

## STANDARD GENERAL TERMS AND CONDITIONS FOR GOODS & SERVICES

### 1. DEFINITIONS. As used in this Purchase AGREEMENT:

- "Buyer" - The legal entity issuing this AGREEMENT is Day & Zimmermann (DZ) or American Ordnance LLC (AO).
- "Seller" - The legal entity which contracts with Buyer.

c. AGREEMENT" - The Purchase Order, these terms and conditions, including any supplements thereto, and all specifications and other documents referred to herein.

2. **PARTIES.** This AGREEMENT is by and between Day & Zimmermann or American Ordnance (AO), Delaware limited liability companies, its subsidiaries and affiliates, ("Buyer"), and the party contracting to provide Products and/or services ("Products") hereunder ("Seller"). This AGREEMENT together with all documents and written provisions expressly incorporated herein by reference shall constitute the entire and exclusive understanding and agreement between the parties, and replaces and supersedes any prior or contemporaneous communications, representations, or AGREEMENTS, whether oral or written, with respect to such subject matter. Only the Buyer's authorized Procurement Representative has the authority to amend the AGREEMENT. Such amendments must be in writing except as otherwise provided herein, all notices furnished by the Seller shall be sent to the Buyer's authorized Procurement Representative.

3. **AGREEMENT AND ACCEPTANCE.** Seller's unqualified acceptance of this AGREEMENT is evidenced by either: (i) signing and returning to Buyer a written acknowledgment of this AGREEMENT, (ii) commencing work under such AGREEMENT, or (iii) acceptance of payment. By acceptance of this AGREEMENT as just defined, Seller agrees to be bound by and comply with all terms and conditions of this AGREEMENT, including any supplements thereto, and all specifications and other documents referred to herein. Any and all other terms offered by Seller in its acceptance of this AGREEMENT are hereby expressly rejected by the Buyer.

### 4. PRICE, INVOICE AND PAYMENT.

- Seller shall submit invoices for payment, itemized and identified with Buyer's Order number and with specific Order item numbers. Freight, taxes, similar charges, if authorized by the Order, shall be itemized separately.
- Payment will be made by Buyer against properly submitted invoices in accordance with the terms of payment set forth in the Order for all Goods received and which meet the requirements of the Order. Payment of Seller's invoice shall not constitute acceptance of the Goods or Services. All Seller invoices shall be subject to adjustment for errors, shortages, defects, or other failure of the Seller to meet the requirements of the Order.
- Unless otherwise stated on the face of the Purchase Order, Payment terms are Net 45 days after final acceptance by Buyer's Incoming point of Inspection. d. Payment of Invoices by the Buyer shall not constitute acceptance of the Products delivered under this AGREEMENT. Invoices shall be subject to appropriate adjustment should Seller fail to meet any of the requirements for this AGREEMENT. e. Buyer may set off any amount owed by Seller or Seller's affiliates to Buyer against any amount owed Seller by Buyer under this AGREEMENT or any other AGREEMENT between Buyer and Seller, provided Buyer gives Seller prompt written notice of the set off.

### 5. PACKING, MARKING AND SHIPPING.

- No charge shall be made by Seller for packaging or storage unless specified on the face of this AGREEMENT.
- Unless otherwise specified, all Products shall be packaged, marked, and otherwise prepared in accordance with the Procurement Specifications, Technical Data Package (TDP), applicable laws and regulations, and good commercial practices.
- To the extent it may be lawful to do so; Seller shall use commercially reasonable efforts to obtain fair and reasonable shipping rates.
- Seller shall mark containers or packages with necessary handling, and loading instructions, shipping information, Buyer's Purchase Order number, item and shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment. Bills of Lading shall include Buyer's Purchase Order number.
- Failure of the Seller to provide any required samples or documentation prior to or with the shipment of Products as stated in this AGREEMENT or in the referenced Quality Assurance Provisions, if any, may result in the assessment by the Buyer of a penalty for each occurrence. Buyer shall have the right to set off any such penalty against any amount owed Seller by Buyer under this AGREEMENT or any other AGREEMENTS between the parties.

### 6. DELIVERY INSPECTIONS AND TITLE.

- Time is of the essence in the performance of this AGREEMENT. Subject to Article 21, Force Majeure, Buyer may charge Seller for Buyer's commercially reasonable transportation costs if necessary to meet Buyer's contract delivery schedule(s).
- Unless otherwise stated on the face of the Purchase Order, all Products delivered under this AGREEMENT shall be shipped FOB Destination, and Seller shall prepay all transportation charges.
- Seller assumes all risk of loss until Products are delivered to the locations specified in this AGREEMENT. Title of the Product shall pass to Buyer upon arrival of such Product at the delivery locations specified herein, subject to acceptance per Article 3, Agreement and Acceptance; Nonconforming Products below.
- Buyer may return, or store at Seller's expense, any Products delivered in advance of the delivery date specified for such Products unless early delivery is authorized in writing by the Buyer.
- Buyer reserves the right to reject or return, at seller's expense, any materials the buyer at its sole discretion any material not conforming to specification, drawing, or other quality deficiency
- Buyer shall have no obligation to accept over shipments. In the event of an over shipment, Buyer may, at its options: (i) retain Products shipped in excess of the quantities stated in this AGREEMENT, at the price set forth in this AGREEMENT, (ii) return such items to Seller at Seller's expense, or (iii) place into storage the excess quantities of Products at Seller's risk and expense.
- Seller agrees to immediately notify Buyer of any delays in meeting the required delivery schedule and the reasons therefore. If Buyer approves a revised delivery date, Seller shall pay any additional transportation charges and Seller shall extend to Buyer an equitable reduction in the AGREEMENT price. The Buyer, in addition to any other remedies provided by this AGREEMENT, reserves the right to deduct an amount of 1.5% of the invoice amount for any delivery made after the scheduled delivery date. Acceptance of late deliveries or waiver of the above stated deduction does not constitute a waiver of any rights by the Buyer. h. Schedule Deceleration Buyer may, for his convenience, extend any part of or the entire delivery schedule as listed on this AGREEMENT by as much as four weeks, at no additional cost to the Buyer, by notifying the Seller in writing a minimum of two weeks prior to the scheduled date to be moved out. Seller shall insure that the shipment takes place so that the scheduled quantity arrives at the Buyer's facility on or no more than ten days prior to the new due date.
- All Products, including raw materials, components, intermediate assemblies, tools, equipment, and end Products, may be inspected and tested by Buyer, its customers and contractors at all reasonable times and places. If the AGREEMENT specifies that any inspection or testing is to be made on Seller's premises, Seller shall provide without additional charge, all reasonable access, facilities and assistance for such inspections and test. In its internal inspection and testing of the Products, Seller shall provide and maintain an inspection system acceptable to the Buyer and Buyer's customers covering the product hereunder. All inspection records relating to the Products shall be available to the Buyer and the Buyer's customer during the performance of this AGREEMENT. Unless specified elsewhere, Seller shall maintain, for a period of seven (7) years after the completion of the last delivery or acceptance of the last lot, whichever is longer, quality and inspection records, purchase order files for supplies, equipment, material, or services including supporting documentation, invoices and supporting memoranda.
- No Inspection (including source inspection), tests, approval (including design approval) or acceptance of the Products shall relieve Seller from responsibility for any defects in the Products or other failures to meet the requirements of this AGREEMENT, or for latent defects, fraud, such gross mistakes as amount to fraud, and Seller's warranty obligations. Buyer's failure to inspect, accept or reject Products or failure to detect any nonconformity by inspection shall not relieve Seller from its obligations or any liability, nor impose liabilities on Buyer, its agents or customers.

### 7. WARRANTY-QUALITY.

- In addition to any other warranties provided at law, express or implied, and without limiting any other warranties that may appear in this AGREEMENT, Seller expressly warrants that all Products shall be manufactured, provided and transported in full and complete conformity and in compliance with all the requirements of this AGREEMENT, specifications, drawings, designs, samples and other descriptions or requirements as Buyer may furnish or specify. Seller expressly warrants that all Products furnished by it or any of its subcontractors or suppliers at any tier shall be (1) merchantable, (2) fit and sufficient for the purposes intended, and (3) free from all deficiencies in materials, workmanship and design, whether or not the Seller has supplied the design for the Products sold hereunder. The warranty period shall commence upon Buyer's acceptance, use or operation of the Products, whichever is later, and continue for a period of (1) year thereafter.
- All warranties of Seller or Seller's subcontractors or suppliers at any tier shall run to Buyer and Buyer's customer. Should Seller or Seller's subcontractor's or supplier's warranty run for a longer period, Seller shall extend such longer warranty period to Buyer.
- This warranty shall survive inspection, test, acceptance, and payment.
- Buyer may, at its option: (1) return for full refund or credit; (2) require prompt correction or replacement of defective or nonconforming Products; or (3) replace the non-conforming Products with similar Products from another source and charge the costs occasioned to the Buyer thereby to the Seller. Correction or replacement shall be made at Seller's expense and no correction or replacements of defective or nonconforming products shall be made unless approved by Buyer. Products required to be corrected or replaced shall be subject to this warranty and a new warranty period and to Article 6, Delivery and Title, above, to the same extent as products originally delivered under this AGREEMENT.
- Seller warrants that all Products sold hereunder shall be free of any claim of any nature by any third person or entity, and that Seller shall convey clear and marketable title to Buyer. Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this AGREEMENT.
- Counterfeit goods: In addition to all other warranties provided under this Purchase Order, Seller warrants that the Goods delivered hereunder are new and not refurbished or used, are being supplied by the original equipment manufacturer (OEM) or its expressly authorized agent or distributor, and that Seller has documented traceability of the Goods or components to the OEM. Buyer may return the Goods at any time if they are not genuine, new and unused items or they are found to not meet all OEM specifications and requirements as well as all the requirements defined on this Purchase Order. Seller must provide the following with shipment of the items upon request of Buyer:
  - Certificate of Conformance (C of C), certifying the items are genuine and meet all Purchase Order and original manufacturer requirements.
  - Traceability information to original manufacturer.
  - Results from any additional inspections, tests, and examinations as required by this Purchase Order.

Any Goods for which the above requirements are not met shall be considered defective under this Purchase Order and may be rejected by Buyer or returned. Seller shall be liable to Buyer for any damages, costs, penalties, judgments, or fines against Buyer to the extent caused by Seller's failure to meet all requirements of this section and, at Buyer's election, Seller may also be required to deliver suitable replacement Goods traceable to the OEM, meeting all OEM specifications. Seller shall include the substance of this clause in all of its sub-tier contracts with its suppliers providing components in support of this Purchase Order.

g. With respect to Goods found not to be as warranted, Seller shall bear the costs, if any, of inspection, disassembly, reassembly, retesting and any other similar costs incurred in connection with, or as a consequence of, correction, repair or replacement of Seller's Goods, including any such costs associated with assemblies into which Goods have been incorporated. Any Goods corrected or furnished in replacement shall, from the date of delivery of such corrected or replacement Goods, be subject to the provisions of this Clause for the same period and to the same extent as Goods initially furnished pursuant to this Purchase Order.

8. **SUBCONTRACTS.** Seller shall not subcontract for complete or substantially complete parts of the work called for by this AGREEMENT without Buyer's prior written approval.

### 9. COMPLIANCE WITH LAWS.

- Seller represents warrants and certifies that it shall comply with all applicable international, federal, state, and local laws, ordinances, rules, executive orders and regulations. Such compliance is agreed to be a material element of the performance of this AGREEMENT. Seller further certifies that it shall comply with all laws, rules regulations and executive orders, and any subsequent amendments, including but not limited to the Occupational Safety and Health Act, the Resources Conservation and Recovery Act, Employment of the Disabled, Equal Opportunity, Employment of Veterans, Employment Discrimination due to Age, and Utilization of Disadvantaged Business Enterprises, and all applicable requirements of the Federal Fair Labor Standards Act. Without limitation, Seller certifies that all of its activities in providing Products under this AGREEMENT conform and comply with the latest applicable environmental, health, and safety laws and regulations, and any other pertinent international, federal, state, or local statutes, laws, rules or regulations with respect to chemical substances, hazardous materials, and environmental matters. In addition, for any goods shipped to European destinations, Seller shall comply with the "European AGREEMENT Concerning the International Carriage of Dangerous Goods."
- Products supplied under this AGREEMENT may be exported worldwide; including countries that prohibit the importation of goods manufactured with child labor or forced, indentured or convict labor. Seller represents, warrants, and certifies that no goods or services supplied under this AGREEMENT have been or will be produced using forced, indentured or convict labor, or the labor of persons in violation of the minimum working age or minimum wage, hour of service, or overtime laws of the country of manufacture. If Buyer determines that Seller has failed to comply with the requirements of this Article 9, Buyer may terminate this AGREEMENT without further compensation to Seller, and Seller shall defend, indemnify and hold harmless Buyer and Buyer's affiliate, agents, and customers in accordance with the provisions of Article 10, Indemnification, below.
- Seller will defend, indemnify and hold harmless Buyer and Buyer's affiliates, agents, and customers from any loss, damages, or costs arising from or caused in any way by any actual violation of any federal, state, or local law, ordinance, rule, or regulation, or failure by the Seller to (1) have any chemical substances sold hereunder included in the list of approved chemical substances published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act; or (2) provide a completed Material Safety Data Sheet (OSHA Form 20 or equivalent) for any chemical substances sold hereunder as required by any federal, state or local law, ordinance, rule or regulation.

### 10. INDEMNIFICATION and LIMITATION OF LIABILITY.

a. Seller shall defend, indemnify, and hold harmless Buyer and Buyer's affiliates, agents, and customers from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of the same, and any costs incurred in connection therewith, including but not limited to, attorney fees and litigation expenses, arising out of or related to Seller's performance of this AGREEMENT or any breach by Seller of this AGREEMENT, or which may result in any way from any accident, injury, libel, or property damage, including but not limited to response or remedial action costs associated with damage to the environment or to natural

resources, by reason of any act or omission by Seller, its agents, employees, or subcontractors, except to the extent that the accident, injury, libel, or property damage is due solely and directly to Buyer's negligence. Buyer may, at its sole option: (i) tender such claim to Seller to defend using legal counsel acceptable to Buyer, or (ii) defend such claim by legal counsel of Buyer's choosing and Seller shall reimburse Buyer for all costs of such defense as they are incurred. In either case Seller shall indemnify and hold Buyer harmless from and against all damages arising out of or relating to such claim. If Buyer tenders the defense of a claim to Seller and Seller accepts such defense, then Seller shall be conclusively deemed to have agreed that such claim is subject to indemnification hereunder, and that Seller has no claim or counterclaim against Buyer, all of which Seller shall be deemed to have waived. If Seller assumes the defense of a claim and thereafter fails to vigorously defend such claim, Buyer shall have the right, at its option, to assume the defense of such claim and Seller shall remain obligated to indemnify Buyer hereunder. If Seller assumes the defense of a claim, Seller shall not settle or compromise such claim without Buyer's prior written consent. Seller shall at all times maintain such liability, property damage, and employee liability insurance in a sufficient amount that will protect Buyer from any or all of the foregoing risks, and upon Buyer's request shall supply certificates of insurance.

b. Seller's indemnification obligations under this Article 10.0 shall not be limited in any way by: any statutory immunity or other limitation on the amount or type of damages, compensation or benefits payable by or for the Seller or any sub-vendor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

c. An Indemnified Party shall have the right to select counsel and control any claims, actions or litigation arising hereunder.

d. Notwithstanding any other provisions of this AGREEMENT, under no circumstances shall Buyer be liable or held responsible for consequential, incidental, special, or indirect loss or damage including whether such loss or damage arises from contract, negligence, recklessness, strict liability, or otherwise. In no event, however, shall any liability of Buyer exceed the price allocable to the Product that initially gives rise to the claim. The foregoing shall constitute the sole and exclusive remedy of Seller, and the sole and exclusive liability of Buyer. Seller hereby waives, releases, and renounces all other rights, claims, and remedies against Buyer.

e. In addition to any other remedies provided under this Purchase Order or by law, if Seller or its officers, employees, agents, suppliers, or subcontractors at any tier fails to comply with any applicable laws, orders, rules, regulations, and ordinances of government entities and, as a result Buyer's contract price or fee is reduced, Buyer's costs are determined to be unallowable, Buyer incurs any fines, penalties or interest costs, or Buyer incurs any other costs, losses or damages, then Buyer may reduce the price, or the recoverable costs and fee, of this Purchase Order or of any other contract with Seller by a corresponding amount or amounts, or may demand payment of such amounts, or both, and Seller shall promptly pay any such amount demanded.

**11. INTELLECTUAL PROPERTY INDEMNIFICATION.** Seller shall defend, indemnify, and hold harmless Buyer and Buyer's, affiliates, agents, and customers from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of the same, that the manufacture or furnishing of Products under this AGREEMENT, or that the sale or use of such Products constitutes an infringement of any patent, trade secret, trademark, service mark, copyright, or related application, or other intellectual property or proprietary information infringement. If any Product is enjoined in any manner due to such infringement, Seller shall, at its own expense and at its option, either: (i) procure for Buyer and its customers the right to continue using said Products, (ii) replace the infringing item with a non-infringing equivalent, (iii) modify the item so that it becomes non-infringing, or (iv) upon showing an inability to do any of the foregoing, remove the Product and refund the purchase price and any related transportation and installation costs. Seller shall at all times maintain such intellectual property insurance in a sufficient amount that will protect Buyer from any or all of the foregoing risks, and upon Buyer's request shall supply certificates of insurance. If any Product is so enjoined, Seller agrees to be liable and to reimburse Buyer for any costs incurred by Buyer caused by such infringement, including for any delays, and to indemnify and hold harmless Buyer for any claims made against it by Buyer's customer caused by such infringement, including for any delays.

**12. ASSIGNMENT.** Seller shall not assign this AGREEMENT or any rights under this AGREEMENT, voluntarily or involuntarily or by operation of law, without the prior written consent of Buyer, and no purported assignments by Seller shall be binding on Buyer without such written consent.

#### **13. CHANGES.**

a. Buyer may at any time, by written notice, stop work or make other changes in Seller's Products to be provided under this AGREEMENT. Such changes include, but are not limited to: (i) quantities, (ii) drawings, designs, or other specifications, (iii) packing, method of shipment, or time or place of delivery; and (iv) the amount of property furnished by the Buyer or the Buyer's Customer.

b. Subject to Article 21, Excusable Delays (Force Majeure), below, if such changes cause an increase or decrease in the cost of performance of this AGREEMENT, the parties shall promptly negotiate in good faith an equitable adjustment, and the AGREEMENT shall be modified in writing accordingly. Except where an extension is granted in writing by Buyer, any claim for adjustment under this Article 13 shall be deemed to be absolutely and unconditionally waived unless asserted in writing within twenty (20) days from the date of receipt by Seller of the change. Seller shall submit to Buyer in writing any claim for an adjustment under this Article 18 as soon as is reasonably possible, along with a specification of the amount claimed with supporting cost figures. Such specification shall be accompanied by a signed statement from Seller that the claim is made in good faith and Buyer shall have the right to review any analyses performed in determining the amount of such claim and meet to discuss the analyses with any of Buyer's personnel that participated in conducting the analyses.

c. Seller may not make any changes to this AGREEMENT without Buyer's express written consent. Buyer's engineering and technical personnel are not authorized to change the Products ordered under this Agreement or any other provision of this AGREEMENT. No Change Order will be binding on Buyer unless issued by an authorized representative of Buyer's procurement department in writing.

d. Nothing in this Article 13, including any disagreement with Buyer as to the equitable adjustment to be made, shall excuse Seller from proceeding with performance of this AGREEMENT as changed.

e. No changes in process or qualified design, or substitutions of materials or accessories may be made without Buyer's prior written consent. No charges for extras will be allowed unless Buyer has agreed to such extras in writing and the price agreed upon.

#### **14. TERMINATION.**

##### **For Convenience**

a. The Buyer may terminate this Order in whole, or in part, at any time for any cause and will reimburse the Seller for his reasonable, substantiated, and necessary costs already incurred directly in the performance of this Order prior to the notice of termination, plus a reasonable profit thereon. Buyer shall not be liable for loss of anticipated profits on the Order, or the part thereof, so canceled.

b. All Goods and plans completed by Seller prior to the date of termination shall, upon payment by Buyer, become the property of Buyer.

c. In no event shall Buyer's obligations to Seller, as a consequence of termination under this Article, exceed the costs and reasonable profit described in 14(a), and upon payment thereof, Buyer shall have no further obligation to Seller hereunder or otherwise.

##### **For Cause**

d. If Seller materially breaches any provision of this agreement or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided by this Order or by law, terminate all or any part of this Order without any liability by Buyer to Seller on account thereof.

e. In the event that Buyer terminates this Order for cause, in whole or in part, as provided in this Article 14.0, Buyer may purchase from others, upon such terms and in such manner as Buyer may deem appropriate, similar goods to those so terminated and Seller shall be liable to Buyer for any excess costs incurred by Buyer thereby. Further, if a Buyer request, Seller agrees to assist Buyer in the purchase of goods similar to those terminated due to Seller's default by, among other things, cooperating in the transfer to Buyer of information and/or Work-in-process and equipment or materials which may have been purchased by Seller specifically for Buyer's Order.

f. If Buyer has requested and received the cooperative transfer of goods as set forth in Paragraph 14d above, Buyer will credit the value of such Goods against Buyer's excess cost of re-purchase and if such credit exceeds Buyer's excess costs Buyer shall promptly pay Seller such difference.

**15. NO WAIVER, SEVERABILITY.** The failure of Buyer to insist upon the performance of any provision of this AGREEMENT, or to exercise any right or privilege granted to the Buyer under this AGREEMENT, shall not be construed as waiving such provision or any other provision of this AGREEMENT, and the same shall continue in full force and effect. If any provision of this AGREEMENT is found to be unenforceable by any court or other judicial or administrative body, the other provisions of this AGREEMENT shall not be affected thereby, and shall remain in full force and effect.

**16. GOVERNING LAW, JURISDICTION AND VENUE.** The UN Convention of Contracts for the International Sale of Goods (CISG) shall **not** govern the rights and obligations of the parties under this AGREEMENT. This Order shall be governed by and construed and interpreted according to the laws of the State of Delaware and the parties agree that Delaware state court shall hear any legal disputes arising under this AGREEMENT, subject to Article 17. Both parties waive any objection to this Article.

#### **17. DISPUTES/CLAIMS.**

a. Resolution of Other Disputes. Any dispute between Buyer and Seller that is not resolved pursuant to the foregoing provisions of this AGREEMENT shall upon written notice, be referred to the respective representatives for each party. The parties, through their representatives and/or senior management shall confer in good faith to attempt to resolve the matter. If the parties are unable to fully resolve the dispute, then the matter shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association upon the demand of either party. Arbitration proceedings shall be conducted by a sole arbitrator, who must be an attorney with at least 10 years of experience in the litigation of contract claims. Arbitration proceedings shall be conducted in Delaware. Either party may seek preliminary equitable relief in any court of competent jurisdiction pending the decision of the arbitrator.

b. Seller to Continue Performance. Seller shall proceed diligently with performance of this Purchase Order pending final resolution of any request for relief, claim, dispute, appeal or action arising under or in connection with this AGREEMENT and pending such resolution shall comply with Buyer's written direction, if any, on the matters at issue.

**18. SURVIVORSHIP.** On termination of this AGREEMENT for any reason, all warranty, infringement, confidentiality, dispute, indemnification, and liability obligations and limitations, and those terms, which by their nature are intended to survive, will survive. Termination will not prejudice either party to require performance of any obligation due at the time of termination.

#### **19. INDEPENDENT CONTRACTOR RELATIONSHIP.**

a. Buyer and Seller are independent contractors of one another. Nothing in this AGREEMENT is intended to or will constitute either party as an agent, legal representative, or partner of the other for any purpose.

b. Seller shall comply with all of Buyer's and/or Buyer's customer's safety and security procedures for all work that Seller, its employees, agents, or subcontractors may perform on either Buyer's or its customer's premises. Seller shall also take all necessary precautions to prevent the occurrence of any injury to person or damage to property during the performance of such work on Buyer's or its customer's premises. Seller shall at all times be responsible for the safety of its employees and operations. Seller shall defend, indemnify, and hold harmless Buyer and/or Buyer's customer against any claim that results from any act or omission by Seller, its employees, agents, and subcontractors, which is related to its work on Buyer's or its customer's premises. Seller shall maintain comprehensive general liability, automobile liability, and employers' liability insurance with limits as Buyer may reasonably require, as well as appropriate workers' compensation insurance. Upon Buyer's request, Seller shall provide to Buyer verification that the required insurance is in effect during any period while this AGREEMENT or any Purchase Order issued hereunder remains in effect.

c. Seller shall comply with any and all federal, state, or local drug or alcohol abuse and/or drug testing statutes or regulations for any of its employees who perform work on Buyer's or its customer's premises.

d. Seller shall conduct a criminal background investigation of its employees before assigning such employee to perform work on Buyer's or its customer's premises. Buyer may request, at its discretion, from Seller documentation of the completion of the investigation for any employee assigned to work on Buyer's or its customer's premises. Seller shall not assign any person to perform work on Buyer's or its customer's premises who has been convicted of any felony, or any crime of dishonesty or violence, whether the crime is a felony or a misdemeanor.

e. Absent prior written approval by Buyer, Seller shall ensure that all of its employees or contractors working on orders under this AGREEMENT are "U.S. persons" (citizen or green card holders).

f. Seller shall impose the requirements of this Article 19 with its agents and subcontractors who will perform work on Buyer's or its customer's premises pursuant to this AGREEMENT or under a Purchase Order.

g. If Seller fails to comply with any of the provisions of this Article 19, Buyer may immediately expel Seller's employee(s) from Buyer's or its customer's premises and Buyer may also terminate this AGREEMENT or any Purchase Order for default.

h. Whenever performing on-site services, the Seller shall at all times keep its work areas, including its storage areas, free from the accumulations of waste material or rubbish. In addition, prior to completion of the work, the Seller shall remove any rubbish from its work areas and all of its tools, scaffolding, equipment, and materials that are not the property of the Buyer or the Buyer's Customer. Upon completion of the service, the Seller shall leave its work areas in a clean, neat and good condition satisfactory to the Buyer.

i. The Buyer and the Buyer's Customer have the right to conduct surveillance of the Seller's work when such work is being performed on the premises of the Buyer or the Buyer's Customer. Notwithstanding the Seller's responsibility for the safety of its employees and operations under this AGREEMENT, the Buyer or the Buyer's Customer has the authority to stop any work or practice that, if allowed to continue, could reasonably be expected to result in the death or serious physical harm to any person, generate major system damage, or endanger in any way the property or mission of the Buyer or Buyer's Customer. This authority allows for the stoppage of any work or practice until such time that the perceived danger has been eliminated to the satisfaction of the Buyer or the Buyer's Customer. Any such stoppage shall be without liability to the Buyer.

j. The presence of the Buyer or Buyer's Customer and the fact that the Buyer or Buyer's Customer conducts or provides any inspections, investigations, surveys, oversight, concurrence, approvals, advice or recommendations shall not affect the Seller's responsibility for safety under this AGREEMENT.

k. The Buyer or the Buyer's Customer may at any time deny the Seller or Seller's employee's access to the premises of the Buyer or the Buyer's customer if it is deemed to be not in the public interest to allow such access because of the misconduct of the Seller or its employees for reasons of safety or security. Any such denial shall be without liability to the Buyer.

#### **20. RIGHTS IN INVENTIONS AND INTELLECTUAL PROPERTY.**

a. Any invention or intellectual property that Seller first makes or conceives in the performance of this AGREEMENT or under a Purchase Order, or which is derived from or based on the use of information supplied by Buyer, shall be considered a "work made for hire" and shall also be Buyer's Property, which Buyer shall own solely and exclusively. Seller shall execute any document and take all appropriate measures, as Buyer deems necessary, to perfect Buyer's title to the same.

b. All such Buyer's Property shall remain Buyer's personal property, unless the parties otherwise agree in writing. All of Buyer's Property furnished to Seller shall be deemed to be proprietary property of the Buyer and shall remain Buyer's personal property, whether or not it is marked as such with any restrictive legend.

c. This paragraph shall apply if the Products are hardware or software to be designed or developed and such design or development is paid for by Buyer, whether itemized separately or included in the price for one or more Products to be furnished. Seller shall disclose and assign on demand, and it does hereby assign, to Buyer any and all inventions, improvements, or developments, each whether patentable or not, which it may make or assist in making in the course of such development. Seller assigns, and agrees hereafter on demand to assign, to Buyer, all patents, copyrights, and applications for patents or copyrights, in connection with any such invention, improvement, or development and to do all acts and to execute all instruments which Buyer may request. Seller shall cause every appropriate person employed by or associated with it to enter into an AGREEMENT under which such person shall disclose and assign to Seller or Buyer all inventions and execute all papers and do all acts deemed necessary by Seller or Buyer relative to assignment and patent protection of such inventions. In addition, all information, ideas, results, and data developed by Seller as a result of developmental work contemplated by this section shall be transmitted by Seller only to Buyer and shall become the exclusive property of Buyer.

**21. FORCE MAJEURE.** No liability shall result to either party from delay in performance or from nonperformance caused by an Act of God, or event beyond the control of a party, including an act or omission of government, act or omission of civil or military authority, act of a public enemy, war, blockade, insurrection, riot, epidemic, landslide, earthquake, fire, storm, lightning, flood, washout or civil disturbance which could not have been avoided through the exercise of reasonable care, procedure, and diligence

**22. PROHIBITION OF GRATUITIES.**

a. Seller represents and warrants that it and its officers, employees, agents and representatives have not offered or given, and agrees that it and its officers, employees, agents and representatives will not offer or give, any kickbacks or gratuities in the form of entertainment, gifts, or otherwise to any officer or employee of Buyer or Buyer's customer with a view toward securing this or any other Purchase Order, any favorable treatment with respect to the awarding or amending of this or any other Purchase Order, or the making of any determination with respect to Seller's right or duties.

b. For any breach of Seller's obligations under this Clause, Buyer shall have, in addition to any other rights provided by this AGREEMENT, the right to terminate any or all AGREEMENTs with Seller for cause, and to recover from Seller the amount of any gratuity, plus all reasonable costs (including attorney fees) incurred in seeking such recovery.

**23. INSPECTION AND ACCEPTANCE; NONCONFORMING PRODUCTS.**

a. All Products, including raw materials, components, intermediate assemblies, tools, equipment, and end Products, may be inspected and tested by Buyer, its customers and higher tier contractors at all reasonable times and places. If the AGREEMENT specifies that any inspection or testing is to be made on Seller's premises, Seller shall provide without additional charge, all reasonable access, facilities and assistance for such inspections and test. In its internal inspection and testing of the Products, Seller shall provide and maintain an inspection system acceptable to the Buyer and Buyer's customers covering the product hereunder. All inspection records relating to the Products shall be available to the Buyer and the Buyer's customer during the performance of this AGREEMENT. Unless specified elsewhere, Seller shall maintain, for a period of seven (7) years after the completion of the last delivery or acceptance of the last lot whichever is longer, quality and inspection records, purchase order files for supplies, equipment, material, or services including supporting documentation, invoices and supporting memoranda.

b. Final inspection and acceptance by Buyer shall be at destination unless otherwise specified in this AGREEMENT. Such inspection shall be in accordance with the stated requirements of this AGREEMENT. If rejection of a shipment would result from Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct an above-normal level of inspection and charge the seller the reasonable costs thereof. If a lot is rejected, Buyer may screen, rework, repair, and/or test lot at Seller's expense.

c. No Inspection (including source inspection), tests, approval (including design approval) or acceptance of the Products shall relieve Seller from responsibility for any defects in the Products or other failures to meet the requirements of this AGREEMENT, or for latent defects, fraud, such gross mistakes as amount to fraud, and Seller's warranty obligations. Buyer's failure to inspect, accept or reject Products or failure to detect any nonconformity by inspection shall not relieve Seller from its obligations or any liability, nor impose liabilities on Buyer, its agents or customers.

d. If the Buyer determines at its sole discretion that any of the Products are nonconforming or otherwise do not meet the requirements of this AGREEMENT, Buyer, at its option and at Seller's expense, may, without limiting any other remedies available to Buyer, require Seller to: (1) rescind this AGREEMENT as to such Products; (2) reject such Products and require the delivery of replacements; (3) retain and correct, any Products that do not conform to the requirements of this AGREEMENT, even if Buyer does not discover the nonconformity until after Buyer uses such goods or manufactures Products made with such goods. Deliveries of replacements shall be accompanied by a written notice specifying that such Products are replacements. If Seller fails to deliver required replacements promptly, Buyer may terminate this AGREEMENT for cause as provided in Article 14(b) hereof. Buyer's right to reject nonconforming deliveries extends to those which arrive late, in the incorrect quantity, or improperly labeled. The Buyer may charge the Seller for expenses of inspection for Products which do not conform to the AGREEMENT. The risk of loss of nonconforming Products remains with the Seller.

e. Buyer's Remedies - Buyer's remedies are cumulative and in addition to all remedies set forth herein or otherwise legally available. Buyer may exercise its remedies either individually or cumulatively. Buyer's remedies shall include, but not be limited to, incidental and consequential damages and the cost of any recall campaigns or other corrective actions. Buyer's selection of any particular remedy, or its forbearance in exercising any remedy available to it, shall not constitute an election or waiver of any other remedy.

**24. CHANGE IN OWNERSHIP.** As used herein, a "Change in Ownership" shall occur if: (a) a person or group of persons acting in concert directly or indirectly acquire more than 50% of Seller's or Seller's parent's voting power subsequent to the date that the parties enter into this AGREEMENT; (b) Seller or Seller's parent sells, leases, transfers or otherwise disposes of substantially all of Seller's or Seller's parent's assets, or of the assets relating to the Product Seller produces for Buyer under this AGREEMENT; (c) Seller or Seller's parent becomes involved in a merger, reorganization, consolidation, share exchange, re-capitalization, business combination, liquidation or dissolution or similar transaction; or (d) Seller or Seller's parents is the subject of a tender or exchange offer for any of the outstanding shares of its capital stock. Seller shall provide notice to Buyer of any pending or possible Change in Ownership, as soon as Seller becomes aware of the events giving rise to the Change. If Seller is or becomes the subject of a Change in Ownership, Buyer may at its discretion terminate this AGREEMENT or a Purchase Order for default, Seller's Default, at no cost to Buyer, and notwithstanding any termination, Seller shall take all measures reasonably necessary to protect Buyer's Property and any proprietary information. Pending termination or in lieu of termination, Buyer may require that Seller provide adequate assurance of performance.

**25. DEFAULT ORDER OF PRECEDENCE.** Any inconsistency in this AGREEMENT shall be resolved by giving precedence in the following order: (a) Contract; (b) Statement of work; (c) Purchase Order; (d) Attachments, Exhibits, or Annexes, if any, and; (e) these Standard Terms and Conditions. This order of precedence is to be followed except where a different is explicitly called for in either a SOW or a PO and that modified order of precedence only applies to those explicit terms.

**26. IMPORT and EXPORT COMPLIANCE.** Seller shall comply with all laws, ordinances, rules and regulations governing the import and export of the Seller's Product provided under this AGREEMENT and any components and raw materials used in the manufacture of the Products. This includes, but not limited to, the International Traffic-in-Arms Regulations ("ITAR"), 27 CFR 55, and the Foreign Corrupt Practices Act, with respect to the Products furnished hereunder, Seller certifies that it has not and will not pay, offer or agree to pay, for the purpose of soliciting, promoting or otherwise securing the sale of defense Products and services to or for the use of the armed forces of an international organization or non-U.S. country, any: (i) fees or commissions in excess of \$1,000, or (ii) political contribution (including any gift, rebate or payment of expenses) to a non-U.S. person or entity. Seller intends to conduct work for Buyer in a foreign country, including but not limited to the use of Seller's own facility outside of the U.S., or the use of a foreign affiliate or unrelated subcontractor, Seller shall provide advance written notification to Buyer. Seller is responsible for obtaining all import and export control licenses required by law, regulation or as otherwise requested by the Buyer. Seller shall flow the substance of this clause in any subcontracts. Seller will defend, indemnify and hold harmless Buyer and Buyer's affiliates, agents, and customers from any loss, damages, or costs arising from or caused in any way from the Seller's failure to comply with any law, ordinance, rule, or regulations governing the import or export of the Products provided under this AGREEMENT and any components or raw materials used in the manufacture of the Products.

**27. PROHIBITED GOODS AND SERVICES.** The U.S. Government prohibits the importation of goods or the purchase of services, and certain financial transactions, from certain countries, which list may change from time to time. Seller represents and warrants that it and its officers, employees, agents and representatives have not purchased or otherwise obtained, and agrees that it and its officers, employees, agents and representatives will not purchase or otherwise obtain goods or services, either directly or indirectly, from any prohibited country in providing goods or services to Buyer under this AGREEMENT. Seller may obtain an updated list of such countries by visiting the U.S. Treasury Department's website at <http://www.treas.gov/ofac/>. The Seller agrees that, as a condition of doing business with the Buyer, Seller will provide all goods or perform all Services with integrity and within the law. Seller further agrees to be aware of Buyer's "Standards of Business Conduct" as outlined at Buyer's website [www.dayzim.com/About\\_DZ/Suppliers](http://www.dayzim.com/About_DZ/Suppliers) in the Ethics Standards and guidelines for Supplier Personnel.

**28. SEC CONFLICT MINERALS RULE.** Seller warrants that all Products furnished to Buyer shall be free of any materials deemed to be "conflict minerals" under the SEC's Conflict Minerals Rule, absent prior written approval from Buyer. Upon request by Buyer, Seller agrees to provide within five (5) business days certification in whatever form is requested by Buyer or Buyer's customer that the Products are free from conflict minerals. Seller shall include the substance of this clause in all of its sub-tier contracts with its suppliers providing components in support of this Purchase Order.