



## STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

These Standard Terms and Conditions for Purchase of Goods and Services ("*Terms and Conditions*") apply to all purchases of Goods and Services from Contractor under purchase orders or other similar documents or transmissions or instruments issued by Company.

- Parts A and C shall apply to purchases of Goods by Company.
- Parts B and C shall apply to purchases of Services by Company.

"*Agreement*" means, collectively: (i) these Terms and Conditions, (ii) and the Statement of Work, Bill of Materials or Proposal dated \_\_\_\_\_, 20\_\_ ("*SOW*") identifying or describing the Goods and Services to be furnished and performed by Contractor hereunder and attached hereto as Exhibit A and incorporated herein by reference into this Agreement, except to the extent inconsistent with these Terms and Conditions, and (iii) any written contract executed by and between Company and Contractor into which these Terms and Conditions are incorporated by reference.

"*Company*" means PMC Group N.A., Inc. or any of its subsidiaries or affiliates, as appropriate, that are acquiring the Goods and Services from Contractor.

"*Contractor*" means the party selling the Goods and Services to Company under this Agreement.

"*Delivery Point*" means the place of installation inside Company's plant in \_\_\_\_\_.

"*Goods*" means all goods sold to Company by Contractor in connection with the Services and more particularly described in the SOW.

"*Services*" means and includes all labor, work, equipment, supplies and other materials necessary or appropriate for the installation of the Goods by Contractor and as more particularly described in the SOW.

"*Specifications*" means the descriptive and performance specifications for the Goods as more particularly set forth on Exhibit B attached hereto and incorporated herein by reference.

### A. TERMS AND CONDITIONS APPLICABLE TO THE PURCHASE OF GOODS

#### 1. WARRANTIES

- (a) Contractor shall provide the Goods described and at the prices set forth in Exhibit A to Company in accordance with the terms and conditions of this Agreement. In the event of any inconsistency between these Terms and Conditions and the other terms and conditions of this Agreement, this Agreement shall govern.
- (b) Contractor represents and warrants that the Goods (i) shall be of the kind, quantity and quality specified in this Agreement, free from fault in design, workmanship and material, (ii) shall be new and of good and merchantable quality, (iii) are suitable and fit for the purpose for which they shall be used, (iv) upon the completion of the Services hereunder by Contractor, the Goods shall

conform to and perform in accordance with the Specifications and drawings, if any, and set forth on Exhibit B attached hereto and incorporated herein by reference, (v) shall not constitute an infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold or used for their ordinary intended purpose, and (vi) shall be delivered free from all liens, encumbrances, claims or other charges. All Goods shall at all times be subject to Company's inspection but neither Company's inspection nor failure to inspect shall relieve Contractor of any obligations hereunder or constitute a waiver of any of Company's rights or warranties of Contractor. If any Goods fail to conform with Specifications or drawings or are otherwise defective, then at Company's option: (i) Company may, in its sole discretion, reject all or any portion of the non-conforming or defective Goods, and such non-conforming or defective Goods may be (A) held at Contractor's risk for Contractor's retrieval, or (B) returned to Contractor upon notice, at Contractor's cost, and in either such case Company shall be entitled to a refund in full, or (ii) require Contractor to promptly repair or replace the non-conforming or defective Goods at Contractor's sole expense.

- (c) The warranties in this Section 1 Warranties shall continue in full force and effect until expiration of the applicable statute of limitations.
- (d) Where Goods are repaired or replaced under the above warranties, such Goods shall be warranted to the same extent as the original delivery.
- (e) Company shall be entitled to the benefit of any of Contractor's service warranties and guaranties customarily offered by Contractor, in addition to those warranties set forth above.
- (f) Contractor shall bear all costs for removal, repair, replacement and reinstallation of Goods under the above warranties.
- (g) To the fullest extent permitted by law, Contractor hereby assigns and transfers to Company all right to, and benefit from, any and all manufacturers' or suppliers' warranties (each and collectively "**Manufacturer's Warranty**") that apply or otherwise relate to any Goods provided under this Agreement. Contractor shall fully cooperate with and assist Company in making any claim under any Manufacturer's Warranty. Any claim by Company under a Manufacturer's Warranty shall not: (i) prevent Company from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Company's rights or remedies in law or at equity.
- (h) Acceptance of, or payment for, the Goods delivered under this Agreement shall not constitute a waiver by Company of any of the warranties of Contractor, either express or implied, and shall not be deemed to alter or affect the obligations of Contractor or rights of Company under any of such warranties, either express or implied, nor shall acceptance of, or payment for, any Goods constitute a waiver of any of Company's rights or remedies contained herein, or in law or at equity.
- (i) All warranties and the benefits thereof will run to Company, its successors, assigns and customers.
- (j) Upon request of Company, Contractor shall determine whether any Goods contain tin, tantalum, tungsten, gold or any other material that is designated under applicable rules of the Securities and Exchange Commission ("**SEC**") as a "conflict mineral." If no Goods contains one or more conflict minerals that are necessary to the functionality or production of such Goods within the meaning of applicable SEC rules and interpretations, Contractor shall, upon request, certify to Company that none of the Goods contains such conflict minerals. If any Goods contains one or more such conflict minerals, Contractor shall certify to Company the country of origin of any

such conflict mineral or that the conflict mineral came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Contractor is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Contractor shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict minerals, and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Contractor is or becomes aware that any conflict minerals that are necessary to the functionality or production of any Goods originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Contractor shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publicly available, and to provide written documentation of such determination. Contractor shall also take such additional actions and provide such additional information requested by Company as may be necessary in order for Company to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.

- (k) The warranties set forth or referred to herein are in addition to all rights and remedies Company may have in law or at equity.
- (l) Contractor shall provide Company with not less than forty-five (45) days advance written notice of any changes in or to the Goods, including, without limitation, changes in or to the Specifications, raw materials, packaging, manufacturing processes, manufacturing locations, analytical test methods, use of a new reagent or solvent, or any other change which results in an alteration to the physical or chemical characteristics of the Goods.

## 2. TITLE AND RISK OF LOSS

Title to each item included in the Goods shall pass to Company upon delivery, FOB the Delivery Point. Notwithstanding the foregoing, risk of loss for all Goods shall remain with the Contractor and shall transfer to Company in accordance with Section 6(c) below.

## 3. CERTIFICATE OF ORIGIN

Where applicable:

- (a) Contractor shall at Contractor's cost, prepare and issue to Company, Certificate(s) of Origin for Goods sold pursuant to the North American Free Trade Agreement (NAFTA) or any successor agreement and shall provide copies of the issued Certificate(s) of Origin to the customs administration of Contractor's and Company's home country upon request as well as provide all information requested by either customs administration in respect of the issued Certificate(s) of Origin. Contractor shall maintain records in respect of the Certificate(s) of Origin for five (5) years or such longer period as required by law. Contractor shall otherwise comply with Contractor's obligations under NAFTA or any successor agreement.

- (b) Contractor shall defend, indemnify and save Company harmless from and against all liability, loss and cost incurred for additional duties, tariffs and penalties imposed by any customs administration, resulting from the Certificate(s) of Origin furnished with respect to Goods being found to be incomplete, false or otherwise invalid in whole or in part, or arising out of a breach by Contractor of Section 3(a) above. Contractor's indemnity herein shall extend to all costs and expenses, including attorney's fees, arising from any resulting redetermination or reassessment with respect to any of the Goods.

#### 4. PACKAGING

Contractor shall ensure all Goods are packaged in accordance with applicable law and regulations and in such a manner as to ensure the Goods are transported and delivered to Company without sustaining damage or deteriorating in condition.

#### 5. LABELING AND SHIPPING

- (a) Contractor shall place or affix the number of this Agreement on all invoices, packing lists, packages, containers and related correspondence. Each shipment must be accompanied by all Safety Data Sheets or similar documentation, and a packing list showing the exact quantity and description of Goods shipped. Contractor shall mark all containers with necessary lifting, handling, environmental, safety and shipping information.
- (b) Where Company is responsible for freight charges Contractor shall ship the Goods by the most economical manner and route unless otherwise specified or directed by Company.
- (c) If Company specifies or directs Contractor to ship the Goods in a specific manner or by a specific route and Contractor fails to do so, Contractor shall reimburse Company for any loss or extra expenses incurred by Company resulting from such failure.

### B. TERMS AND CONDITIONS APPLICABLE TO THE PURCHASE OF SERVICES

#### 6. PERFORMANCE

- (a) Contractor shall diligently and carefully perform the Services in strict accordance with this Agreement and shall furnish all labor, supervision, tools, materials and equipment necessary or appropriate therefor or otherwise required in for the performance of the Services in accordance with the terms of this Agreement.
- (b) Unless otherwise agreed to in writing by Company, Contractor shall immediately upon completion of the Services remove from Company's premises all its equipment, surplus materials and debris and shall leave such premises in a clean and tidy condition.
- (c) Risk of Loss to the Goods shall remain with Contractor until completion of all the Services hereunder and acceptance of the Goods and Services by Company.

#### 7. WARRANTY

- (a) Contractor represents and warrants to Company that:
  - (i) Contractor shall perform the Services in a timely, professional and workmanlike manner, in accordance with the industry's highest standards of care, thoroughness, and competence;

- (ii) Contractor shall perform the Services in full compliance with all applicable laws, regulations and rules and this Agreement, all applicable manufacturer's or vendor's instructions, and other documentation delivered by Company, or as otherwise agreed to by Company and Contractor in writing;
  - (iii) Contractor shall employ only persons who may lawfully work at the site where the Services are to be performed;
  - (iv) Contractor shall employ only trained, qualified, competent and experienced personnel to perform the Services; and
  - (v) All work product resulting from the Services shall be of the kind and quality specified herein, free from fault in design, workmanship and material and belong solely and exclusively to Company.
- (b) The above warranties shall continue in full force and effect after completion of the Services. Contractor shall re-perform all Services that were performed incorrectly or otherwise do not fully comply with the above warranties.
  - (c) Where Services are re-performed under the above warranties, such Services shall be warranted as set forth in subclause 2(a) above from the date re-performance is completed.
  - (d) Contractor shall bear all costs for re-performance of the Services under the above warranties.
  - (e) Contractor shall assign to Company the benefit of all warranties or similar obligations provided by any subcontractor or supplier to Contractor (each and collectively "*Supplier Warranties*"). Contractor shall ensure that all Supplier Warranties are assignable to Company without the consent of any third party, or shall obtain the necessary consents before completing the Services without additional cost to Company. Contractor shall fully assist Company in making any claim under any Supplier Warranty. Any claim by Company under a Supplier Warranty shall not: (i) prevent Company from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Company's rights or remedies in law or at equity.

## 8. CONTRACTOR'S PERSONNEL AND EQUIPMENT

If Company determines in its sole discretion that any of Contractor's personnel or equipment do not comply with applicable safety and security requirements or of any other legally permitted reason, Company may refuse to permit such personnel or equipment to enter upon any of Company's premises. Contractor shall indemnify defend and hold harmless Company from any and all claims, causes of action, petitions, demands, loss or expenses (including court costs, interest and reasonable attorney's fees) of every kind arising out of Company's refusal to permit any of Contractor's personnel or equipment to enter upon any of Company's premises.

## 9. BOND

At Company's request, Contractor shall furnish Company with a performance bond in an amount designated by Company. The form and content of the bond and the surety shall be subject to prior approval by Company.

## 10. ENVIRONMENT, HEALTH AND SAFETY

Without limiting the generality of Section 27 below, the parties agree as follows:

- (a) Contractor shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State or local governments relating to environmental protection as well as any environmental policies or procedures imposed by Company from time to time.
- (b) Company may at any time evaluate Contractor's environmental practices and procedures and may, from time to time, require the assistance of Contractor in completing evaluations in this regard.
- (c) Contractor shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable Federal, State or local occupational health and safety laws and regulations as well as any additional safety rules imposed by Company from time to time, whether attached as an Appendix to this Agreement or otherwise.

## 11. SITE INSPECTION

Contractor acknowledges that prior to entering into this Agreement it has, and shall be deemed to have, examined and familiarized itself with and considered the location and all conditions of the work to be performed as part of the Services including, without restricting the generality of the foregoing, topography, access to the work site, the rights-of-way, the character and quantity of the physical plant and equipment thereat, the surface and subsurface conditions, the uncertainties of weather, the availability of labor and other requisite elements such as power, water and transportation and the type and quantities of necessary equipment and materials (each and collectively "*Site Conditions*").

## 12. PURCHASE PRICE AND PAYMENT TERMS

Except as otherwise expressly provided herein, Company shall pay, and Contractor shall accept, as the sole and complete consideration for the sale of the Goods and the performance of the Services, including all labor, supervision, tools, materials and equipment necessary or appropriate therefor to complete the installation of the Goods in accordance with the Specifications, the sum of \$\_\_\_\_\_ (the "Purchase Price"). Unless otherwise specified by the parties in writing, the following payment terms shall apply to the purchase of the Goods and Services:

- (a) (i) Contractor shall invoice Company for twenty five percent (25%) of the Purchase Price upon acceptance of Company's Purchase Order; (ii) upon completion of delivery, Contractor shall invoice Company for twenty five percent (25%) of the Purchase Price; (iii) upon completion of the installation by Contractor in accordance with this Agreement, Contractor shall invoice Company for twenty five percent (25%) of the Purchase Price, and (iv) upon acceptance of the Goods and Services by Company following appropriate testing under actual operating conditions designed to confirm that the Goods conform to and operate in accordance with the applicable Specifications and the Services have been furnished in accordance with this Agreement, Contractor shall invoice Company for the balance of the Purchase Price. All Invoices shall include such information as Company may require.



- (b) Unless otherwise specified in this Agreement, invoices shall be due and payable forty-five (45) days after receipt of the invoice by Company. Each invoice issued by Contractor shall be subject to a fifteen percent (15%) holdback by Company, which shall be payable by Company upon the completion of the Services to Company's reasonable satisfaction and in accordance with this Agreement.

## C. TERMS AND CONDITIONS APPLICABLE TO THE PURCHASE OF ALL GOODS AND SERVICES

### 13. ACCEPTANCE

Contractor's acceptance of this Agreement is expressly limited to its terms and Company hereby objects to and rejects any different or additional terms in any response to this Agreement and, in addition, Company and Contractor are not bound by prior dealings or trade usage. EXCEPT AS AGREED TO IN WRITING BY COMPANY, IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN ANY AGREEMENT SUBMITTED BY CONTRACTOR AND THE PROVISIONS HEREOF, THE PROVISIONS HEREOF SHALL GOVERN AND CONTROL AND CONTRACTOR ACKNOWLEDGES THAT UNIFORM COMMERCIAL CODE § 2-207 OR THE APPLICABLE STATE LAW EQUIVALENT, SHALL NOT APPLY, AND SHALL NOT ALTER, ADD, CHANGE OR MODIFY THE PROVISIONS HEREOF. Each acceptance of an Agreement by Contractor shall constitute the creation of a separate binding contract between Contractor and Company, subject to the terms hereof. Any of the following acts by Contractor shall constitute acceptance of an Agreement: (i) Contractor signing and returning a copy of this Agreement; (ii) Contractor's shipment of all or any portion of the Goods covered by an Agreement; or (iii) Contractor's commencement of the performance of any of the Services identified in an Agreement.

### 14. DRAWINGS AND SPECIFICATIONS

Unless otherwise agreed to by the parties, all drawings, blueprints, Specifications, dies, patterns and tools, whether supplied by Company or prepared or constructed by Contractor as required for the completion of this Agreement, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Company.

### 15. FIRM PRICE

- (a) The Purchase Price is firm and shall not change without written agreement of Company. Company may cancel any order without any resulting liability after receiving a price change notice. Charges for packing, packaging, freight/shipping and handling will not be allowed or paid by Company unless expressly included in Contractor's price quote prior to Company's acceptance. The Purchase Price includes all expenses, charges and costs for all equipment, goods and materials necessary to complete the Services.
- (b) No increases in the price or other charges shown or referred to in the SOW, including taxes or customs and excise duties, shall be payable by Company unless such increases are authorized by Company in writing.
- (c) If any error is discovered in an invoice by Company, such error shall be adjusted within thirty (30) days from the date of discovery of such error, provided however, that there shall be no

adjustment made for any error discovered by Contractor more than twelve (12) months after receipt of an invoice by Company.

- (d) Unless otherwise specifically provided for in this Agreement, Contractor assumes exclusive liability for and shall pay before delinquent, all sales, use, customs and excise, import, export (from country of origin), value added and other taxes, charges, duties, levies, imposts or contributions of any kind or with respect to or measured by the Goods or the Services supplied hereunder (collectively "*Sales Taxes*"). Contractor shall indemnify, defend and hold harmless the Company Indemnified Parties, as defined herein, from any claims, causes of action, costs and expenses (including court costs and expenses and reasonable attorney's fees) arising out of Contractor's failure to pay any Sales Taxes that are Contractor's responsibility under this Section.
- (e) Unless otherwise specifically provided for in this Agreement, Contractor assumes exclusive liability for and shall pay before delinquent all Federal, State and local income taxes, pension benefits, social security taxes, employment, disability and other customary insurance and for any other taxes or payments which may be due and owing by Contractor or which are the result of fees or amounts paid by Company to Contractor under this Agreement (each and collectively "*Income Taxes*"). Contractor shall indemnify, defend and hold harmless the Company Indemnified Parties, as defined herein, from any claims, causes of action, costs and expenses (including court costs and expenses and reasonable attorney's fees) arising out of Contractor's failure to pay any Income Taxes that are Contractor's responsibility under this Section.
- (f) Company shall furnish Contractor any applicable, valid and effective tax exemption certificates and Contractor shall collect Sales Taxes and other taxes only in accordance with those tax exemption certificates.
- (g) Any applicable Sales Taxes and other government charges shall be separately listed on Contractor's invoice.
- (h) All taxes and duty rebates, remissions, exemptions or other such savings shall be for the account of Company and accordingly, shall reduce the price shown in the Agreement. In the event that Company has already paid the price shown in the Agreement, Contractor shall pay all amounts received in respect of rebates, remissions, exemptions or other such savings to Company within ten (10) days of their receipt. Contractor shall apply promptly for all available rebates, remissions and exemptions in compliance with applicable law. Early payment discounts shall run from the later of: (i) Company's receipt of Contractor's invoice, (ii) delivery of the Goods, or (iii) completion of the Services.

## 16. **AUDIT**

Company shall have the right to audit the books and records of Contractor at any time to confirm Contractor's compliance with this Agreement.



## 17. TIMELY PERFORMANCE AND COVER

- (a) Contractor understands and agrees that time is of the essence and Contractor shall deliver all Goods and perform and complete all Services in accordance with time schedules referred to in this Agreement or otherwise agreed to by the parties.
- (b) If it is reasonably anticipated that Contractor may fail to deliver Goods or perform and complete all Services within the above time periods, Contractor shall promptly notify Company of any anticipated delay and forthwith take all steps necessary or appropriate to expedite performance so as to prevent such failure. Any additional costs resulting from such steps including, but not limited to, the full cost of cover for Goods or Services not timely delivered or completed shall be borne by Contractor, including any costs or expenses incurred by Company to purchase such Goods from an alternate source.

## 18. INDEPENDENT CONTRACTOR

- (a) The parties acknowledge and agree that Contractor is an independent contractor and nothing contained in this Agreement or otherwise nor any past relationships or course of dealings between the parties shall be construed as constituting a joint venture or partnership or establishing a relationship of principal and agent, master and servant, franchisor or franchisee, or employer and employee. Contractor shall be solely responsible for the performance of the Services and such Services shall be performed by Contractor according to its own methods and at its own risk, subject only to compliance with the provisions of this Agreement.
- (b) Contractor, in keeping with its independent status, shall cause itself and any of its employees when applicable, to be registered with the appropriate government agencies for the purpose of workers' compensation, unemployment insurance, social security or equivalent and income tax. Contractor shall indemnify the Company Indemnified Parties in accordance with Section 15(f) for failure to pay any aforementioned taxes.
- (c) Contractor shall ensure that all Contractor personnel and subcontractors have received all training regarding health and safety or any other matters required by applicable law or applicable governmental regulations or authorizations. Training or implementation of any additional health and safety measures appropriate for the work will be specified by Company. Upon Company's request Contractor shall provide Company written documentation of said training and worker qualifications.

## 19. SUBCONTRACTORS

- (a) Contractor may not subcontract any part of this Agreement without the prior written approval of Company and if granted such approval shall not operate to relieve Contractor of any liability to Company under this Agreement.
- (b) Contractor shall enter into written contracts with Company-approved subcontractors that include provisions requiring them to perform in accordance with and subject to the terms and conditions of this Agreement.
- (c) Contractor shall be fully responsible to Company for any and all acts and omissions of its employees, agents or subcontractors and their employees or agents of any tier.

## 20. INDEMNIFICATION

- (a) Contractor shall defend, indemnify, release and save Company its members, shareholders, managers, directors, officers, employees, agents and affiliates (each and collectively "*Company Indemnified Parties*") harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions (including punitive damages) on account of bodily injury, sickness, disease or death of any person or persons, or damage to or destruction of tangible property, including the loss of use resulting therefrom arising out of or related to the performance of this Agreement, including, but not limited to, latent defects which Company Indemnified Parties may suffer or incur by reason of, arising from, relating to, or in connection with:
- (i) the delivery of any non-conforming Goods;
  - (ii) any breach of this Agreement by Contractor or any employee, agent or subcontractor of Contractor;
  - (iii) any violation of applicable law by Contractor or any employee, agent or subcontractor of Contractor;
  - (iv) any other act or omission by Contractor or any employee, agent or subcontractor of Contractor;
  - (v) any claim, suit or allegation, including, without limitation, any claim or suit for alleged infringement of any patent, industrial design, copyright or trademark, resulting from or arising in connection with the manufacture, sale, use or other disposition of any of the Goods or the provision of any of the Services hereunder;
  - (vi) any and all damage to or loss or destruction of any property, including without limitation, property of Company, Contractor, or any employee, agent or subcontractor of Company or Contractor, arising out of or in connection with any act, omission, default, breach of warranty, violation of law or any other act of omission by Contractor or any employee, agent or subcontractor of Contractor; or
  - (vii) bodily or personal injury to or death of any persons, including without limitation, any employees or agents of Company, Contractor, or any subcontractor of Company or Contractor, arising out of or in connection with any act, omission, default, breach of warranty, violation of law or any other act of omission by Contractor or any employee, agent or subcontractor of Contractor under this Agreement.
- (b) Without limiting the obligations of Contractor in Section 20(a), Contractor shall release Company Indemnified Parties of any liability for, and shall protect, defend, indemnify, and save Company Indemnified Parties harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions (including punitive damages) in favor of Contractor's employees (including leased employees) or Contractor's contractors and subcontractors or their employees or Contractor's invitees on account of bodily injury, death or damage to property without limit and without regard to the cause or causes thereof, including without limitation, the acts or omissions of any party or parties, arising out of or related to this Agreement or relating in any way to the performance of the Services. Contractor's indemnity shall be without regard to and without any right to contribution from any insurance maintained by Company.

## 21. INSURANCE

- (a) Contractor shall, at its own expense, obtain and maintain while this Agreement is in effect, with insurers having an A.M. Best rating of A VII or better, the following minimum coverages which may be increased at Company's reasonable discretion:
- (i) commercial general liability insurance (including contractual, products, and completed operations coverages) of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of or relating to the acts or omissions of Contractor in providing the Goods or performance of the Services;
  - (ii) insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of the ownership or operation of a motor vehicle used or to be used in connection with the supply of Goods or the performance of the Services by Contractor;
  - (iii) Contractor shall furnish evidence of its and its permitted subcontractor's compliance with Worker's Compensation or similar legislation applicable at the site(s) where the Services shall be performed or Goods shall be delivered;
  - (iv) product liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of Contractor's provision of the Goods to Company;
  - (v) errors and omission liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate; and
  - (vi) crime (Fidelity) insurance of not less than \$500,000 per employee dishonesty claim.
- (b) Prior to commencing to provide any Goods or Services hereunder, Contractor shall deliver to Company a broad form "vendors endorsement," ISO # 20-15-07-04 or equivalent thereto, in favor of Company and a certificate of insurance evidencing the above coverages or, if required by Company, certified copies of the above insurance policies and endorsements.
- (c) The above insurances shall (i) be primary to any other coverage in favor of the Company, (ii) include Company as an additional insured, (iii) provide a waiver of subrogation in the Company's favor and (iv) provide thirty (30) days' notice of cancellation or material change.
- (d) Contractor shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Company with evidence of the above coverages and endorsements prior to delivering any Goods or Services hereunder.

## 22. CONFIDENTIALITY

Contractor shall not use or disclose to any third person any business information, business plans, data, designs, drawings, Specifications or other information, (collectively, the "**Confidential Information**") belonging to or supplied by or on behalf of Company except as necessary to perform under this Agreement. Upon the expiration or termination of this Agreement or upon Company's earlier request, all Confidential Information, including any copies thereof, shall be returned to Company. Where Company's Confidential Information is furnished to Contractor's subcontractors or suppliers in

connection with the performance of this Agreement, Contractor shall insert the substance of this provision in its subcontracts and orders and shall ensure compliance with such provision by its subcontractors and suppliers.

## 23. TERMINATION

Company may, in its sole discretion, terminate this Agreement at any time, in whole or in part, by written notice to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue any Services or efforts in respect of provision of Goods being performed in connection with this Agreement, except as directed by Company. Upon such termination, and subject to audit, Company shall reimburse Contractor for Goods delivered and the value of the Services actually provided to Company up to the effective date of termination. In no event shall Company be liable to Contractor for lost or anticipated profits.

## 24. SET-OFF

- (a) Company shall be entitled at all times to set-off against any amount due or owing to Contractor under this Agreement or under any other agreement between Company and Contractor, such amounts that, in the opinion of Company, are sufficient to: (i) cover any account owing from Contractor to Company or to any of its affiliated companies, or (ii) protect Company from any losses or expenses arising from defects or deficiencies in the Services performed or Goods provided by Contractor, breach of this Agreement or any other failures by Contractor to comply with the requirements of this Agreement.
- (b) Company shall further have the right, but not the duty, to withhold any monies payable by it hereunder and apply same to the payment of: (i) any obligations of Contractor to Company howsoever arising, or (ii) any obligations of Contractor to any other parties arising in connection with this Agreement.

## 25. FORCE MAJEURE

Neither party shall be liable for delays or defaults due to acts of God, acts of terrorism, governmental authority or public enemy, war, fires, floods, epidemics, pandemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Company may terminate this Agreement pursuant to Section 23 herein in the event of such delay in performance.

## 26. LIENS

- (a) Contractor shall keep Company's premises and all other assets free and clear of any and all liens and charges arising in connection with the performance of this Agreement.
- (b) Company may withhold a lien holdback from the price agreed to be paid to Contractor for the purpose, in the manner, in the amount and for the time provided under all applicable laws, rules and regulations. In the event that any lien or charge is filed against Company's premises in connection with this Agreement or any claim shall exist in connection with this Agreement which may form the basis for any lien or charge against Company's premises, Contractor shall

take such steps as are necessary to immediately discharge the lien, charge or claim. If such lien, charge or claim has not been discharged within five (5) days of notice from Company, Company may in its sole discretion take such steps as it deems necessary to discharge such lien, charge or claim, including withholding amounts payable under this Agreement or under any other agreement between Company and Contractor. Contractor shall be liable for and shall indemnify and save Company harmless from any and all costs and expenses (including legal fees) and other liabilities arising from such lien, charge, or claim.

27. **COMPLIANCE WITH LAWS AND POLICIES**

Contractor shall comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State or local governments. Contractor shall also comply with any business conduct policies and safety and security rules imposed by Company from time to time. Contractor shall ensure that its employees, subcontractors and agents are made aware of and comply with the above laws, regulations, by-laws, permits, approvals, policies and rules and shall furnish Company with such evidence of compliance as Company may require from time to time.

28. **GOVERNING LAW**

This Agreement shall be deemed to be an agreement made in the State of Delaware governed by and construed in accordance with the laws of the State of Delaware pertaining to the sale of Goods or performance of Services as applicable and without reference to that jurisdiction's choice or conflict of laws rules. Company and Contractor expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

29. **WAIVER OF JURY**

CONTRACTOR IRREVOCABLY WAIVES ANY AND ALL RIGHT CONTRACTOR MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT OR ANY OF SUCH DOCUMENTS. CONTRACTOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

30. **JURISDICTION AND VENUE**

Contractor hereby irrevocably agrees, submits and consents to, and expressly waives any right to contest or object to, the exclusive jurisdiction and venue of the federal or state courts of the state in which the contracting Company is headquartered for all disputes arising out of or relating to this Agreement.

31. **COMPANY'S RIGHTS AND DAMAGE LIMITATIONS**

- (a) Contractor agrees that any right, cause of action or remedy under the warranties or undertakings assumed or imposed upon Contractor under this Agreement shall extend without exception to any company affiliated with Company on whose behalf this Agreement is issued by Company.
- (b) Except as specifically set forth herein, all rights and remedies provided in favor of Company hereunder are in addition to and without prejudice to any other rights and remedies to which

Company may lawfully be entitled, including without limitation, under and by virtue of the provisions of any Federal, State or local law governing the sale of goods.

- (c) The failure of Company to insist upon strict performance by Contractor of any of the terms and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that Company may have at law or in equity in respect thereof and shall not be deemed a waiver of any subsequent default by Contractor.
- (d) Under no circumstances shall Company be liable for consequential, special, indirect, incidental, punitive, statutory or exemplary damages arising out of any claim or cause of action arising out of or based on this Agreement, even if advised of the possibility of such damages.
- (e) In any suit between Company and Contractor under this Agreement or involving the purchase and sale of the Goods or Services, upon the entry of a final non-appealable order of a court of competent jurisdiction, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the other party.

### 32. ENTIRE AGREEMENT AND CHANGES

- (a) This Agreement shall constitute the entire, final, complete, and exclusive agreement between Company and Contractor and no terms or conditions, other than those stated herein, and no agreements or understandings, oral or written, in any way purporting to modify this Agreement, or customs or usages of trade shall be binding on Company unless documented by Company's written authorization.
- (b) Without limiting the generality of the foregoing, the quality, quantity and other Specifications of the Goods or Services to be supplied hereunder shall not be changed from those referred to in the SOW, or in any specification furnished by Company or otherwise agreed to by Company and Contractor without Company's written authorization thereof.

### 33. MISCELLANEOUS

- (a) The headings contained herein are provided for convenience only and are not to be considered when interpreting or construing this Agreement.
- (b) No right, title, or interest in this Agreement and no obligations or duty or liability of Contractor shall be transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Company, which consent may be given or withheld in the sole discretion of Company.
- (c) Each notice, statement and invoice to be given pursuant to this Agreement shall be in writing and shall be sent by prepaid ordinary, certified or registered mail, by facsimile transmission or by nationally recognized express courier to the addresses and facsimile numbers for Company and Contractor noted in the SOW or as otherwise agreed in writing by the parties. Notices, statements and invoices sent by mail or courier shall be deemed to have been received when actually received or refused, and those sent by facsimile transmission shall be deemed to have been received on the first business day following the day on which they were sent.
- (d) Company or any person designated by Company may at any and all reasonable times for a period of twenty-four (24) months after completion of delivery of the Goods or Services hereunder, have access to Contractor's books and records relating to the Contractor's invoices



for the purpose of auditing and verifying such costs and Company may make copies of such books and records as reasonably required by Company in performing such audit. Contractor shall promptly review and settle with Company all matters arising from such audit, including the refunding of monies where applicable.

- (e) If this and any other documents are transmitted by any means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Contractor.
- (f) Contractor shall not use Company's names, logos, trade names, trademarks or copyrights or the fact that Contractor is performing Services or supplying Goods for Company in any press release, media statement, advertisement or other public communications or otherwise publicize this Agreement without the prior written consent of Company.
- (g) During the period for performance of this Agreement, Contractor shall not enter into any additional agreement, or modify any existing agreement, with another buyer of Goods or Services from Contractor that establish rights or benefits to such other buyer that are more favorable in any material respect to such other buyer than the rights and benefits afforded to Company in this Agreement, unless, in any such case, Contractor has extended to Company such rights and benefits.
- (h) The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

EXHIBIT A

SOW

**EXHIBIT B**  
**SPECIFICATIONS FOR THE GOODS AND SERVICES**