessary to protect the rights granted to BUYER herein. To enable SELLER to comply with the foregoing, SELLER shall ensure that each of its personnel, workers, representatives, agents and subcontractors providing services under this Contract assign sufficient rights they have in all inventions, works for hire, project results, and the like, to SELLER.



- d) SELLER represents that any technical data furnished to BUYER as a required deliverable under this Contract shall be free from confidential, proprietary or restrictive markings (Nonconforming Markings) and that any such markings are not in violation of rights of ownership of any technical data owned by BUYER. On behalf of itself or its customer, BUYER will notify SELLER, in writing, of any Nonconforming Markings and SELLER will remove such Nonconforming Markings and resubmit within sixty (60) days after such notification. If SELLER fails to remove or correct such Nonconforming Markings within sixty (60) days after such notification, BUYER may ignore, or at SELLER'S expense, remove or modify, as appropriate, any such Nonconforming Markings as may be on such deliverables and SELLER shall not have any recourse nor shall BUYER incur any liability for any such removal or modification.

### 23. TERMINATION

- a) Termination for Convenience
- i. BUYER may terminate this Contract for its convenience in whole or, from time to time, in part, if BUYER'S Procurement Representative determines that a termination is in BUYER'S best interest. BUYER'S Procurement Representative shall effect such termination by delivering to SELLER a notice of termination specifying the extent of termination and the effective date.
- b) Termination for Default
- i. BUYER may, by written notice, terminate the whole or any part of this Contract, including any purchase order or agreement made thereof, in any of the following circumstances:
    - a. If SELLER fails to deliver the goods or to perform the services required by this Contract within the time specified herein, or any extension thereof granted by BUYER in writing;
    - b. If SELLER fails to perform any material provision of this Contract or so fails to make progress as to endanger performance of this Contract, and if in either of these two circumstances, SELLER does not cure such failure within a period of eight (8) days after receipt of written notice from BUYER specifying such failure;
    - c. If SELLER fails to deliver goods or to perform services required or fails to perform any material provision of other contracts issued by BUYER and such default causes BUYER to terminate those other contracts;
    - d. SELLER files or declares bankruptcy; or
    - e. In the event of suspension of SELLER'S business, insolvency, liquidation proceedings by or against SELLER, appointment of a trustee or receiver for SELLER'S property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of creditors.
  - ii. If BUYER terminates this Contract in whole or in part, it may acquire, under the terms and in the manner BUYER considers appropriate, goods or services similar to those terminated, and SELLER will be liable to BUYER for any excess costs for those goods or services. However, SELLER shall continue the work not terminated.
  - iii. BUYER may require SELLER to transfer title and deliver to BUYER in the manner and to the extent directed by BUYER for –
    - a. Any completed Work, and

- b. Such partially completed Work and such materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, (hereinafter called manufacturing materials) as SELLER has produced or acquired for the performance of this Contract, including the assignment to BUYER of SELLER'S subcontracts. SELLER shall protect and preserve property in possession of SELLER in which BUYER has an interest.
- c. Payment for completed goods delivered to and accepted by BUYER shall be at the contract price. Payment for manufactured materials delivered to and accepted by BUYER, and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience subparagraph hereof, except that SELLER shall not be entitled to profit. Failure to agree will be a dispute under the "Disputes/Jury Waiver" provision in these Terms and Conditions. BUYER may withhold from SELLER moneys otherwise due SELLER for completed goods and/or manufacturing materials in such amounts as BUYER determines necessary to protect BUYER against loss due to outstanding liens or claims against said goods or for any amounts otherwise due from buyer to SELLER.
- d. Except for defaults of subcontractors at any tier, SELLER shall not be liable for any excess costs if the failure to perform this Contract is due to fires, floods, strikes, lockouts, epidemics, accidents, industry-wide shortages, or other causes beyond the reasonable control of the parties, which prevent SELLER from performing its obligations hereunder. In each instance, the failure to perform must be beyond the control and without the fault or negligence of SELLER.
- e. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both SELLER and the subcontractor, and without the fault or negligence of either, SELLER shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for SELLER to meet the required delivery schedule.
- f. If after notice of termination for default, it is determined for any reason that SELLER was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for convenience pursuant to the Termination for Convenience subparagraph hereof.

### 24. INSURANCE

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of BUYER or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation (with a waiver of subrogation in favor of BUYER), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to BUYER, and such other insurance as BUYER may reasonably require. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER'S agents, subcontractors or suppliers, SELLER'S obligation to indemnify and defend in accordance with this paragraph shall apply regardless of cause. SELLER shall provide to BUYER'S Procurement Representative thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER'S required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER'S compliance with these



requirements. SELLER shall name BUYER as an additional insured for the duration of this Contract. Property and Contractor's Equipment Insurance maintained pursuant to this paragraph shall be considered primary as respects the interest of BUYER and is not contributory with any insurance that BUYER may carry. "Subcontractor" as used in this subparagraph shall include SELLER's subcontractors at any tier.

### 25. STOP WORK ORDER

- a) SELLER shall stop Work or performance under this Contract in accordance with the terms of any written notice received from BUYER ("Stop Work Order") and SELLER and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b) After the issuance of a Stop Work Order, BUYER shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, SELLER may request an equitable adjustment within twenty (20) days after such continuation, and in accordance with the above "Contract Direction/Changes" provision.

### SECTION II: Additional General Provisions for Foreign Subcontracts/Purchase Orders

### 26. FOREIGN CORRUPT PRACTICES PROHIBITION

- a) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist BUYER or SELLER in obtaining or retaining business.
- b) SELLER shall ensure that all lower tier subcontracts include this provision.

### 27. LANGUAGE AND STANDARDS

All reports, correspondence, drawings, notices, marking, documentation, and other communications shall be in the English language. In the event of any inconsistency with any translation into another language, the American Standard English meaning of this Contract shall prevail. Unless otherwise provided in writing, all documentation and Work shall employ the units of United States standard weights and measures as published by the United States National Institute of Standards and Technology.

### 28. PACKING/SHIPMENT/IMPORTER OF RECORD

- a) This provision applies if this Contract involves importation of Work into the United States. If this provision applies, Section 1C, Paragraph 18 does not apply.
- b) Unless otherwise specified, delivery shall be Free On Board (FOB), applicable port of shipment in accordance with INCOTERMS 2010. The minimum insurance shall cover the price provided in this Contract plus ten percent (i.e. 110%) and shall be provided in the currency of this Contract.
- c) When BUYER is importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U. S.C. Sec. 1673 et seq.).
- d) Bills of Lading shall include:
  - i. This Contract / Purchase Order number;
  - ii. Applicable Harmonized Tariff Schedule number(s) (HTS# to the 8<sup>th</sup> or 10<sup>th</sup> digit) for all items shipped; and
  - iii. Marks and number as specified in the Contract.
- e) Commercial Shipping Invoice shall include, pursuant to 19 CFR §§ 141.86 to 141.89:
  - i. This Contract / Purchase Order number;
  - ii. Applicable Harmonized Tariff Schedule number(s) (HTS# to the 8<sup>th</sup> or 10<sup>th</sup> digit) for all items shipped;
  - iii. Total valuation of the shipment;

- iv. BUYER Item Number(s).
  - a. For initial shipment against this Contract: SELLER shall declare unit price and extended price on each line of the shipped Work, plus if applicable
    - 1) Total value of line items on this Contract for other than deliverable hardware (e.g. engineering, tooling, special packaging) and/or
    - 2) The value of other assists provided at no cost to SELLER (e.g. BUYER provided tooling, material, test equipment, etc. required for the manufacture of the deliverable hardware)
  - b. For subsequent shipments against this Contract: SELLER shall declare unit price and extended price on each line of the shipped Work
  - c. For items returned for repair and reshipment: SELLER shall declare repair value also noting the original value of repaired items, as well as:
    - 1) BUYER Item Number(s)
    - 2) Description(s) – Complete and detailed, must be in English. see 19 CFR §§ 141.86 (3) and (11)(d)]
    - 3) Quantity per line item
    - 4) Total value of shipment listed in relevant currency (i.e., US, Euro, etc.)
    - 5) Country of origin
    - 6) Terms of Sale
    - 7) Invoice should also identify Shipper, if shipped by a third party the shipper and SELLER, and BUYER as the sold to party (in case of drop shipment to third party, that party is the "shipped to" and BUYER is still identified as "sold to").
  - f) Packing:
    - i. Unless otherwise specified, all Work is to be packed in accordance with commercially reasonable practice designed to protect the integrity of the shipped contents consistent with international shipping practices.
    - ii. Wooden Packaging from International Suppliers: Wooden packaging from SELLER must conform to INTERNATIONAL STANDARDS FOR PHYTOSANITARY MEASURES ISPM 15 REGULATION OF WOOD PACKAGING MATERIAL IN INTERNATIONAL TRADE (2009) revised Aug 2011. Additional information on this requirement can be found at the following site: [http://www.aphis.usda.gov/import\\_export/plants/plant\\_imports/wood\\_packaging\\_materials.shtml](http://www.aphis.usda.gov/import_export/plants/plant_imports/wood_packaging_materials.shtml)
    - iii. Shipments not conforming to this international standard will be returned to the shipper by U.S. Customs and Border Protection. Expenses related to non-conformance with this requirement and attendant delay and disruption to BUYER will be charged back to SELLER.
    - iv. A complete packing list shall be prepared in accordance with 19CFR § 141.86 (11)(e), enclosed with all shipments, and include the following:
      - a. BUYER purchase order
      - b. BUYER Item number(s)
      - c. Description of shipped items
      - d. Quantity per line item
      - e. The box number that each line item is in
      - f. Total number of boxes in shipment
      - g. Dimensions of shipment
      - h. Final delivery address
      - i. The packing slip shall be put inside the package and a copy affixed to the outside of the package





**SEYMOUR  
MIDWEST**

SUPERIOR HEAVY-DUTY TOOLS  
**STRUCTRON**

**SEYMOUR**

**KENYON**

**Toolite**

**MIDWEST RAKE**

**LINK HANDLES**

- v. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including BUYER purchase order number, item number, dates of shipment, and the names and addresses of consignee.
- g) If elsewhere in this Contract BUYER is not indicated as importer of record, then SELLER agrees that:
  - i. BUYER shall not be a party to the importation of Work, the transaction(s) represented by this Contract will be consummated after importation, and SELLER will neither cause nor permit BUYER'S name to be shown as "Importer of Record" on any Customs declaration; and
  - ii. Upon request and where applicable, SELLER will provide to BUYER and United States Customs and Border Protection (CBP) Form 7501 entitled "Entry Summary" properly executed.
- h) SELLER shall provide to BUYER's Procurement Representative, in writing, five business days advance notification of shipments. Such notification shall include submission of a copy of the Commercial invoice and packing list required by this provision and such other information as BUYER may reasonably request.
- i) SELLER shall forward copies of its shipping documents via email or facsimile, to Import/Traffic department identified in the International Routing Instructions provided with this Contract so that BUYER may facilitate Customs clearance. These documents shall include:
  - i. Commercial Shipping Invoice;
  - ii. Any applicable Free Trade Agreement or Special Trade Program Certifications/Statements, examples include NAFTA and IFTA certificates of origin;
  - iii. If using Ocean Transport: Ocean ISF details according to Customs Publication, dated August 2009 – Importer Security Filing and Additional Carrier Requirements (10+2);
  - iv. For Articles returned to BUYER after repair, SELLER shall include a Foreign Repairer Certificate attesting to the work performed abroad in accordance with 19 CFR § 10.8.
- j) For Work returned to BUYER after repair;
  - i. SELLER shall include a Foreign Repairer Certificate attesting to the work performed abroad in accordance with 19 CFR § 10.8;
  - ii. Seller should reference the return instructions as provided by BUYER;
  - iii. SELLER is required to include a commercial invoice stating the reason for RETURN. Products being returned to BUYER after repair must include the hardware value from the original sale of the item;
    - a. Example: "Original hardware for Customs purposes only: \_\_\_"
  - iv. Seller must include the cost of the repair as a separate line item on the commercial invoice;
  - v. For repair work done under warranty, SELLER is required to include the estimated cost of repair.
- b) Each payment made shall be subject to reduction to the extent of amounts which are found by BUYER not to have been properly payable and shall also be subject to reduction for overpayments.
- c) Payment shall be deemed to have been made as of the date of mailing BUYER'S payment or electronic funds transfer.
- d) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes. All duties, taxes, and other official charges as well as the costs of carrying out customs formalities shall be payable in accordance with the Incoterm called out in this Contract. Each of the foregoing shall be listed separately on the invoice.
- e) The prices stated in this Contract are firm, fixed prices in United States dollars.
- f) SELLER shall at all times attempt to maintain flat or deflationary pricing for all items BUYER purchases from SELLER. SELLER shall notify BUYER ninety (90) days in advance of any increase in price and shall honor current pricing on all open purchase orders or purchase agreements where the period of performance has not expired. No increase in the price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of BUYER.
- g) Any decrease in SELLER'S price shall be retroactive seven hundred and twenty (720) days from the date of SELLER notification ("Retroactive Date"). SELLER shall issue a credit to BUYER within thirty (30) days for the total difference in the purchase price for items included in the notification calculated using the Retroactive Date.
- h) SELLER will provide BUYER with a current W-8 form (Certificate of Foreign Status). In accordance with IRS regulations, if SELLER fails to provide a complete and proper W-8 Form, BUYER is required to subject payments to Backup Withholding.

## 29. PAYMENTS, TAXES, AND DUTIES

- a) Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of the following: (i) BUYER'S receipt of SELLER's accurate invoice in accordance with proper invoicing instructions as identified on the PO or other master-type agreement; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. BUYER shall have a right of setoff against payments due or at issue under this Contract or any other contract between BUYER and SELLER.