

Purchase Terms and Conditions E251

1. **Agreement.**

- 1.1. **Acceptance.** These Purchase Terms and Conditions E251 (“Terms”) have been incorporated by reference into a purchase order, order confirmation, contract, agreement or other written instrument issued or signed by an authorized employee of Purchaser (each, a “Purchase Document”) regarding the purchase of products (“Products”) and/or services (“Services”) from Supplier. These Terms and the Purchase Document issued by Purchaser shall be collectively referred to herein as the “Agreement.”
- 1.2. **Precedence.** In the event of any conflict between the terms and conditions of a Purchase Document and these Terms, the terms and conditions of these Terms shall take precedence.
- 1.3. **Entire Agreement.** The Agreement, including any attachments, exhibits, Internet links or other written documents that are explicitly incorporated by reference in the text of the Agreement, constitutes the entire agreement between Purchaser and Supplier regarding the subject matter of the Agreement and may not be modified except in writing signed by a duly authorized employee of Purchaser and Supplier.
- 1.4. **Supplier Documents.** Purchaser shall not be bound by the terms and conditions of any quotation, order confirmation, sales order or other instrument issued by Supplier (each, a “Supplier Document”) unless such Supplier Document is counter-signed by an authorized employee of Purchaser. Purchaser’s performance under the Agreement shall not, under any circumstances, be deemed Purchaser’s acceptance of any of the terms and conditions contained in a Supplier Document. If Supplier issues a Supplier Document, then such issuance shall be deemed to constitute Supplier’s acceptance of the terms and conditions of this Agreement, but all other terms and conditions contained in the Supplier Document shall be of no force or effect and shall not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of this Agreement. Supplier’s performance or fulfillment of any part of the tasks described in the Purchase Document or Supplier’s acceptance of any payment by Purchaser for any Products or Services described in the Purchase Document shall also be deemed to constitute Supplier’s acceptance of all of the terms and conditions of this Agreement.

2. **Shipping and Delivery.**

- 2.1. **Shipping.** Supplier shall notify Purchaser at the time of shipment as to the quantity of Products shipped and the specific shipping information. Shipping quantities may not vary from those established by the Purchase Document unless otherwise mutually agreed upon in writing by the parties. In the event that any shipment is delayed and may not be delivered on time, Purchaser may direct Supplier to ship such Products by premium transportation designated by Purchaser, and Supplier shall bear the expense of any difference in cost due to such premium transportation. Supplier shall ship the Products to the delivery address(es) set forth in the applicable Purchase Document. Purchaser may, from time to time, instruct Supplier to deliver all or a portion of the Products ordered pursuant to a Purchase Document to non-Purchaser locations, or to store all or portions of such Product for subsequent shipment without charge following packaging. Until a Product is shipped, Supplier shall store the Product separately from any other material stocks.
- 2.2. **Delivery.** Unless otherwise specified in the Purchase Document, all Products shall be delivered DDP (INCOTERMS 2020). Title and risk of loss shall pass from Supplier to Purchaser at Purchaser’s designated final delivery location.
- 2.3. **Packing.** Supplier shall be responsible for the safe packaging of the Products, and Supplier warrants that upon their delivery the Products shall be undamaged and in marketable condition. Supplier shall separately number all containers showing the corresponding number on the invoices. An itemized packing slip, bearing Purchaser’s order number, must be placed in each container. No extra charge will be made for packaging or packing materials.
- 2.4. **Time of Delivery.** Time of delivery is of the essence. Purchaser reserves the right to cancel any order and reject any Product upon default by Supplier in the time of delivery. Purchaser also reserves the right to refuse shipments made in advance of the schedule of deliveries requested by Purchaser.

3. **Changes.**

- 3.1. **No Unauthorized Changes.** Following the date of the Agreement, Supplier covenants that no Changes will be made to any Product, including, but not limited to, changes to any assembly, subassembly, component, subcomponent or part, except with the written consent of Purchaser’s Configuration Management Department. The term “Change” means alterations to any (i) specifications, (ii) form, fit or function, (iii) version or revision (including version or revision number), (iv) software code, (v) layouts or

designs, (vi) colors or materials of any items, internal or external to the Product, (vii) data sheets, manuals or instructions, (viii) testing protocols or (ix) manufacturing locations.

- 3.2. **Revision Numbers.** Supplier covenants that all Products shall be manufactured to the revision number that is specified in the Purchase Document. Exceptions to this requirement shall not be permitted except with the written consent of Purchaser's Configuration Management Department.
 - 3.3. **Repairs and Replacements.** Supplier covenants that all spare and replacement parts, components and supplies provided with the Products, as well replacements of Products (whether during a warranty period or thereafter) shall also strictly adhere to the requirements set forth in this Section 3 (Changes).
 - 3.4. **Certificates of Conformance.** Whenever requested by Purchaser, Supplier shall deliver a certificate of conformance on a form approved by Purchaser's Configuration Management Department, certifying that Supplier, or one or more Products, conform to the requirements set forth in this Section 3 (Changes).
 - 3.5. **Engineering Changes.** Purchaser may at any time request that Supplier incorporate engineering changes into a Product or Service. Such requests shall include a description of the proposed engineering changes sufficient to permit Supplier to evaluate their feasibility and cost. Supplier's evaluation, which shall be delivered promptly to Purchaser, shall state the increase or decrease in Supplier's actual costs (if any) expected to result from such engineering change and the amount of time (if any) required to implement such engineering change. Supplier shall not proceed with the engineering change unless and until it receives written instructions to do so from Purchaser, in which case (i) the Product and/or Service price (as applicable) shall be adjusted in the amount of such increase or decrease in Supplier's actual costs (including, without limitation, the cost of Unusable Inventory (as defined in Section 7 (Cancellation)) due to such engineering change), (ii) the delivery schedule for the Product and/or Service shall be amended to reflect such additional implementation time and (iii) the specifications for the Product and/or Service shall be amended to reflect the engineering change. Supplier shall not refuse to implement any engineering change requested by Purchaser unless Supplier reasonably determines that such engineering change is technically unworkable.
4. **Inspection.** Purchaser shall have the right, but not the obligation, to (i) inspect the work conducted and Services provided by Supplier under the Agreement; (ii) inspect and test Supplier's facility(ies) and any equipment used by Supplier in the performance of any such work or Services, including, without limitation, any areas where the Products (or components thereof) are stored, handled, packaged or manufactured; and (iii) inspect and obtain copies of all books and records (including financial and technical books and records), licenses, authorizations, approvals and written communications from any governmental agency or regulatory authority, to the extent related in any way to the performance of work or Services of the type(s) performed under or in connection with the Agreement. Supplier covenants that it shall retain all such books and records (including financial and technical books and records), licenses, authorizations, approvals and written communications, and that it shall make them available for inspection and copy by Purchaser, for a period of 10 years from the date of shipment of the Product/completion of the Services to which they relate.
5. **Confidentiality.**
 - 5.1. **Confidential Information.** "Confidential Information" shall mean any and all information and materials disclosed by Purchaser to Supplier (whether or not in writing and whether disclosed before or after the date of the Agreement) that is marked or identified as, or provided under circumstances indicating that such information or material is, confidential or proprietary. The term Confidential Information includes, without limitation, the terms and existence of the Agreement, all Technical Information and Materials (as defined in Section 8.1 (License)) and all information concerning Purchaser's employees, customers and performance requirements.
 - 5.2. **Restrictions on Disclosure and Use of Confidential Information.** Supplier shall not use any Confidential Information except for the purpose of performing its obligations under this Agreement. Supplier shall maintain all Confidential Information in strict confidence. Unless Purchaser grants specific, written, advance permission to do so, Supplier shall not disclose any Confidential Information to any third party. Supplier shall limit access to Confidential Information to those employees of Supplier who have a need to know such information in order to perform their obligations under this Agreement and who are bound by confidentiality and non-use obligations to Supplier at least equivalent to Supplier's obligations to Purchaser under this Agreement. Should Supplier determine that it needs to disclose Confidential Information of Purchaser to any non-employee (including consultants or contractors) in order to perform its obligations under this Agreement, Supplier shall not do so without the prior written permission of Purchaser. Upon receiving such permission, Supplier may proceed, but only after binding any such non-employee to confidentiality and non-use obligations to Supplier at least equivalent to Supplier's obligations to Purchaser under this Agreement.

Supplier shall be responsible to Purchaser for the acts and omissions of its employees and of any other party to whom it provides Confidential Information.

- 5.3. **Return of Confidential Information.** Upon any expiration or termination of the Agreement or upon the request of Purchaser, Supplier shall return or destroy, at Purchaser's option, all Confidential Information and any copies thereof. In addition, Supplier shall promptly destroy any electronic or otherwise non-returnable embodiments of the Confidential Information.

6. **Price and Payment.**

- 6.1. **Price.** The price for all Products and Services shall be as set forth in the Purchase Document.

- 6.2. **Payment Terms.** Payment terms shall be as set forth in the Purchase Document. Invoices for amounts due shall reference the Purchase Document, line item (if applicable) and description and quantity of Products shipped and Services rendered and shall be sent to the "Bill To" address specified in the Purchase Document. Payment of an invoice shall not constitute acceptance by Purchaser of the Products or Services covered thereby and is without prejudice to any and all claims Purchaser may have against Supplier in connection therewith. Supplier shall be conclusively presumed to have waived Supplier's right to receive payment for Products or Services covered by any Purchase Document if Supplier has not submitted an invoice for the Products or Services within ninety (90) days of the date the Product or Service (as applicable) is delivered.

- 6.3. **Taxes.** Except if separately itemized in the Purchase Document, the price of all Products and Services specified in the Purchase Document shall be deemed to include all applicable taxes. All applicable taxes, include, without limitation, sales, use, VAT, duties, tariffs, excise or other taxes (and all interest and penalties) that may be assessable in connection with the design, manufacture, transport, export, import, delivery, installation, or use of the Products or performance of the Services, each of which amounts shall be remitted by Supplier to the appropriate tax or other governmental authority. Notwithstanding the foregoing, each party is responsible for its own respective income taxes or taxes based upon gross revenues, including, without limitation, business and occupation taxes.

7. **Cancellation.** Purchaser may cancel the Agreement for convenience, in whole or in part, at any time by delivery of written notice. To the extent that any unused inventory (or portion thereof) procured by Supplier cannot be used by Supplier in the manufacture, testing or assembly of other products for Purchaser or any of Supplier's other customers ("Unusable Inventory"), Supplier shall use its best efforts to (i) cancel any pending orders for such Unusable Inventory and (ii) return any such Unusable Inventory in Supplier's possession to the applicable suppliers. If Supplier is unable to return any Unusable Inventory in its possession to the applicable suppliers, Supplier shall notify Purchaser of such Unusable Inventory and, at Purchaser's instruction, Supplier shall either deliver such Unusable Inventory to Purchaser or use its best efforts to resell such Unusable Inventory. After such efforts have been completed, Purchaser shall pay Supplier for Products and Unusable Inventory affected by the cancellation as follows: (i) the contract price for all finished Products in Supplier's possession that are delivered to Purchaser and accepted by Purchaser, (ii) the cost of all Unusable Inventory delivered to Purchaser, (iii) the difference between the cost of all Unusable Inventory that was resold by Supplier at less than cost and the proceeds from such resale, (iv) the difference between the cost of all Unusable Inventory that could not be resold by Supplier and the salvage value thereof and (v) any vendor cancellation charges incurred with respect to the Unusable Inventory accepted for cancellation or return by the vendor. Notwithstanding any of the foregoing, Supplier shall use best efforts to mitigate the amounts payable by Purchaser under this Section 7.

8. **License.**

- 8.1. **License to Technical Information and Materials.** Subject to the terms and conditions of this Agreement, Purchaser hereby grants to Supplier, for the period required to perform its work under this Agreement, a non-exclusive, non-transferable, non-sublicensable license for Supplier to use the information, specifications, drawings, data, knowledge, tools and materials furnished to it by Purchaser or paid for by Purchaser (collectively, "Technical Information and Materials"), but solely for Supplier to manufacture the Products and perform the Services for Purchaser.

- 8.2. **Restrictions and Reservation of Rights.** Supplier agrees not to use the Technical Information and Materials except as expressly permitted in Section 8.1. Title to, including all intellectual property rights in and to, the Technical Information and Materials are and shall at all times remain owned exclusively by Purchaser, subject only to the license rights expressly granted to Supplier in Section 8.1. Any and all rights not expressly granted to Supplier herein are reserved by Purchaser.

- 8.3. **Information Exchange.** Purchaser shall provide to Supplier such Technical Information and Materials as Purchaser determines in its sole discretion is advisable to facilitate Supplier's manufacture and delivery of

the Products and performance of the Services. All Technical Information and Materials shall constitute the Confidential Information of Purchaser.

9. **Intellectual Property.**

- 9.1. **Work Product.** As used in this Agreement, the term “Work Product” shall include, without limitation, all discoveries, ideas, inventions, concepts, developments, know-how, trade secrets, works of authorship, materials, software (source and object code), algorithms, HTML, writings, drawings, designs, processes, techniques, formulas, data, specifications, technology, patent applications (and contributions thereto), and other creations (and any related improvements or modifications to the foregoing or to any Confidential Information), whether or not patentable, that are conceived, created or otherwise developed by Supplier (alone or with others), or result from or are suggested by any work performed by Supplier (alone or with others) if (i) based on any of the Confidential Information, including any Technical Information and Materials or (ii) stemming from or relating to any non-recurring engineering (NRE) performed under or associated with the fulfillment of the Agreement.
- 9.2. **Assignment.** Supplier agrees to disclose promptly in writing to Purchaser all Work Product. Supplier further agrees that any and all Work Product shall be considered “work made for hire” (as such term is defined in 17 U.S.C. §101) and shall be the sole and exclusive property and Technical Information and Materials of Purchaser. To the extent that the Work Product may not be considered “work made for hire,” Supplier hereby irrevocably assigns and agrees to assign to Purchaser all right, title and interest worldwide in and to the Work Product (whether currently existing or conceived, created or otherwise developed later), including, without limitation, all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual and proprietary rights related thereto (the “Proprietary Rights”), effective immediately upon the inception, conception, creation or development thereof. The Proprietary Rights shall include, without limitation, all rights, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world, related to the Work Product, together with all national, foreign and state registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, substitutions and reexaminations); all goodwill associated therewith; and all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations of any rights relating thereto; and to settle and retain proceeds from any such actions). Supplier retains no rights to use the Work Product and agrees not to challenge the validity of Purchaser’s ownership in the Work Product.
- 9.3. **License to Work Product; Waiver of Rights.** To the extent, if any, that any Work Product or Proprietary Rights are not assignable or that Supplier retains any right, title or interest in and to any Work Product or any Proprietary Rights, Supplier (i) unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Purchaser with respect to such rights; (ii) agrees, at Purchaser’s request and expense, to consent to and join in any action to enforce such rights and (iii) hereby grants to Purchaser a perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple levels of sublicensees), exclusive, worldwide right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, sell, offer to sell, import and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser) all or any portion of such Work Product, in any form or media (now known or later developed). The foregoing license includes, without limitation, the right to make any modifications to such Work Product regardless of the effect of such modifications on the integrity of such Work Product, and to identify Supplier, or not to identify Supplier, as one or more authors of or contributors to such Work Product or any portion thereof, whether or not such Work Product or any portion thereof has been modified. Supplier further irrevocably waives any “moral rights” or other rights with respect to attribution of authorship or integrity of such Work Product that Supplier may have under any applicable Law (as defined in Section 10.2 (Compliance with Law Generally)) or under any legal theory. Supplier hereby waives and quitclaims to Purchaser any and all claims, of any nature whatsoever, which Supplier now has or may hereafter have for infringement of any Work Product or Proprietary Rights assigned and/or licensed hereunder to Purchaser.
- 9.4. **Assistance.** Supplier agrees to cooperate with Purchaser or its designee(s), both during and after the term of the Agreement, in applying for, obtaining, perfecting, evidencing, sustaining and enforcing Purchaser’s Proprietary Rights in the Work Product, including, without limitation, by providing information regarding development, disclosure, use, implementation and reduction to practice, identifying inventors, executing such written instruments as may be prepared by Purchaser and doing such other acts as may be necessary in the opinion of Purchaser to obtain a patent, register a copyright, or otherwise enforce Purchaser’s rights in such Work Product (and Supplier hereby irrevocably appoints Purchaser and any of its officers and agents

as its attorney in fact to act for and on Supplier's behalf and instead of Supplier, with the same legal force and effect as if executed by Supplier).

10. **Representations and Warranties.**

- 10.1. **Products and Services.** Supplier represents, warrants and covenants that (i) the Products furnished and Services performed hereunder shall conform in all respects to their applicable specifications as of the date of the Agreement and other requirements stated in the Purchase Document, including any revision number specified therein, and shall meet the quality, operating conditions and performance requirements described in all applicable specifications and the Purchase Document; (ii) any Services furnished hereunder shall be performed in a professional and competent manner, consistent with the highest industry standards; (iii) the Products shall be merchantable, free from defects in workmanship and material, and new, fit and sufficient for the particular purpose of Purchaser and Purchaser's customers; and (iv) Supplier has good and marketable title to the Products to be furnished hereunder and there are no liens, claims or encumbrances of any kind whatsoever against the same. Supplier's representations and warranties contained in this Section 10.1 shall survive acceptance of and payment for the Products and/or Services, shall inure to the benefit of Purchaser, its successors, assigns, customers and end users, and shall not be deemed to be exclusive of any other representations and warranties available under any applicable Law or otherwise inferable from the text of the Agreement or the nature of the Products and Services provided. In addition to any other remedies available under the terms of the Agreement or applicable Law, Supplier agrees to replace or correct (at Purchaser's election) any Products or Services not conforming to the foregoing warranties promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects in or replace nonconforming Products or Services promptly, Purchaser may make such corrections or replace such Products and Services and charge Supplier for the cost incurred by Purchaser in doing so.
- 10.2. **Compliance with Law Generally.** Supplier represents, warrants and covenants that Supplier shall comply with all Laws applicable to its performance pursuant to the Agreement, including, without limitation, the provision of Products and Services hereunder. The term "Law" shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy or rule of common law, or any governmental requirement or other governmental restriction or similar form of decision or determination, or any interpretation or administration of any of the foregoing by any national, state or local government (or any association, organization or institution of which any of the foregoing is a member, or to whose jurisdiction any of the foregoing is subject, or in whose activities any of the foregoing is a participant), whether now or hereafter in effect.
- 10.3. **Environmental Laws.** Supplier represents, warrants and covenants that its facilities and operations comply with all applicable Environmental Laws. The term "Environmental Laws" shall mean any and all Laws relating to the indoor or outdoor environment, or to the health or safety of natural persons affected by the environment, or to the release or threatened release of hazardous materials into the indoor or outdoor environment, including, without limitation, ambient air, soil, surface water, groundwater, sea water, wetlands, land or subsurface strata, or otherwise relating to the generation, manufacture, processing, distribution, handling, use, treatment, recycling, storage or disposal of hazardous material or transportation to or from the property controlled by such person or entity of hazardous materials, whether now or hereafter in effect. Supplier shall obtain and maintain all licenses, authorizations, certifications and approvals required under any applicable Environmental Laws. Supplier shall not permit the release of any hazardous material into the environment and, in the event of any such release, shall promptly perform any investigation, study, sampling, testing, cleanup, removal and remedial or other action necessary to remove and clean up any such hazardous materials in accordance with the requirements of all applicable Environmental Laws.
- 10.4. **Export Administration.** Supplier represents, warrants and covenants that it shall comply with all applicable export control Laws, including, but not limited to, the Arms Export Control Act, the International Traffic in Arms Regulations (ITAR) and other export controls of the United States of America as amended from time to time, and the Export Control Act 2002, the Export Control Order 2008, EU Regulation 428/2009 and the Customs and Excise Management Act 1979 and other export controls of the United Kingdom as amended from time to time, and the Strategic Trade Act 2010 and other export controls of Malaysia as amended from time to time (collectively, "Export Control Laws"). Supplier covenants that it shall not transfer any export-controlled item, data or services to foreign persons employed by or associated with, or under contract to Supplier or Supplier's lower-tier suppliers, without first obtaining all required export licenses. Supplier agrees to notify Purchaser if (i) any deliverable under the Agreement is restricted by Export Control Laws, (ii) Supplier is or becomes listed in any Denied Parties List or (iii) Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S., U.K., and/or Malaysian government entity or agency. Supplier agrees to provide Purchaser with the applicable Export Control Classification Number for

each Product and hereby covenants that such classification shall be correct and accurate in all respects. Supplier represents and warrants that its export privileges are not, and have not within the last five years been, denied, suspended, or revoked in whole or in part by any government, including any agency or department of the U.S., U.K., or Malaysian government. Supplier further represents and warrants that its name (including any former name) and the name of any current or former director, officer or employee of Supplier, do not appear, and have not within the last five years appeared, on any lists maintained by the U.S., U.K., or Malaysian government identifying parties who are subject to export denial orders or who are otherwise restricted or prohibited by such governments from engaging in export transactions.

- 10.5. **Doing Business with the U.S. Government.** Supplier represents, warrants and covenants that Supplier, including its subcontractors, vendors, consultants and agents and its and their officers, directors and employees, is not presently, and has not within the past 10 years, been debarred, suspended or proposed for debarment by any agency or department of the U.S. Government or otherwise declared ineligible by any agency or department of the U.S. Government for award of contracts or subcontracts. Supplier further represents, warrants and covenants that Supplier, including its subcontractors, vendors, consultants and agents and its and their officers, directors and employees, has not within the past 10 years, been convicted of or had a civil judgment rendered against it for (i) the commission of fraud or any criminal offense, including, but not limited to, fraud or criminal offenses involving embezzlement, theft, receipt of stolen property, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or violation of other tax Laws or (ii) violation of any Federal or State antitrust Laws. Supplier further represents, warrants and covenants that (i) it has filed all compliance reports required of it by the U.S. Equal Employment Opportunity Commission and (ii) Supplier's representations to Purchaser about its U.S. Small Business Administration classification, including but not limited to, size standards, ownership, and control, are and in the future will be accurate and complete. Supplier covenants that it shall provide Purchaser immediate written notice if (i) Supplier, including any of its subcontractors, vendors, consultants or agents or any of its or their officers, directors or employees hereafter become debarred, suspended or proposed for debarment by any agency or department of the U.S. Government or otherwise declared ineligible for award of contracts or subcontracts by agency or department of the U.S. Government and (ii) any of the representations, warranties or covenants contained within this Section no longer remain valid, accurate, or complete in any respect.
- 10.6. **Conflict Minerals.** Supplier represents, warrants and covenants that no Conflict Minerals originating from the Democratic Republic of Congo will be used in the production of any of the Products or performance of any Services. The term "Conflict Minerals" means (i) columbite-tantalite (coltan), cassiterite, gold, wolframite and their derivatives (which derivatives are currently limited to tantalum, tin and tungsten) and (ii) any other mineral or its derivatives, the exploitation and trade of which the U.S. Secretary of State has determined is being used to finance ongoing military conflicts in the Democratic Republic of Congo or any adjoining country. Supplier covenants that it shall immediately notify Purchaser, in writing, if it learns or at any time has reason to believe that any breach of the foregoing commitments has occurred.
- 10.7. **Other Rights.** Supplier represents, warrants and covenants that: (i) Supplier has the full power and authority to enter into the Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; (ii) Supplier's execution of and performance under the Agreement shall not breach any oral or written agreement with any third party or any obligation owed by Supplier to any third party to keep any information or materials in confidence or in trust; (iii) the Work Product shall be the original work of Supplier, and any persons involved in the development of Work Product have executed (or prior to any such involvement, shall execute) a written agreement with Supplier in which such persons (a) assign to Supplier all right, title and interest in and to the Work Product in order that Supplier may fully grant the rights to Purchaser as provided herein and (b) agree to be bound by confidentiality and non-disclosure obligations no less restrictive than those set forth in this Agreement; (iv) Supplier has the right to grant the rights and assignments granted herein, without the need for any assignments, releases, consents, approvals, immunities or other rights not yet obtained; and (v) the Products, Services, and Work Product (and the exercise of the rights granted herein with respect thereto) do not and shall not infringe, misappropriate, violate or conflict with, any patent, copyright, trademark, trade secret intellectual property, proprietary or other right of any third party ("Third Party Right").
- 10.8. **No Conflict of Interest.** Supplier represents, warrants and covenants that it shall not accept work or enter into any agreement or accept any obligation that is inconsistent or incompatible with Supplier's obligations under the Agreement or the scope of Services, if any, rendered for Purchaser.
- 10.9. **Disclaimer.** **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING.**

11. **Limitation of Liability.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PURCHASER OR SUPPLIER FOR DEATH OR PERSONAL INJURY ARISING FROM NEGLIGENCE, FRAUD OR FRAUDULENT MISREPRESENTATION, BREACH OF THE TERMS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979, BREACH OF SECTION 2 OF THE CONSUMER PROTECTION ACT 1987, ANY DELIBERATE DEFAULT OF WILFUL MISCONDUCT OF THEIR EMPLOYEES, AGENTS OR SUBCONTRACTORS OR THE INDEMNITY PROVIDED BY SUPPLIER UNDER CLAUSE 14.1 (INDEMNITY) OF THIS AGREEMENT. SUBJECT TO THE FOREGOING, PURCHASER'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE PRICE PAYABLE BY PURCHASER FOR THE UNITS OF PRODUCT, OR THE SPECIFIC SERVICES, THAT ARE THE SUBJECT OF THE DISPUTE. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 AND IN THE OTHER PROVISIONS OF THE AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH PURCHASER WOULD NOT HAVE ENTERED INTO THE AGREEMENT. THE PRICING CONTAINED IN THE AGREEMENT REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.
12. **No Indirect or Consequential Damages.** PURCHASER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS OR SAVINGS, INCURRED BY SUPPLIER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.
13. **Reciprocal Waiver of Claims.** As the Products and Services may be deployed in defense against or to assist in the detection of an Act of Terrorism (as such term is defined under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002) before it occurs, Purchaser and Supplier each agree to waive all claims against the other (including those of or against their officers, directors, employees, subsidiaries, affiliates, agents, subcontractors or other representatives) for losses, including business operation losses, resulting from or related to such Act of Terrorism. Each of the parties agrees to make a good faith effort to include a Reciprocal Waiver of Claims provision that is substantially similar to the one set forth in the immediately preceding sentence in its written agreements with third parties that are involved in the manufacture, sale, service, use or operation of the Products and/or Services.
14. **Indemnification.**
 - 14.1. **Indemnity.** Supplier shall indemnify and hold harmless, and at Purchaser's request defend, Purchaser, its subsidiaries and affiliates, and its and their officers, directors, employees, customers successors and assigns (all referred to in this Section 14 as "Purchaser") from and against any and all losses, liabilities, costs, damages, claims, fines, penalties and expenses (including, without limitation, costs of defense or settlement and attorneys', consultants' and experts' fees) that arise out of or relate to (i) the acts or omissions of Supplier, including any of Supplier's subcontractors, vendors, employees, consultants or agents; (ii) injuries or death to persons or damage to property (including loss of property), in any way arising out of or caused or alleged to have been caused by the work performed, or Products or Services provided, by Supplier; (iii) assertions under workers' compensation or similar acts made by persons employed or furnished by Supplier; (iv) any breach (or claim or threat thereof that, if true, would constitute a breach of) the Agreement, including, without limitation, any breach of any representation or warranty set forth in the Agreement; (v) violation of any Law, including, without limitation, any Environmental Law, in any way arising out of or caused or alleged to have been caused by Supplier's work or Services under the Agreement or by a Product; or (vi) any claim or threat thereof that the Products, Services or Work Product (or any part thereof) or the exercise of any rights granted herein with respect thereto) infringe, misappropriate, violate or conflict with any Third Party Right.
 - 14.2. **Notice; Cooperation; Settlement.** Purchaser shall notify Supplier of any claim or liability for which indemnification is sought ("Claim"), provided, however, that the failure to give such notice shall not relieve Supplier of Supplier's obligations hereunder except to the extent that Supplier was actually and materially prejudiced by such failure. Purchaser may, at its option and Supplier's expense, participate and appear on an equal footing with Supplier in the defense of any Claim that is conducted by Supplier as set forth herein. Supplier may not settle any Claim without the prior written approval of Purchaser. From the date of written notice from Purchaser to Supplier of any such Claim, Purchaser shall have the right to withhold from any payments due Supplier under the Agreement the amount of any defense costs, plus additional reasonable amounts as security for Supplier's obligations under the Agreement.
 - 14.3. **Additional Remedies.** In the event of any claim or threat thereof that the Products, Services or Work Product (or any part thereof) or the exercise of any rights granted herein with respect thereto) infringe, misappropriate, violate or conflict with any Third Party Right, then, in addition to Supplier's indemnification obligations set forth above and all other remedies that may be available to Purchaser under the Agreement,

at law or in equity, Purchaser shall also have the right to demand, and Supplier shall comply with such demand, that Supplier, at Supplier's expense, (i) modify the Product, Service or Work Product (as applicable) to be noninfringing, (ii) obtain a license (on terms satisfactory to Purchaser) to continue using the Product, Service or Work Product (as applicable) or (iii) refund to Purchaser the full purchase price.

15. **Miscellaneous Provisions.**

- 15.1. **Independent Contractors.** Each of Purchaser and Supplier is an independent contractor and neither party's personnel are employees or agents of the other party. The Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.
- 15.2. **No Supplier Press Release.** Supplier shall not, without Purchaser's express written consent, issue any press release or other public statement of any kind regarding its business relationship with Purchaser, including, but not limited to, any statement regarding the sale of the Products to or performance of the Services for Purchaser, or its entry into or the terms of the Agreement.
- 15.3. **Notice.** Any notice required or permitted hereunder shall be in writing, shall reference the Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) two days after deposit with a private industry express courier, for next day delivery, with written confirmation of delivery; or (iii) four days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All notices sent by Purchaser shall be sent to the address to which Purchaser regularly contacts Supplier or, at Purchaser's election, to Supplier's address set forth in the Purchase Document. All notices sent by Supplier shall be sent to the Purchaser address set forth in the Purchase Document, ATTN: VP Operations, with a copy to Legal Counsel, EMEA at the same address, or to such other address or person as may be designated by Purchaser by giving written notice to Supplier pursuant to this Section.
- 15.4. **Insurance.** Supplier shall maintain in effect at all times the following insurance: (i) statutory Employer's Liability Insurance (or equivalent) for all employees of Supplier in accordance with the Laws of the jurisdictions in which they are performing work for Supplier; and (ii) Public Liability Insurance of not less than £1 million per claim, (iii) Product Liability Insurance of not less than £1 million for claims arising from any single event and not less than £5 million in the aggregate for all claims arising in a year. All insurance policies required by this Section 15.4 must remain in force for a period of at least six years from the date of the Agreement and Supplier shall furnish, if requested by Purchaser, a Certificate of Insurance prior to the commencement of the work naming Purchaser (including its subsidiaries and affiliates) as an additional insured thereunder. Certificates of Insurance evidencing such coverage shall provide that Purchaser shall be given ten (10) days written notice before cancellation or reduction of any of the insurance coverage. The liability of Supplier assumed under the Agreement shall not be limited to the amount of insurance which the Supplier is required to provide.
- 15.5. **No Subcontracting or Assignment.** Supplier shall not be permitted to subcontract or assign the Agreement, by operation of Law or otherwise, without the express written consent of Purchaser.
- 15.6. **No Solicitation; No Hire.** Following delivery of the Product(s) to be delivered or Services to be rendered to Purchaser hereunder and for one year thereafter, Supplier agrees that it shall not, and will ensure that its agents and affiliates do not, directly or indirectly, hire or solicit or attempt to solicit for employment any persons employed by Purchaser or its affiliates.
- 15.7. **Remedies.** The remedies described in various sections of the Agreement shall not be deemed the exclusive remedies available to Purchaser and Purchaser shall, in addition to all such remedies, be entitled to all other remedies available to it under Law.
- 15.8. **U.S. Government Contract Flowdowns.** The Products and Services provided hereunder may be used by Purchaser in fulfilling a U.S. Government contract. Therefore, Supplier is subject to, and covenants that it shall comply with, Purchaser's "Purchase Terms and Conditions, Supplement 1 – U.S. Government Contract Flowdowns" ("Supplement 1"). Supplement 1 is available at www.rapiscansystems.com/termsandconditions and is incorporated into this Agreement by reference.
- 15.9. **Governing Law.** The Agreement shall be governed by the law of England and Wales, except that Supplement 1 shall be governed and interpreted in accordance with the federal common law of government contracts of the United States, as enunciated and applied by United States federal judicial bodies, boards of contract appeal, and quasi-judicial agencies of the United States federal Government.

- 15.10. **Venue**. Except for matters of injunctive relief, for which either party may initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be London, England. If Supplier is headquartered in the United Kingdom, the arbitration shall be administered by International Chamber of Commerce in accordance with its Rules of Arbitration. The Emergency Arbitrator Provisions shall not apply. If Supplier is headquartered outside of the United Kingdom, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, Purchaser shall have the right, but not the obligation, to undertake legal proceedings in a court of Supplier's domicile, main place of business or any other jurisdiction where Supplier has assets sufficient to meet its obligations under the disputed claim in whole or in part to (i) settle any issue or dispute arising out of or relating to monies due by Supplier to Purchaser; (ii) protect or enforce any patent, trademark, copyright or other intellectual property right, confidential information or trade secrets; or (iii) proceed in connection with a dispute commenced by a third party.
- 15.11. **Legal Fees**. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to the Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all expenses, including all court costs, arbitration fees and attorneys' fees paid or incurred.
- 15.12. **Survival**. The following sections shall survive any cancellation, expiration or termination of the Agreement: 3.3, 3.4, 4, 5, 8.2, 9, 10, 11, 12, 13, 14, 15.
- 15.13. **Right of Setoff**. All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of any agreement or other arrangement between Supplier and Purchaser, including any of Purchaser's subsidiaries and affiliates.
- 15.14. **No Waiver**. The waiver by either party of a breach of or a default under any provision of the Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the Agreement, nor shall any delay or omission on the part of either party to exercise any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- 15.15. **Severability**. If for any reason a court or arbiter of competent jurisdiction finds any provision of the Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties, and the remainder of the Agreement shall continue in full force and effect.
- 15.16. **Construction**. The Agreement shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

[End of Purchase Terms and Conditions]