4. DELIVERY

A. Unless Seller agrees otherwise, all work is made Ex-Works Seller's specified location. If Seller fails to specify a location, it is deemed Seller's factory or warehouse where the Work is manufactured or stored.

B. Risk of loss or damage passes to Buyer when Seller delivers the Work to the carrier at Seller's location.

C. Buyer must pay all transportation, storage, and special packing costs or reimburse Seller on invoice if any such costs. Unless otherwise specified, all prices quoted and the Purchase Price are exclusive of these expenses. If the Purchase Price includes any of these expenses, the Purchase Price is subject to any change in them not caused by Seller. Buyer agrees regardless whether Seller estimated transportation or packing costs when it submitted its Proposal. Buyer must pay all actual transportation and packing costs, even if they increase when product is shipped.

D. If Buyer is unable, declines, or refuses to take delivery when specified in the Contract, Seller will have the Work stored for Buyer at Buyer's risk and cost, and the Work will be considered "deemed." Buyer must pay all resulting storage, handling, and re-handling charges.

E. Absent timely instructions from Buyer, Seller will select the method of transportation and mode of shipment.

F. Seller may ship Work in one or more consignments and invoice each consignment separately.

G. Unless otherwise agreed in writing, delivery time is "at the discretion of Seller." Even if delivery is specified as "at the discretion of Seller," Seller is not responsible for delays in shipment beyond its reasonable control.

H. Seller is not responsible for shipping delays beyond its reasonable control. Seller may invoice for Work ready to be shipped to Buyer in accordance with the terms of the Contract even if shipment is delayed unless Seller caused the delay.

I. Buyer must notify Seller of any visible defects, open shortages, or incorrect product shipments within seven days of receiving any shipment. Failure to provide such notice is deemed acceptance and an unqualified waiver of any right to return product on those bases.

5. ASSEMBLY, INSTALLATION, COMMISSIONING

A. If the Contract requires assembly, installation, or commissioning, the equipment, the equipment or material must be assembled, erected, and installed under the personal direction of Seller's employee or agent. Buyer must furnish sufficient electricity, water, compressed air, light, heat, sanitary facilities, fire protection, adequate waste disposal space, and all other utilities, equipment, and support services which Seller deems necessary to perform work covered by the Contract.

B. Whether or not referencing a Proposal, purchase orders are legally binding invitations to Seller to offer to manufacture or supply materials, equipment, or services. Purchase orders are binding only if in writing and signed by both Buyer and Seller.

C. Amendments to a Contract are binding only if in writing and signed by both Buyer and Seller. Any change Buyer makes may result in a price increase. Seller may suspend performance until Buyer and Seller agree on the scope and cost of any such requested change.

6. CANCELLATIONS

A. By written notice to Buyer, Seller may cancel all or any portion of a Contract after it is signed and delivered by both Buyer and Seller. Within 30 days after such cancellation, Seller will invoice and Buyer must pay all contract costs and other expenses incurred by Seller before it receives such written notice (including machine-hours, expenses, overhead costs, costs of expended materials, direct labor with factory burden, and all commitments to Seller's suppliers, subcontractors, and others), plus a cancellation charge of 20% of the Purchase Price to cover general and administrative expenses, plus 10% of the Purchase Price to cover Seller's lost profit. If Buyer materially breaches any of its obligations under the Contract, Seller may cancel the unfurnished portion of the Contract without liability to Buyer.

7. WARRANTIES AND REMEDIES

A. MATERIAL / WORKMANSHIP WARRANTY (APPLICABLE TO EQUIPMENT, SYSTEMS, TOOLING AND SPARE PARTS). Seller warrants that all equipment it manufactures and furnishes and related work will be free from defects in materials and workmanship for 12 months from delivery. Seller's obligation is to repair or replace, at Seller's option, any part or component which, after Seller's inspection, proves to be defective. Seller is not liable for any removal, shipping, or reinstallation costs, all of which Buyer must pay. Seller will make repairs or replace components available to Buyer in Seller's standard parts shop. This warranty does not apply to consumable, replaceable parts or components normally subject to wear and replacement. Seller's obligations under this paragraph A are subject to these conditions:

   (i) Seller must receive from Buyer immediate written notice describing the defect in detail.

   (ii) Buyer must not attempt to correct the defect without Seller's prior written approval.

   (iii) Buyer must have installed (if applicable), operated, and maintained the equipment strictly in accordance with Seller's operating and maintenance instructions, including Seller's design or basis of design or other design criteria stated in the Proposal.

   (iv) The defect must have been caused solely by faulty materials or workmanship for which Seller is responsible, and not by such things as erosion, corrosion, or deterioration resulting from how the equipment is operated, accident (including damage during shipment), neglect, misuse, or abuse, or exposure to conditions beyond the environmental power or operating constraints specified by Seller. Seller assigns to Buyer any warranty provided by the manufacturer of any components of the equipment, Supplier provides. Seller's responsibility regarding these products is limited to the manufacturer's warranty. Seller's warranty for such products is conditioned on Buyer replacing replaced items and does not include labor, repair or replacement costs, or travel unless otherwise explicitly provided in writing.

   (v) The damage to the equipment must not result from a failure of Buyer test articles.

B. SERVICES WARRANTY (APPLICABLE TO CONSULTING, PLANNING, DESIGN, ENGINEERING, INSPECTION, REPAIR, MACHINING, SPIN TESTING, BALANCING SERVICE ORDERS, AND OTHER SERVICES).

   (i) Seller warrants it will perform the services in a competent and non-negligent manner. If any test result from the dates, Seller, at its cost, will re-perform correctly any non-conforming services, or if such service cannot be re-performed, refund the amount paid for the non-conforming services.

   (ii) Seller warrants it will perform any engineering or design work in accordance with generally accepted trade or industry practices. Seller's warranty under this warranty is to revise and resubmit incorrectly completed calculations and drawings.

C. PERFORMANCE WARRANTY. Any warranty relating to the performance of equipment is subject to:

   (i) The information provided by Buyer being accurate, the conditions specified in the Proposal being met, and properly trained personnel operating and maintaining the equipment.

   (ii) Unless otherwise specified in the Proposal, Buyer must have conducted performance tests within 30 days after the equipment's initial operation or six months after delivery, whichever is earlier. If performance tests are not conducted within that period through no fault of Seller, the equipment is deemed accepted by Buyer and in compliance with the Contract. Buyer must provide Seller the opportunity to witness all performance tests.

   (iii) Seller's obligations under any performance warranty are satisfied when performance tests are successfully completed in accordance with applicable standard procedures specified in the Proposal.

   (iv) Seller makes no warranty regarding including the equipment supplied by Seller into Buyer's production process. Seller's warranty is limited solely to the performance of its equipment in accordance with the Contract. If the equipment fails to meet the Contract performance warranties, Seller, at its option, will repair such equipment or supply replacement parts.

D. PATTERN WARRANTY. Seller, at its expense, will defend any suit or proceeding brought against Buyer based on any claim of infringement of any material Seller provides. Buyer under the Contract infringes any U.S. patent issued as of the Proposal date. Seller will pay any court-awarded damages and costs awarded against Buyer up to, and not exceeding, the amount Buyer pays for the Contract job. Seller will not defend any such suit or proceeding or pay any damages or costs regarding equipment or material manufactured or designed by Buyer specific to Seller's order under this paragraph C are subject to:

   (i) Buyer promptly notify Seller of such claim and provide Seller a copy of any documents or materials provided to Buyer supporting the claim.
B. CONTINGENCY. Buyer’s recourse for Seller breaching any warranty is contingent on Buyer paying the Purchase Price and all other costs it is obligated to pay under the Contract.

C. EXCLUSIVITY. THE WARRANTIES AND REMEDIES PROVIDED IN SECTION 7 ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT ASSUME, OR AUTHORIZE ANY PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY RELATING TO ITS PRODUCTS OR THE WORK.

D. SPIN TESTING, BALANCING SERVICES.
(i) Buyer understands there is an inherent risk in spin-testing or balancing Buyer’s parts. Buyer assumes the risk for error in spin-testing or balancing. Seller is not liable for damage to any part caused by such errors if Seller exercised reasonable care in performing the service. "Reasonable care" means the level of care normally provided in performing such processes. If Buyer’s part is damaged because of Seller’s negligence in performing such services, Seller will be liable to Buyer for no more than the amount Buyer paid for the services. If Buyer’s part bursts in Seller’s facility during spin testing or balancing, Buyer must pay for the cost to repair and replace any damaged components and any repair required because of the burst.

(ii) Existing arbors, tooling, designs, and instrumentation needed for spin testing or balancing services remain Seller’s property and are covered under Seller’s property and casualty insurance policies. When Buyer orders the services, it can request special labeling, marking, and instrumentation at its cost.

E. OTHER CONTRACTORS. No company or any contractor or sub-contractor, agent or authority to direct, supervise, or oversee any of Buyer’s contractors or provide the means, methods, or sequence of their work or stop their work. Seller’s services or presence at Buyer’s site relieves no offsite of its responsibility to Buyer or others. Buyer is not liable for the work of Seller’s contractors or others to fulfill their obligations. Buyer agrees to indemnify, hold harmless and defend Seller against all claims arising out of such failure.

F. HAZARDOUS MATERIALS. Seller has no obligation to remove or remediate any hazardous materials, including asbestos bearing materials, it encounters at Buyer’s facilities. Seller will remove or remediate such material only if Buyer and Seller enter into a separate agreement with separate consideration to Seller for such work. If Seller or any of its subcontractors perform work in or adjacent to any facilities containing hazardous material (including asbestos) and the work must be interrupted to remediate or remove those materials, Buyer must pay all costs and other expenses associated with such interruption. Buyer agrees to defend, hold harmless and indemnify Seller and its agents against any claim arising from exposure to such hazardous (including asbestos-bearing) materials.

G. HEALTH AND SAFETY. Seller is not responsible for inspecting, observing, reporting, or correcting health and safety conditions or deficiencies of Buyer or others at Buyer’s site. Seller is not responsible for health or safety programs or precautions related to Buyer’s activities or operations. Buyer’s other contractors, their employees, or others at Buyer’s site, are responsible for their own health and safety.

H. BUYER’S NEGLIGENCE AND INDEMNIFICATION OF SELLER.
(i) Seller is not responsible for losses or damages arising out of the negligence of Buyer, its employees, agents or contractors or those of third parties for whom Seller is not responsible, or losses for which Seller has agreed to provide insurance coverage. If both Seller and Buyer are negligent and the negligence of both is the proximate cause of a loss or accident, they each will be responsible for their own losses (excluding consequential or indirect damages which Seller disclaims) equal to its comparative share of the total negligence.

(ii) To the extent permitted by law, Buyer must defend, indemnify, and hold harmless Seller, its subsidiaries, affiliates, customers and other designated parties against all claims, damages, losses, expenses, liens, demands and causes of action (including those of the parties, their agents and employees, except for death, personal injury, property damage or any other liability, damages, fines or penalties (unless reimbursement of fines or penalties is a condition of the Work) including settlements and judgments arising out of the use of any product or in or out of any connection with any work performed on Buyer’s premises by (a) any act, failure to act or omission of Buyer or any agent, employee, invitee or contractor of Buyer or (b) any notice, or other actions by Buyer), or any other equipment or on in or in any materials furnished or provided by Buyer; or (c) any equipment, components, labor, materials or products provided by Buyer in conjunction with the Work.

11. BUYER’S NEGLIGENCE AND INDEMNIFICATION OF SELLER.
(i) Seller is not responsible for losses or damages arising out of the negligence of Buyer, its employees, agents or contractors or those of third parties for whom Seller is not responsible, or losses for which Seller has agreed to provide insurance coverage. If both Seller and Buyer are negligent and the negligence of both is the proximate cause of a loss or accident, they each will be responsible for their own losses (excluding consequential or indirect damages which Seller disclaims) equal to its comparative share of the total negligence.

(ii) To the extent permitted by law, Buyer must defend, indemnify, and hold harmless Seller, its subsidiaries, affiliates, customers and other designated parties against all claims, damages, losses, expenses, liens, demands and causes of action (including those of the parties, their agents and employees, except for death, personal injury, property damage or any other liability, damages, fines or penalties (unless reimbursement of fines or penalties is a condition of the Work) including settlements and judgments arising out of the use of any product or in or out of any connection with any work performed on Buyer’s premises by (a) any act, failure to act or omission of Buyer or any agent, employee, invitee or contractor of Buyer or (b) any notice, or other actions by Buyer), or any other equipment or on in or in any materials furnished or provided by Buyer; or (c) any equipment, components, labor, materials or products provided by Buyer in conjunction with the Work.

12. MISCELLANEOUS
A. EXPORT COMPLIANCE. Buyer will comply and cooperate fully with Seller in its compliance, with all import and export control laws and regulations, including the United States Export Administration Regulation, the United States International Traffic in Arms Regulations, the United States Office of Foreign Assets Control Regulations, the United States Foreign Trade Regulations, and country-specific import and export regulations and country-specific sanctions regimes. Buyer will obtain import and export approvals and licenses required for the Work, including products, equipment, parts, services and technical data delivered hereunder. Buyer will indemnify and hold Seller harmless from all claims arising out of Buyer’s failure to comply with such laws and regulations or to disclose to Seller information required to assist it with such compliance and such laws and regulations.

B. DELIVERABILITY. IN THE EVENT OF A FORCE MAJEURE,Seller will make commercially reasonable efforts to deliver the Work, but the success of such efforts will not be warranted. In the event of a force majeure, Seller is not obligated to perform, but may elect not to do so or to elect to resume performance of the Work, after such event is over, if in Seller’s sole judgment it is in the best interests of Buyer to so do, and after Seller has obtained Seller’s approval and, if required by law, Seller has obtained all necessary licenses, permits and consents.

C. ASSIGNMENT. SUBCONTRACTS. The Contract binds and inures to the benefit of Buyer and Seller, and their successors, and assigns, but Buyer may not assign the Contract without Seller’s prior written consent. Seller may subcontract any portion of the Work.

D. DISPUTES. Seller and Buyer will use all reasonable efforts to amicably resolve disputes arising out of the Contract before starting any legal proceedings. All legal proceedings under the Contract must be filed exclusively in the state or federal courts in New York, which courts have exclusive jurisdiction. Buyer consents to the personal jurisdiction of the state or federal courts of New York for any such action.

E. NOTICES. All notices, consents, waivers, requests, and communications permitted or required under the Contract must be in writing and are deemed given to a party when (i) delivered to the appropriate address by hand delivery or by nationally recognized overnight courier service (costs prepaid), (ii) sent by facsimile or e-mail with confirmation of transmission and return receipt requested, where rejected by the addressee, if sent postpaid by certified or registered mail, return receipt requested, in each case to the parties at the addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated in the Proposal or Contract, or at such other address, facsimile number or e-mail address as a party may designate by written notice given to the other parties as provided in this paragraph E.

F. ENTIRE AGREEMENT. AGREEMENT INTERPRETATION. GOVERNING LAW. All communications, whether oral or written, between Buyer and Seller, constitutes an integral part of the Contract before the date it was signed and delivered are merged into the Contract, and the Contract, as supplemented or amended from time to time, represents the entire agreement between Buyer and Seller relating to its subject matter. No change in or modifications to the Contract are binding unless written and signed by both parties. Unless Seller expressly agrees to the contrary, Buyer’s other business practices or Seller’s other business practices will not be deemed to modify or change the terms of the Contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.