

## GENERAL TERMS AND CONDITIONS OF PURCHASE

The term “*SELLER*” as used in this document shall mean the entity furnishing the goods, materials, equipment, or other services (referred to as the “*Goods*”) as described in the Purchase Order. The term “*BUYER*” as used in this document shall mean MODEC International, Inc., or its affiliate or subsidiary as identified in the Purchase Order. Collectively BUYER and SELLER are referred to as the “*Parties*” and individually as “*Party*”. These General Terms and Conditions of Purchase incorporate any Special Conditions of Purchase attached hereto as Attachment “A”. In the event of any conflict between these General Terms and Conditions of Purchase and the Attachment A - Special Conditions, the Attachment A - Special Conditions shall prevail.

**1. ENTIRE AGREEMENT:** This Purchase Order embodies the entire agreement between BUYER and SELLER with respect to the Goods. The Parties shall not be bound by nor liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in any proposals, correspondence, discussions, or negotiations prior to the date of this Purchase Order has any effect on this Purchase Order unless specifically incorporated herein. No changes, amendments, substitutions, or modifications of any of the terms and conditions hereof shall be valid unless reduced to writing and signed by both Parties in accordance with Article 2 (Changes) of this Purchase Order. No terms contained in any document by SELLER shall have any force or effect unless specifically agreed to by BUYER and incorporated herein.

**2. CHANGES:** BUYER, through its authorized Procurement Representative (as such term is defined in the Purchase Order), may at any time direct, in writing, changes, including but not limited to changes in any one or more of the following: (1) drawings or specifications; (2) additions to or deletions from quantities ordered; (3) delivery schedule; (4) method of shipment or packing; and/or (5) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of any part of the work or affects warranties and guarantees, an adjustment may be made in the price or delivery schedule, or both, and the Purchase Order shall be modified by written amendments or change orders executed by the authorized representatives of both Parties. Any request by SELLER for adjustment under this Article 2 (Changes) must be asserted within ten (10) calendar days from the date of receipt by SELLER of the notification of change. However, nothing in this Article shall excuse SELLER from proceeding with the Purchase Order as changed. If this Purchase Order requires BUYER to review and comment on SELLER's technical documents, then SELLER shall submit within ten (10) calendar days from the date of SELLER's receipt of such review and comments any requests for adjustment which would result from implementation of BUYER's comments. No adjustment will be made hereunder unless BUYER, through its assigned Procurement Representative, confirms the change in writing.

**3. SURVIVAL:** Notwithstanding anything to the contrary contained in this Purchase Order, the provisions of this Article

3 (Survival) and Articles 4, 7, 10, 11, 12, 13, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 32, 33, 35, 36, 37, 38, 39 and 40 shall survive the completion, expiration, cancellation, or termination of this Purchase Order.

**4. PARENT COMPANY GUARANTEE:** Upon the request of BUYER, SELLER shall, within fifteen (15) calendar days of such request, deliver to BUYER a guarantee from SELLER's ultimate parent company in a form acceptable to BUYER. Such parent company guarantee shall bind SELLER's ultimate parent company to all terms, conditions and warranties contained in this Purchase Order in the same manner that SELLER is so bound. If the Parties agree, SELLER may deliver to BUYER, in lieu of the above Parent Company Guarantee, an irrevocable standby letter of credit drawn on or confirmed by a Houston, Texas bank in a form and amount acceptable to BUYER.

**5. PRICE AND PAYMENT:** The prices herein specified are firm and not subject to escalation, and unless otherwise expressly stated, shall include all taxes and duties of any kind which are required to be paid with respect to the sale of the Goods covered by this Purchase Order, as well as all charges and expenses in connection with the packing of the Goods and their carriage to the place of delivery to BUYER unless specifically excluded. SELLER shall be paid, except as otherwise stated in this Purchase Order, upon submission of proper invoices, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted; however, payment may be withheld or portions thereof may be deducted if, in BUYER's reasonable opinion, SELLER is not performing work in accordance with the provisions of this Purchase Order or if setoffs in favor of BUYER in other transactions are asserted. Payment terms are net forty-five (45) calendar days after BUYER's receipt of correct invoice.

**6. DELIVERY:** Timely performance is a material provision of this Purchase Order and BUYER relies upon SELLER's timely performance in accordance with the delivery date provided within the Purchase Order.

In the event of a delay in the delivery of Goods beyond the contractually agreed delivery date, if such delivery is not excused under the terms of the Purchase Order, SELLER shall, if set forth in the Purchase Order, be liable for liquidated damages. **NOTWITHSTANDING ANYTHING TO THE CONTRARY**

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HEREIN, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT (i) SUCH LIQUIDATED DAMAGES ARE NOT A PENALTY AND REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGE BUYER MAY SUFFER AS A RESULT OF DELAY, AND (ii) SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE LIABILITY OF SELLER AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR DELAY DURING THE PERIOD COVERED BY SUCH LIQUIDATED DAMAGES.

SELLER will not be liable for delays in performing its obligations to the extent such delays are caused by any unforeseeable condition which is beyond SELLER's reasonable control (referred to as "Force Majeure") and without SELLER's fault or negligence. Acts of God, such as named tropical storms or floods, as well as government priorities, acts of civil or military authorities, fires, epidemics, war or riot are examples of events which may be excusable for being beyond SELLER's reasonable control, only upon fulfillment of the following conditions: (1) within three (3) calendar days of the commencement of any excusable delay as described herein, SELLER shall provide BUYER with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof; and, (2) within seven (7) calendar days of the cessation of the event causing such delay, SELLER shall provide BUYER with written notice of actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay. Failure to so notify BUYER shall not relieve the SELLER from complying with the delivery date set forth in this Purchase Order.

Force Majeure shall not include rain, storms, snow, winds, seas, tides and currents or other prevailing weather conditions which SELLER could reasonably have anticipated. If BUYER claims a Force Majeure situation and as a result of the Force Majeure is prevented from delivering the BUYER-supplied items or otherwise carrying out its obligations to SELLER, SELLER's sole remedy shall be to submit a change request for an extension of the delivery date. The Party prevented from performing its obligations as a result of Force Majeure shall mitigate the impact of the Force Majeure event on all obligations under this Purchase Order and resume its performance as soon as possible after the Force Majeure condition ceases. Should a Force Majeure claimed by SELLER continue for a period of seven (7) calendar days from the date SELLER was affected, and if in BUYER's opinion the Force Majeure condition will prevent SELLER from delivering the Goods per the terms of this Purchase Order, then BUYER shall have the right to terminate this Purchase Order by notice to SELLER pursuant to Article 15 (Termination for Convenience).

**7. TITLE AND RISK OF LOSS:** Title to all Goods furnished by SELLER hereunder shall transfer to BUYER upon the earlier of: (1) delivery to BUYER; or (2) purchase and delivery to SELLER's facility of goods and materials comprising the Goods. Notwithstanding the foregoing, SELLER shall be responsible for and shall bear any and all risk of loss or damage to any Goods furnished until delivery thereof in accordance with the delivery provisions of this Purchase Order as per INCOTERMS 2010. Notwithstanding the foregoing, any loss or damage, whenever occurring, which results from SELLER's nonconforming packaging or crating shall be borne by SELLER. All dies, tools, patterns, drawings, fixtures, etc. furnished or specifically paid for by the BUYER shall become the property of the BUYER and BUYER shall be entitled to possession thereof upon request. The SELLER is not permitted to use the same for any other customer without BUYER's written approval.

**8. EXPEDITING:** Any Goods furnished under this Purchase Order, including all warranty work, shall be subject to expediting by BUYER. BUYER's representatives shall be afforded free access during working hours to SELLER's facilities, and SELLER agrees to obtain a similar right for BUYER, for expediting purposes with respect to SELLER's subcontractors and vendors. As required by BUYER, SELLER shall supply schedules, progress reports and unpriced copies of SELLER's Purchase Orders and subcontracts for BUYER's use in expediting. SELLER shall notify BUYER in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. Slippage in SELLER's schedule may be deemed to be reasonable grounds for insecurity, in which event BUYER may demand in writing that SELLER provide adequate assurances that SELLER will perform on time.

**9. QUALITY STANDARDS:** SELLER shall comply with the standards of quality specified by this Purchase Order in addition to those customary in the industry if no requirement is specified. BUYER's Quality Surveillance Representative shall be afforded free access during working hours to facilities of SELLER and to SELLER's subcontractors and vendors in order to monitor compliance with quality requirements. BUYER's right to inspect, examine, and test any Goods furnished shall extend through the manufacturing process, the time of shipment and for a reasonable time after arrival at the final destination. SELLER's failure to adhere to the standards of quality required under this Purchase Order shall be deemed to be reasonable grounds for insecurity. BUYER may demand, in writing, that SELLER provide adequate assurances of SELLER's ability to meet said standards. Any Goods furnished shall not be deemed accepted until finally inspected by BUYER's representative at final destination. The making or failure to make an inspection,

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examination or test of, or payment for, or acceptance of any Goods furnished shall in no way relieve SELLER from its obligation to conform to all of the requirements of this Purchase Order and shall in no way impair BUYER's right to reject or revoke acceptance of nonconforming Goods or to avail itself of any other remedies to which BUYER may be entitled, notwithstanding BUYER's knowledge of the nonconformity, its substantiality or the ease of its discovery.

**10. WARRANTIES/GUARANTEES:** SELLER warrants that the Goods furnished are fit for the use intended and shall be free from liens and defects in design, material, workmanship, and title, and shall conform in all respects to the terms of this Purchase Order and to the applicable drawings issued for manufacture, and shall be new and of the best quality, if no quality is specified.

Unless the warranty period is otherwise extended, the conditions of which are provided elsewhere in this Purchase Order, the following warranty shall apply: twenty-four (24) months from the date of delivery or twelve (12) months from first beneficial use or start-up of operations whichever is longer. If, at any time prior to expiration of the above warranty period it appears that the Goods furnished, or any portion thereof, do not conform to these warranties or to the specifications, and BUYER notifies SELLER promptly after its discovery, SELLER shall, within five (5) calendar days after written notice from BUYER of such breach, submit for BUYER's consideration a detailed proposal to remedy the defect. This proposal shall include a description of the corrective work proposed (including all supporting engineering data and calculations) and a comprehensive schedule showing each work element. In the event of any breach of this warranty, at BUYER's option, either (1) SELLER shall correct such breach at its sole cost, expense and risk, failing which BUYER may reject or revoke acceptance, and cover by making any reasonable purchase of the Goods in substitution for those rejected and SELLER will be liable to BUYER for any excess costs for such similar goods, materials or services provided in accordance with BUYER's delivery requirements; or (2) BUYER may proceed to correct SELLER's nonconforming work by the most expeditious means available, the costs, expense and risk of which shall be for SELLER's account; or (3) BUYER may retain the nonconforming Goods and an adjustment reducing the order price to reflect the diminished value of such nonconforming Goods furnished will be made by written change order. In the event that any such non-conforming Goods are repaired or replaced, then SELLER's warranty obligations shall be extended for twelve (12) months from BUYER's acceptance of such repaired or replaced defective Goods. BUYER expressly reserves the right to assign any and/or

all of the above warranties to any third party, including but not limited to the ultimate end-user of the Goods (the "Client"), whereupon the assignee shall be deemed to have all of the rights of BUYER under this Purchase Order. Without limiting BUYER's remedies, with respect to the supply of defective Goods, SELLER agrees to release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client from and against any damages, losses, claims, adjustments, suits, penalties, fines, demands, expenses (including reasonable attorneys' fees or other expenses) or causes of action directly or indirectly resulting from any breach of these warranties. Notwithstanding, SELLER's warranty obligations shall not extend to any use by BUYER of the Goods in conditions more severe than the manufacturer's recommendations nor to any defects which were visually observable by BUYER, but which are not promptly brought to SELLER's attention.

**11. INFRINGEMENT:** SELLER shall, at its own expense, release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and Client under this Purchase Order against any claim, suit, or proceeding brought against any member of BUYER GROUP and/or the Client which is based upon a claim, whether rightful or otherwise, that any equipment, process or material, or any part thereof, furnished by SELLER under this Purchase Order, constitutes an infringement of any patent or other intellectual property right and SELLER shall pay all damages and costs awarded against any member of BUYER GROUP and/or the Client, resulting therefrom. In case said equipment, process, or material, or any part thereof, is in such suit held to constitute infringement and/or its use is enjoined, SELLER shall, at its own expense, subject to the following provisions, either procure for the members of BUYER GROUP and the Client an irrevocable, royalty-free license to continue using such equipment, process or material, or with BUYER's prior written approval, replace same with substantially equal but non-infringing equipment or modify it so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve SELLER of its warranties and guarantees set forth in this Purchase Order. The indemnity is given upon the condition that BUYER shall promptly notify SELLER of any claim or suit or proceeding involving BUYER in which such infringement is alleged, and BUYER shall permit SELLER to control completely the defense or compromise of any such allegation of infringement, and BUYER shall render such reasonable assistance at SELLER's cost in the defense thereof as SELLER may require. Notwithstanding any proprietary legends or copyright notices to the contrary, members of BUYER GROUP and the Client may copy or reproduce documents and information furnished by SELLER in connection with SELLER's proposal and this Purchase Order

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and distribute such copies or reproductions to others for the limited purposes of designing, constructing, operating, maintaining, or licensing members of BUYER GROUP's and the Client's project. SELLER is responsible for obtaining necessary permission and releases from any third parties placing proprietary rights or copyrights on such documents or information and shall, at its own expense, release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client against any and all claims, suits or proceedings based upon a claim whether rightful or otherwise that a proprietary right or copyright has been infringed by copying, reproduction, distribution or use by any member of BUYER GROUP or the Client.

**12. COMPLIANCE WITH APPLICABLE LAWS:** SELLER warrants that the Goods furnished hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all laws and regulations to which goods, materials or services are subject (referred to as "Applicable Laws"). SELLER shall execute and deliver to BUYER any documents as may be required to effect or to evidence such compliance. All Applicable Laws required to be incorporated in agreements of this character are hereby incorporated by reference. SELLER shall release, protect, defend, indemnify, and hold harmless all members of BUYER GROUP and the Client under this Purchase Order against any claim or proceeding resulting from any violation of Applicable Laws.

**13. ASSIGNMENT:** Any assignment of this Purchase Order or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of BUYER shall be void. Upon prior written notice to SELLER, BUYER may assign this Purchase Order and all rights hereunder to any member of BUYER GROUP, any third party and/or the Client, whereupon said assignee shall have all of the rights of BUYER under this Purchase Order.

**14. SUSPENSION:** Notwithstanding any other provisions of this Purchase Order, BUYER may suspend, or extend the time for SELLER's performance at any time and from time to time upon ten (10) calendar days' prior written notice of such suspension or extension. Thereafter, SELLER shall resume performance as directed by BUYER. In the event of such suspension or extension, SELLER's sole and exclusive remedy shall be an extension of time for such suspension if such extension is claimed within thirty (30) calendar days after resumption of performance and BUYER shall have no liability to SELLER for any damages, claims, losses or expenses associated with any such suspension.

**15. TERMINATION FOR CONVENIENCE:** SELLER's performance under this Purchase Order may be terminated by BUYER in accordance with this Article in whole, or, from time to time, in part, whenever BUYER shall so elect. Any such termination shall be effected by delivery to SELLER of a notice of termination specifying the extent to which performance under the Purchase Order is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, SELLER shall, unless the notice requires otherwise: (1) immediately discontinue work on the date and to the extent specified in the notice; (2) place no further orders for materials other than as may be necessarily required for completion of such portion of the work that is not terminated; (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to BUYER of all orders to subcontractors and vendors or assign those orders to BUYER; and (4) assist BUYER upon request in the maintenance, protection, and disposition of property acquired by BUYER under this Purchase Order. If notified in writing within thirty (30) calendar days after the notice of termination, BUYER will pay to SELLER an adjustment to include: (a) all amounts due and not previously paid to SELLER for that portion of the Goods completed in accordance with this Purchase Order prior to such notice, and for work thereafter completed as specified in such notice; and (b) verifiable and unavoidable costs of settling and paying claims arising out of the canceled orders. The total sum to be paid to SELLER under this Article shall not exceed the total price of the Purchase Order as reduced by the amount of payments otherwise made and as further reduced by the order price of work not terminated, and will not include any consideration for loss of anticipated profits on the terminated work, all claims for which SELLER agrees to waive.

**16. TERMINATION FOR DEFAULT:** BUYER may terminate the whole or any part of SELLER's performance under this Purchase Order in any one of the following circumstances: (1) if SELLER fails to make delivery of the Goods or to perform within the time specified herein or any agreed upon extension thereof; (2) if SELLER delivers nonconforming Goods; (3) if SELLER fails to provide adequate assurances of its abilities to meet the quality standards or the delivery date of this Purchase Order; or (4) if SELLER fails to perform any of the other provisions of this Purchase Order in accordance with its terms or so fails to make progress as to endanger performance of this Purchase Order. In the event of any such failure, BUYER will provide SELLER with written notice of the nature of the failure and BUYER's intention to terminate for default. In the event SELLER does not cure such failure within ten (10) calendar days of the date of such notice, BUYER will provide SELLER with a written notice of default. In the event BUYER terminates this Purchase Order in whole or in part as provided in this Article, BUYER may

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procure, upon such terms and in such manner as BUYER may deem appropriate, supplies or services similar to those so terminated and SELLER shall be liable to BUYER for any excess costs, expense and risk for such similar supplies or services provided in accordance with BUYER's delivery requirements; provided, that SELLER shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this Article. SELLER agrees to assist BUYER in the event that such re-procurement action is necessary as a result of default, by cooperation in the transfer of information, in the disposition of work in progress or residual material, and in the performance of other reasonable requests made by BUYER. If, after notice of termination of this Purchase Order, it is determined for any reason that SELLER was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Purchase Order, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Article 15 (Termination for Convenience).

**17. NON-WAIVER:** Failure by BUYER to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights or remedies provided herein or by law, or to properly notify SELLER in the event of breach, or the acceptance of or payment for any Goods hereunder, or review of design, shall not release SELLER from any of the warranties or obligations of this Purchase Order and shall not be deemed a waiver of any right of BUYER to insist upon strict performance hereof or any of its rights or remedies as to any such Goods regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any termination of this Purchase Order by BUYER operate as a waiver of any of the terms hereof. Unless the Purchase Order clearly indicates otherwise, a requirement that a SELLER furnished document is to be submitted for or subject to "Authorization to Proceed," "Approval," "Acceptance," "Review," "Comment," or any combinations of such words or words of like import shall mean that SELLER shall, before implementing the information in the document, submit the document, obtain resolution of any comments and authorization to proceed. Such review shall not mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, tests, or construction methods or materials developed or selected by SELLER and shall not relieve SELLER from full compliance with requirements of this Purchase Order.

**18. AUDIT:** BUYER or the Client shall have the right to audit all pertinent records and documentation in relation to all technical aspects of the Purchase Order, as well as to all

commercial and accounting records relating to the Purchase Order and any other obligations under this Purchase Order, including but not limited to the charges incurred by SELLER which are associated with the design, procurement, fabrication, manufacture, testing, loadout and shipment of the Goods and all records pertaining thereto for a period of five (5) years after delivery of the Goods to BUYER. Such audit shall not include the make-up of lump sum prices and unit rates. BUYER shall have the right to make and take copies of such records at its expense. Without prejudice to its other rights and remedies, BUYER may require that SELLER promptly refund to BUYER any remuneration found to have been over paid. All accounting records shall be maintained in accordance with generally acceptable accounting practices.

**19. INDEMNITIES:** SELLER shall release, protect, defend, indemnify and hold harmless BUYER and its parent, subsidiary and affiliated companies, BUYER's other contractors and subcontractors of all tiers and its and all of their respective officers, directors, members, employees, agents, invitees, assignees, representatives and the subrogees of all said parties (referred to as "BUYER GROUP") and the Client from and against any loss, cost, claim, obligation to indemnify another arising out of this Purchase Order, suit, judgment, subrogation action, award or damage (including reasonable attorney's fees) in any case of illness, injury or death to SELLER and its parent, subsidiary and affiliated companies, SELLER's subcontractors and vendors of all tiers and its and all of their respective officers, directors, members, employees, invitees, permitted assignees, representatives and the subrogees of all said parties (referred to as "SELLER GROUP") and in any case of loss or damage to any member of SELLER GROUP's property arising out or relating to the provision of the Goods furnished under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF BUYER GROUP'S OR THE CLIENT'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PRE-EXISTING CONDITIONS.**

BUYER shall release, protect, defend, indemnify and hold harmless all members of SELLER GROUP from and against any loss, cost, claim, obligation to indemnify another arising out of this Purchase Order, suit, judgment, subrogation action, award or damage (including reasonable attorney's fees) in any case of illness, injury or death to any member of BUYER GROUP and in any case or loss or damage to any member of BUYER GROUP'S property arising out or relating to the provision of the

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Goods furnished under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PRE-EXISTING CONDITIONS.**

Notwithstanding the foregoing, SELLER shall be liable in any case of loss or damage to property and in any case of injury or death to any person where such loss, damage, injury or death is caused or contributed to by any defect in the Goods furnished.

**20. INSURANCES:** During the performance of this Purchase Order, SELLER, at its sole expense except as specifically set forth to the contrary below, shall maintain the insurance coverages or their substantial equivalents and endorsements set forth in this Article 20 and with insurance underwriters and upon terms reasonably satisfactory to BUYER. Where applicable, each insurance policy described below shall be endorsed as follows: (1) underwriters shall waive their rights of subrogation against all members of BUYER GROUP and the Client; (2) to provide thirty (30) calendar days' prior written notice of cancellation, material change or reduction of coverage to BUYER; (3) to provide adequate territorial and navigational limits; and (4) except for the Workmen's Compensation policy, BUYER and the Client shall be named as additional assureds under such policies but only to the extent of the indemnification obligations and risks assumed by SELLER under this Purchase Order.

SELLER shall maintain a Workmen's Compensation policy complying with all of the statutory benefits required by the Workmen's Compensation and Occupational Disease laws of the location where operations are being conducted. The policy shall be endorsed to provide Employers Liability coverage for the following: (1) endorsements to cover all states in which the work is performed; and (2) "Borrowed Servant" endorsement, stating that a claim brought against BUYER as a "borrowed servant" by an employee of SELLER shall be treated as a claim against SELLER.

SELLER shall maintain a Commercial General Liability insurance policy covering all operations of the SELLER. This policy shall include the following: (1) Premises and Operations; (2) Contractual Liability, insuring the indemnity agreements contained in the Purchase Order; (3) SELLER's Protective Liability, covering all activities of the SELLER relating to the Goods; and (4) limits of coverage as required by Excess Liability

Insurance or Umbrella Insurance policy as provided hereunder. SELLER shall also maintain a Comprehensive Automobile Liability insurance policy providing coverage for all owned, hired, and non-owned automobiles with the coverage limits as required by the Excess Liability or Umbrella insurance company. SELLER shall maintain an Excess Liability Insurance or Umbrella Insurance policy supplementing the primary coverages of the policies required above with a limit not less than US\$5,000,000 per occurrence, provided that such coverage shall not limit SELLER's indemnification obligations under Article 19. Certificates of all of the above insurances shall be provided by SELLER to BUYER within five (5) calendar days of the date of this Purchase Order.

**21. SUPPLIER DATA:** SELLER shall provide to BUYER with the number of copies of data as set forth in the Supplier Data Requirement List ("*SDRL*") for the Goods being purchased by BUYER including, but not limited to, commissioning and start-up data, operating and maintenance manuals, drawings and spare parts data, as well as listings of recommended spare parts required for a two (2) year period of operations and for start-up. SELLER is hereby advised by BUYER that the Purchase Order will only be deemed complete once the BUYER has received the acknowledgement copy of the Purchase Order and any Change Orders (if applicable) and all drawings and data specified in the order and specifications. BUYER may elect to withhold or retain amounts otherwise payable pending acceptable receipt of all such requirements.

**22. REPRODUCTION OF DRAWINGS AND DATA:** All members of BUYER GROUP and the Client shall have the right to reproduce any data submitted by SELLER for their use despite notice of the contrary appearing on any documents or data submitted by SELLER.

**23. NON-DISCLOSURE:** SELLER agrees not to divulge information to third parties which is obtained from BUYER GROUP, including, but not limited to, publishing or disclosing any information, photographs, data or process, drawings or specifications connected with the business of BUYER GROUP or the Client which shall come or have come into its possession or to its knowledge in or by reason of the performance of the Purchase Order, without prior written consent from the BUYER unless said information is found to be in the public domain, SELLER agrees that it shall only use information provided hereunder by BUYER GROUP for the purpose of providing the Goods.

**24. INSPECTION:** SELLER shall allow BUYER and the Client to undertake an inspection of the Goods being fabricated, assembled, or shipped and the facilities for such. SELLER shall provide to BUYER a minimum of ten (10) calendar days' prior

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notice of any inspection or test to which the Goods are being subjected to allow BUYER to attend such inspection or test. At BUYER's option and at no additional cost, BUYER may have up to three (3) inspectors located at SELLER's facility during normal working hours to inspect the Goods and to review all processes utilized for the manufacture of the Goods. Such inspection shall not relieve SELLER of any obligation and/or liability under this Purchase Order. BUYER may elect to test Goods for conformance to Purchase Order requirements/specifications. Any and all costs, expenses and risk incurred by the BUYER as a result of SELLER's design changes, non-readiness to perform scheduled tests, or failure to achieve satisfactory test results shall be for the SELLER's account.

If the Goods purchased under this Purchase Order requires third-party inspection, the SELLER, unless otherwise agreed, shall arrange and assume all obligations, responsibilities, costs, and charges associated with such inspection of and all certification requirements for the Goods. BUYER shall be given access to SELLER's facilities and the facilities of SELLER's subcontractors for inspection and/or expediting purposes.

**25. ARBITRATION:** All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Purchase Order shall be decided by resort of either SELLER or BUYER to arbitration utilizing a single arbitrator in accordance with the Construction Industry Rules of the American Arbitration Association ("AAA"). All arbitrations hereunder shall be administered by the Dallas office of the AAA (domestic). Except for the exchange of relevant, material, and non-privileged documents between the Parties, the arbitrator shall have the right to limit discovery in order to minimize the costs to the Parties of the arbitration and to expedite the resolution of disputes. Notwithstanding the foregoing, there shall be no interrogatories or requests for admissions. The arbitration shall be held in Houston, Texas. The arbitrator shall only apply the choice of law as set forth in Article 27 (Choice of Law) and shall disregard and shall not consider any other law for any portion or aspect of the award nor for any of the deliberations associated with the award. Nothing herein will be deemed as preventing the arbitrator from applying injunctive or other equitable relief (or any other provisional remedy) in favor of any Party as is necessary to protect any Party's name, proprietary information, trade secret, know-how, or any other intellectual property rights. The arbitrator shall have the right to award all reasonable attorney fees and costs to the prevailing party in the proceeding hereunder. The decision of the arbitrator shall be final, binding, and enforceable in any court of competent jurisdiction and SELLER and BUYER agree that there shall be no

appeal from the arbitrator's decision. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding. The right to arbitrate shall survive the completion, termination, or expiration of the Purchase Order. SELLER shall continue to perform all obligations under this Purchase Order, including, but not limited to, delivery of the Goods notwithstanding any dispute and during the pendency of any arbitration proceeding hereunder.

**26. SEVERABILITY:** If, in any legal proceeding, it is determined that any provision of this Purchase Order is unenforceable under applicable law, the unenforceable provision shall automatically be amended to conform to that which is enforceable under applicable law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Purchase Order, and the Purchase Order shall be construed and enforced as if such provision had not been included.

**27. CHOICE OF LAW:** The laws of the State of Texas shall control the validity, construction and interpretation of this Purchase Order excluding any conflicts of law principles which would direct the substantive law of another jurisdiction to apply. The Parties agree to waive any right or redress under any statute, law or regulation that would invalidate, in whole or in part, the dispute resolution forum and/or the choice of law provisions under this Purchase Order.

Notwithstanding anything to the contrary, the Parties expressly agree the following shall not apply in any respect to the Purchase Order or any of the obligations of the Parties: the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), and the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Vienna Protocol (also known as the "Vienna Convention").

**28. INDEPENDENT CONTRACTOR:** In the performance of this Purchase Order, SELLER's status shall be that of an independent contractor and the relationship of the BUYER and SELLER shall in no event be construed or interpreted as being that of principal and agent, master and servant, or employer and employee, and the employees of each Party shall not be deemed to be employees of the other Party for any purpose.

**29. TAXES AND PERMITS:** The prices shown in the Purchase Order are deemed to include all taxes which are not expressly imposed on BUYER by law, and SELLER shall release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client from any liability and expense by reason of SELLER GROUP's failure to pay such taxes. SELLER shall secure and keep in effect all governmental permits and

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licenses required in connection with the performance of the Purchase Order. Specifically, SELLER shall be responsible for: (1) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which SELLER is liable as imposed by any appropriate government authority, whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to SELLER's personnel; (2) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) including, but not limited to, income, profits, corporation taxes and taxes on capital gains, turnover, Value Added Tax (VAT) and sales taxes, now or hereafter levied or imposed by any appropriate government authority; (3) compliance with all statutory obligations to make deductions on account of and remit the required amounts to any appropriate government authority, including, but not limited to, income tax, national insurance, employee taxes, charges, social security costs, VAT, sales taxes, levies and contributions whether or not they are measured by the wages, salaries or other remuneration or benefits paid to SELLER's personnel; and (4) ensuring that any subcontractor and vendor shall comply with this Article.

SELLER shall be solely responsible for payment of all taxes levied, imposed, assessed, or collected, at any time against the Goods, or parts thereof, or against SELLER GROUP in relation to the Purchase Order and the Goods by any governmental authority or which might have been levied, imposed, assessed or collected at any time notwithstanding BUYER having been required to withhold or having made payment of such taxes. For each jurisdiction in which SELLER and/or its subcontractors or vendors are obligated to report income and file a tax return, SELLER shall submit, and shall require that its subcontractors and vendors submit, all relevant documentation, file all relevant tax returns (including an income tax declaration, VAT, sales tax, payroll, etc.) and pay all relevant taxes to the appropriate governmental authority in accordance with applicable law. To the extent required under applicable law, BUYER shall inform the above authorities that the Purchase Order has been entered into and specify any payments made or due to SELLER hereunder.

**30. PAYMENT OF CLAIMS/LIENS:** Whenever BUYER requests, SELLER shall furnish proof satisfactory to BUYER that all charges for material and/or labor have been fully paid. SELLER agrees to release, protect, defend, indemnify, and hold harmless BUYER and the Client from and against any and all liens, claims, or encumbrances for labor and/or material arising out of or related to this Purchase Order. In the event of any such claim, BUYER reserves the right to pay directly to any claimant the amount of such claim and any payments will be

credited against any amount owed by BUYER to SELLER. If no amounts are then due to SELLER, then the amounts so paid shall be deemed a debt of SELLER to BUYER. To the maximum extent permitted by applicable law, SELLER agrees that, in consideration of BUYER awarding this Purchase Order to SELLER, SELLER shall waive any and all right to lien or encumber the Goods, BUYER's and the Client's property or vessels, and any hydrocarbon product associated therewith. SELLER acknowledges that in entering into this Purchase Order, SELLER shall look solely and exclusively to BUYER for payment and shall not rely on any statutory, common law or other right to lien or encumber any property of BUYER or any hydrocarbons associated therewith.

**31. SUBCONTRACTORS:** SELLER expressly agrees to obtain BUYER's written approval prior to subcontracting any work required to produce the Goods furnished under this Purchase Order.

**32. OFFSHORE REQUIREMENTS:** SELLER shall comply with all applicable training, visa and other requirements prior to SELLER dispatching any SELLER personnel to a BUYER offshore location.

**33. CONSEQUENTIAL DAMAGES:** Notwithstanding anything to the contrary contained elsewhere herein, neither SELLER nor BUYER shall be liable to the other for any consequential, incidental, indirect or punitive damages of any kind or character, including, but not limited to, loss of use, loss of profit, loss of efficiency, loss of productivity, acceleration, or loss of revenue (referred to as "Consequential Damages") whenever arising under this Purchase Order or as a result of, relating to or in connection with the Goods furnished hereunder, and no claim shall be made by either SELLER or BUYER against the other or any member of their respective GROUPS.

BUYER shall release, protect, defend, indemnify and hold harmless all members of SELLER GROUP from and against any Consequential Damages claimed or asserted by any member of the BUYER GROUP against any member of SELLER GROUP arising out or relating to the provision of the Goods furnished under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PREEXISTING CONDITIONS.**



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SELLER shall release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client from and against any Consequential Damages claimed or asserted by any member of the SELLER GROUP against any member of BUYER GROUP and the Client arising out or relating to the provision of the Goods furnished under this Purchase Order and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF BUYER GROUP'S OR THE CLIENT'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PREEXISTING CONDITIONS.**

**34. SELLER'S OBLIGATIONS:** SELLER shall comply with, and ensure all personnel involved in the performance of work under this Purchase Order comply with, all applicable SELLER health, safety and environmental practices, procedures, and requirements, as well as any and all project, Client's and BUYER's health, safety and environmental practices, procedures and requirements that form part of the Purchase Order. SELLER shall do everything necessary to ensure that no person, property, right, right-of-way or privilege shall be injured, damaged, or unreasonably infringed by reason of SELLER's activities under the Purchase Order and all documents contained herein. Fire hazards shall be eliminated, and the health of all persons employed in connection with the Purchase Order shall not be endangered. SELLER shall maintain the adequate medical supervision of all persons employed in connection with the Purchase Order and adequate sanitation measures in respect of the performance of the Purchase Order. SELLER shall observe and comply with all fire, safety, and security and other rules and regulations relating to the safe execution of the Purchase Order and shall be responsible for the observance thereof by its employees, workmen, agents, and subcontractors. During the execution of the Purchase Order, the SELLER shall furnish, free of charge, support and necessary conveniences at the SELLER's and its subcontractor's facilities to BUYER, including but not limited to secretarial service, telephone, facsimile, and office space.

**35. RIGHTS OF TECHNOLOGY:** If the SELLER's performance of this Purchase Order includes experimental design, development, or research work, and such work is paid for in whole or in part by BUYER, SELLER shall: (1) promptly disclose and assign to BUYER all technical data and computer software resulting, in whole or in part, from such work, including but not limited to all confidential designs, processes, know-how, trade secrets and inventions, whether or not patentable, resulting

from such work (collectively the "Developed Technology"); (2) use the Developed Technology only in the performance of this Purchase Order; (3) maintain the Developed Technology in strict confidence using the same care as SELLER uses to protect its own proprietary information; (4) not disclose the Developed Technology to any third party; and (5) execute such documents and take such actions as BUYER may consider appropriate to vest in BUYER exclusive title to the Developed Technology.

**36. RIGHTS OF THIRD PARTIES:** Except as specifically provided, neither these terms nor the Purchase Order shall be construed to confer any benefit on any third party not a Party to this Purchase Order nor shall it provide any rights to such third party to enforce its provisions.

**37. ANTI-CORRUPTION COMPLIANCE:** SELLER warrants that, in connection with the execution of this Purchase Order, SELLER shall comply with Applicable Anti-corruption Laws as defined below. SELLER represents and warrants that it has not corruptly made, offered, paid, promised or authorized, and will not corruptly make, offer, pay, promise or authorize, the payment or gift of money or anything of value directly or indirectly to any person, including any Public Official, as defined below, for the purpose of: (1) influencing any act or decision of the person or Public Official in his or her official capacity; (2) inducing the person or Public Official to do an act in violation of a lawful duty; or (3) inducing the person or Public Official to influence the act or decision of a government or government instrumentality, in order to assist SELLER or BUYER in obtaining or retaining business or securing any improper advantage, including any license, permit, government authorization or any decision related to BUYER or this Purchase Order.

### *Disclosure Controls and Procedures.*

SELLER agrees and undertakes that in connection with this Purchase Order and in connection with any other business transactions involving BUYER and SELLER and the jurisdiction in which the Goods are supplied, SELLER has applied, and will apply, effective disclosure controls and procedures.

### *Continuing Effect and Survival of Representation, Warranties and Covenants.*

All of the foregoing representations, warranties and covenants shall be continuing in effect and shall survive for a period of five (5) years after completion, expiration, or termination of the Purchase Order. SELLER shall be obliged to immediately inform BUYER if any of the foregoing representations and warranties ceases to be accurate, in whole or in part.

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### *Right of Termination Due to Evidence of Violations.*

In the event BUYER has any reasonable basis to believe SELLER may not be in compliance in any material way with the undertakings and/or requirements set forth in this Article 37, BUYER shall advise SELLER in writing of its belief and SELLER shall fully cooperate with any and all inquiries undertaken by or on behalf of the BUYER. Without prejudice to any other rights the BUYER may have hereunder, under the Purchase Order or at law (including, as applicable, the right of damages for breach of contract), BUYER shall have the right to terminate this Purchase Order with immediate effect if any of the foregoing agreements, representations, warranties, covenants, undertakings, or requirements set forth in this Article 37 have not been complied with or fulfilled by SELLER.

### *Indemnity for Violation or Breach.*

SELLER agrees to be responsible for and assume all liability for and hereby agrees to release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) of whatever nature resulting from any violation or breach by SELLER of Applicable Anti-Corruption Laws, or any of the representations, warranties or other obligations contained in this Article 37.

### *Defined Terms.*

*"Applicable Anti-corruption Laws"* shall mean: (1) Japan Unfair Competition Prevention Law ("UCPL"); (2) the U.S. Foreign Corrupt Practices Act ("FCPA"); (3) the U.K. Bribery Act 2010; (4) any other applicable legislation implementing either the United Nations Convention Against Corruption or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; (5) anti-corruption laws of any applicable territory; and (6) all applicable laws dealing with bribery, extortion and kickbacks.

*"Public Official"* shall mean: (1) any official, officer, employee or representative of (a) any federal, state, provincial, territory, county or municipal government or any department or agency thereof, (b) any public international organization or any department or agency thereof, or (c) any company or other entity owned or controlled by any government; (2) any political party or party official; and (3) any candidate for political office.

**38. EXPORT CONTROLS:** Unless otherwise directed by BUYER, SELLER shall be responsible for determining all export licensing requirements and obtaining all necessary export licenses and authorizations as required by Applicable Laws. In such circumstances, SELLER shall utilize an export agent or freight

forwarder to facilitate the export of the Goods or any portion thereof, and SELLER shall be solely and exclusively responsible for providing written authorization or power of attorney to its export agent or freight forwarder so that SELLER's export agent or freight forwarder can act on SELLER's behalf. Copies of the written authorization or power of attorney given by SELLER to SELLER's export agent or freight forwarder must be delivered to BUYER as a condition to the transfer of the Goods or any portion thereof by SELLER to BUYER or SELLER's export agent or freight forwarder. SELLER's export agent or freight forwarder shall be listed on all export documents as the Principal Party in Interest and/or Exporter, and SELLER and SELLER's export agent or freight forwarder shall assume all responsibility for the proper handling, classification, and exporting of the Goods or any portion thereof sold by SELLER to BUYER. Upon written request from BUYER, SELLER's export agent or freight forwarder, SELLER shall provide all necessary and sufficient technical information to assist BUYER, SELLER's export agent or freight forwarder in determining the export classification status of the Goods or any portion thereof.

SELLER shall be responsible for filing for and obtaining all such export licenses and authorizations for all goods, materials and intellectual property relating to the sale of the Goods by SELLER to BUYER and SELLER shall release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) on account of failing to file for and properly obtain all such export licenses and authorizations for all goods, materials and intellectual property relating to the sale of the Goods by SELLER to BUYER.

**39. DANGEROUS GOODS:** Dangerous Goods must be packed, marked, and labelled in accordance with the requirements of Applicable Laws prior to shipment. SELLER must ensure that all Goods are properly packed so as to prevent any damage or deterioration to the Goods. In each single package or bundle, a packing note, or list of items contained in the package or bundle must be inserted. All bales, drums, cases, crates, and other packages in which Goods are transported must be marked in a clear and suitable manner with gross dead weight and with marks and shipping numbers. The shipping document shall specify the Purchase Order and shall be clearly visible on the package. Goods shall be dispatched as instructed in the Purchase Order. SELLER shall be liable for any expense, loss or difference in freight charges arising from failure to follow the dispatch instructions. BUYER reserves the right to arrange transportation for any Goods. SELLER shall furnish to the BUYER copies of dangerous goods declaration, material safety data sheets, transport documents and other certifications

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stipulated under Applicable Laws prior to delivery of Dangerous Goods that shall arrive at the supply base (3) days prior to the stipulated delivery date. SELLER shall be liable to BUYER for any cost incurred by BUYER as a result of SELLER's failure to comply with Applicable Laws relating to dangerous or hazardous Goods.

**40. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS PRINCIPLES:** SELLER shall adhere to all applicable internationally recognized human rights principles and shall comply with the international human rights standards set forth in MODEC's Human Rights Policy:

[https://www.modec.com/sustainability/pdf/MODEC\\_HumanRightsPolicy.pdf](https://www.modec.com/sustainability/pdf/MODEC_HumanRightsPolicy.pdf).