



# TERMS AND CONDITIONS OF PURCHASE

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1) **ACCEPTANCE OF TERMS**

Seller agrees to be bound by and to comply with all terms set forth herein and in the purchase order, to which these terms are attached and expressly incorporated by reference (together known as the "Order"), including any amendments, supplements, specifications and other documents referred to in this Order. Acknowledgement of this Order, including without limitations, beginning performance of the work called for by this Order, shall be deemed acceptance of this Order. The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are set forth on the face of the Order to which these terms are attached. This Order does not constitute an acceptance by Buyer of any offer to sell, any quotation or any proposal. Reference in this Order to any such offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of this Order. **Any attempted acknowledgement of this Order containing terms inconsistent with or in addition to the terms of this order is not binding unless specifically accepted by Buyer in writing.**

2) **PRICES AND PAYMENTS**

All prices are firm and shall not be subject to change. No extra charges of any kind will be allowed unless specifically agreed in writing by Buyer. Seller's price includes all taxes, fees, and duties not recoverable by Buyer provided, however, that any state and local sales, use, and/or excise taxes, if applicable, will not be included in Seller's price but will be identified on Seller's invoice. Unless otherwise stated on the face of this Order, payment terms are net due forty five (45) days from the Payment Start Date defined as the later of the required date identified on the Order, the received date of the goods and/or services in Buyer's receiving system or the date of receipt of valid invoice by Buyer and Buyer shall be entitled to take an early payment discount of 1.00% of gross invoice amount when payment is made within 10 days from the Payment Start Date; i.e., payment terms shall be 1%10 Net 45. Seller's invoice shall always include Buyer's Order number. Buyer shall be entitled to reject Seller's invoice if it fails to include Order number or is otherwise inaccurate, and any resultant delay shall be Seller's responsibility. Buyer shall be entitled to set off any and all amounts owing from Seller to Buyer.

3) **DELIVERY AND PASSAGE OF TITLE**

Time is of the essence for this Order. If Seller fails to deliver the goods or complete the service as scheduled, Buyer may assess such amount as may be set on the face of this Order as liquidated damages for the agreed delay period. The parties agree that such amounts, if assessed, are 1) an exclusive remedy for the agreed delay period; 2) a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based upon circumstances existing at the time the Order was issued; 3) to be assessed as liquidated damages not as a penalty. In the absence of agreed to liquidated damages, Buyer shall be entitled to recover damages that it incurs as a result of Seller's failure to perform as scheduled. Unless expressly stated to the contrary, Buyer's remedies are cumulative and Buyer shall be entitled to pursue any and all remedies available at law or equity. Further to the foregoing, Seller shall not make material commitments or production arrangements in access of the amount or in advance of the time necessary to meet Buyer's delivery schedule. Should Seller enter into such commitments or engage in such production any resulting exposure shall be for the Seller's account. Unless otherwise stated on the face of this Order goods shall be delivered EXW named point with title passing at Buyer's dock. Goods delivered to Buyer in advance of schedule may be returned to Seller at Seller's expense. Buyer may specify contract of carriage. Failure of Seller to comply with any such specification shall cause all resulting transportation charges to be for the account of Seller.

4) **CHANGES**

Buyer may at any time make changes within the general work scope of this Order for quantity, place and time of delivery, quality requirements, scope or schedule of goods and/or services, method of shipment or packaging, design and/or specification for goods specially manufactured for Buyer. If any change causes an increase or decrease in the cost or the time required for performance of this Order an equitable adjustment shall be made for the price, delivery, or both, in writing. Any Seller claim for adjustment under this clause will be deemed waived unless asserted within thirty (30) days from Buyer's notification of the change and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change. Any change to this Order will be made by a signed amendment.

5) **SUSPENSION**

Buyer may at any time, by notice to Seller, suspend performance of the work for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies, and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment, and/or services for the work and shall take such action relative to such purchase orders and subcontracts as the Buyer may direct. Buyer may withdraw at any time the suspension as to all or part of the suspended work by written notice specifying the effective date and scope for withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal. All claims for increase or decrease in the cost of or time required for the performance of any work caused by suspension shall be pursued pursuant to and consistent with the section herein titled "Changes".

6) **TERMINATION**

Termination for Convenience: Buyer may terminate all or any part of this Order at any time by written notice to Seller. Upon termination (other than due to Seller's default, including failure to comply with this Order, or Seller's insolvency) Buyer and Seller shall negotiate reasonable termination costs allowable under the section herein titled "Changes" and identified by Seller within thirty (30) days of Buyer's termination notice to Seller, unless the parties have agreed to a termination schedule in writing.

Termination for Default: Except for delay due to causes beyond the control and without fault or negligence of Seller and all of its suppliers (lasting not more than 60 days), Buyer, without liability, may by written notice of default, terminate all or any part of this Order if seller: 1) fails to perform within the time specified or any written extension granted by Buyer; 2) fails to make progress which, in Buyer's reasonable judgment, endangers performance of this Order in accordance with its terms; or 3) fails to comply with any of the terms of this Order. Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default. Upon termination Buyer may procure at Seller's expense and upon terms it deems appropriate, goods and services similar to those so terminated. Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess cost for similar goods or services. As an alternate remedy and in lieu of termination for default Buyer may, at its sole discretion, elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller's performance. If Seller for any reason anticipates difficulty in complying with the delivery schedule or any other requirements of this Order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule Buyer may require delivery by fastest method and charges resulting from the premium transportation must be fully prepaid by Seller. Buyer's rights and remedies in this clause are in addition to any other rights and remedies provided by this Order or by law.



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Termination for Insolvency or Prolonged Delay: If Seller ceases to conduct its operations in the normal course of business or fails to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought against Seller or a receiver for Seller is appointed or applied for or an assignment for the benefit of creditors is made or an excused delay lasts more than 60 days, Buyer may immediately terminate this Order without liability, except for the goods or services completed, delivered and accepted within a reasonable period after termination (which will be paid for at the Order price).

Obligations on Termination: Upon expiration of this Order or after receipt of a notice of termination for any reason, Seller shall immediately: 1) stop work as directed in the notice; 2) place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the continued portion of this Order; 3) terminate all subcontracts to the extent they relate to the work terminated. After termination Seller shall deliver to Buyer all completed work, work in progress, and all designs, drawings, specifications, other documentation and material required or produced in connection with such work and all Buyer's Confidential Information as set forth in the section herein titled "Confidentiality or Proprietary Information and Publicity".

7) **DRAWINGS**

Any review or approval of drawings by Buyer will be for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of this Order.

8) **WARRANTIES**

Seller warrants and represents that all goods and services will be new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by Buyer, free from all defects in design, workmanship and material and will be fit for the particular purpose for which they are intended. Such goods and services will be provided in strict accordance with all specifications, samples, drawings, designs, descriptions, or other requirements approved or adopted by Buyer. Seller warrants that all goods and services provided pursuant to this Order, whether provided by Seller or a direct or indirect supplier of Seller, will be free of any claims of any nature, including without limitation title claims, and will cause any lien or encumbrance to be discharged, at its sole cost and expense, within thirty (30) days of its assertion (provided that such liens do not arise out of Buyer's failure to pay amounts not in dispute under this Order or an act of omission of Buyer). Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies by acknowledgement or otherwise shall be null, void and ineffective.

9) **INSPECTION**

If specific Buyer and/or Buyer's customer tests, inspection and/or witness points are included in this Order the goods shall not be shipped without an inspector's release or a written waiver of test/inspection/witness with respect to each such point; however, Buyer will not be permitted to unreasonably delay shipment. Seller shall notify Buyer in writing prior to each of Seller's final and, if applicable, intermediate test/inspection/witness points in accordance with the timing set forth in this Order. Buyer's failure to inspect, accept, reject, or detect defects by inspection shall neither relieve Seller from responsibility for such goods or services that are not in accordance with the Order requirements nor impose liabilities on Buyer. Seller shall provide and maintain an inspection, testing, and process control system acceptable to Buyer and its customer covering the goods and services to ensure compliance with this Order and shall keep complete records available to Buyer and its customer for seven (7) years after completion of this Order. Acceptance of such system by Buyer shall not alter the obligations and liability of Seller under this order. In the event that Seller desires to transfer work under this Order to another site or make any material modification in its manufacturing process or the procurement of materials related to the goods it shall first consult with and obtain the prior written consent of Buyer, which consent shall not be unreasonably withheld. Such consent by Buyer shall be subject to qualification of the new site under Buyer's supplier qualification standards. In the event that Seller discovers a non-conforming condition, Seller shall immediately stop work and notify Buyer of the non-conformance. Work shall not proceed until Buyer identifies to Seller, in writing, a course of corrective action.

10) **REJECTION**

If any of the goods and/or services furnished pursuant to this Order are found within a reasonable time after delivery to be defective or otherwise not in conformity with the requirements of this Order, including any applicable drawings and specifications, whether such defect or non-conformity relates to scope provided by Seller or a direct or indirect supplier to Seller, then Buyer, in addition to any other rights, remedies, and choices it may have by law, contract or at equity, and in addition to seeking recovery of any and all damages and costs emanating there from, at its option and sole discretion and at Seller's expense may 1) require Seller to immediately re-perform any defective portion of the services and/or require Seller to immediately repair or replace non-conforming goods with goods that conform to all requirements of this Order; 2) take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with all requirements of this Order, in which event, all related costs and expenses (including, but not limited to, material, labor, and handling and any required re-performance of value added machining or other service) and other reasonable charges shall be for the Seller's account; 3) withhold total or partial payment; 4) reject and return all or any portion of such goods and/or services; and/or 5) rescind this Order without liability. For any repairs or replacements, Seller, at its sole cost and expense, shall perform any tests requested by Buyer to verify conformance to this Order. Buyer may require the Seller to complete a Corrective Action Request to determine the root cause of the non-conformance and implement a corrective action plan to prevent future occurrences.

11) **RIGHT OF ACCESS**

In order to assess Seller's work quality, conformance with Buyer's specifications and compliance with this Order, upon reasonable notice by Buyer all goods, materials, and services related in any way to the goods and services purchased by this Order (including without limitation raw materials, components, intermediate assemblies, work in process, tools, and end products) shall be subject to inspection and test by Buyer, its customer, their representative, or appropriate authority at all times and places, including sites where the goods and services are created or performed, whether they be at premises of Seller, Seller's suppliers or elsewhere and Seller's books and records relating to this Order shall be subject to inspection by Buyer. If any inspections, test, audit or similar oversight activity is made on Seller's or its suppliers' premises, Seller shall, without additional charge, provide all reasonable access and assistance for the safety and convenience of the inspectors and take all necessary precautions and implement appropriate safety procedures for the safety of Buyer's personnel while they are present on such premises.

12) **PACKING, PRESERVATION AND MARKING**

Packing, preservation and marking will be in accordance with the specification drawing or as specified on the Order or, if not specified, the best commercially accepted practice will be used and at a minimum consistent with applicable law. In addition, Seller shall include the following information on each shipment under this Order: Buyer's Order number, destination address, commodity description, gross/net weight, dimensions, precautionary remarks (e.g., fragile, glass, air ride only, do not stack, etc), and loading hook/lifting point as applicable. Seller shall place all markings in a conspicuous location as legibly, indelibly and permanently as the nature of the article or container will permit. All goods shall be packed in an appropriate manner, giving due consideration to the nature of the goods, with



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packing suitable to protect the goods during transport from damage and otherwise to guarantee the integrity of the goods to destination. Goods that can not be packed due to size or weight shall be loaded into suitable containers, pallets or crossbars thick enough to allow safe lifting and unloading. Vehicles that reach their destination and present unloading difficulties will be sent back to their point of departure.

13) **SPECIAL MANUFACTURING REQUIREMENTS**

Seller shall comply with the requirements of the Aerospace SAE Specification for Quality Systems, AS 9100, and/or General Electric Specification for Aircraft Engine Quality System Requirements For Suppliers, S-1000, whenever these specifications are referenced in this Order. Seller shall comply with all other specifications and quality management system requirements noted in this order or in related drawings. In all cases of manufactured parts, equipment, and articles the Seller shall inspect for and remove entrapped contaminants to prevent foreign object damage (F.O.D.).

14) **ASSIGNMENT AND SUBCONTRACTING**

Seller shall pass onto its Suppliers the provisions and obligations of the sections herein covering "Drawings", "Warranties", "Inspection", "Right of Access", "Packing, Preservation and Marking", "Special Manufacturing Requirements", "Assignment and Subcontracting", "Confidentiality or Proprietary Information and Publicity", "Proper Business Practices", and "Intellectual Property Indemnification". The Seller shall require its Suppliers to comply with all specifications, key characteristics, and other documents applicable to this Order. Seller may not assign (including by change of ownership or control, by operation of law or otherwise) this Order or any interest herein including payment, without Buyer's prior written consent. Seller shall not subcontract or delegate performance of all or any substantial part of the work called for under this Order without Buyer's prior written consent. Should Buyer grant assignment or subcontract such assignee or subcontractor shall be bound by the terms and conditions of this Order.

15) **CONFIDENTIALITY OR PROPRIETARY INFORMATION AND PUBLICITY**

Seller shall keep confidential any technical, process, proprietary or economic information derived from drawings, 3D or other models, specifications and any other data and/or information furnished by Buyer in connection with this Order (the "Confidential Information") and shall not divulge, directly or indirectly, the Confidential Information for the benefit of any other party without the Buyer's prior written consent. Confidential Information shall also include any notes, summaries, reports, analyses, or other material derived by Seller in whole or in part from the Confidential Information in whatever form maintained (collectively, "Notes"). Except as required for the efficient performance of this Order, Seller shall not use or permit copies to be made of the Confidential Information without Buyer's prior written consent. If any such reproduction is made with prior written consent, notice referring to the forgoing requirements shall be provided thereon. The restrictions in this Section regarding the Confidential Information shall be inoperative as to particular portions of Confidential Information disclosed by Buyer to Seller if such information: 1) is or becomes generally available to the public other than as a result of disclosure by the Seller; 2) was available on a non-confidential basis prior to its disclosure to Seller; 3) is or becomes available to Seller on a non-confidential basis from a source other than Buyer when such source is not, to the best of Seller's knowledge, subject to a confidentiality obligation with Buyer; 4) was independently developed by Seller, without reference to the Confidential Information, and Seller can verify the development of such information by written documentation. Upon completion or termination of this Order, Seller shall promptly return to Buyer all Confidential Information, including any copies thereof, and shall destroy (with such destruction certified in writing by Seller) all notes and copies thereof. Any knowledge or information, which Seller shall have disclosed or may hereafter disclose to Buyer, and which in any way relates to the goods or services purchased under this Order (except to the extent deemed to be Buyer's Property as set forth in the section herein titled "Buyer's Property") shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary, and shall be acquired by Buyer free from any restrictions (other than a claim for infringement), as part of the consideration for this Order and, notwithstanding any copyright or other notice thereon, Buyer shall have the right to use, copy, modify and disclose the same as it sees fit. Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for the manufacture and assembly of the goods), or release any information concerning this Order or any part thereof or with respect to its business relationship with Buyer, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative order without Buyer's prior written consent.

16) **BUYER'S PROPERTY**

Unless agreed in writing, all tangible and intangible property, including, but not limited to, information or data of any description, tools, materials, drawings, computer software, know-how, documents, copyrights, trademarks, equipment or material furnished to Seller by Buyer or specially paid for by Buyer, and any replacement thereof, or any materials affixed thereto, shall be and remain Buyer's personal property. Seller agrees to comply with any handling and storage requirement provided by Buyer. Seller shall use Buyer's property only to meet Buyer's orders and shall not use it, disclose it to others, or reproduce it for any other purpose. While Seller has custody or control of Buyer's property, Seller shall hold the property at Seller's risk and insure the property at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer. The property shall be subject to removal at buyer's written request, in which event Seller shall prepare the property for shipment and redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, at Seller's expense.

17) **PROPER BUSINESS PRACTICES**

Seller shall act in a manner consistent with all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order.

18) **INTELLECTUAL PROPERTY INDEMNIFICATION**

Seller shall indemnify, defend and hold Buyer harmless from all costs and expenses related to any suit, claim or proceeding brought against Buyer or its customers based on a claim that any article or apparatus, or any part thereof, constituting goods or services furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party. Buyer shall notify Seller promptly and give Seller authority, information, and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded. If use of said article, apparatus, part, device or process is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part, process or device, or replace same with a non-infringing equivalent.



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19) **DISPUTES**

(a) Any controversy or claim that may arise out of or in connection with this Purchase Order that after good faith negotiations cannot be resolved to both Parties mutual satisfaction may be resolved by submitting the claim to a court of competent jurisdiction. (b) Pending resolution or settlement of any dispute arising under this Purchase Order, Seller will proceed diligently as directed by Buyer with the performance of this Purchase Order. Irrespective of the place of performance, this Purchase Order will be construed and interpreted according to the laws of the State of Minnesota, United States of America.

20) **COMPLIANCE WITH LAW**

(a) Seller warrants that the materials to be furnished and the services to be rendered under this Purchase Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations and in compliance with applicable international prohibitions on child labor. Seller certifies that with respect to the production of the articles and/or the performance of the services covered by this Purchase Order, it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof, if applicable. (b) Seller warrants that all equipment and materials delivered under this Purchase Order are in conformance with the latest OSHA requirements. (c) The Seller warrants that in the performance of this Purchase Order, it will comply with all applicable U. S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this warranty. The foregoing is in addition to and not in mitigation of any other requirements of this Purchase Order. (d) For orders placed in support of and charged to a U.S. Government Prime Contract or subcontract there under procuring an item meeting the Federal Acquisition Regulation (FAR) definition, specific clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of said prime contract are incorporated herein by reference of this Purchase Order. Directive to obtain full textual data related to Government contracting is available upon request of Seller from Buyer.

21) **INTERNATIONAL TRANSACTIONS**

(a) Payment will be in United States dollars unless otherwise agreed to by specific reference in the Purchase Order. (b) Seller agrees that the Buyer, its subsidiaries, affiliates or its designees may exclusively use the value of the Purchase Order to satisfy any international offset obligations with Seller's country, subject to the offset qualifying laws, rules and regulations of that country.

22) **EXPORT-IMPORT CONTROL**

(a) If Seller is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). (b) Seller shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of the Buyer and the Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller. (c) Seller shall immediately notify Buyer if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked.

23) **RESPONSIBILITY AND INSURANCE**

In the execution of its obligations under this Order, Seller shall take the necessary precautions to prevent any injury to persons or to property. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order. Seller shall also maintain and cause its subcontractors to maintain such General Liability, Property Damage, Employer's Liability, and Workers' Compensation Insurance, Professional Errors and Omissions Insurance, and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Purchase Order or, if none are specified, such amount as will protect Seller (and its subcontractors) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes. Seller shall provide Buyer with certificates evidencing required insurance upon Buyer's request.

24) **WAIVER**

No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Either party's failure to enforce any provisions hereof shall not be construed as a waiver of a party's right thereafter to enforce each and every such provision.

25) **ENTIRE AGREEMENT**

This Order, with documents incorporated by reference, is intended as a complete, exclusive, and final expression of the parties' agreement with respect to the subject matter herein and supercedes any prior or contemporaneous agreements, whether written or oral, between the parties. No course of prior dealings and no usage of the trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. The term "including" shall mean and be construed as "including, but not limited to", unless expressly stated to the contrary. The invalidity, in whole or in part, of any of the foregoing articles or paragraphs of this Order shall not affect the remainder of such article or paragraphs or any other article or paragraphs of this Order, which shall continue in full force and effect. All provisions or obligations contained in this Order, which by their nature or effect are required or intended to be observed, kept or performed by Seller's suppliers or after termination or expiration of an Order will survive and remain binding upon and for the benefit of the parties, their successors (including without limitation successors by merger) and permitted assigns including, without limitations, the sections herein covering "Drawings", "Warranties", "Inspection", "Rejection", "Right of Access", "Packing, Preservation and Marking", "Special Manufacturing Requirements", "Assignment and Subcontracting", "Confidentiality or Proprietary Information and Publicity", "Buyer's Property", and "Intellectual Property Indemnification".