

**OTIS STANDARD TERMS AND CONDITIONS OF  
PURCHASE**

**CANADIAN - SHORT FORM**

**[Changes from December, 2007**

**Addition of 21.2(d)**

**Addition of 21.6**

**Addition of final sentence of 27.2**

**Addition of final sentence of 4.5 to include ISPM 15  
wood packaging requirements**

**Deletion of 8.2**

**Addition of 27.9**

**Corrected “Supplier” to “Seller” in 11.2, 11.3 and  
11.4]**

**December 2008 (Canadian) Version**

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**UTC (Otis) STANDARD TERMS AND CONDITIONS OF  
PURCHASE**

**CANADIAN - SHORT FORM**

**DEFINITIONS:**

**Agreement:** shall mean these Terms and Conditions together with the Order pursuant to which goods or services are being provided and all documents specifically referenced herein or in such Order.

**Buyer:** shall mean the UTC affiliated company issuing the Order.

**Deliverables:** shall mean Goods and/or Services depending on the context.

**Goods:** shall mean materials or products described in the Order, the purchase of which is governed by the terms of this Agreement.

**Order:** shall mean a document, electronic or hard copy, issued by Buyer to Seller, in the form of a purchase order or release or similar document, referring to these Terms and Conditions and ordering Deliverables.

**Seller:** shall mean the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order, to whom the Order is issued by Buyer.

**Services:** shall mean services (whether or not ancillary to a sale of Goods) described in the Order, the purchase of which is governed by the terms of this Agreement.

**Terms and Conditions:** shall mean these Standard Terms and Conditions of Purchase.

**1. SCOPE OF THE AGREEMENT**

1.1 This Agreement must be accepted as indicated in the Order or, if the Order does not provide, in writing by Seller within the time specified on the face of the Order or, if not so specified, within a reasonable time of Seller's receipt hereof.

1.2 If for any reason Seller fails to accept this Agreement in writing or as specified in the Order, the furnishing or commencement of any Services called for hereunder, (including preparation for manufacture), the shipment by Seller of any Goods (or lots thereof) ordered hereby, the acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contact pertaining to the subject matter hereof, may, at Buyer's election, be treated as an unqualified acceptance by Seller of this Agreement and all the terms and conditions hereof.

1.3 Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or

conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Agreement shall constitute the complete and exclusive statement of the terms and conditions of the contact between the parties and shall apply to each Deliverable received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of Seller.

- 1.4 If the Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to all such additional and different terms herein and acknowledges that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged (i) unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of the relevant Order, or (ii) if Seller engages in any conduct that recognizes the existence of a contract including, without limitation, the furnishing or commencement of any Services called for hereunder, the shipment by Seller of any Goods ordered hereby, or the acceptance by Seller of any payment hereunder.

## **2. PRICE AND PAYMENT**

- 2.1 **Payment terms:** Payment terms will be net sixty (60) days following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in this Agreement.
- 2.2 Seller warrants that the agreed price for the Deliverables is not less favourable than that currently extended to any other buyer for the same or like Deliverables in similar quantities.
- 2.3 **Cash Discount:** The cash discount period, if any, shall be computed as commencing with receipt by Buyer of invoice or of Deliverables, whichever is later.
- 2.4 **Invoices:** All invoices must contain the following information: Purchase order number, item number, description of items, quantities, unit prices, taxes and tax registration numbers, including the goods and services tax and provincial sales tax registration numbers. Payments of invoices shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of this Agreement. Buyer or any of its affiliated companies may set off or set up compensation for any amount owed by Seller or any of its affiliated companies to Buyer or any of its affiliated companies against any amount owed by Buyer hereunder.

2.5 Buyer shall not be obligated to pay for any Deliverable if the invoice for such Deliverable is received more than twelve (12) months after the receipt of the Deliverable.

### 3. TAXES

3.1 **Tax Liability:** Seller shall properly impose upon and collect from Buyer and remit to the appropriate government Tax authority ("Tax Authority") any and all sales, use, excise, transaction and value added taxes, customs, duties, contributions, or similar levies by taxing jurisdictions as required by law ("Taxes") that are imposed by any Tax authority upon Buyer's payments pursuant to this Agreement, and such Taxes are the legal obligation of the Buyer. Each of the Taxes shall be separately stated on all applicable Seller invoices. Seller shall pay any interest, penalties or other additions to Taxes resulting from Seller's failure to properly collect and remit taxes.

3.2 **Tax Exceptions:** No Taxes, interest, penalties, or other additions to Taxes, shall be collected by Seller if, pursuant to this Agreement or the laws of the applicable Tax Authority, (a) the transaction is not subject to Taxes; (b) Buyer has been authorized to pay Taxes directly to the appropriate Tax Authority; or (c) Seller is obligated to pay the Taxes. Seller shall also indemnify Buyer in respect of any Taxes, interest, penalties or other additions to Taxes, and any taxes in respect of income, arising out of its wilful misconduct or negligence for which Buyer becomes liable including, without limitation any tax associated with such indemnification.

3.3 **Tax Assessment Notification:** Seller shall, upon receipt from any Tax Authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing directed to: Manager, Tax Compliance, United Technologies Corporation, Ten Farm Springs Road M/S 10FS-1, Farmington, CT 06032.

3.4 **Tax Disputes:** Seller shall cooperate in the equitable resolution of disputes pertaining to any Taxes arising from this Agreement. If Buyer may directly contest any Taxes in its own name, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Seller shall in good faith, as requested by Buyer, contest the Taxes. Seller shall supply Buyer with information and documents as Buyer may reasonably request to control or participate in any proceeding to the extent permitted herein.

3.5 **Tax Refund and Indemnification:** If Seller receives a refund of any Taxes attributable to Buyer; Seller shall pay such amount to Buyer within thirty (30) days of receipt. Seller shall indemnify Buyer against any and all losses, costs, and expenses (including reasonable attorneys' fees) which result from Seller's violation of its obligations under this section.

- 3.6 **Delivery of Software:** Seller shall deliver electronically via the internet all software Deliverables of any type (including manuals) that are the subject of, rather than are ancillary to, this Agreement. Seller shall separately itemize the costs of electronically delivered software, licenses, fees and all Services on all invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the internet," License locations should clearly be stipulated in the Agreement to allow for proper allocation of any Taxes owed.
- 3.7 **Property Taxes:** Buyer shall report and remit any property-related Taxes relating to property for which Buyer retains title pursuant to this Agreement, accruing prior to and after the commencement of this Agreement. Where Seller possesses Buyer-owned property, Seller shall notify Buyer of any disposal or movement of such property. Seller shall report and remit any property-related Taxes relating to property for which Seller retains title pursuant to this Agreement, accruing prior to and after the commencement of this Agreement.

#### 4. DELIVERY

- 4.1 Seller shall furnish the Deliverables called for by this Agreement in accordance with the delivery terms stated on the Order and if delivery dates are not stated, Seller shall offer Buyer its best delivery dates, subject to written acceptance by Buyer ("Delivery Dates"). Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Buyer may defer payment or return at Seller's expense, any Deliverables delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such items.
- 4.2 Unless otherwise expressly set forth in the Order, the delivery terms for Goods shall be: DDP Buyer's facility Incoterms 2000 provided that Seller shall be responsible for unloading of the Goods and any deterioration in the Goods in accordance with Buyer's instructions and the risk of unloading will be that of Seller. As consistent with this delivery term, standard delivery instructions of the relevant procurement department apply and may be obtained through the relevant Buyer procurement representative. Title shall pass to Buyer on delivery of Goods as provided in this section. If delivery is required to be made to a third party (drop shipment), title and risk of loss shall pass to Buyer when delivered at the consignee's facility.
- 4.3 **Notice Of Delay:** Whenever an actual or potential reason for delay (including but not limited to labor disputes), delays or threatens to delay the timely performance of the Order, Seller agrees to immediately notify Buyer in writing of all relevant information and, subject to the *force majeure* provision set forth herein, to make and pay for all necessary changes to fulfill its obligations under the Order and mitigate the potential impact of any such delay. Buyer has the right

without incurring any liability to cancel any Deliverables affected by the delay in performance.

- 4.4 **Cessation of Production:** Seller shall give Buyer at least one hundred eighty (180) days prior written notice of the permanent discontinuance of production of Deliverables covered by the Order, provided however that compliance with this provision shall in no way relieve the Seller from its obligations under the Order.
- 4.5 **Packing:** Seller shall not charge separately for packaging, packing or boxing, unless Buyer has agreed to such charges in writing. Seller shall not combine in the same container, material that is to be delivered to different receiving locations. All wood products used in packaging shall be ISPM 15 compliant.
- 4.6 **Marking:** Unless otherwise agreed in writing, exterior containers shall be marked with the following: (1) Address of Buyer site and Seller; (2) Order number; (3) Part number; (4) Special markings called for on the Order; (5) Quantity; and (6) (where applicable) Vendor Code or other vendor identification number. Every article of foreign origin (or its container), if any, imported into Canada and comprising part of the Deliverables shall be marked in accordance with all applicable marking laws, rules and regulations.
- 4.7 **Bills of Lading:** Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.
- 4.8 **Packing Slip:** Seller shall include an itemized packing slip with all shipments that will adequately identify the Goods shipped, including Buyer part number.
- 4.9 **Shipping and Approved Carriers:** On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, Goods shall be shipped in accordance with routing instructions furnished by Buyer. If such instructions are not received, Goods shall be shipped via least expensive method sufficient to meet delivery requirements, but always through Buyer approved carriers.

## 5. PRIME OR CUSTOMER CONTRACT REQUIREMENTS

When Seller's work hereunder will form a part of the work, whether Goods or Services, under a contract that Buyer has with another or others, Seller agrees, by its acceptance hereof, to be bound to Buyer in the same manner and to the same extent that Buyer is bound to its customer. Seller further agrees that Buyer's contract with its customer is incorporated herein and forms an integral part of this Agreement and that it has examined the drawings, specifications, terms and conditions of such contract and that it will be

bound and shall abide by such drawings, specifications, terms and conditions. Access to all such documentation will be provided to Seller upon request.

## **6. INSPECTION/ACCEPTANCE/REJECTION**

- 6.1 All Deliverables being provided to Buyer's specifications covered by the Order may be inspected and tested by Buyer or its designee, at all reasonable times and places, including during manufacture. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests.
- 6.2 All inspection records relating to Deliverables covered by the Order and being manufactured to Buyer's specifications and/or drawings shall be available to Buyer during the performance of the Order and for such longer periods as specified by Buyer.
- 6.3 Deliverables furnished hereunder shall have zero defects, and Seller has the obligation to properly inspect such items prior to delivery to Buyer. If any Deliverables covered by the Order are defective or otherwise not in conformity with the requirements of the Order, Buyer may, (i) rescind the Order as to such Deliverables, and rescind the entire Agreement if such defect or non-conformity materially affects Buyer; (ii) accept such Deliverables at an equitable reduction in price, or (iii) reject such Deliverables and require the delivery of replacements. Deliveries of replacements shall be accompanied by a written notice specifying that such Deliverables are replacements. If Seller fails to deliver required replacements promptly, Buyer may (i) replace, obtain or correct such Deliverables and charge Seller the cost occasioned by Buyer thereby, and/or (ii) terminate the Order for cause.
- 6.4 Rejected Deliverables may be returned to Seller at Seller's cost.

## **7. CHANGE ORDERS**

Buyer shall have the right at any time prior to the Delivery Date of Deliverables to make changes in drawings, designs, specifications, packaging, place of delivery, nature and duration of Services, and method of transportation, or require additional or diminished work. If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Seller's claims for adjustment under this section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date Seller receives the change order.

## **8. WARRANTIES**

- 8.1 Seller expressly covenants and warrants that all Deliverables shall conform to the specifications, drawings, samples or other description upon which the Order is based, shall be suitable for the purpose intended, merchantable, free from defects in material and workmanship, and free from liens, hypothecs, claims or encumbrances of title, and that Deliverables of Seller's design will be free from

defect in design. Inspection, test, acceptance or use of Deliverables furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. This warranty shall run to Buyer, its successors, assigns, customers, and the users of the Deliverables. Seller agrees to replace or correct defects of any Deliverables not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer. In the event of failure by Seller to correct defects in or replace nonconforming Deliverables promptly, Buyer, after reasonable notice to Seller, may make such correction or replace such Deliverables and charge Seller for the cost incurred by Buyer thereby. Seller further warrants that all work will be performed in a professional manner in accordance with the highest industry standards.

8.2 **Permits and Licenses:** Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing federal, national, state, provincial, territorial, municipal or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

8.3 **Product Support Obligation;** Seller shall maintain, at its expense, the ability to, and shall, provide product support for the Deliverables for ten (10) years after the last Order is placed by Buyer under this Agreement.

## 9. ENVIRONMENTAL, HEALTH & SAFETY

9.1 **Test Reports:** Any Seller test reports or other test results related to the Deliverables shall be provided to Buyer as set forth in the terms of the Order, or if not specified in the Order terms, upon Buyer's request.

9.2 **Environmental, Health and Safety:** Seller agrees to comply with Buyer's environmental, health and safety standards during Seller's performance hereunder and when at Buyer's jobsites, and if Seller is unable or unwilling to comply with such requirements, the Order can be withdrawn without further recourse by Seller. Specifically, and without limitation, Seller agrees to: (1) comply with the applicable federal, national, state, provincial, territorial, municipal or local environmental, occupational health and/or safety legislation or regulations; (2) supply to employees and require that all employees wear specified safety equipment, including but not limited to, eye protection and foot protection; (3) adhere to all Buyer's safety requirements and instructions as indicated by Buyer or Buyer's representatives, including without limitation, if Seller will be performing Services within Buyer's facilities, the compliance requirements and restrictions applicable to Services performed within Buyer's facilities; (4) immediately prior to commencement of any work or service, contact a responsible Buyer representative; (5) submit the registration number issued to the Seller by the appropriate workers' compensation board or the *Commission de la*

*santé et de la sécurité du travail* (“CSST”) to Buyer's safety office; (6) submit, upon request from Buyer, an “avis de conformité” issued by the CSST, or a Clearance Certificate issued by the Ontario Workplace Safety and Insurance Board, or comparable documentation issued by such other worker’s compensation board as is applicable, as the case may be, for the period determined by Buyer; (7) require its suppliers to agree to the requirements of this section and the section of this Agreement entitled “Compliance with Laws”.

- 9.3 **Use Of Hazardous Substances:** Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify the material composition, on a substance -by-substance basis, including quantity used of each substance, of any Goods ordered by Buyer and/or of any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer. Separately and/or alternatively, Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify that any Goods ordered by Buyer and/or any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer, do not contain particular hazardous substances specified by Buyer.

## **10. SECURITY**

- 10.1 Each person requiring unescorted access to Buyer's facilities or systems shall meet the following minimum requirements:
- (a) Be a citizen, permanent resident, or otherwise authorized to work in the country in which the person will be providing Services; and
  - (b) Not be convicted of any criminal offence connected to the person’s employment for which the person has not received a pardon (even if such sentence is deferred or suspended).
- 10.2 Seller shall perform all background checks permissible by law. Seller shall provide to Buyer in advance of Buyer's granting access to a person a certification that the person meets the requirements of section 10.1 above.

## **11. SECURITY AND CUSTOMS CLEARANCE PROGRAMS**

- 11.1 The Canada Border Services Agency (“CBSA”) has created a Partners in Protection (“PIP”) Program in which the government and business will work together to protect the supply chain, to enhance border security, combat organized crime, increase awareness of customs compliance and help deter and prevent contraband smuggling. Buyer is committed to be in full compliance with the PIP Program, and any other program undertaken by CBSA to promote those objectives, and requires that its suppliers also comply with these programs.

- 11.2 Seller agrees that during the period in which it ships goods to Buyer, it and its sub-contractors who either ship directly or package goods for shipment will either (i) be certified under the PIP Program by CBSA or (ii) demonstrate to Buyer's satisfaction that it meets security requirements of the PIP Program. Accordingly, Seller must either provide Buyer with documentation that it and such sub-contractors are certified or provide documentation and evidence satisfactory to Buyer to demonstrate compliance with PIP security requirements.
- 11.3 Upon five (5) days written prior notice, Buyer, or its delegate, may audit all pertinent books and records of Seller and its sub-contractors, and to make reasonable inspection of Buyer's and its sub-contractors' premises, in order to verify compliance with the requirements of this provision.
- 11.4 Any delay in delivery due to Seller's failure to comply with this provision shall not relieve Seller of its obligations and shall not constitute a *force majeure* or give rise to inexcusable delay.

## **12. INTELLECTUAL PROPERTY**

- 12.1 "Intellectual Property" means all proposals, prototypes, designs, methods, processes, inventions, ornamental designs, works of authorship, requirements, specifications, graphical displays, interfaces, marks, know-how, algorithms, codes, computer programs, software, strategies, invention disclosures, patents, copyrights, mask works, industrial property rights, trademarks, trade secrets, and other information or rights of a similar nature worldwide to the extent that such information or rights are created or made possible by Seller (alone or acting with Buyer or others) and result from the Seller's performance under this Agreement or are included in any Deliverables provided to Buyer.
- 12.2 **Grant of Rights:** Seller shall promptly disclose in writing to Buyer all Intellectual Property conceived or first reduced to practice or created in the performance of this Agreement. Seller agrees that any works of authorship created in the course of this Agreement by Seller, its employees or any others used by Seller in the performance of this Agreement shall be owned by Buyer and hereby assigns to Buyer all right, title, and interest it has to any copyright in any such works of authorship. To the extent permitted by law, Seller hereby irrevocably waives all "moral rights", all rights of privacy and publicity, and the like, in all materials provided to Buyer, and shall cause, and represents and warrants that it has caused, all Seller's employees or any others used by Seller in the performance of this Agreement to irrevocably waive all "moral rights", all rights of privacy and publicity, and the like, any of them may have in all materials provided to Buyer. In addition to the foregoing, and to the extent permissible by law, Seller, hereby irrevocably assigns and hereby agrees to assign to Buyer all right, title and interest to all Intellectual Property conceived or first reduced to practice or created by Seller, any employees or any others used by Seller, in the performance of this Agreement.

- 12.3 **Grant of License Rights:** To the extent Buyer does not otherwise have the right(s) under this Agreement, Seller hereby grants to Buyer worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable licenses (with rights to grant sublicenses) to (i) make, have made, use, offer for sale, sell, import, (ii) copy, distribute, publicly display, publicly perform, make derivative works, embed, operate, install, maintain, repair, and otherwise freely exploit in connection with the Deliverables and similar, related or integrated goods or services, all Intellectual Property which Seller provides or has provided to Buyer either during the term of or prior to the effective date of this Agreement, in any and all media now known or later developed.
- 12.4 **Work Product:** The tangible and intangible work product developed under this Agreement, whether or not delivered under this Agreement, including, but not limited to, all analyses, recommendations, reports, and memoranda, shall become the property of Buyer.
- 12.5 **Cooperation:** Seller will cooperate fully and will execute or cause to be executed any documents required to establish, defend and enforce Buyer's Intellectual Property rights under this Agreement.
- 12.6 **Warranty of Title to Intellectual Property:** Seller agrees, warrants, and represents to Buyer that, to its knowledge (i) Buyer shall acquire good and clear title to the Intellectual Property, that (ii) Seller has all rights and authority to perform its obligations under this section regarding Intellectual Property, or that the Intellectual Property is in the public domain, and the use thereof by Buyer, its representatives, distributors, dealers, end users, and other direct and indirect customers does not and shall not infringe any proprietary rights of any third party. As of the date of this Agreement, Seller represents that it has not received any notice or claim alleging that the Intellectual Property or Deliverables or any portion thereof, infringes any proprietary rights of a third party.

### 13. BUYER'S PROPERTY

All tools, equipment dies, gauges, models, drawings or other materials furnished by Buyer to Seller or made by Seller for the purpose of this Agreement or paid for by Buyer and all replacements thereof and materials attached thereto, shall be and remain the property of Buyer. All Buyer's property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Seller as being Buyer's property, will at Seller's expense be safely stored (separate and apart from Seller's property whenever practicable) and maintained and will be kept free of all liens, hypothecs, claims, encumbrances and interests of third parties. Seller shall be responsible for loss of and damage to Buyer's property. Seller will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in fulfilling the Orders of Buyer. Upon completion by Seller of the Order, or upon the written request of Buyer at any time, Seller

will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer shall have the right, at all reasonable times, upon prior notice to enter Seller's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any Buyer's property. Should Seller be unable to deliver Goods pursuant to this Agreement, Buyer, by written notice, may vest in itself title to finished parts, raw materials or work in process associated with this Agreement, and Seller shall deliver all such material and other Buyer property to such location or locations outside its facility as may be designated by Buyer.

#### **14. PROPRIETARY INFORMATION**

- 14.1 "Proprietary Information" shall for the purpose of this Agreement, mean all Intellectual Property and information, knowledge or data disclosed by Buyer or its affiliated companies to Seller (including, without limitation, financial, business, and product strategy; product specifications; product designs; internal procedures, studios, tests; and reports) regardless of whether disclosed in written, tangible, oral, visual or other form, and related to work performed or contemplated under this Agreement. If Buyer furnishes sample products, equipment, or other objects or material to Seller, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed pursuant to this Agreement.
- 14.2 Proprietary information, including Proprietary Information received prior to the execution or approval of an Order, shall be used by Seller solely for the purposes of the current business relationship with Buyer or evaluating the feasibility of a future business relationship with Buyer and shall not be used for any other purpose, including, without limitation, to design, manufacture, repair or service equipment, to provide or sell services or to seek any government or third party approval to do such. Seller shall not disclose Proprietary Information to any third party without Buyer's express written consent. Seller may disclose Proprietary information to contact workers, consultants and agents of Seller who have a need to know and who have executed agreements with Seller obligating them to treat such Proprietary Information in a manner consistent with the terms of this Agreement.
- 14.3 Seller shall maintain all Proprietary Information received in strict confidence and shall safeguard the Proprietary Information by using all reasonable efforts to prevent its disclosure to or use by third parties other than as this Agreement permits. Seller shall not reverse engineer, reverse assemble, or decompile Proprietary Information.
- 14.4 Notwithstanding the foregoing provisions, this Agreement shall not restrict or affect Seller's rights to use or disclose information:
- (a) which is or may hereafter be in the public domain through no fault of Seller and through no improper act or omission of a third party; or

- (b) which is received by Seller without restriction as to disclosure by Seller from a third party having a right to disclose it; or
- (c) which Seller can show, as reflected by its contemporaneous documents, was known to it prior to the disclosure by Buyer; or
- (d) which Seller independently develops without the use of the Proprietary Information as evidenced by its contemporaneous writings kept in the ordinary course of business.

14.5 If Seller is required to disclose Proprietary Information pursuant to governmental or judicial process, notice of such process shall be promptly provided to Buyer to allow Buyer to intercede in such process to contest such disclosure, and Seller will cooperate with Buyer to protect the Proprietary Information from further disclosure.

14.6 Upon expiration or termination of this Agreement for any reason whatsoever, Seller shall promptly return to Buyer or otherwise dispose of at Buyer's direction, all Proprietary Information.

14.7 Obligations in this section regarding Proprietary Information shall, with respect to each disclosure of Proprietary Information hereunder, continue for ten (10) years from the date of such disclosure or ten (10) years after termination of this Agreement whichever is later.

## **15. GENERAL INDEMNIFICATION**

Seller shall indemnify, protect, defend and save the Buyer, its officers, directors, employees, representatives and agents and Buyer's affiliates and their officers and directors, employees, representatives and agents harmless from all suits, claims, losses, damages, injuries, costs or expenses (including attorneys' fees) arising out of, or caused by, Seller's performance hereof or any defects in the Deliverables.

## **16. INFRINGEMENT INDEMNIFICATION**

16.1 Seller shall indemnify and hold harmless Buyer, its officers, directors, employees, representatives and agents and Buyer's affiliates and their officers and directors, employees, representatives and agents and any third party indemnified by Buyer for any losses, costs, damages, liabilities, arising from any threatened, pending, completed or future claim, suit, action, proceeding, or investigation alleging that any manufacture, use, sale or offer for sale of the Deliverables under this Agreement infringe any patent, trademark, copyright, or alleging any other violation of an Intellectual Property right; except and to the extent that such alleged infringement arises directly from Seller's compliance with designs furnished by Buyer. In the event and to the extent Seller's compliance as set forth in this paragraph shall form the basis of any claim, suit or action for infringement against Seller, Buyer shall indemnify Seller as set forth below.

- 16.2 The party required to indemnify under the provisions hereof shall promptly assume and diligently conduct the entire defence of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action as such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Seller in determining the strategy to defend any such suit or action.
- 16.3 Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defence of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event Seller shall be released from its obligation to pay for attorneys' fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defence of any alleged infringement claim.

## **17. TERMINATION FOR CONVENIENCE**

Buyer may terminate, for its convenience, all or any part of this Agreement at any time by written notice to Seller. In such case Buyer's sole obligation will be to pay for completed Deliverables that are delivered to Buyer. Notwithstanding anything to the contrary in the previous sentence, Buyer will not be obliged to pay for any Deliverables in excess of that which would be delivered to Buyer in the "Lead Time Period" of the Order. The "Lead Time Period" for each terminated Deliverable will commence on receipt of Buyer's notice of termination and end upon the expiration of the lead-time specified for a Deliverable. If no lead-time is specified for a Deliverable, the lead-time will be a reasonable average actual lead-time under normal delivery circumstances for that Deliverable. In no event shall costs associated with, or anticipated profit or overhead, on unperformed work be payable to Seller.

## **18. TERMINATION FOR DEFAULT**

If (i) Seller fails to make any delivery or perform Services in accordance with Delivery Dates or otherwise fails to comply with the Order and does not remedy such failure within a reasonable time after receipt of written notice thereof, (ii) Seller fails to make progress to such an extent that performance of the Order is endangered, (iii) any proceeding with respect to the Seller is commenced under the *Companies Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or any similar legislation or an assignment for the benefit of creditors is made or (iv) Seller commits any other breach of this Agreement, Buyer may (in addition to any other right or remedy provided by this Agreement or by law) terminate all or any part of this Agreement by written notice to Seller without any liability and may purchase substitute goods and services elsewhere. Seller shall be liable to Buyer for any cost occasioned by Buyer thereby. Buyer also may require Seller to transfer title and deliver to Buyer any completed supplies, and such partially completed supplies and

materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contact rights as Seller has specifically produced or specifically acquired for the performance of such part of this Agreement and any technology or information necessary for production of Deliverables. If a court of competent jurisdiction finds that any termination for cause was wrongful, then such termination shall be automatically converted to a termination for convenience and the rights and obligations of the parties will be as set forth in the section hereof titled "Termination for Convenience". The parties agree that the provisions of this Default section shall not apply to failures or delays in making deliveries of Deliverables when such failure or delay is due to any cause beyond the control and without the fault or negligence of Seller as provided in the *force majeure* provision set forth herein; provided, however, that Buyer may cancel without liability to Seller its purchase of any such items.

## **19. ASSIGNMENT**

19.1 Neither this Agreement nor any interest hereunder shall be assignable by either party unless such assignment is mutually agreed to in writing by the parties hereto, provided, however, that Buyer may assign this Agreement to any corporation with which Buyer may merge or consolidate or to which Buyer may assign substantially all of its assets or that portion of its business to which this Agreement pertains or to any third party provider of "integrated services" that will purchase the Deliverables for Buyer's benefit without obtaining the agreement of Seller. Seller shall not subcontract any work called for by this Agreement without Buyer's prior written approval.

19.2 Claims for money due or to become due to Seller from Buyer arising out of this Agreement may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this Agreement and not already paid. Buyer shall be under no obligation to pay such assignee unless and until Buyer has received written notice of the assignment from Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.

## **20. OFFSET**

20.1 Buyer and its affiliated companies may be required by their customers to fulfill offset and/or other industrial cooperation obligations in specific countries. These obligations may take the form of technology transfer, purchase of components or services, technical and export assistance or other business transactions.

20.2 Seller acknowledges Buyer's exclusive rights in and to any offset credit that is generated as a result of this Agreement and any subsequent subcontracting by Seller to fulfill this Agreement. Buyer may use all or any part of the value of this Agreement, including the value of subcontracts placed by Seller for this Agreement, for satisfying offset obligations of Buyer, Buyer's affiliates or any entity that Buyer transfers such value to. Seller may use the offset credit generated by this Agreement

or the subcontracting of this Agreement only upon the receipt of written approval from Buyer.

- 20.3 Seller shall also support Buyer, in any manner reasonably requested by Buyer, and at no additional cost to Buyer, in meeting Buyer's offset requirements in the amounts and in the countries specified by Buyer. Seller shall furnish upon request any certificates or other documents reasonably required by Buyer in fulfillment of Buyer's offset obligations, including, any documents transferring title to the offset credits to Buyer, any documents perfecting any rights granted to Buyer in this section, and take other action as Buyer deems appropriate in order to protect Buyer's interests in offset credits.

## 21. COMPLIANCE WITH LAWS

- 21.1 Seller shall comply with all applicable federal, national, state, provincial, territorial, municipal and local laws, ordinances, rules, and regulations, and all applicable policies, directives and programs of governmental or regulatory authorities, and, to the extent there are any foreign components related to this Agreement, all relevant and applicable laws, ordinances, rules and regulations and all applicable policies, directives and programs of governmental or regulatory authorities, of the relevant territory or geographic area, which are not in conflict with the Governing Law, as set out in Section 25 hereof, including but not limited to those relating to

- (a) pollution control, waste disposal, hazardous substances, occupational health and safety, such as the *Canadian Environmental Protection Act, 1999* (Canada) (S.C. 1999, ch.33); the *Hazardous Products Act* (Canada) (R.S.C. 1985, ch. H-3); the *Environment Quality Act* (Québec) (R.S.Q., c. Q-2); the *Environmental Protection Act* (Ontario) (R.S.O. 1990 c. E.19); the *Environmental Assessment Act* (Ontario) (R.S.O. 1990 c. E.18); the *Clean Water Act* (Ontario) (S.O. 2006, c.22); *An Act respecting Industrial Accidents and Occupational Diseases* (Québec) (R.S.Q., c.A-3.001); *An Act respecting Occupational Health and Safety* (Québec) (R.S.Q., c.S.-2.1); the *Occupational Health and Safety Act* (Ontario) (R.S.O. 1990 c. O.1) and any other federal, national, state, provincial, territorial, municipal and local laws, ordinances, rules, and regulations dealing with protection of the environment, health and safety;
- (b) employment practices and child labor, such as the *Canada Labour Code* (Canada) (R.S.C. 1985, ch. L-2); the *Labour Code* (Québec) (R.S.Q., c.C-27); *An Act respecting Labour Standards* (Québec) (R.S.Q., c.N-1.1), the *Employment Standards Act, 2000*, (S.O. 2000, c. 41), and any amendments thereto, as well as with the provisions of any other laws with respect to labour relations, minimum wages and hours of employment, now in effect or hereafter enacted.
- (c) customs, import or export, including country of origin requirements, including, without limitation, the *Excise Act* (Canada) (R.S.C. 1985, ch.

E-14); the *Customs Act* (Canada) (R.S., 1985, ch.1 (2<sup>nd</sup> supp.)); the *Special Import Measures Act* (Canada) (R.S.C. 1985, ch. S-15), and any regulations made thereunder;

- (d) equal employment opportunity and equal pay including, without limitation, *An Act respecting labour standards* (Québec) (R.S.Q., c.N-1.1); the *Charter of Human Rights and Freedoms* (Québec) (R.S.Q., c. C.-12), the Ontario *Employment Standards Act* 2000, (S.O. 2000, c. 41) and the Ontario *Human Rights Code*, (R.S.O. 1990, c. H.19), which prohibit discrimination on the basis of matters including race, color, religion, sex, sexual orientation, place of origin, disability, ancestry, ethnic origin, citizenship, creed, age, marital status or family status, and other similar federal, state, provincial or territorial laws or regulations;
- (e) Data Privacy meaning laws relating to data privacy, trans-border data flow or data protection, including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) (S.C. 2000, ch.5); *An Act respecting the Protection of Personal Information in the Private Sector* (Québec) (R.S.Q., c.P-39.1);
- (f) providing, attempting to provide, or offering to provide any kickback (as generally prohibited under the *Corruption of Foreign Public Officials Act* (Canada) (S.C. 1998, ch. 34), the *Criminal Code* (Canada) (L.R.C. 1985, ch. C-46) or any other applicable federal, national, state, provincial, territorial, municipal or local laws regarding kickbacks or commercial bribery); and
- (g) export controls and sanctions, including, without limitation, the *Export and Import Permits Act* (Canada) (R.S.C. 1985, ch. E-19) and relevant laws and regulations of other countries relating to export and import control.

#### 21.2 Seller warrants that:

- (a) the Deliverables meet or exceed the applicable standards imposed by consumer protection laws, such as the *Consumer Protection Act* (Québec) (R.S.Q., c.P-40.1) and the *Consumer Protection Act, 2002* (Ontario) (S.O. 2002 c.30 Sched. A);
- (b) the Deliverables meet or exceed the safety and health standards established and promulgated under the occupational health and safety laws, such as *An Act respecting Industrial Accidents and Occupational Diseases* (Québec) (R.S.Q., c.A-3.001); *An Act respecting Occupational Health and Safety* (Québec) (R.S.Q., c. S-2.1) and the *Occupational Health and Safety Act* (Ontario) (R.S.O. 1990 c. O.1); and

- (c) Seller has fully complied with the pay equity laws, such as the *Pay Equity Act* (Québec) (R.S.Q., c.E-12.001) and the *Pay Equity Act* (Ontario), R.S.O. 1990, c.P.7, as amended; and
  - (d) This Agreement does not violate any laws or regulations of the territories where Seller conducts business or will perform this Agreement.
- 21.3 Seller has complied with all laws, ordinances, rules, and regulations designating certain parties as "denied", "restricted" or similarly ineligible to do business with Canadian entities. Seller shall notify Buyer promptly if Seller is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the Canadian Government, or (ii) listed or is proposed to be listed by the Canadian Government in any "denial orders," as a "blocked person," as a "specially designated national," as a "specially designated terrorist" or other similar designation for Canadian export administration purposes (collectively, "Debarment"). Seller shall indemnify and hold Buyer harmless against any loss or damage suffered by Buyer as a result of Seller's Debarment. **Gratuities:** Seller has not and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer by influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- 21.4 **Drawback and Duty Deferrals:** Upon request, Seller agrees to furnish completed drawback certificates or other documentation evidencing drawbacks or duty deferrals, and retain substantiating documentation, in accordance with applicable legislation, regulations, rules, policies and requirements of any governmental authority, including, without limitation, the *Customs Act* (Canada) (1985 c.1 (2<sup>nd</sup> Supp) C-52.6), the *Customs Tariff Act* (Canada) (1997 c.36) and related legislation and regulations made thereunder..
- 21.5 **NAFTA and Other Free Trade Agreements:** If applicable, Seller will furnish annual certificates and/or other verification documentation in accordance with regulations made under the *Customs Act* (Canada) (1985 c.1 (2<sup>nd</sup> Supp) C-52.6), related legislation and regulations as well as the provisions of any relevant free trade agreements only on Deliverables which have met NAFTA rules of origin and rules of eligibility; and maintain record keeping to support such qualification for the period of time required by that legislation, regulations and/or trade agreements. Related costs will be the responsibility of Seller.
- 21.6 **REACH:**
- (a) Seller expressly warrants that all the products and/or materials supplied in the European Union ("EU") under this Agreement will be supplied in full compliance with the provisions of the European Regulation (EC) n° 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (the "REACH Regulation").

- (b) Seller expressly warrants that all the substances in the products and materials supplied in the EU that require registration are or will be pre-registered (for phase-in substances) and registered within the applicable REACH statutory deadlines.
- (c) To the extent that the products and/or materials supplied under this Agreement are imported by Buyer or one of its affiliates or customers in the EU and such fact is communicated to Seller, Seller expressly undertakes to appoint an Only Representative to pre-register and register the substances in these products and/or materials that require registration or, if so agreed on a case by case basis by Buyer, to supply Buyer at Seller's own cost with all necessary data and information needed for Buyer to pre-register and register the substances in these products that require registration, and to reimburse Buyer for the registration fees paid for these substances. Furthermore, Seller expressly undertakes to notify the European Chemicals Agency of any substances of very high concern as defined either in article 57 of the REACH Regulation (prior to publishing of the "candidate list") or as identified on the "candidate list" (as published in accordance with Article 59.1 of the REACH Regulation) that are contained in these products and/or materials and that require notification or, if so agreed on a case by case basis by Buyer, to supply Buyer at Seller's own cost with all necessary data and information needed for Buyer to notify the European Chemicals Agency of substances in these products that require notification and to reimburse Buyer for any associated fees.
- (d) To the extent that the products supplied by Seller qualify as "articles" under REACH, Seller hereby expressly undertakes to investigate and communicate to Buyer if there are any substances intended to be released from these articles that require registration under REACH and if there are any substances of very high concern as defined either in article 57 of the REACH Regulation (prior to publishing of the "candidate list") or as identified on the "candidate list" (published in accordance with Article 59.1 of the REACH Regulation) and present in these articles or parts thereof above 0,1%, in which case Seller shall inform Buyer of the identity of this/these substance(s) and its/their concentration in these articles. This obligation also applies to articles already supplied under this Agreement at the time of the inclusion of the substances concerned on the candidate list.
- (e) Seller expressly warrants that all the substances, products and/or materials supplied under this Agreement in the EU are in compliance with the restrictions of Annex XVII of REACH, which will replace Directive 76/769/EEC on June 1, 2009. In addition, Seller undertakes to properly

and timely inform Buyer of any additional restrictions set forth by the REACH Regulation or otherwise undertaken by the relevant authorities in the implementation of the REACH Regulation, including but not limited to, any restriction on use or listing in Annex XIV of the REACH Regulation for Authorization, impacting or likely to impact the use, sale or disposal of any substance contained in the products and/or materials supplied under this Agreement.

- (f) Seller also undertakes to timely provide the Buyer with all relevant information on the products and/or materials supplied under this Agreement that Seller and/or its suppliers are required to communicate down the supply chain (that is, any subsequent purchaser or user) under the REACH Regulation, and in any case, to provide all the information necessary for the Buyer and/or the actors down its supply chain to timely and accurately fulfill their obligations under the REACH Regulation.
- (g) For the avoidance of doubt, Seller shall bear all costs, charges and expenses related to pre-registration and registration under the REACH Regulation of the chemical substances that are the subject of this Agreement.

## **22. PUBLICITY**

Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Agreement or which shall make use of Buyer's name or logo without the prior written consent of Buyer, except as may be reasonably required to perform this Agreement.

## **23. INSURANCE**

23.1 Without limiting Seller's duty to defend, hold harmless and indemnify hereunder, Seller agrees to secure and carry as a minimum during the entire term of this Agreement and any Order, the following insurance: workers' compensation insurance, inclusive of any alternate employer endorsement, in an amount sufficient by virtue of or as required by applicable federal, national, state, provincial, territorial, municipal or local laws of Canada or other country or governmental subdivision in which the work or any portion of the work is performed and employer's liability insurance in the amount of \$1,000,000 for any one occurrence or be duly registered pursuant to applicable workers' compensation legislation; general liability insurance including premises and contractual liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence, unless some other amount is agreed to in writing;

- (a) If Seller vehicles are used on Buyer's premises and/or used to accomplish work under this Agreement or an Order or otherwise on behalf of Buyer, automobile liability insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$2,000,000 for any one occurrence;
  - (b) If Seller or its subcontractors have Buyer's materials or equipment in its care, custody or control, Seller shall maintain all risk property insurance in an amount sufficient to meet or exceed the replacement value of such material; and
  - (c) If Seller is performing professional services on behalf of Buyer, Seller shall maintain professional liability insurance with a limit of not less than \$5,000,000, unless some other amount is agreed to in writing.
- 23.2 All such insurance shall be issued by companies authorized to do business under the laws of the jurisdiction in which all or part of the Services are to be performed and must have an AM Best financial rating of A- or better or an equivalent rating by another rating agency acceptable to Buyer.
- 23.3 The insurance coverages described above shall be in a form satisfactory to Buyer, and shall contain a provision prohibiting cancellation except upon at least ten (10) days' prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of Seller's performance of work and shall provide that where there is more than one (1) insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carrier by Buyer. Certified copies of said policies or certificates evidencing such insurance and endorsements naming Buyer as an additional insured or, in the case of all risk property insurance, naming Seller and Buyer as loss payees, shall be filed with Buyer upon execution of this Agreement and before commencement of any work hereunder, and within a reasonable time after any renewals or changes to such policies are issued. To the extent permitted by law, Seller and its insurer(s) agree that subrogation rights against Buyer are hereby waived. Seller shall reflect such waiver in any policy (ies) required under this Agreement and shall advise the amount of available policy limits as of execution of this Agreement and shall identify the amounts of any self-insured retention.
- 23.4 The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Seller, its employees, invitees or agents under the Agreement and that such insurance shall not be invalidated by any act or neglect of Seller whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.
- 23.5 Seller agrees to insert the applicable substance of this provision in all major subcontracts entered into by Seller to support work performed under the Order.

## **24. AUDIT RIGHTS**

In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer may inspect and audit, on reasonable notice, Seller's books, records and its facilities, or such parts of its facilities as may be engaged in the performance of this Agreement, if the Order: (a) is a time and material order, (b) is a cost based order, or (c) provides for advance or progress payments based on costs incurred by Seller.

## **25. FORCE MAJEURE / DISASTER RECOVERY**

25.1 Neither Seller nor any Buyer shall be liable for damages for any failure or delay in the performance of this Agreement or any Order resulting from causes beyond its reasonable control including, but not limited to, unforeseeable events such as acts of God, acts of Government, war, court order, riots, natural disasters, and labour strikes. Buyer may cancel without liability to Seller its purchase of any Deliverables affected by Seller's failure or delay in performance. The party incurring the delay shall give timely notice to the others of any such event and shall use all reasonable efforts to avoid or remove the cause and resume performance with minimum delay. If requested by Buyer, the parties shall jointly prepare a contingency plan to address the potential impact of any such event.

### **25.2 Disaster Recovery**

Seller that is: (i) a sole source of supply; or (ii) providing Deliverables whose lead-time exceeds one hundred twenty (120) days, shall develop and maintain a Disaster Recovery Plan. The said plan must include strategy and actions for recovery and continuation of business, related to production of Seller's Deliverables furnished under this Agreement, in the event of a disaster or emergency in order to prevent or limit interruption of supply of Deliverables. Seller shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

## **26. DISPUTE RESOLUTION / GOVERNING LAW**

26.1 Both parties agree that they will endeavour to resolve any disputes arising from or related to this Agreement amicably through discussions with each other; and that prior to either party filing legal action against the other (except for equitable actions that may be necessary to protect a party's rights), they will enter into informal settlement discussions between management personnel of each party. The settlement discussions will commence following receipt of written notice by one party to the other and will conclude within a 60-day period, unless the parties agree to a different time period. Such settlement discussions will include attempts that are at least two tiered; meaning that if one level of management from each side cannot resolve the dispute, then each party will appoint a higher level of management to review the dispute and endeavor to reach resolution. The purpose of this section is to prevent costly litigation where early frank and pragmatic discussions between the parties could avert such litigation.

- 26.2 This Agreement shall be interpreted in accordance with and governed by the laws of the Province of Ontario without application of conflicts of law provisions thereof. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this Agreement in any court of competent jurisdiction in the Province of Ontario, and Seller hereby irrevocably consents to personal jurisdiction and venue in any such court Seller agrees to irrevocably waive any right to, and shall not, oppose any such Ontario action or proceeding on any jurisdictional basis, including *forum non conveniens*. Moreover, Seller shall not oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this Section.
- 26.3 Any action or claim by Seller with respect hereto shall also be brought in the appropriate court in the jurisdiction described above, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. If Buyer and Seller mutually agree to participate in alternative dispute resolution, Seller agrees that all alternative dispute resolution proceedings shall take place in Ontario.
- 26.4 The parties specifically disclaim application to this Agreement of the United Nations Convention on Contracts for the international Sale of Goods.

## 27. MISCELLANEOUS

- 27.1 **Duty To Proceed:** Seller shall proceed diligently with the performance of this Agreement. Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to this Agreement shall excuse Seller from proceeding. During the pendency of any dispute, Buyer shall continue to pay in accordance with this Agreement for Seller's performance related to matters not in dispute. Notwithstanding the generality of the foregoing, Buyer shall retain its rights with respect to setoff and withholding.
- 27.2 **Independent Contractor:** Seller shall perform the services required under this Agreement as an independent contractor and shall have exclusive control and direction of the persons engaged by Seller to perform such services, including, but not limited to, employees of Seller working at Buyer facilities. Seller assumes full responsibility for the acts and omissions of such persons. Seller shall have exclusive liability for the payment of and compliance with regulations pertaining to local, municipal, state, provincial, territorial and federal or other governmental entity payroll taxes or contributions, and taxes for unemployment insurance, workers' compensation, social security and/or similar or related protection for such persons, as required by applicable law. Seller shall have no power to legally bind, or act on behalf of, Buyer and shall not hold itself out as an agent of Buyer.
- 27.3 **Survival:** All obligations and duties under any provisions, which by their nature extend beyond the expiration or termination of this Agreement, including, but not

limited to, warranties, indemnifications, intellectual property (including protection of proprietary information), shall survive the expiration or other termination of this Agreement of which these provisions are made a part.

- 27.4 **Waiver:** Buyer's failure to seek a remedy for any breach by Seller or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, rights or privileges or any other terms, conditions, or privileges whether of the same or similar type. Acceptance of any Deliverables or payment therefor shall not waive any breach.
- 27.5 **Remedies:** Seller shall be liable for any damages incurred by Buyer as a result of Seller's acts or omissions under this Agreement. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.
- 27.6 **Partial Invalidity:** If in any instance any provision of this Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms unless the purposes of the Agreement can no longer be preserved by doing so.
- 27.7 **Interpretation:** This Agreement shall be construed as if drafted jointly by the parties and no provision in this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.
- 27.8 **Captions:** The captions, headings, section numbers, and table of contents appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.
- 27.9 **Seller Code of Conduct:** UTC expects Seller to adopt and conform its conduct to a statement or code of ethical business conduct suitable to its business. At a minimum, it shall establish the minimum standard that Seller shall comply with all pertinent laws and regulations, and may address Seller's policies regarding workplace health and safety; labor standards as required by local law or regulation, including avoiding the use of child or forced labor; protection of the environment and resources, including efficiency of Seller's products and reduction of wastes, emissions, energy consumption, and materials of concern; product safety and quality; and anti-corruption.
- 27.9 **Language:** The parties hereto expressly agree that this Agreement and all documents related thereto, such as the Order and any invoices, shall be drawn up in the English language. *Les parties aux présentes s'entendent expressément que la présente entente et tout document connexe, y compris le bon de commande et toute facture, soient rédigés en anglais.*