

## TERMS AND CONDITIONS OF PURCHASE

### 1. 1. CONTROLLING PROVISIONS AND ACCEPTANCE:

Controlling Provisions. Ellsworth Adhesives Specialty Chemical Distribution, Inc. or its affiliate(s) ("Buyer"), as identified on the Purchase Order or other commercial document provided by Ellsworth or its affiliate ("Commercial Document") offers to purchase the goods and/or services described in such Commercial Document (the "Products") from the seller to which this offer is addressed ("Seller"), subject to the terms and conditions set forth herein and in Buyer's Commercial Document (together, the "Contract"). If this document is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained in this Contract including, without limitation, all additional terms and conditions contained herein. Seller's acceptance of this offer is limited to the terms, covenants and conditions in this Contract. Buyer objects to and rejects any additional, different or varying terms proposed by Seller, except additional warranties by Seller, regardless of whether such terms would materially alter these terms and conditions and regardless of whether such terms recite that any action or inaction by Buyer constitutes agreement or consent by Buyer to such terms. Seller's proposal of additional or different terms shall not operate as a rejection of Buyer's terms, and Buyer's terms shall be deemed accepted without the additional or different terms. **THIS CONTRACT CONSTITUTES THE FINAL WRITTEN EXPRESSION OF THE AGREEMENT BETWEEN BUYER AND SELLER REGARDING THE PRODUCTS AND IS THE COMPLETE, ENTIRE AND EXCLUSIVE STATEMENT OF THEIR AGREEMENT. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS BETWEEN THE PARTIES WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY THE BUYER, EXPRESSLY STATING BUYER'S INTENT TO MODIFY THIS CONTRACT.** Buyer is not obligated to any minimum purchase or future purchase obligations.

Acceptance. Seller shall be deemed to have made an unqualified acceptance of this Contract on the earliest of the following to occur: (a) Buyer's receipt of a copy of this Contract, or any agreement incorporating this Contract, signed by Seller (with scanned or facsimile signatures treated as original signatures); (b) Seller's acknowledgment of these terms and conditions or any purchase order submitted by Buyer from time to time; (c) Seller's commencement of manufacture or delivery of the Products; (d) Seller's acceptance of any payment from Buyer; (e) Seller's failure to object to these terms and conditions within ten days of receipt; or (f) any other event constituting acceptance under applicable law. All items ordered to specifications or other technical requirements shall comply with such requirements current as of the date of this Order unless otherwise agreed by Buyer in writing or via change order. Seller shall flow down applicable product specification, descriptions and requirements to all sub-tier suppliers, that may be involved in the order, including key characteristics required to ensure such compliance.

Governing Law. This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin without regard to its conflict of law principles, including, without limitation, the Uniform Commercial Code as adopted in Wisconsin (except to the extent Buyer is given additional rights herein). This Contract and purchases hereunder shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Buyer shall be entitled to temporary and/or permanent injunctive and/or other equitable remedies to protect its Confidential Information and Intellectual Property.

Severability: Waiver. The invalidity or unenforceability of any term or condition of this Contract shall not affect the validity or enforceability of the remainder of this Contract. Buyer reserves the right to correct clerical or similar errors relating to any terms of this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition.

2. **PATENT INDEMNIFICATION:** Seller shall fully indemnify, defend, protect and hold harmless Buyer, its directors, officers, employees, agents, stockholders, affiliates, successors, assigns, customers and users of the Products, from and against all actions, suits at law or in equity, demands, damages, claims, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including without limitation reasonable attorneys' fees and costs) for actual or alleged infringement of any United States or foreign patent or other intellectual property right by reason of the use or sale of the Products. In the event that either the sale or use of such Products is enjoined, Seller shall at its own expense, either procure for Buyer the right to continue using such Products, or replace same with equivalent non-infringing products or modify such Products so they become non-infringing, or remove same and refund the purchase price, including transportation, installation, removal and other charges incidental thereto, at Buyer's option. In making this purchase Buyer does not recognize the validity of any patent.

3. **DELIVERY:** Unless otherwise specified in Buyer's Commercial Document, Seller shall deliver the Products F.O.B. Buyer's plant (for deliveries from within the United States) or DDP Buyer's plant pursuant to INCOTERMS 2020 of the International Chamber of Commerce, as amended from time to time (for deliveries from outside the United States). Seller shall pack, mark and ship Products in accordance with applicable law and Buyer's specifications from time to time. Seller shall package Products so as to prevent damage or deterioration and shall comply with all applicable packaging laws. **Seller shall deliver Products in a sealed container.** Seller shall include with each shipment such documents as Buyer may require including, without limitation, a packing slip showing Buyer's purchase order number, item numbers, and sufficient other particulars to identify the Products, certificates of analysis and a Bill of Lading showing quantities delivered by lot number (collectively, the "Delivery Documents"). Buyer's count shall be accepted as final on all shipments not accompanied by packing lists. Buyer shall have the right at any time to specify the carrier and/or the method of transportation to be employed in conveying the Products, upon proper adjustment being made to cover any difference in transportation cost agreed upon herein. Buyer may from time to time change delivery schedules. Any forecasts provided by Buyer are estimates only and are nonbinding. Seller agrees to supply Buyer's requirements for Products. Nothing herein shall be deemed to restrict Buyer from procuring Products from alternate sources. Time is of the essence for all deliveries. If Seller's deliveries are not in the quantities ordered and/or delivered at the time specified, Buyer, without limiting its other rights and remedies, may expedite routing and debit Seller's account for any expediting charges or may cancel all or any portion of any order. No charge will be allowed for packing, crating, drayage, storage or other charges without Buyer's written permission. Products delivered in excess of the specified quantities may be refused and returned at Seller's expense. Where deliveries are to be made in accordance with Buyer's written releases, notwithstanding any quantities specified on Buyer's Commercial Documents, Seller shall not produce any Products covered by this order, or procure materials required therefor, or ship any Products to Buyer, except to the extent authorized by such written releases. Neither acceptance of Products nor payment therefor shall constitute a waiver of this provision.

4. **TITLE TO AND RISK OF LOSS OF PRODUCTS:** Title to and risk of loss of Products shall remain with Seller until delivery to Buyer's plant. Seller warrants title to all Products sold and services supplied.

5. **PRICING; PAYMENT:** If a price is not stated in Buyer's Commercial Document, the Products shall be billed at the price last quoted, or the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without Buyer's prior written authorization. Prices shall not increase without Buyer's prior written consent. Pricing is inclusive of applicable taxes, freight, packaging, insurance, handling and all other charges, whether similar or dissimilar, unless otherwise indicated in Buyer's Commercial Document. Buyer shall pay undisputed amounts within 60 days after receipt of invoice or shipment, whichever is received later, except where cash discounts apply or other terms are specified and specifically agreed to in writing by Buyer. Buyer's obligation to pay within such 60-day period is subject to Buyer's receipt of the Delivery Documents. Buyer reserves the right of setoff of any amounts due Seller on this Contract against any amount due Buyer from Seller on any transaction. Buyer's acceptance of or payment for the Products or any other action or inaction shall neither (a) relieve Seller from any of its obligations and warranties hereunder nor (b) constitute a waiver of Buyer's

rights and claims hereunder. Seller represents and warrants that the price for the Products is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Products. If Seller charges any other buyer a lower price, Seller must apply that price to all Products under this Contract (except to the extent prohibited by law). If Seller fails to meet the lower price, Buyer, at its option, may terminate this Contract without incurring liability.

6. **INSPECTION:** At Buyer's option, all Products ordered will be subject to final inspection and approval by Buyer after delivery. Buyer has no obligation to inspect Products. Items that are palletized or in boxes are receipted and counted as exterior packages only for Proof of Delivery verification. Buyer maintains the right to validate actual delivery quantities after acceptance of delivery. Short shipment credits will be requested in a timely manner. Buyer may reject any Products which contain defective material or workmanship or fail to conform to specifications or samples, even if Buyer has already paid for the Products. Rejected Products will be held at Seller's risk. If Buyer rejects any portion of the Products, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the order in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Buyer requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Products and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Buyer may replace them with products from a third party and charge Seller all costs thereof and terminate this Contract for cause pursuant to section 9. Any inspection or other action by Buyer under this section shall not reduce or otherwise affect Seller's obligations under this Contract, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. No rejected Products shall be replaced by Seller unless Buyer expressly so requests in writing and then only at the price stated in the order or prevailing at the time of such written request, whichever is lower.

6a. **\*\*\*DROP SHIPMENT SUPPLIER.** Seller agrees to inspect prior to shipment all goods furnished in performance of this order to insure compliance with the specifications and other requirements of the purchase order. If contract stipulates that shipment is to be made directly to Buyer's customer, the Seller shall act as an authorized delegate and provide confirmation to Buyer that inspection was performed and PO requirements have been met.

7. **FORCE MAJEURE:** Buyer shall not be liable for delays or defaults due to acts of God, acts of governmental authority, acts of public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargoes, terrorism, operation of statutes, laws, rulings or of any court or government, or other causes or contingencies reasonably beyond its control. In case of such excusable delay or default, Buyer shall have the right to cancel any order on 15 days' written notice without incurring liability to Seller.

8. **NOTIFICATIONS:** (a) **Delay Notification:** Whenever Seller has knowledge of any actual or potential delay in the timely performance of any order, Seller shall immediately give Buyer written notice including all relevant information. Without limiting the foregoing, Seller shall provide Buyer with written notice at least six months in advance of any planned or potential obsolescence, discontinuation, unavailability or material change to any Product ordered by Buyer or forecasted by Buyer to be ordered. Seller acknowledges that Buyer has commitments to its customers and may be required to provide such notice to them. Seller shall promptly refund to Buyer any amounts paid by Buyer with respect to such Products not delivered to Buyer, as well as any damages claimed by Buyer's customer with respect thereto. Seller agrees to insert the substance of this clause, including this sentence, in any subcontracts. Notwithstanding the foregoing, Seller shall not assign or subcontract its rights or obligations hereunder without Buyer's consent, which Buyer may withhold in its sole discretion. (b) **Price Changes:** Seller must provide Buyer written notification sixty (60) days prior to any price increases. (c) **Seller change:** Seller must notify Buyer with written notification of any changes to company name, address, manufacturing site changes, which may include change(s) to processes, tooling, or raw materials. (d) **Safety Data Sheets (SDS):** Any changes or updates to the SDS must be submitted in writing to Buyer.

9. **CANCELLATION AND TERMINATION FOR CAUSE:** Buyer reserves the right by written notice to cancel any order and/or the Contract, without incurring liability to Seller, upon any of the following:

Seller's insolvency; Seller's filing of a voluntary petition in bankruptcy; filing of involuntary petition to have Seller declared bankrupt; appointment of a receiver or trustee for Seller; execution by Seller of an assignment for the benefit of creditors; or Seller's failure to correct any breach of this Contract within ten days after Buyer notifies Seller in writing of such breach. In the event of such termination, Buyer may complete the performance of this Contract by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Any amounts due Seller for Products delivered by Seller in compliance with this Contract prior to such termination shall be subject to setoff by Buyer for Buyer's additional costs of completing the Contract and other damages incurred by Buyer as the result of Seller's default.

10. **TERMINATION AND SUSPENSION FOR BUYER'S CONVENIENCE:** Buyer may suspend or terminate this Contract, at any time, for its convenience and in whole or in part, by any reasonable manner. If Buyer terminates this Contract for its convenience, Seller's sole claim shall be for the costs it reasonably incurred in the performance of this Contract prior to such termination, with due allowance for the salvage value of all Products after Buyer has had full opportunity to recommend disposition and audit Seller's costs. Seller may be entitled to such termination compensation only if it provides Buyer written evidence of such costs within 60 days of termination. Upon termination, Buyer may take possession of materials and work in progress. If Buyer suspends this Contract, Seller shall promptly suspend further performance of the Contract to the extent specified and during the period of such suspension shall properly care for and protect all work in progress and materials Seller has on hand for performance of the Contract. Buyer may at any time withdraw the suspension of performance to Seller and Seller shall resume diligent performance of the work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Contract price, Seller shall within 30 days of such suspension or withdrawal submit to Buyer a written claim for such modification. Seller's claim shall substantiate Seller's increased costs with invoices and other documents satisfactory to Buyer. Upon Buyer's verification and approval of such additional costs, Buyer and Seller shall agree upon an adjustment in the Contract price based upon such costs as full settlement to Seller for the suspension and withdrawal of suspension. **IN NO EVENT SHALL SELLER BE ENTITLED TO ANY PROSPECTIVE PROFITS OR ANY DAMAGES DUE TO TERMINATION, SUSPENSION OR WITHDRAWALS OF SUSPENSION.**

11. **MODIFICATION:** Notwithstanding section 1 above, Buyer may by written supplement to this Contract change the specifications for Products. If such change would affect the price or delivery date for such Products, Buyer and Seller shall agree in writing upon an equitable adjustment to reflect the effect of such change. Seller shall not suspend performance of this Contract while Buyer and Seller are in the process of making of such changes and related adjustments. No substitutions shall be made in this Contract without Buyer's prior written authorization. Any claim by Seller for an adjustment pursuant to this section shall be deemed to have been waived unless made in writing within 30 days from the date Buyer notifies Seller of the modification.

12. **ASSIGNMENT:** No assignment may be made of this Contract or any orders or any claims for monies due under any orders without the written consent of Buyer. Any payment to an assignee of any claim under any order shall be subject to set-off, recoupment or other reduction for any claim that Buyer may have against Seller.

13. **COMPLIANCE WITH LAWS:** Seller represents and warrants to Buyer that in the performance of this Contract and all orders hereunder, Seller shall comply and has complied with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to the applicable provisions (as amended) of: the Fair Labor Standards Act of 1938 (codified at 29 U.S.C. §§ 201-219); the Walsh-Healey Public Contracts Act (codified at 41 U.S.C. §§ 6501-6511); the Contract Work Hours and Safety Standards Act (codified at 40 U.S.C. § 3701-08); the Occupational Safety and Health Act (codified at 29 U.S.C. §§ 651-678); and the Federal Acquisition Regulations (C.F.R. Title 48). To the extent applicable, Seller shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance

in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Seller shall also comply, to the extent applicable, with the requirements of 29 CFR Part 471, Appendix A to Subpart A and 41 CFR § 61-300.10. In addition, Seller agrees to comply with (to the extent applicable) the U.S. Foreign Corrupt Practices Act and all other anti-bribery laws, all U.S. anti-boycott laws, the U.S. Export Administration Act and all regulations thereunder and all laws relating to exports or re-exports of Products, and all laws relating to imports of Products into the United States. If Seller or its authorities, agents or representatives engages a freight forwarder or similar service provider, Seller shall provide Buyer with copies of freight forwarder (or similar) records regarding Product exports promptly upon request. Seller shall promptly notify Buyer in writing if Seller receives notice or otherwise has reason to believe that a violation of U.S. import or export law has occurred or is likely to occur. Seller shall indemnify and hold Buyer harmless from any damage or liability resulting from the failure of such compliance.

14. **BUYER'S PROPERTY:** If material is furnished by Buyer in connection with any order on other than a charge basis, Seller shall be solely responsible for all such material and shall properly insure it against damage, destruction and loss.

15. **WARRANTY:** Seller warrants to Buyer, Buyer's customer and to the ultimate user that, in addition to all express and implied warranties provided under the Uniform Commercial Code, (a) the Products (including Products sold to Buyer but manufactured by others and all packaging and materials) will (i) be free from defects in materials and workmanship for the Product's shelf life as published in the most current manufacturer's Technical Data Sheet, (ii) conform to all representations, specifications and drawings provided by Seller or Buyer and to any other specifications agreed upon between the Parties, (iii) meet or exceed the quality standards furnished or adopted by Buyer, (iv) be merchantable, of good material and workmanship and fit and sufficient for the purposes intended, and (v) be new, and not used or reconditioned; (b) the use and/or sale, alone or in combination, of the Products will not infringe or violate any United States or foreign letters patent, or any right in or to any patented invention or idea, or a trademark or copyright, (c) the Products and their production, storage, pricing, delivery and sale hereunder are in compliance with foreign, federal, state and local laws applicable thereto, and (d) Seller is transferring to Buyer full title to Products, free of liens or encumbrances. Seller acknowledges that it has knowledge of Buyer's intended use and warrants that all Products that have been manufactured by Seller based on Buyer's use and will be fit and sufficient for the particular purposes intended by Buyer. Any Products not in accordance with the foregoing warranties or any special warranty shall be deemed to be defective and may be rejected by Buyer without limiting Buyer's other remedies. Any applicable statute of limitations runs from the date of discovery of the noncompliance of the Products with the foregoing warranties. Buyer's approval of Seller's specifications shall not relieve Seller of any of its warranty obligations. Seller will maintain a quality assurance system which is adequate in Buyer's judgment to detect and prevent shipment of nonconforming Products. In the event of any recall affecting the Products, Seller shall indemnify Buyer and the Buyer Parties in accordance with section 27. Buyer shall have the right to control the recall process and Seller shall fully cooperate with Buyer in connection with the recall. Seller shall obtain and retain, for a period equal to the manufacturer's documented quality standards, samples and data of all Products and make such samples and data available to Buyer on request.

16. **COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION:**

a) **Definitions for purposes of this Contract:**

i. "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

iii. As used herein, "authentic" shall mean (A) from the legitimate source claimed or implied by the marking and design of the product offered; and (B) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

iv. "Independent Distributors" are persons and businesses that are not part of an OCM's authorized distribution chain. These also may be referred to as non-franchised distributors, unauthorized distributors or brokers.

vi. "Original Component Manufacturer" (OCM) is an organization that designs and/or engineers a part and is pursuing or has obtained the intellectual property rights to that part.

vii. "Original Equipment Manufacturer" (OEM) is an organization that designs, manufactures and/or engineers an end product comprised of various parts and is pursuing or has obtained the intellectual property rights to that end product.

viii. "Suspect Counterfeit Part" means a Part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Part is authentic.

b) Seller represents and warrants that only new and authentic materials are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by Buyer. Seller must present complete and compelling support for its request and include in its request all actions needed to ensure that the parts/components thus procured are legitimate parts. Buyer may additionally need to get its customer's approval of Seller's request. Awaiting the processing of such requests shall not constitute a basis for excusable delay on part of the Seller. Buyer's approval of Seller's request(s) does not relieve Seller's responsibility to comply with all Contract requirements, including the representations and warranties in this provision.

c) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the Buyer and his/her written approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request. Seller's system shall be consistent with applicable industry standards, for the detection and avoidance of Counterfeit Parts and Suspect Counterfeit Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Counterfeit Parts, and taking corrective action.

e) Seller shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Contract.

f) Notifications: Should Seller become aware of a Counterfeit Part that, by any means, has been delivered to Buyer, or acquired for this Contract whether or not delivered to Buyer. Seller shall notify Buyer as soon as possible but not later than 7 days of discovery. Seller will verify receipt of this notification by Buyer. This requirement will survive this Contract.

g) Seller shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

17. **NONCONFORMING PRODUCTS AND MATERIALS:** If at any time Seller becomes aware that any shipped product or material is nonconforming, Seller will immediately notify Buyer in writing. All nonconforming products and materials must be documented and investigated. Seller's investigation shall include root cause analysis, impact/assessment of scope and identification and timely implementation of effective corrective actions. All investigations will be documented and records maintained. Seller shall obtain Buyer's prior written approval with respect to the disposition of any nonconforming products or materials

18. **COMPLIANCE WITH PRODUCT ENVIRONMENTAL AND REGULATORY REQUIREMENTS:** Seller represents and warrants that it will comply with any and all applicable global, federal, state, or local government laws, regulations and orders, including, but not limited to, the following:

- (a) European Directive 2011/65/EU of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS"), as implemented by the various member states of the European Union. Seller shall comply with any amendments to RoHS, and any further instructions given by Buyer.
- (b) Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") that applies to or affects the Work supplied by Seller to Buyer. Seller further represents, warrants, and covenants the following:
  - (i) No substance contained in any Work is intended to be released under normal and reasonably foreseeable conditions of use, as understood under Article 7(1) of REACH;
  - (ii) No substance on the Candidate List is present in any Work in a concentration at or above 0.1% (w/w), as such concentration is defined and interpreted pursuant to REACH;
  - (iii) No substance present in any Work supplied by Seller to Buyer requires registration or notification under Article 6 or 7 of REACH (or any corresponding amended provisions);
  - (iv) No substance on the Authorisation List (Annex XIV) is present in any Work supplied by Seller to Buyer;
  - (v) All substances comply with the restrictions (laid out in Annex XVII to REACH) in any Work supplied by Seller to Buyer;
  - (vi) In the event that Seller becomes aware that any representation or warranty set forth in sub-sections (i) through (v) is not accurate, or ceases to be accurate, Seller shall: (A) promptly notify Buyer; (B) ensure that such a substance is registered and/or notified to the European Chemicals Agency ("ECHA"), as applicable, pursuant to REACH, and that the said registration and/or notification includes Buyer's use of the substance; (C) provide Buyer with the name of the substance as well as with sufficient information to allow Buyer to safely use the Work or fulfill Buyer's own obligations under REACH; and (D) use best efforts to ensure, if applicable, that authorization for Buyer's use of each such a substance is granted pursuant to REACH, regardless of whether the substance is delivered as such or in the form of "preparations" or contained in "articles within the meaning of REACH; and (vii) In order to comply with the above-mentioned commitments, Seller shall monitor the publication and the updating of the Candidate List by ECHA and immediately notify Buyer if any of the Work supplied to Buyer contains a substance officially proposed for listing on the Candidate List; shall undertake a complete inventory of substances contained in preparations and articles within the meaning of REACH; and shall ensure that its suppliers undertake the same exercise and timely pre-register and register substances to the extent required to prevent any interruption of the supply chain.
- (c) Radioactive Materials. Supplier shall adhere to all regulations concerning radioactive substances in metals; and, if necessary, routinely test and audit its supply chain for potential radioactive contamination of stainless steel or other nickel bearing alloy contamination of Cobalt 60.
- (d) Restrictions and obligations placed on the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone

layer pursuant to Regulation (EC) 1005/2009 of September and subsequent updates and revisions thereto.

- (e) Specialty Metals. Supplier warrants that any furnished item containing specialty metals is in compliance with DFAR 252.225-7008, 252.225-7009, and 252.225-7010. Seller shall provide evidence of compliance, including flow down to all sub-tier suppliers, when requested by Buyer
- (f) Mercury Exclusion. Seller warrants that any furnished item shipped against this Purchase Order shall not contain any metallic mercury or mercury compounds, and that Seller has taken responsible steps to ensure that the item(s) are not contaminated with metallic mercury or mercury compounds.
- (g) Cyber-Security. Seller shall adhere to all requirements concerning DFARS 252.239-7010 - Cyber Incident Reporting. Seller shall provide adequate security commensurate with the consequences and probability of loss, misuse, or unauthorized access of, or unauthorized modification of information.

19. **ETHICS AND COMPLIANCE PROGRAM:** Seller acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Contract. Buyer strongly encourages Seller to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. Seller shall publicize to its employees who are engaged in the performance of work under the Contract that they may report any concerns of misconduct by Buyer or any of its employees or agents by going **ethics@ellsworth.com**. Seller shall convey the substance of this clause to its suppliers.

20. **CONFLICT MINERALS:** With respect to any and all Products (if any) delivered under the Purchase Order, Seller warrants that such Products will at no time contain "conflict minerals," as such term is defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, including, without limitation, columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives, or any other mineral or its derivatives (collectively known as "3TG"), determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of the Congo (DRC) sourced from the DRC or adjoining countries. Any "3TG" will be sourced from validated Smelters. Seller shall, no later than forty-five (45) days following each calendar year in which Seller has delivered any Products to Buyer, under this Agreement or otherwise, complete the Conflict Minerals Reporting Template that will be sent by or on behalf of Buyer

21. **REMEDIES:** If Seller breaches any of its warranties, Seller shall be liable for and shall indemnify Buyer and the Buyer Parties (as defined in section 27) from and against any and all Damages (as defined in section 27) incurred by them, including, without limitation, the purchase price of the Products, delivery costs, replacement and cover costs, lost profits, and consequential and incidental damages. Seller acknowledges that, if Seller's breach causes Buyer to deliver products to its customers either late or below Buyer's standards, Buyer will incur lost profits and other damages for which Seller is liable. Without limiting the foregoing, upon Buyer's request, Seller shall promptly and at its sole cost replace any Products failing to conform with the warranties set forth in this Contract. Replacement Products shall be subject to the same warranty as provided above.

22. **ON SITE SERVICES:** If Seller is required to enter premises owned, leased, occupied by or under the control of Buyer during the performance of any order, Seller shall indemnify and hold harmless Buyer and its officers and employees, from any Damages (as defined in section 27) by reason of property damage or personal injury, including death, of whatsoever nature or kind arising out of or as a result of such performance, whether arising out of the actions of Seller or of its employees or subcontractors. Seller and its subcontractors shall maintain insurance in the following minimum amounts covering Seller's obligations under any order: Workmen's Compensation Insurance covering all those engaged in the performance of the Order in Statutory Amounts; Employer's Liability Insurance of at least \$100,000/occurrence; Comprehensive General Liability Insurance including contractual obligations of at least \$1,000,000; and Automotive Liability Insurance of at least \$1,000,000. Seller shall provide Buyer with



certificate(s) of insurance properly executed by its insurance carrier(s) showing all such insurance to be in force. Send to the address of appropriate Site Representative.

23. **PRODUCT SAFETY; COMPETENT PERSONNEL.** Seller shall ensure that their personnel used for the fulfillment of this contract are suitable, qualified, and competent to carry out their work activities. Seller shall ensure their personnel are aware of their contribution to product conformity and their contribution to product safety.

24. **RECORD RETENTION:** Seller will maintain reasonably detailed records to adequately reflect Seller's compliance with the terms of this Contract. Without limiting the foregoing, Seller shall maintain verifiable objective evidence of all inspections and tests performed, results obtained, and dispositions of non-conforming Products. These records shall be identified to associated Products, and shall be retained by the Seller and made available for review to the Buyer and or authorized representatives, and customers of the Buyer upon request. Records shall be maintained in a safe accessible location for a period of ten (10) years.

25. **RIGHT OF ACCESS:** (a) Seller shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's customers and/or to any regulatory authority, unrestricted access to (or if requested by the Buyer, provide to Buyer copies of) Seller's books and records (including, without limitation, agreements and technical inspection and quality records, but excluding financial books and records) to the extent relating to Products and (ii) provide Buyer, Buyer's customers and/or any such regulatory authority the right to access, and to perform any type of inspection, test, audit or investigation at Seller's premises, including manufacturing and test locations to the extent necessary for Buyer to verify compliance with the requirements set forth in this Contract or for any other purpose indicated by Buyer's customers and/or said authority in connection with the design, development, certification, manufacture, sale, use and/or support of Products. Seller will require each of its sub tier suppliers to grant to Buyer, Buyer's customers and/or to any regulatory authority, access with respect to their books, facilities, and records to the extent relating to Products. Seller and each sub tier supplier will also furnish other information to the extent relating to Products as may be needed by Buyer's representatives in auditing compliance. (b) Buyer may perform audits up to two years following completion of any purchase order. If, as a result of an audit, any invoice submitted by Seller is found to be in error, an appropriate adjustment will be made to the invoice or the next succeeding invoice following the discovery of the error. Any monetary discrepancy resulting from such error will be paid promptly by Seller or Buyer, as the case may be. Seller will promptly correct any other Seller deficiencies discovered as a result of the audit.

26. **CONFIDENTIALITY:** Seller acknowledges and agrees that all Confidential Information (as defined below) shall at all times, both during and after expiration or termination of this Contract for any reason, remain the exclusive property of Buyer, and Seller shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all non-public knowledge and information that provides Buyer with a competitive advantage and that is disclosed by Buyer to Seller orally or in writing, or acquired by Seller through observation, regarding Buyer's products, technology, inventions, designs, specifications, trade secrets, formulas, know-how, services, forecasts, sales methods, customer usages or requirements, financial information, business plans, strategies and future business relationships. "Confidential Information" also includes the confidential information of Buyer's affiliates, customers and channel partners. Seller shall maintain in confidence, not disclose to any third party and not use, except for the specific purpose of performing hereunder, all information furnished to Seller by Buyer or derived from Buyer in performance of any order. Seller shall inform those performing services under any order of these obligations and shall be responsible for all violations and indemnify Buyer against any damage, loss, cost or expense (including without limitation, attorneys' fees) arising in relation to any violation of these obligations. Upon Buyer's request, Seller shall return to Buyer all such Confidential Information without retaining any copies or embodiments thereof. Seller's obligations of non-use and non-disclosure of Buyer's trade secrets will survive for so long as such Buyer trade secret constitutes a trade secret or for five years, whichever is longer. Nothing in this Contract shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Buyer with broader protection than that provided herein.

27. **INTELLECTUAL PROPERTY:** If any Products supplied under this Contract are made according to Buyer's information, including but not limited to manufacturing information, such information shall be used only to manufacture Products to Buyer's orders. Whenever requested by Buyer to do so, Seller will place on the Products, in the manner specified by Buyer, such trademarks or other identifying marks as Buyer may specify. Seller warrants and agrees that Buyer's identifying marks shall be used only on products supplied to Buyer and in the manner and subject to the restrictions imposed by Buyer. All of Buyer's Intellectual Property Rights are and shall remain Buyer's sole property and Seller agrees not to take or permit any action contradicting Buyer's rights thereto. "Intellectual Property Rights" include, without limitation, any copyright, patent, registered or unregistered design, logo, trademark, trade dress, trade name or other designation, translation of trade name into another language, and any similar rights or applications for rights in any of the foregoing in any part of the world owned or used by Buyer or any of its affiliates, and any goodwill relating thereto. Buyer's rights shall be enforceable by injunctive relief and/or a decree of specific performance. Seller does not acquire any rights, title or interest in any of the trademarks or trade names of Buyer by virtue of this Contract, and Seller shall not use or in any way refer to Buyer's trademarks or trade names without Buyer's prior written permission.

28. **INDEMNIFICATION:** Seller hereby releases and agrees to promptly defend, indemnify and hold Buyer and its affiliated entities, employees, customers, successors and assigns (collectively "Buyer Parties") harmless from and against all liabilities, losses, claims, court costs, incidental and consequential damages, attorneys' fees and other expenses arising from any loss, damage or injury (including death) to any person or property ("Damages") in any way relating to the Products or (a) any alleged defects in the Products, (b) any inadequate disclosures, labels, packaging, warnings or instructions, (c) the alleged violation of any statute, ordinance or other law, order, rule or regulation, (d) any alleged unfair competition resulting from similarity of design, trademark, use or appearance of the Products, (e) bodily injuries, deaths or property damage caused by negligent or wrongful act or omission of Seller, or any employee or agent of Seller, (f) any breach of this Contract, including without limitation any warranty set forth herein or any special warranty, and (g) any recalls involving Products. Buyer and the Buyer Parties, at their option, may be represented by and actively participate through their own counsel in any such suit or proceeding, and Seller shall pay the costs of such representation and participation. **IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN RELATION TO THESE TERMS AND CONDITIONS OR THE PARTIES' RELATIONSHIP, AND SELLER AGREES TO INDEMNIFY AND HOLD BUYER HARMLESS THEREFROM.**

29. **FOREIGN OBJECT DEBRIS (FOD) PREVENTION REQUIREMENTS:** Seller is required to establish and maintain a FOD prevention program in accordance with ISO and/or AS quality standards. Seller shall implement processes and procedures for "Foreign Object Debris/Foreign Object Damage (FOD) Prevention Requirements for all shipments of Product(s) to Ellsworth.

30. **SURVIVAL:** The provisions of sections 1, 2, 9, 10, 13, 15, 16, 17, 18 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 30 and any other provision, the performance or effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason.

31. **NO THIRD-PARTY BENEFICIARIES:** This order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract, except as may be provided to Buyer Parties hereunder.

32. **CUMULATIVE REMEDIES:** The rights and remedies in this Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

33. FLOW DOWN PROVISIONS: If this Order is anticipated to be under a Government Contract, or should the Purchase Order indicate a Government Contract number, it is also controlled and governed by the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation flow down provisions contained on form EA-02 - Government Contract Flow Down Provisions.