

# Terms and Conditions of Purchase

Last revised: January 2, 2017

## 1. General.

1.1 These Terms and Conditions of Purchase ("POTC") are incorporated into and form a part of the purchase order (the "Order") issued by ETAS, Inc. The Order shall also include any provisions incorporated by reference therein pursuant to Section 2.2 below. The term "Buyer" refers to ETAS, Inc. as the issuer of the Order for the required goods and/or services. The term "Seller" refers to the recipient of the Order and supplier of the goods and/or services. The term "Supplies" refers to the goods and/or services to be provided to Buyer by Seller as specified on the Order.

1.2 Seller acknowledges that Buyer is purchasing Supplies for use in which timely delivery is required, and that Buyer is relying upon Seller's agreement to timely deliver to Buyer the Supplies at the price, in the quantities, and on the other terms and conditions stated in the Order and this POTC to allow Buyer to fulfill its contract to sell products which may incorporate the Supplies to Buyer's Customer as defined in Section 2.2. Accordingly, Seller may not terminate the Order before expiration. In the event Seller requests that Buyer resource the Supplies from Seller to a new supplier, Buyer may in its sole and absolute discretion refuse such request for any reason, including a refusal of such request at the direction of Buyer's Customer, in which case Seller must fully and faithfully perform its obligations under the Order for the remaining term of the Order. In the event Buyer elects to resource the Supplies to a new supplier in accordance with Seller's request, Seller shall fully comply with the provision of the Order relating to the transition of supply, including as set forth in Section 13 below.

## 2. Terms of the Order; Offer/Acceptance.

2.1 The Order is an offer by Buyer to purchase the Supplies from Seller on the terms of the Order. The Order is effective, and a binding contract is formed, when Seller accepts the offer prior to the expiration of two (2) weeks following Buyer's delivery of the Order to Seller. Buyer shall have the right to rescind the Order at any time prior to Seller's acceptance. Seller shall be deemed to have accepted the Order upon the earliest of: (a) Seller commencing work or performance with respect to any part of the Order, (b) Seller delivering written acceptance of the Order to Buyer, or (c) any conduct by Seller that fairly recognizes the existence of a contract for the purchase and sale of the Supplies. **The Order is limited to and conditional upon Seller's acceptance of the terms of the Order.** The Order does not constitute an acceptance of any offer, quote or proposal made by Seller, and Seller acknowledges and agrees that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer, and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. In the event Seller accepts Buyer's Order other than by written acceptance pursuant to subsection (b) above, Buyer may cancel the Order in its sole and absolute discretion, without payment of any kind to Seller, if Seller refuses to provide written acceptance of the Order within two (2) business days following Buyer's written or oral request for such confirmation. Any additional or different terms proposed by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise, are unacceptable to and expressly rejected by Buyer, and are hereby waived by Seller and are not part of the Order. However, any proposed modification of the terms of the Order by Seller shall not operate as a rejection of the Order if Seller commences work or is otherwise deemed to have accepted Buyer's offer as provided above, in which case the Order shall be deemed accepted by Seller without any such proposed modifications. Any reference in the Order to Seller's quote or other prior communication shall not imply acceptance of any term, condition or instruction but is solely to incorporate the descriptions or specifications of the Supplies, but only

to the extent that such descriptions or specifications are not in conflict with the descriptions and specifications in the Order. If the Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to and conditional upon Seller's acceptance of the terms of the Order.

2.2 The following documents may be incorporated into and part of the Order: (i) any executed supply agreement between Buyer and Seller; (ii) descriptions, specifications and prints for the Supplies; (iii) Buyer's policies, as revised from time to time; and (iv) any written agreement between Buyer and Seller which defines therein that it shall be part of the Order. As used herein, the term "Buyer's policies" includes any statement of work applicable to the Supplies, quality assurance documents, logistics guidelines, and delivery and packaging specifications, including but not limited to amendments or modifications. The purchasing terms and conditions of Buyer's Customer may also be incorporated into and part of the Order. "Buyer's Customer" means any entity to which Buyer, directly or indirectly, sells the Supplies or any goods or services into which the Supplies are incorporated. Although Buyer may, from time to time and in its sole discretion, provide Seller with certain information regarding the applicable Buyer's Customer's terms and conditions, it is Seller's responsibility to determine if, and how, the Buyer's Customer's terms and conditions may affect Seller's obligations to Buyer and Buyer's Customer.

2.3 In the event of any ambiguities, express conflicts or discrepancies in the descriptions, specifications, prints, drawings or other documents that are part of the Order, Seller shall immediately submit the matter to Buyer for its determination and the parties shall resolve the matter in mutual agreement.

2.4 This POTC applies to all Orders, including those with Sellers that Buyer's Customer has directed, recommended, requested, suggested or otherwise identified to Buyer as a source of the Supplies. Such "Sellers" and "Buyer's Customer", as provided under this section.

2.5 The parties acknowledge that the Order, this POTC and all documents related to them are prepared in the English language and will be interpreted and enforced in the English language.

## 3. Delivery.

3.1 Seller shall manufacture and ship Buyer's requirements for the Supplies in such quantities and at such time as identified in the Order. No charge shall be allowed for packing, shipping or handling unless otherwise stated in the Order. All Supplies received in excess of the quantities in the Order shall be subject to return for credit at Seller's expense.

3.2 Time and quantities are of the essence under the Order. Seller agrees to 100% on-time delivery of the quantities and at the time(s) specified by Buyer in the Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries, excess deliveries or any other delivery that is not a 100% on-time ("Nonconforming Deliveries"). If Buyer elects in its sole and absolute discretion to accept one or more Nonconforming Deliveries, such acceptance shall not constitute a waiver of Buyer's right to reject any other shipment which does not conform to the Order.

3.3 If Seller shall fail to timely meet Buyer's delivery requirements, as the result of any of Seller's acts or omissions, and more expeditious methods of transportation for the Supplies are available, Seller shall ship the Supplies by a transportation method that will meet Buyer's requirement or, if that is not possible, by the most expeditious transportation method possible. In either such case, Seller shall be solely responsible for any incremental costs due to the more expeditious transportation method.

3.4 Unless otherwise stated in the Order or agreed upon in writing by both parties, all pricing and shipments are to be made FCA Ship Point Free Carrier (as defined in Incoterms 2010 published by the International Chamber of Commerce) to Buyer's designated destination.

3.5 Seller warrants full and unrestricted title to Buyer for the Supplies delivered by Seller, free and clear of any and all liens, restrictions, reservations, security interests or encumbrances.

3.6 If Seller is responsible for set-up or installation under the Order, Seller shall bear all of the necessary and incidental costs, including without limitation travel and living expenses and provision of tools and the like to accomplish Seller's obligations under the Order.

3.7 Seller shall: (i) properly pack, mark, and ship Supplies according to Buyer's requirements, involved carriers and country of destination; (ii) route all shipments according to Buyer's instructions; (iii) label or tag each package according to Buyer's instructions; (iv) provide papers with each shipment showing the Order number, amendment number (where applicable), Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and bill of lading number; and (v) promptly forward the original bill of lading or other receipts for each shipment according to Buyer's instructions and carrier requirements. Buyer's count shall be accepted as final and conclusive on shipments which are not accompanied by Seller's itemized packing list. Partial shipments, if authorized by Buyer, shall not be construed as making the obligations of Seller severable.

3.8 Seller shall comply with all national, state, and local laws and regulations pertaining to product content and warning labels, including but not limited to the U.S. Toxic Substances Control Act, California Health and Safety Code for Safe Drinking Water and Toxic Enforcement Act (Proposition 65), U.N. Globally Harmonized System of Classification and Labelling of Chemicals (GHS) ([www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html)), and European Union Directive No. 2000/53/EC which are updated from time to time or any successor law. Seller shall promptly provide Buyer with the following information in the form requested by Buyer: (i) a list of all substances or materials in Supplies; (ii) the amount of all substances or materials, and (iii) information concerning any changes in or additions to the substances or materials. Prior to shipment of Supplies, Seller shall provide Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers, and packaging, including without limitation disposal and recycling instructions, Safety Data Sheets and certificates of analysis) of any hazardous or restricted material that is a substance or material or is otherwise part of the Supplies, together with any special handling instructions needed to advise carriers, Buyer, their respective employees and others handling the Supplies on proper measures for handling, transporting, processing, using or disposing of the Supplies, containers, and packaging to prevent bodily injury or property damage.

#### **4. Price; Payment Terms.**

4.1 The purchase price for the Supplies is set forth in the Order and in U.S. Dollars unless otherwise stated in the Order. Unless otherwise stated in the Order, the purchase price: (i) is a firm, fixed price for the duration of the Order and not subject to increase for any reason, including but not limited to, increased raw material costs, increased labor or other manufacturing costs, increased development costs, currency fluctuations, or changes in volumes from those estimated or expected; (ii) is inclusive of all federal, state, provincial, value-added and local taxes and any duties applicable to provision of the Supplies; and (iii) is inclusive of all storage, handling, packaging, and all other expenses and charges of Seller. Seller shall separately invoice Buyer for any sales, value-added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

4.2 Invoices shall be issued by Seller to Buyer no earlier than delivery of the Supplies to Buyer. Seller shall, at its sole expense, comply with Buyer's instructions in the Order with respect to the

form, content and method for submission of invoices. Seller shall promptly submit correct and complete invoices or other agreed upon billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Supplies.

4.3 Unless otherwise stated in the Order, Buyer shall pay invoices for Supplies which are properly presented and not subject to dispute, according to the terms stated in the Order. If no terms are stated in the Order, Buyer shall pay net thirty (30) days after the later of: (a) the Supplies being received and accepted at Buyer's facility, or (b) Buyer's receipt of Seller's invoice. Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. If the payment date is not a business day, payment shall be due the next business day thereafter. Payment shall be deemed to occur upon transmittal by Buyer of any paper draft or Buyer's wire transfer of payment into the account of Seller.

4.4 Supplies purchased under the Order, which are not services, identified as industrial processing may be exempt from sales taxes. In such case, the tax identification number and/or other exemption information shall be stated in the Order or otherwise provided by Buyer.

4.5 Payment for Supplies shall not constitute acceptance of nonconforming Supplies, nor shall it limit or affect any rights or remedies of Buyer.

#### **5. Quality.**

5.1 Seller shall conform to all quality control and other standards and inspection systems as established or directed by Buyer and its customer for goods and services similar to the Supplies on the Order. These include, without limitation, quality control procedures and/or ISO 9001 or ISO/TS 16949 registered quality system; ISO 14001 registered environmental system; and/or OHSAS 18001 health and safety policies. Seller shall also participate in Buyer's and/or Buyer's Customer's supplier quality and development programs as directed by Buyer.

5.2 Seller is responsible for the performance and quality of all of its suppliers from which Seller obtains goods or services it uses to produce its Supplies, including suppliers that Buyer and/or Buyer's Customer have directed, recommended, requested, suggested or otherwise identified to Seller as a supplier from which Seller shall obtain Supplies. Seller shall maintain adequate development, validation, test, launch and on-going supervision to assure that all Supplies sold to Buyer conform to all descriptions, specifications, drawings, prints, standards and samples set forth in the Order, including as to performance, fit, form, function, materials, if applicable, and appearance. In the event that Seller ships any Supplies which are nonconforming or breach the warranties of Section 6, Buyer may require Seller, at Seller's sole cost and expense, to inspect the Supplies in such a manner determined by Buyer, including the use of a third-party inspector or sorter, to ensure all future Supplies will conform to the Order. Any inspection or test, the lack thereof, or lack of response shall in no way release Seller from any quality or warranty obligations under the Order.

5.3 Buyer reserves the right at any reasonable time to inspect, witness, review or otherwise audit Seller's quality assurance and quality control procedures. Buyer shall have access to all parts of Seller's plant(s) and/or Seller's supplier's plant(s) engaged in the manufacturing or processing of Supplies in order to inspect, witness, review or otherwise audit the quality processes used at such plant(s). Seller shall furnish to Buyer the status of engineering, material procurement, production and shipping information upon request.

5.4 If defective or nonconforming Supplies are rejected by Buyer, the quantities under the Order shall be correspondingly reduced unless Buyer otherwise notifies Seller, and Seller shall not replace reduced quantities without written authorization from Buyer directing it to do so. Following rejection of nonconforming Supplies, Seller shall at Buyer's sole and absolute discretion, without prejudice to any other right or remedy of Buyer: (a) accept the return of the Supplies, at Seller's sole expense, and refund to Buyer the full invoice price plus all transportation and other charges associated with the

nonconforming Supplies; or (b) replace the nonconforming Supplies with conforming Supplies with all associated costs and expenses, other than the original invoice and shipping prices, being borne by Seller; or (c) at Seller's sole expense, correct at any time prior to shipment from Buyer's plant, Supplies which fail to meet the requirements of the Order.

5.5 Promptly upon learning of defective or nonconforming Supplies, Seller shall develop, document and implement corrective actions designed to ensure all Supplies are produced in accordance with all applicable quality control procedures of Buyer and Buyer's Customer. Seller shall immediately provide Buyer written notification when any raw material, component, design or defect in the Supplies is nonconforming, or may be or has become harmful to persons or property.

## **6. Warranty.**

6.1 In addition to any other express or implied warranties provided by law or otherwise, Seller warrants to Buyer, Buyer's Customer and their respective customers, successors and assigns, that Supplies delivered to Buyer shall: (i) be new and conform in all respects to the Order and all descriptions, specifications, drawings, samples and other documents furnished by Buyer or otherwise obtained by Seller; (ii) be free from all defects in design, workmanship and/or materials, and be of the highest quality and workmanship; (iii) be selected, designed, manufactured, assembled and packaged by Seller based upon Buyer's stated use, and be fit and sufficient for the purposes intended by Buyer as evidenced in the Order and in the specifications and drawings referred to therein; (iv) conform to all applicable laws in countries where the Supplies, or Buyer's goods into which the Supplies are incorporated, are to be sold; (v) for all Supplies which consist of services, Seller further warrants that its work shall be performed in a professional and workmanlike manner, consistent with all specifications and standards agreed to with Buyer and otherwise consistent with the highest industry standards.

6.2 All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, test, acceptance and/or payment. Buyer's approval of any design, drawing, material, process or specifications shall not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranties in this Section 6 are intended to and shall provide Buyer with protection from any and all warranty claims brought against Buyer by Buyer's Customer and their respective customers, successors and assigns, relating in any manner to the Supplies.

6.3 The warranty period shall run to the latest of the following: (a) four (4) years from the date Buyer accepts the Supplies; (b) warranty period provided by applicable law; (c) warranty period offered by Buyer to Buyer's Customer; or (d) warranty period Buyer's Customer offers to end-users of the products or for the products into which the Supplies are incorporated.

6.4 At Buyer's request, Seller shall fully participate in any root-cause analysis or investigation conducted by Buyer and/or Buyer's Customer relating in any manner to the failure of the Supplies and provide all information requested by Buyer concerning the Supplies. In the event that the root-cause analysis of a warranty failure is inconclusive but implicates the Supplies, the extent of Seller's liability shall be based upon a good faith allocation by Buyer of the responsibility for the warranty failure.

6.5 In the event Buyer or Buyer's Customer voluntarily or pursuant to a government agency mandate makes an offer to end-users to provide remedial action to address a defect or nonconforming condition of the Supplies, or any of Buyer's products incorporating the Supplies, in connection with a recall campaign, service action or other corrective action ("**Remedial Action**"), the warranty shall continue for such time period as may be dictated by Buyer or Buyer's Customer or government agency.

## **7. Remedies; Indemnification Obligation.**

7.1 The rights and remedies reserved to Buyer in each Order shall be cumulative with and in addition to all other or legal or equitable remedies available to Buyer. Seller is liable for all damages incurred by Buyer, including but not limited to compensatory, indirect, special,

punitive, exemplary or consequential (as opposed to compensatory) damages which include damages for lost profits or other damages directly or indirectly related to profits, fines, penalties, charges, assessments or other costs, incurred by Buyer as a result of Seller's: (i) breach of any representation or warranty set forth in the Order; (ii) failure to timely deliver conforming or otherwise non-defective Supplies; (iii) failure to comply with the shipping, delivery and/or other requirements of Buyer; and/or (iv) failure to otherwise comply with the Order, even if Seller has cured the breach. Such damages shall include but not limited to costs, expenses, and losses incurred directly or indirectly by Buyer: (a) in connection with inspecting, sorting, storing, reworking, repairing or replacing nonconforming Supplies; (b) resulting from production interruptions; (c) conducting or participating in Remedial Action(s) or other corrective service actions; or (d) resulting from personal injury, including death, or property damage caused by nonconforming Supplies. Buyer's damages include reasonable attorneys' and other professional fees, settlements and/or judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials.

7.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies or Transition Support as defined in Section 13.1, and/or for possession of property, Seller acknowledges and agrees that monetary damages are not sufficient remedy for any actual, anticipated or threatened breach of the Order and that, in addition to all other rights and remedies Buyer may have, Buyer shall be entitled to specific performance, including injunctive or other equitable relief as a remedy for any such breach, in addition to recovery of Buyer's reasonable attorneys' fees and expenses.

7.3 If requested by Buyer, Seller shall enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and shall fully participate in and comply with warranty reduction or related programs of Buyer or Buyer's Customer that relate to the Supplies.

7.4 If the goods or products sold by Buyer that incorporate the Supplies are subject to a Remedial Action (as defined in Section 6.5), the extent of Seller's liability shall be based upon a good faith allocation by Buyer of responsibility for the Remedial Action. Buyer shall notify Seller as soon as practicable after Buyer learns in writing that a Remedial Action being considered implicates the Supplies, and thereafter provide Seller the data provided by Buyer's Customer relating to the potential Remedial Action. In the event Buyer's Customer sets-off the cost of a Remedial Action against sums due to Buyer, and Buyer and/or Buyer's Customer determines in good faith that the Remedial Action was caused by the failure of Supplies to conform to the quality standards and/or warranties in Sections 6 and 7 hereof, in whole or in part, Buyer may set-off the costs of the Remedial Action against sums due to Seller prior to the allocation of responsibility set forth above.

7.5 To the fullest extent permitted by law: (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Supplies by Seller or anyone acting on its behalf; (ii) Buyer shall not be responsible for any injury to person, including death, or damage to any property resulting from Seller's possession, use, misuse or failure of any equipment, tooling or other property of Buyer furnished to Seller, and the use of any such property by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller shall defend, indemnify and hold harmless Buyer, Buyer's Customer and end-users of the Buyer's products or end-users of the Buyer's Customer products that incorporate the Supplies and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, losses, claims, liabilities and expenses (including attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of the Order and any part of this POTC including the cost of Remedial Actions.

7.6 If Seller performs any work on Buyer's premises or utilizes property of Buyer, whether on or off Buyer's premises: (i) Seller shall examine the premises to determine whether they are safe for the requested work and shall advise Buyer promptly of any situation it believes to be unsafe; (ii) Seller's employees, contractors, and agents shall comply with all laws and regulations that apply to the premises and if so requested, must leave Buyer's premises at Buyer's sole and absolute discretion; (iii) Seller's employees, contractors and agents shall not possess a firearm and possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal or controlled substances on the premises; and (iv) to the fullest extent permitted by law, Seller shall indemnify and hold Buyer and its agents, successors and assigns, harmless from and against any liability, claims, demands or expenses, including reasonable attorneys' and other professional fees, settlements and judgments for damages to the property of or personal injuries, including death, to Buyer, Buyer's employees or agents, or any other person or entity to the extent arising from or in connection with Seller's work on Buyer's premises or Seller's use of Buyer's property.

7.7 Seller's obligations under this Section 7 to defend and indemnify shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise and, to the maximum extent permitted by applicable law, Seller's indemnification obligations shall apply even as to losses caused in whole or in part by an indemnified party's negligence, except to the extent that losses resulted solely and directly from the gross negligence or willful misconduct of such indemnified party. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, or laws governing occupational diseases, disability benefits or other employee benefits.

## 8. Changes.

8.1 Buyer reserves the right at any time, by written notice to Seller, to make changes or to require Seller to make changes to descriptions, specifications, drawings, samples or sub-supplier Supplies. Buyer also reserves the right to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, test or quality control. Buyer may also require Seller to source the supply of raw materials either from itself or from specified third parties. Seller shall promptly make any such requested change.

8.2 In order for Seller to request a reasonable difference in price or time for performance as a result of a change described in Section 8.1, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of the change. Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. After receiving all requested documentation, Buyer, in consultation with Seller, may equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, Buyer's requested change shall not affect the price or time for performance.

8.3 Seller shall not make any change relating to Supplies, including without limitation, in the Supplies' contents, design, specifications, processing, packing, marking, shipping, price or date or place of delivery, except at Buyer's written instruction or with Buyer's prior written approval.

## 9. Customs Regulations.

9.1 For Supplies imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection ("U.S. Customs"), including but not limited to the Customs-Trade Partnership Against Terrorism ("C-TPAT") program ([www.cbp.gov/ctpat](http://www.cbp.gov/ctpat)).

At Buyer's or U.S. Customs' request, Seller shall certify in writing its compliance with C-TPAT and with all other applicable U.S. Customs laws and regulations. Seller shall provide both Buyer and U.S. Customs access to Seller's facilities for the purpose of auditing Seller's compliance with the foregoing. If the Supplies are transported via ocean carrier into the United States, Seller must also comply with U.S. Customs' Importer Security Filing ("ISF") and provide the necessary data to the freight forwarder selected by Buyer who will act as Buyer's agent for filing of the ISF. Seller shall cause all data required for the ISF to be in the freight forwarder's possession not later than twenty four (24) hours before the Supplies are loaded onto the ocean carrier or such earlier time as the freight forwarder may require. Neither Buyer nor its agents shall be responsible for modifying ISFs after the Supplies are loaded onto the ship. On and after January 1, 2010, any Supplies which receive any U.S. Customs response other than "accepted" shall be deemed to be rejected by Buyer.

9.2 Seller shall obtain all export licenses or authorizations necessary for the U.S. export of Supplies and provide copies to Buyer, unless otherwise set forth in the Order, in which case Seller shall promptly provide to Buyer all information necessary to enable Buyer to obtain the licenses or authorizations. Seller shall promptly notify Buyer in writing of any material or components incorporated in the Supplies that Seller purchases in a country other than the country in which the Supplies are delivered. Seller shall furnish any and all documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller shall promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller shall mark Supplies "Made in [country of origin]." Seller shall provide to Buyer and the appropriate governmental agency, the documentation necessary to determine the admissibility and effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information which is supplied to Buyer about the import or export of Supplies is true and that all sales covered by the Order shall be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

9.3 Supplies and the containers into which they are placed for shipment shall be marked in accordance with all U.S. laws, including but not limited to 19 CFR §134, as amended from time to time. Scientific and laboratory instruments shall be legibly and conspicuously marked by die-stamping, case-in-the-mold lettering, acid or electrolytic etching, engraving, or by means of metal plates securely attached to the Supplies in a conspicuous place by welding, screws, or rivets. If the Supplies cannot be marked as specified above, any method of legible and conspicuous marking is acceptable provided it is calculated to and does require deliberate and persistent effort to remove such marks of origin. Seller shall also be responsible for compliance with additional regulations and guidelines regarding supply chain security published by U.S. Customs and any other government agency, including the Security and Accountability for Every Port Act of 2006.

9.4 All credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes or fees, belong solely to Buyer. Seller shall promptly provide all information and certificates, including NAFTA Certificates of Origin, necessary to permit Buyer to receive the full amount of such benefits or credits. Seller agrees to fulfill all customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements.

9.5 Seller shall indemnify and hold Buyer harmless from and against any liability, claims demands or expenses, including attorneys' and other professional fees, arising from or relating to Seller's noncompliance with this Section. Seller shall be responsible for the full costs of any delay in delivery of the Supplies caused by its failure to comply with the requirements of this Section 9, including but not limited to missing, incomplete, untimely or inaccurate data being furnished to Buyer, Buyer's agents or any governmental authority.

## **10. Excusable Delay.**

Seller shall immediately provide written notice to Buyer of any event or occurrence that threatens to delay or actually delays Seller's performance under the Order. Any delay or failure of either party to perform its obligations shall be excused if and to the extent that the party is unable to perform due to events or occurrences beyond its reasonable control and without its fault or negligence, such as acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively "Excusable Delay"). However, in no event shall Seller's performance be excused by: (a) the change in cost or availability of raw materials, components or services based on market conditions, Seller actions or contract disputes; (b) Seller's financial distress; (c) Seller's bankruptcy or insolvency of one or more of Seller's suppliers; or (d) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers. Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential Excusable Delay, including the implementation of a production contingency plan and, upon Buyer's express written authorization, increasing Seller's inventory of Supplies to a level sufficient to sustain deliveries during such Excusable delay.

## **11. Termination.**

11.1 Buyer may terminate the Order for Cause, without liability to Seller, which shall be effective upon delivery of written notice or upon such other date specified by Buyer in writing. "Cause" for termination includes the following actions: (a) Seller breaches any representation, warranty or other term of the Order; (b) Seller repudiates, breaches or threatens to breach any of the terms of the Order; (c) Seller fails to deliver, or threatens not to deliver, Supplies in accordance with the Order; (d) Seller fails to meet applicable quality requirements so as to endanger timely and proper performance of the Order; (e) Seller makes an assignment for the benefit of creditors; (vi) proceedings in bankruptcy or insolvency are instituted by or against Seller; (f) Seller requests accommodations from Buyer, financial or otherwise, in order for Seller to meet its obligations under the Order; (g) Seller enters or offers to enter into a transaction or series of transactions that would cause the sale of a material portion of the assets used by Seller for the production and/or provision of Supplies to Buyer; (h) Seller enters or offers to enter into a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller within the meaning of Section 409A of the Internal Revenue Code and regulations issued there under, in which case Seller shall notify Buyer within ten (10) days after entering into any related negotiations, or the first period in which such negotiations can be made public consistent with applicable law, that could lead to such a transaction provided that upon Seller's request, Buyer shall enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction; or (i) at any time in Buyer's sole judgment Seller's financial or other condition or progress on the Order shall be such as to endanger timely performance.

11.2 In the event Buyer elects not to terminate the Order in connection with an event that would constitute Cause for termination, Buyer may make such equitable adjustments in the price, payment terms, sole supply relationship and delivery requirements under the Order as Buyer deems appropriate to address changes in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming Supplies or other requirements under the Order, provided that Buyer must provide Seller with notice and details regarding the adjustments.

11.3 Buyer also may, at its option and in its sole discretion, immediately terminate all or any part of the Order, other than the minimum quantities specified in Section 3, at any time and for any reason upon seven (7) days written notice to Seller. Upon receipt of notice of termination, whether under Section 11.1 above or this Section 11.3, unless otherwise directed by Buyer, Seller shall: (i) promptly terminate all work under the Order on the effective date of termination; (ii) transfer title and deliver to Buyer, or its designee, the

finished Supplies, work in process, and parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and Seller cannot use in producing Supplies for itself or others; (iii) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (v) upon Buyer's request, fully cooperate with Buyer in transferring the production of Supplies to a different Seller.

11.4 Upon termination by Buyer under Section 11.3, Buyer shall pay only the following without duplication: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the Order for which Seller has not been paid; (ii) Seller's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under Section 11.3; (iii) Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors required under the Order, to the extent directly caused by the termination but limited to the amount of the firm quantities of Supplies and raw materials and/or components specified in the Order and currently outstanding; (iv) Seller's reasonable actual cost of carrying out its obligations under Section 11.3(iii); and (v) if applicable, amounts due in connection with Transition Support under Section 13.

## **12. Limitation on Buyer's Obligations to Seller for Termination.**

12.1 Buyer's obligations under Section 11.3 are conditioned upon Seller furnishing to Buyer within one (1) month after the date of termination, or such shorter period as may be required by Buyer's Customer, a termination claim which shall consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section 12 and Section 11. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer shall not be obligated to make any payment for Supplies, work-in-process, parts or raw materials inventory: (a) in excess of those authorized or required under the Order; (b) that are damaged or destroyed or not merchantable or useable; (c) that are in Seller's standard stock or readily marketable; or (d) that can be returned to Seller's supplier or subcontractors for credit.

12.2 In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to Buyer's Customer for Buyer's goods which incorporate the Supplies, Buyer shall only be obligated to compensate Seller for any costs under Section 11.4 if, when and to the extent that Buyer's Customer reimburses Buyer for such costs.

12.3 BUYER SHALL HAVE NO LIABILITY OR OBLIGATION FOR, AND SHALL NOT BE REQUIRED TO PAY SELLER DIRECTLY OR INDIRECTLY IN RESPECT OF, CLAIMS BY SELLER OR SELLER'S SUBCONTRACTORS, FOR LOSS OF ANTICIPATED PROFIT, FAILURE TO REALIZE ANTICIPATED PRODUCTION VOLUMES, REVENUES OR SAVINGS, UNABSORBED OVERHEAD, INTEREST ON CLAIMS, PRODUCT DEVELOPMENT AND ENGINEERING COSTS, TOOLING, FACILITIES AND EQUIPMENT REARRANGEMENT COSTS OR RENTAL, UNAMORTIZED CAPITAL OR DEPRECIATION COSTS, OR GENERAL ADMINISTRATIVE BURDEN CHARGES RESULTING FROM OR RELATED TO THE TERMINATION OR EXPIRATION OF THE ORDER, EXCEPT AS OTHERWISE EXPRESSLY AGREED IN A SEPARATE ORDER ISSUED BY BUYER.

## **13. Transition of Supply.**

13.1 In connection with the expiration, cancellation or termination of the Order by Buyer, in whole or in part, for any or no Cause or Buyer's election to change to an alternate Seller of the Supplies, including a Buyer-owned or -operated facility, whether in response to Seller's request or otherwise, Seller shall give Buyer its full and prompt cooperation as set forth herein in transitioning from Seller to Buyer's new supplier the responsibility for providing and delivering Supplies to Buyer. Seller shall continue production and delivery of all Supplies as ordered by Buyer, at the prices and in compliance with the terms of the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the

transition to the alternate supplier(s). Subject to Seller's reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing. At no additional cost to Buyer, Seller shall promptly provide all requested information and documentation regarding and access to Seller's manufacturing or service process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components. Seller shall promptly provide all notices deemed by Buyer in its sole and absolute discretion to be necessary or desirable for Buyer to resource the Order to an alternative supplier. If and when requested by Buyer, Seller shall return to Buyer all Buyer's Property in as good condition as when received by Seller, except for reasonable wear and tear, and shall comply with Seller's obligations relating to Seller's Property in Section 18 and in relation to subcontracts.

13.2 If the resourcing of the Supplies occurs for reasons other than in connection with a termination for Cause or at the request of Seller, Buyer shall, at the end of the transition period, pay Seller's reasonable out-of-pocket cost of Transition Support as requested, provided that upon Buyer's request, Seller has advised Buyer prior to incurring such amounts of its good faith estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer shall pay the undisputed portion to Seller and the remaining portion, if any, promptly following the binding determination by an arbitrator that such amount is due to Seller.

#### **14. Insurance.**

Seller shall maintain and require its subcontractors to maintain, the following insurance coverage: (i) comprehensive general liability insurance; (ii) comprehensive automobile liability insurance; (iii) business interruption insurance; (iv) workers compensation and employer's liability insurance that covers all employees engaged in the performance of the Order for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and/or regulations; and (v) other such insurance as may be requested from time to time by Buyer in its sole discretion. In each case Seller's insurance coverage will name Buyer and its affiliates (as applicable) as loss payee(s) and/or "additional insured(s)" and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts specifically set forth on Buyer's Insurance Addendum which when published, will form part of the Order. Such-Insurance coverage shall, among other things, provide full fire and extended coverage insurance for the full replacement value of all Seller's Property and all bailed Buyer's Property. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Supplies and shall cause all its subcontractors, material-men and Sellers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer. Seller shall furnish to Buyer a certificate showing full compliance with the requirements set forth in this Section 14 or certified copies of all insurance policies within ten (10) days of Buyer's written request. The certificate shall provide that Buyer shall receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance shall not release Seller of its obligations or liabilities under the Order.

#### **15. Audit; Plant Inspections.**

15.1 Upon reasonable notice to Seller, either Buyer, Buyer's Customers or their respective third-party designees may audit Seller's production facility, Supplies and any other Buyer property, including all pertinent documents, data and other information, related to the Order for the purpose of verifying Seller's costs and its compliance with or its ability to perform its obligations under the Order. Seller shall provide, without additional charge, all reasonable facilities and assistance. No inspection under this Section 15 shall constitute acceptance of any work-in-process or finished goods and shall not relieve Seller of any of its responsibilities or warranties under the Order.

15.2 Upon reasonable notice to Seller, Buyer or a third party designated by Buyer may review the financial and cost data of Seller and its affiliates relating to Seller's performance under the Order. Seller shall, and shall cause its affiliates to, fully cooperate in any such review and shall promptly provide copies of or access to requested documents and shall make its financial managers available for discussions during reasonable business hours. Buyer and its third-party designee(s), if any, shall keep confidential any non-public information about Seller or its affiliates obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order.

15.3 Buyer's right to conduct any inspection, audit or review under this Section 15 or otherwise is at its sole discretion. Buyer shall have no obligation to Seller to conduct any inspection, audit or review under this Section 15 or otherwise and Buyer's decisions as to whether, how and when to conduct any inspection, audit or review shall not modify or relieve Seller of any obligations under the Order, shall not give rise to any liability of Buyer to Seller and shall be without prejudice to any rights or remedies available to Buyer.

#### **16. Buyer's Property.**

This Section 16 shall only apply if there is no current bailment agreement between the parties.

16.1 "Buyer's Property" shall mean and include: (i) all information and materials, including tooling which has been furnished by Buyer to Seller or for which Seller has been reimbursed by Buyer (such as fixtures, gauges, jigs, patterns, castings, cavity dies, molds, with all related appurtenances, accessions, and accessories, collectively herein referred to as "Tooling"); (ii) packaging, documents, standards, specifications, samples, trade secrets, manufacturing processes, marketing and pricing data, proprietary information and other materials and items, including whether or not such materials are in any way modified, altered or processed, furnished by Buyer either directly or indirectly to Seller to perform the Order; and (iii) any and all supplies, Tooling, deliverables, data and Intellectual Property Rights (as defined in Section 19.1) which are property of Buyer under the terms of the Order. Buyer's Property shall be and remain the sole and exclusive property of Buyer.

16.2 With respect to Buyer's Property in the custody or control of Seller or Seller's supplier, subcontractors or agents: (i) Seller shall use it or permit its use only for the production of Supplies for Buyer; (ii) Seller, at its own expense, shall keep Buyer's Property in good working condition and house, maintain, repair and replace it as necessary so that such Buyer's Property shall remain in the same condition as it was when it was received by Seller, except for reasonable wear and tear; (iii) Seller shall keep Buyer's Property fully insured for the benefit of Buyer at all times while in Seller's possession; and (iv) Seller shall keep Buyer's Property, and cause any of its suppliers, subcontractors or agents in possession of such Buyer's Property to keep it segregated from all other assets and labeled as being the property of Buyer. Seller shall not release, relocate or dispose of Buyer's Property to any third party without the prior, express, written permission of Buyer. Seller shall promptly notify Buyer the location of Buyer's Property if located at any place other than Seller's facility.

16.3 Seller shall have only temporary possession of Buyer's Property as a bailee at will.

16.4 Buyer shall have the right to enter Seller's premises, or the premises of any of Seller's suppliers, subcontractors or agents in possession of Buyer's Property, to inspect Buyer's Property and Seller's records regarding Buyer's Property. Seller agrees neither to create nor permit any liens on Buyer's Property and Seller agrees to immediately sign any UCC-1 forms or other documents reasonably required by Buyer to perfect Buyer's rights granted herein. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect and protect Buyer's interest in Buyer's Property.

16.5 Seller shall assume all risk of death or injury to persons or damage to property arising from its use of Buyer's Property. TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY SUPPLIED BY BUYER. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH BUYER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

16.6 Immediately upon Buyer's request, pursuant to any bailment agreement, or upon any bankruptcy or insolvency filing, and without payment of any kind, Seller shall return Buyer's Property and shall comply with Buyer's instructions relating to its return, including the method and location for its return. Seller shall be responsible for labor and other costs incidental to such Buyer's Property's return. Seller shall cooperate with Buyer and provide Buyer access to all facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section 16. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of Buyer's Property, including molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

## **17. Tooling.**

17.1 Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any tooling except as authorized in the Order. Seller represents that the price in the Order for Tooling is no greater than Seller's actual cost of such Tooling and that there is no mark-up for profit, unless as authorized in this Section 17.

17.2 If Seller is responsible for fabricating or acquiring Tooling, such Tooling shall: (i) comply with any specifications provided by Buyer or, where directed by Buyer, those of Buyer's Customer; and (ii) be capable of making their intended contribution to the manufacture of Supplies that satisfy the Order. Seller represents and warrants that the Tooling fabricated or acquired by Seller shall not infringe on the Intellectual Property (as defined in Section 19.1) of any third party and shall defend, hold harmless and indemnify Buyer, its successors and assigns against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe any Intellectual Property and against any resulting damages, expenses (including attorney's and other professional fees), settlements and judgments arising out of or in any way connected to the Tooling, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications. If the use of the Tooling for manufacture of the Supplies is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller shall, at Buyer's election in its sole discretion and at Seller's sole expense, procure for Buyer the right to continue using the Supplies or modify the Tooling so it becomes non-infringing.

17.3 If Seller subcontracts all or part of the fabrication, modification, repair or refurbishment of Tooling to a third-party toolmaker, Seller shall: (i) provide advance written notice to Buyer of the identity of the toolmaker and the location of the Tooling; (ii) inform the toolmaker in writing that it is a bailee-at-will, through Seller, of Tooling owned by Buyer; and (iii) be solely responsible for payments to the toolmaker. Buyer has no obligation to Seller or subcontractor other than payment to Seller of the Order price. If a subcontractor brings an action against Seller for payment of the Tooling, Seller shall not join Buyer in the action.

17.4 If Seller's primary business is to fabricate Tooling, Seller shall be permitted a reasonable profit percentage as specified in the Order. In the absence of a mutually-accepted profit percentage, Buyer shall determine a reasonable profit percentage following the completion of its audit. Seller shall invoice Buyer for, and Buyer shall only be obligated to pay, the lower of Seller's actual cost plus such profit percentage or the amount set forth in the Order.

17.5 Seller shall provide to Buyer, as requested, access to Seller's premises and all documentation relating to the Tooling, prior and subsequent to payment, to inspect work performed and verify charges submitted by Seller against the Order. For any Tooling or parts thereof that Seller obtains from any third party, Seller shall provide Buyer with access to the ultimate production source of the Tooling and documentation in accordance with the preceding sentence. Seller shall have ninety (90) days from the date Buyer notifies Seller of Buyer's intention to audit Seller to provide the requested access and copies of requested documentation for Buyer's exclusive use and records. Any information submitted following such ninety (90) day period may be disregarded by Buyer in its sole and absolute discretion. The price set forth in the Order or Tooling shall be adjusted to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller shall not disclose to any third party, except for its attorneys and professional advisors who are required to maintain confidentiality, the results of any such Tooling audits or any adjustments made by Buyer to the prices and amounts payable to Seller as a result of such audit. Seller shall retain, and cause its Tooling subcontractors, if any, to retain all cost records for a period of three (3) years after receiving final payment of the charges.

17.6 To the extent permitted by applicable law, any payments made by Buyer for Tooling that is manufactured by a third party are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce such Tooling, and Seller agrees to hold such payments as trustee in trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for such Tooling. Seller acknowledges and agrees that such subcontractor is an intended third-party beneficiary of the terms of this Section 17.6 as related to the trust and as such, such Tooling subcontractor shall have the right to enforce the terms of this Section 17.6 directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's Tooling subcontractor under this Section other than making the payment to Seller in accordance with the Order. In the event Seller's Tooling subcontractor brings an action against Seller under this section, Seller agrees that it shall not join Buyer in any such action.

## **18. Seller's Property.**

18.1 "Seller's Property" shall mean all capital equipment, materials, machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, blueprints, designs, specifications, drawings, photographic negatives and positives, art work copy layout, and all other records or items that are not Buyer's Property and that are necessary for the production of Supplies under the Order.

18.2 Seller, at its expense, shall furnish, keep in good working condition capable of producing Supplies to meet all applicable specifications, and replace when necessary, all Seller's Property. Seller shall insure Seller's Property with full fire and extended coverage insurance for its replacement value, and otherwise as required under Section 14 ("Insurance") hereof. If Seller uses Seller's Property to produce goods or services similar to Buyer's Supplies for other customers, including aftermarket customers, such goods or services shall not incorporate Buyer's logos, trademarks, trade names or part numbers. Under no circumstances shall Seller disclose or imply in its marketing efforts that the goods and services it produces for others are equivalent to or better than those purchased by Buyer.

## **19. Intellectual Property.**

19.1 "Intellectual Property" shall mean and include patents, copyrights, trademarks, trade names, trade dress, trade secrets, copyrights, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, designs, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property/proprietary rights, rights in other tangible and intangible assets of a proprietary nature, domain names, company names, and the like. "Intellectual Property Rights" means all forms of Intellectual Property protection or proprietary rights available throughout the world, including without

limitation utility patents, design patents, patent applications, design registrations, utility models, industrial designs, copyrights, trademarks, trade dress, trade secrets and rights in domain names.

19.2 Seller warrants that the Supplies and the sale and/or use thereof, before or after incorporation into products during manufacture, are original to Seller and do not and shall not infringe any third party's Intellectual Property Rights.

19.3 Seller agrees: (i) to defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents, and any of their respective successors and assigns (each a "Buyer Indemnified Party") against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses, including attorneys' and professional fees, expenses, settlements and judgments, arising out of or relating to the manufacture, sale or use of the Supplies, including cases in which Seller has provided only part of Supplies; (ii) to waive any claim against any Buyer Indemnified Party, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against such Buyer Indemnified Party for infringement of any Intellectual Property Right, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications; and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole and absolute judgment, is likely to be enjoined, Seller shall, at Buyer's election in its sole discretion and at Seller's sole expense, procure for Buyer the right to continue using the Supplies, replace the same with equivalent non-infringing goods or modify such Supplies so they become non-infringing.

19.4 All Supplies, Tooling and all other deliverables which include Intellectual Property, for which Buyer has agreed to reimburse Seller, along with all Intellectual Property relating thereto and needed to manufacture, sell or use the Supplies, are the sole and exclusive property of Buyer. Seller shall promptly disclose in an acceptable form and assign to Buyer all such Intellectual Property. Seller shall cause its employees to promptly sign any papers necessary to enable Buyer to file applications for patents throughout the world and to record rights in and to such Intellectual Property. To the extent that the Intellectual Property includes any works of authorship created by or on behalf of Seller, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title and interest in all copyrights and moral rights therein.

19.5 Seller hereby grants to Buyer, its subsidiaries and affiliates, and their respective successors and assigns, and Buyer hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid-up worldwide license, including the right to sublicense to others in connection with providing the Supplies to Buyer or Buyer's Customer under: (i) any Intellectual Property owned or controlled by Seller or its affiliates, and relating to the Supplies, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Supplies; and (ii) any works of authorship fixed in any tangible medium of expression, including specifications, drawings, prints, and manuals, furnished by Seller in the course of Seller's activity under the Order to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of the Order (all items in (i) and (ii) are collectively "Seller's Intellectual Property" and such license in respect thereof, the "License"). Seller acknowledges and agrees that the License shall be effective from the first date of delivery of Supplies under the Order and extend for so long as Buyer has contractual obligations to Buyer's Customer to sell goods incorporating the Supplies. The License is intended to be subject to 11 USC Section 365(n), as amended from time to time, as an executory agreement under which Buyer has license rights to Seller's Intellectual Property and is supplementary to any other rights of Buyer under the Order and any other agreement with Seller.

19.6 Seller shall ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section 19.

## **20. Proprietary Information; Record Retention.**

20.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with the Order and any and all services to be rendered and/or work to be performed pursuant to the Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use, communicate or disclose such confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under the Order. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors", officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller may have disclosed or may hereafter disclose to Buyer in connection with the Supplies.

20.2 The restrictions and obligations of Section 20.1 shall not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to any of the Buyer's information. Notwithstanding anything to the contrary in this POTC, any confidentiality or non-disclosure agreement between the parties that predates the Order shall remain in effect except as expressly modified by the Order and to the extent of a conflict between the express terms of such an agreement and this Section 20, the terms of that agreement shall control.

20.3 All documents containing proprietary information relating to the Supplies produced or acquired by Seller in connection with the Order and non-disclosure agreement shall belong to Buyer. All drawings, know-how and confidential information supplied to Seller by Buyer, and all rights therein shall remain the property of Buyer and shall be kept confidential by Seller in accordance with Section 20.1 above.

20.4 Seller agrees not to assert any claim against Buyer or its suppliers with respect to any technical information that Seller may have disclosed or may disclose to Buyer in connection with the Supplies covered by the Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Order.

20.5 Seller shall, within five (5) business days of Buyer's request or the expiration or termination of the Order, return all confidential and proprietary information, including all copies, notes and/or extracts thereof. This Section 20 shall survive termination of the Order.

20.6 Seller shall keep all relevant documents, data and other written information relating in any manner to the Supplies for at least three (3) years following: (i) in the case of the Supplies, the later of the last delivery of the Supplies or date of the final payment to Seller under the Order; and (ii) in the case of Tooling, the later of the date of completion of the Order, date of submission of any applicable part submission warrant or date of final payment. Buyer may make copies of these materials at any time prior to their destruction.

## **21. Set-off.**

In addition to any right of set-off or recoupment as permitted by law, all amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set-off against or recoup from any amounts due or to become due to Seller, any amounts



due to Buyer however and whenever arising. If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of amount due to Seller until such obligation is resolved in accordance with Section 29. In the event Buyer reasonably believes it is at risk, Buyer may in its sole and absolute discretion withhold and recoup a corresponding amount due Seller to protect against such risk. For purposes of this Section 21 only, the terms "Buyer" and "Seller" shall include their parent companies, subsidiaries, brother/sister companies and affiliates.

## **22. Social Responsibility and Protection of the Environment.**

22.1 Seller shall comply with all laws and regulations regarding environmental protection and to work on reducing the adverse effects of its activities on human beings and the environment. In this respect, Seller shall implement and maintain an environmental management system in accordance with ISO 14001 wherever possible. In the event Buyer's Customer requires Buyer and its Sellers to participate in any energy saving (or green initiative) or other environmental protection programs, Seller shall fully comply and assist Buyer with its participation in such program as directed by Buyer.

22.2 Seller warrants that neither it nor any of its subcontractors shall utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under the Order. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.

22.3 Seller shall comply with the principles of the U.N. Global Compact Initiative relating to the protection of international human rights, right to collective bargaining, abolition of forced labor and child labor, elimination of discrimination when personnel is engaged and employed, responsibility for the environment and prevention of corruption. Further information on the UN Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

## **23. Compliance with Laws; Ethics.**

23.1 Seller warrants that they and all Supplies furnished by Seller under the Order shall comply with all applicable local, state, federal and other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as amended from time to time. Seller shall provide all permits, certificates, licenses, insurance approvals and inspections which may be required for the performance of the Order.

23.2 Seller warrants that all Supplies furnished by Seller in performance of the Order shall comply fully with the Occupational Safety and Health Act of 1970 and State plans approved under this Act, as amended from time to time; Toxic Substances Control Act, as amended from time to time; and regulations promulgated under both Acts, to the extent applicable to such equipment and in addition to any other rights or remedies which Buyer may require. Seller also warrants all Supplies fully comply with all federal and state environmental regulations including without limitation state laws regulating the amount of mercury. Seller shall promptly notify Buyer in the event that any environmental factors associated with Seller's products, services and/or processes may adversely impact Buyer or its employees, either directly or indirectly. Such impacts may involve, but are not limited to, direct exposure to toxic substances in Seller's products and/or processes, and/or negative publicity or litigation arising from Seller's use of endangered species or other environmentally sensitive materials.

23.3 Buyer serves from time to time as a contractor and/or a subcontractor concerning contracts to supply to the United States government. In those cases, Seller shall comply with the federal laws, regulations and rules applicable to government contracts, including those relating to equal employment opportunity and affirmative action in the employment of minorities, women, the handicapped and certain veterans, and contracting with women-owned or small and disadvantaged business concerns. Where applicable, Seller certifies that it maintains no segregated employee facilities in compliance with applicable law and that it is not debarred from being awarded federal or federally-assisted contracts.

23.4 Seller and/or any agent or representative of Seller, may not offer or give any gratuities, in the form of entertainment, gifts or otherwise, to any officer or employee of Buyer with a view toward securing any Order or securing favorable treatment with respect to the awarding, amending or making of any determinations with respect to the performance of the Order or future Orders.

23.5 Seller shall promptly notify Buyer if Seller has provided information to any government agency, including agencies of foreign governments, regarding the Supplies which includes information provided to the U.S. Government in accordance with the reporting requirements of U.S. laws, as amended from time to time, including but not limited to Defect and Noncompliance Reporting and Reporting of Information and Communications About Potential Defects. This notification shall include the: (i) date the notification was provided to a government agency; (ii) affected Supplies or components of the Supplies, as applicable; and (iii) report type, such as reporting to the U.S. Government the Seller's Early Warning Report or Noncompliance Report. Seller shall also promptly notify Buyer if Seller has provided information to a government agency regarding goods of a comparable or derivative nature to the Buyer's Supplies including information provided to the U.S. Government.

23.6 Seller shall notify Buyer of any change in laws applicable to the Supplies and must identify the impact of such changes on Seller's performance and Buyer's receipt of such Supplies. Seller shall promptly develop and, with Buyer's approval, implement with respect to the affected Supplies any modifications that are necessary as a result of such changes in laws. Seller shall be responsible for any fines or penalties imposed on Seller or Buyer resulting from any failure by Seller or its agents, subcontractors or third-party suppliers to comply with applicable laws or respond in a timely manner to changes in such laws.

23.7 Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses, including attorneys' and professional fees, settlements and judgments arising from or relating to Seller's noncompliance with this Section 23.

## **24. Buyer's Limited Liability to Seller.**

Buyer's sole liability under the Order, including its termination, expiration or cancellation, is to pay for the Supplies in accordance with Section 5 and to pay the specific termination-related amounts described in Section 11.4. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATORY, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (AS OPPOSED TO COMPENSATORY) DAMAGES, LOST PROFITS OR OTHER DAMAGES DIRECTLY OR INDIRECTLY RELATED TO PROFITS OR LIABILITIES OF ANY KIND IN CONNECTION WITH THE ORDER, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.

## **25. Assignment.**

25.1 Seller may not, without Buyer's prior written consent: (a) assign or delegate, including without limitation by subcontract, its obligations under the Order, or (b) enter or offer to enter into a transaction that includes the sale of a substantial portion of its assets used for the production of Supplies for Buyer or a merger, sale or exchange of stock or other equity interests which would result in a change of control of Seller. In the event of any approved assignment, including without limitation subcontract, sale or delegation is authorized by Buyer, Seller shall retain all responsibility for Supplies, including all related warranties and claims unless otherwise expressly agreed to in writing by Buyer.

25.2 With Buyer's prior written consent, Seller may make an assignment of receivables due, or to become due, to a single financial institution provided that any such assignment shall be subject to set-off, as defined in Section 21, or other methods of enforcing any claims that Buyer may have under the Order.

25.3 Buyer shall have the right to assign any benefit or duty under the Order to any third party upon notice to Seller with or without Seller's consent.

**26. No Publicity.**

Seller shall not advertise, publish or disclose to any third party, other than to Seller's professional advisors on a confidential and need-to-know basis, in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by the Order or any terms of the Order, including prices, or use any trademarks or trade names of Buyer in any press release, advertisement or promotional material without prior written consent by Buyer.

**27. Relationship of the Parties.**

Seller and Buyer are independent contracting parties and nothing in the Order shall make either party the employee, agent or legal representative of the other for any purpose. The Order shall not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller shall be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

**28. Conflict of Interest.**

Seller represents and warrants that its performance of the Order shall not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and its employees and contractors participating in the performance of the Order shall refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order. Seller may not directly solicit Buyer's Customer for sales of the Supplies, goods substantially similar to the Supplies, or any goods substantially similar to the goods sold by Buyer to the Buyer's Customer.

**29. Governing Law; Dispute Resolution.**

29.1 Buyer and Seller shall first endeavor to resolve, through good faith negotiations, any dispute arising under the Order. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, all disputes arising out of or relating to the Order shall be resolved through binding arbitration. The arbitration proceedings shall be conducted before a panel of three (3) arbitrators (one appointed by each party and a neutral appointed by the other two arbitrators) in accordance with the Commercial Rules of the American Arbitration Association, including application of the Optional Rules for Emergency Measures of Protection and shall be governed by the United States Arbitration Act and this Section 29. The arbitration shall be conducted in the city and state of Buyer's primary place of business, and the language of the arbitration shall be English. The arbitrators shall issue a written opinion setting forth the basis for the arbitrators decision (Arbitration Award) which may include an award of legal fees and costs. While arbitration proceedings are pending, the parties shall continue to perform their obligations under the Order and this POTC without set-off for any matters being contested in the arbitration.

29.2 Venue for confirmation of or any challenge to the Arbitration Award shall be, at Buyer's option, in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan.

29.3 The Order shall be construed and governed, at Buyer's option, in accordance with the internal laws of the State of Michigan. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-law provisions that require application of another choice of law, are excluded.

29.4 Neither course of performance, course of dealing or usage of trade may be used to vary the terms of the Order.

29.5 If either party brings arbitration or other proceeding against the other as a result of any alleged breach or failure by the other party to fulfill or perform any covenants or obligations under the Order, the prevailing party which obtains final judgment in such proceeding shall be entitled to receive from the non-prevailing party the prevailing party's reasonable attorneys' fees incurred by reason of such action or proceeding, and all costs associated with such action or proceeding incurred by the prevailing party, including the costs of preparation and investigation.

**30. No Waiver.**

Buyer's failure to insist on the performance by Seller of any term or failure to exercise any right or remedy reserved in the Order, or Buyer's waiver of any breach or default hereunder by Seller shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

**31. Severability.**

If any provision of the Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

**32. Survival.**

The obligations of Seller to Buyer survive termination of the Order except as otherwise provided in the Order.

**33. Notices.**

33.1 A written notice is used by the parties to provide a required notice or instructions to each other, or to authorize an exception, deviation or waiver of a pre-existing obligation or requirement under the Order. A written notice is also used by either party to provide any notice to the other party that is required to be in writing. In the case of the Buyer, any written notice is valid only if signed by a representative of Buyer's purchasing activity. A written notice may be signed manually or electronically.

33.2 A written notice may be provided by: (a) first class mail, (b) courier service, (c) fax, or (d) email. A written notice using method (a) or (b) is effective as of the date of delivery, and method (c) or (d) is effective as of the date of transmission.

**34. Interpretation.**

No provision may be construed against Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Order.

**35. Entire Agreement; Modifications; Buyer's Website.**

35.1 The Order is the entire agreement between the parties with respect to Supplies and supersedes any prior agreements, negotiations or understandings of the parties with respect to Supplies, whether written or oral, except that a signed prior agreement, such as an award letter, statement of work or non-disclosure agreement, will continue to apply to the extent not directly in conflict with the Order. The Order may only be modified by: (a) written amendment executed by authorized representatives of each party, or (b) an amendment of the purchase order issued by the Buyer, including changes within the scope of Section 8. This POTC is modified from time to time by posting to the Buyer's website at [www.etas.com/en/etas\\_usa\\_contact.php](http://www.etas.com/en/etas_usa_contact.php) under Legal Notices or its successor website. Such revised POTC shall apply to all purchase order amendments and new Orders issued on or after the effective date thereof. Seller shall be responsible to review Buyer's website periodically.

35.2 Buyer's website may also contain additional requirements for certain items covered by the Order, including labeling, packaging, shipping, delivery and quality procedures, instructions and/or directions. Any such requirements shall be deemed to form part of

the terms and the Order. Buyer may periodically update such requirements by posting revisions thereto on Buyer's website. In the event of any inconsistency between the Order and Buyer's website, the terms of the Order shall prevail, unless the requirements specified on Buyer's website expressly state otherwise.

35.3 Seller represents and warrants that there is no outstanding litigation, arbitrated matter or other dispute to which Seller is a party which, if decided unfavorably to Seller, would reasonably be

expected to have a material adverse effect on Buyer's or Seller's ability to fulfill its respective obligations under this agreement.

35.4 Seller covenants that each express representation and warranty of Seller in this agreement shall remain true and correct during the term and any extension thereof. To the extent that Seller becomes aware that any such representation or warranty becomes untrue in any material respect during the term, Seller shall notify Buyer of the facts and circumstances surrounding such situation.

## Additional Purchasing Terms and Conditions for Products regarding Open Source Software of ETAS, Inc. (herein referred to as "ETAS")

### 1. Scope

- a) These terms apply to business-to-business transactions with regard to the acquisition/licensing of software and hardware with integrated (embedded) software in any code form (e.g., source code, object code, executable, etc.), including updates ("Contract Products"). These terms apply in particular when Supplier is:
  - licensing software and/or technology to ETAS which includes Free and Open Source Software (FOSS) Components;
  - designing software and/or technology for ETAS which will include FOSS Components;
  - selling and/or otherwise providing ETAS hardware which has FOSS Components either:
    - (1) bundled with it,
    - (2) installed in it (e.g., incorporated into firmware as part of the product), or
    - (3) distributed separately but intended to be used with the product;
  - providing ETAS with FOSS Components in conjunction with services for ETAS or its partners or its customers.
- b) These terms exclude deviating general terms and conditions used by Supplier even if ETAS accepts the Contract Products with knowledge of such Supplier's general terms and conditions.

### 2. Definitions

- a) "Open Source Software" (OSS) or "Free and Open-Source Software", "FOSS" or "FOSS Component" in this document designates software:
  - (1) under a license agreement which
    - is approved by the Open Source Initiative and/or Free Software Foundation and listed on either's website, and/or
    - allows distribution or provision of access to the software only, if material and/or information (e.g., license texts, copyright/author notices, source code or written offer for the same, makefiles, scripts, other software, etc.) or links to material and/or information ("Additional FOSS Material") are provided along with the software or are otherwise disclosed ("FOSS License"); or
  - (2) which is (allegedly) free software, dedicated to the public domain or otherwise gratis ("**Free Software**").
- b) "**Copyleft Terms**" designate a FOSS License that requires modifications or derivative works of the FOSS Component to be under the terms of such FOSS License, such as GNU General Public License version 2, Mozilla Public License version 1.1, and others.

### 3. Agreement regarding FOSS, Copyleft Terms, Obligations of the Supplier

- a) FOSS may only be included in Contract Products if explicitly agreed between the parties in writing (including fax and email) and to the extent listed in an ANNEX FOSS signed by ETAS. In addition, Software under Copyleft terms may only be part of the Contract Products if specifically agreed between the parties in writing (including fax and email). In case Supplier intends to add, update or modify FOSS Components and/or FOSS Licenses in the Contract Products, Supplier will request ETAS's written prior approval to the intended changes on an updated ANNEX FOSS, which ETAS shall not withhold unreasonably (in doubt, ETAS decides).
- b) **ANNEX FOSS** shall contain the following information on the FOSS Components included in the Contract Products or relevant to the use thereof:
  - (1) FOSS Component name, version number and URL of origin; and
  - (2) name and version number of the FOSS License or indication if "Free Software", respectively.
- c) Supplier shall fully comply with all obligations associated in any way with any FOSS included in the Contract Products, including FOSS Licenses and copyright law, ("**FOSS Obligations**") and especially provide all **Additional FOSS Material**, and the following material and information in a common file format, which ETAS may specify, for each development state and final state for each copy of the Contract Product or its software with each delivery or upon request by ETAS.
  - (1) A list of the FOSS Components, including:
    - (a) FOSS Component name and version number,
    - (b) name and version number of the FOSS License (e.g., GNU Lesser General Public License v2.1) or indication if "Free Software", respectively,
    - (c) origin of FOSS Component,
    - (d) copyright notices and content of the notice file (e.g., Apache License),
    - (e) license text respective permission note,
    - (f) information whether FOSS Component was modified,
    - (g) information on any possible Copyleft Terms and
    - (h) type of linking (dynamic or static);
  - (2) A file ("**compulsory info document**") containing FOSS Component file names, respective licensing text and copyright/author notices of each FOSS Component with reasonable headings and table of contents at the beginning;

(3) If required by the respective FOSS License, an **archive file of all source code files** of all FOSS and other software (e.g., makefiles, scripts, etc.), and instructions for building the source code into installable object code (e.g., "Complete Corresponding Source Code" if required) if and insofar the FOSS License requires ETAS to provide this on distribution of the Contract Product.

d) Supplier shall fulfill its obligations under Section 3c) in a way that allows ETAS to distribute each single Contract Product in full compliance with ETAS's FOSS Obligations. If FOSS License requires, then all **Additional FOSS Material**, and material and information designated under Section 3c)(2) and 3c)(3) shall accompany each Contract Product in an easily readable format (print or CD or other standard data carrier or documented program function to display) which ETAS may specify in writing.

#### 4. Supplier's FOSS warranties and representations, only agreed FOSS, complete information, no license violation or incompatibility, Copyleft Terms

Without limitation to any other rights of ETAS, Supplier warrants and represents that:

- a) no FOSS other than those **agreed** to in Section 3a) shall be contained in the Contract Products;
- b) material and information Supplier provides pursuant to Section 3 is **complete and accurate**;
- c) each FOSS Component included in Contract Products, or relevant to the use thereof, does not and shall not:
  - (1) **violate** the terms of the FOSS Licenses for such FOSS Components by the manner in which the FOSS Component is used or connected with or interacts with other FOSS Components or proprietary software, and
  - (2) require that any **proprietary software** used in the Contract Products or an ETAS product will be subject to the terms of a FOSS License by the manner in which the FOSS Component is used or connected with or interacts with such proprietary software according to the intended use of the Contract Products;

d) it has **complied** fully with all of the terms of the FOSS Licenses by which Supplier is bound with regard to using, processing, editing and passing on the FOSS Components included in the Contract Products or which are relevant to the use thereof provided for under the contract;

e) it will **follow all instructions by ETAS** to protect the proprietary software used in the Contract Product or an ETAS product according to the intended use of the Contract Products, especially those aimed to protect against the effect of **Copyleft Terms**.

#### 5. Supplier's FOSS Remedies

Without limitation to any other rights of ETAS, if Supplier breaches its obligations set forth in Section 3 or its warranties and representations set forth in Section 4, the Supplier shall, within the agreed development and delivery dates and immediately upon its having knowledge thereof:

- a) replace not agreed upon FOSS Components with agreed software, and correct or complete any false or incomplete material and information pursuant to Sections 3 and 4a);
- b) deliver to ETAS any software not provided in contravention of Sections 3c)(3); or
- c) remedy any violations of the warranties of Section 4c) through 4e).

#### 6. Supplier's FOSS Indemnification

Without limitation to any other rights of ETAS, Supplier shall indemnify ETAS all costs, expenses and damages caused by the non-compliance or untimely compliance, whether by act or omission, with:

- a) FOSS licenses or copyright law in relation to the Contract Products; or
- b) obligations established for Supplier in Section 3; or
- c) violation of the representations and warranties agreed in Section 4 or remedy of the consequences thereof agreed in Section 5.