



PURCHASE ORDER TERMS AND CONDITIONS

- 1) **DEFINITIONS.** “**Buyer**” or “**Lumenis**” means Lumenis Ltd. or any of its subsidiaries or affiliates. “**Seller**” means the person, firm or company to whom the order is addressed. The “**Order**” means the purchase order to which these terms and conditions are attached, including any other attachments. “**Goods**” means all required materials, supplies, articles, goods, products, services and/or other deliverables constituting the subject matter of the Order. “**Laws**” means any laws, ordinances, regulations, standards, permits, certificates, licenses and government approvals and inspections, including, without limitation, those specified in Section 22 herein. “**Export/Import Laws**” means, collectively, all export/import (including re-export) laws, sanctions, regulations, orders, and authorizations, (including without limitation the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) that are applicable to the export or import of goods, software, technology, or technical data or services. “**Disposables Regulations**” means, “**RoHS**” (EU Directive 2002/95/EC on Restriction on the use of certain Hazardous Substances in electrical and electronics equipment); “**WEEE**” (EU Directive 2002/96/EC on Waste Electrical and Electronic Equipment); “**REACH**” (EC Regulation No 1907/2006 on Registration, Evaluation and Authorization of Chemicals); EU Member States’ implementations of the foregoing; or other laws and regulations dealing with recycling or disposal of materials or equipment.
- 2) **GENERAL.** (a) This Order is placed, subject only to the terms and conditions included herein and any statement of work, plans, specifications, and other documents, to the extent the same are incorporated by reference on the face of this Order. The reference to any proposal from Seller (if any), is only for the purpose of specifying basic information concerning price, the description of the Goods, quantities, terms of payment and delivery and then, only as such terms are consistent with the terms and conditions herein. In the event of contradiction between these general terms and conditions and specific provisions on the face of the Order, or specific contract/agreement between the Parties, the specific provisions shall prevail. (b) Any of Seller’s terms and conditions which are in addition to or are construed as proposals for addition to this Order are hereby rejected and will not be binding unless agreed to in writing by the Buyer and appear on the Order or in its referenced attachment. (c) The earliest of the following shall constitute acceptance by Seller of these Order terms and conditions: (i) Seller’s commencement of performance under this Order, or (ii) Seller returns a signed acknowledgement of this Order, or (iii) Seller accepts any payment for the Goods or any part thereof.
- 3) **REPRESENTATIONS.** Seller represents and warrants that: (a) it has the right to enter into this Order; (b) its performance of this Order will comply, at its own expense, with the terms of any Laws to which it is or becomes subject; (c) no lien or action exists or is threatened against Seller that would interfere with Buyer’s use or sale of the Goods; and (d) the Goods are sold to Buyer free and clear of any liens, claims or encumbrances.
- 4) **SPECIFICATION OF GOODS.** Goods are to be supplied complete in all respects in accordance with the Order and in compliance with any applicable Laws. The Buyer may refuse to accept any Goods delivered which are not in accordance with original specifications or modified specifications agreed between the Buyer and the Seller in writing and/or not in compliance with the applicable Laws and/or manufactured from materials not in compliance with the applicable Laws. In such case the Buyer shall have the right to return the goods and/or withhold payment for same. Notwithstanding the above, Buyer may request Seller to promptly replace, if necessary, by most expeditious manner, such Goods, to Goods conforming to the proper and agreed specifications and/or standards in accordance with this Order. All charges, including transportation expenses for such replacement, are to be borne by the Seller. In such event, the Seller may request the Buyer to return the Goods incorrectly supplied, but in all cases the Seller shall bear all expenses involved including any repackaging and/or transportation charges. Should the Seller elect not to have such Goods returned, the Buyer may dispose of them in any manner deemed suitable by the Buyer. Should the Seller fail to promptly replace the Goods incorrectly supplied, with Goods of the proper and agreed specifications, or to make alternative arrangements mutually agreed upon in writing between the Buyer and the Seller within a reasonable time, the Buyer, at its option, may require the Seller to indemnify the Buyer for all losses or damages resulting therefrom, including without limitation, costs incurred by Buyer for the replacement or correction of such Goods. The foregoing is in addition to any other rights Buyer may have in contract or at law. Seller shall not again tender rejected or corrected Goods unless Seller discloses the former tender and rejection or requirement of correction.



- 5) FACILITIES AND SPECIAL EQUIPMENT. The Seller confirms that it now has, or can readily obtain, without assistance of the Buyer, all facilities tools and special equipment necessary for the timely performance of this Order. Special dies, tools, molds, patterns and the like used in manufacture of the Goods herein ordered shall be furnished by and at the expense of the Seller, unless otherwise agreed in writing with the Buyer.
- 6) BUYER FURNISHED PROPERTY AND/OR MATERIALS. Any materials and/or property furnished by the Buyer, on other than a charge basis, in connection with this Order, will be deemed loaned to the Seller for purposes of the Order only and title thereto shall at all times remain with the Buyer. Seller agrees to fully compensate Buyer for such materials and/or property which are not returned to Buyer either as originally loaned (except for reasonable wear and tear due to the utilization of the same in accordance with the provisions of this Order and for the purpose of this Order only) or as an integrated part of Goods ordered. Seller agrees to procure a policy or policies of insurance satisfactory to the Buyer, insuring all Buyer's owned and supplied property and/or materials while on Seller's premises, against loss or damage. However, the procurement of such policies shall not be deemed as releasing the Seller from its responsibilities with respect to the property of the Buyer.
- 7) PACKING MARKING AND SHIPPING. Unless the Seller advises the Buyer in writing to the contrary, the prices quoted by the Seller shall include the packing of the Goods in containers suitable for export via air, sea or ground freight (as applicable), as well as labelling and marking in accordance with Buyer's requirements and delivery in accordance with the Order. Seller further agrees to bear transportation charges as per the applicable Incoterms. Seller will dispatch the Goods to the authorised shipper as per Buyer instructions appearing on the face of the Order.
- 8) INVOICES AND SHIPPING DOCUMENTS. With each shipments of Goods, Seller will include packing lists and invoices that will show the type and quantity of the Goods, Buyer's order number and line item number and manufacturer's parts numbers. One copy of the packing list must be attached to the outside of the package, and an additional copy should be placed inside the same package. Two copies of invoice (one of which should be signed original) and two copies of the packing list must be attached to airway or transportation documents accompanying shipment. One signed copy of the invoice and one copy of the packing list should also be sent via fax or e-mail directly to Buyer's purchasing department. Failure to comply with the above will delay identifying shipments at customs, thus delaying payment by Buyer to Seller.
- 9) INSPECTION AND TESTING. (a) Buyer or the duly appointed representatives of the Buyer shall be entitled upon reasonable advance notice to Seller to inspect and test the Goods to be supplied, both during and after manufacture, whether at the Seller's facilities or at the premises of any of its subcontractors. Such inspection shall in no way relieve the Seller of its responsibilities under this Order. Any Goods rejected shall be replaced at the Seller's expense. (b) Buyer, at its sole discretion, may employ either 100% inspection or a sampling plan approved by Buyer. Lots which fail to pass such sampling plan may be subsequently 100% inspected by Buyer. Seller will be charged for all such inspection costs. (c) In addition to inspection and testing at Seller's facility, all Goods ordered are subject to Buyer's final incoming inspection and approval, after delivery to Buyer's facilities. Lots which fail to pass incoming inspection test, will be returned to Seller. Rejected Goods or lots which are returned, shall be returned at Seller's risk and expense for prompt correction and/or replacement, free of charge or for refund, at Buyer's sole discretion. Exercise of these remedies shall not be exclusive and shall be in addition to any other remedies provided by law or equity which are available to Buyer. Notwithstanding prior payment, it is expressly agreed that payment shall not constitute final acceptance of the Goods by Buyer. (d) Seller shall maintain an effective quality assurance system for control of material quality, assembly, testing, packaging and shipping, and routines for quality verification and corrective actions which is acceptable to the Buyer and/or its customer. Unless otherwise stated on the face of this Order, such quality assurance system shall be in accordance with the requirements of most updated ISO 13485 and CAN/CSA ISO13485 (as applicable). As part of the quality requirements for Goods, Seller will include a Certificate of Compliance (COC) and/or a Certificate of Testing (COT) with each lot of Goods; (e) Seller shall not subcontract any manufacturing processes to any third party without prior approval by Buyer. (f) Seller shall keep all drawings and documents relevant to this Order for a period of seven (7) years from the last delivery.
- 10) CHANGES. Buyer, at any time, by written change order, may make changes to this Order, including quantities or delivery dates of Goods. If the cost or delivery time is increased or decreased as a result of such change orders, an equitable adjustment in the Order price and/or delivery schedule will be made in the change order. If a price and/or



delivery adjustment is not included in the change order, no increase in price or delay in delivery will be allowed. Any claim or challenge by Seller with respect to such adjustment or non-adjustment must be asserted by Seller in writing within 30 days from the date of the change order. This Order shall not be deemed or construed to be modified, amended, cancelled or waived, in whole or in part, except by a written change order hereto signed by the Buyer's authorised representative and nothing contained in this section shall excuse Seller from proceeding with the change order. Any major change in Seller's production processes or any other process regarding the Goods, such as: change in production site location, design changes, replacement of major subcontractor, change in one or more production processes, change that affect the Goods FFF (fit, form and function), requires the prior written approval of Buyer.

- 11) DELIVERY. (a) The terms of delivery are EXW (Incoterms 2010) Seller's facilities, unless otherwise stated on the face of this Order. (b) If Seller's deliveries fail to meet the delivery dates specified herein and as a result Buyer requires and Seller makes express and/or air shipments, partial shipments, or both, then Seller agrees to assume all resulting excess shipping charges. Invoices covering Goods shipped in advance of requested delivery schedules will not be paid until their normal maturity after the date specified for delivery. (c) Without derogating from Buyer's rights under this Order, or in accordance with the law as provided in article 22 herein, Buyer may, at its sole discretion, cancel this Order in whole or in part, where there is a delay in delivery for any reason, and in such case Seller shall have no right to claims against the Buyer for cancellation or any other charges. (d) Seller hereby acknowledges that the time of delivery under the Order is of the essence and that the Goods ordered are intended to be combined with other products and Goods the Buyer supplies to its customers. Therefore Seller hereby agrees to indemnify Buyer for any losses and/or damages and/or expenses incurred by Buyer due to any delay by Seller in supplying the Goods. Delivery ahead of the schedules herein specified is subject to prior written approval by Buyer. (e) Title to the Goods shall pass to Buyer, free of all liens, claims and encumbrances, upon delivery thereof in accordance with the provisions of this Order.
- 12) WARRANTIES. By acceptance of the Order Seller warrants all Goods supplied for a period of twelve (12) months, except for latent defects, (unless otherwise is specified in writing in this Order) from the date of receipt of the applicable Goods by the Buyer at its warehouse, against any defect which may arise due to faulty design, workmanship, material or performance. Any defective item will be promptly replaced by Seller without cost to Buyer, and the warranty terms renewed for items replaced. The defective items will be held at the disposal of Seller for return and replacement at its expense. Upon Buyer's request, Seller shall promptly provide Buyer with a "return of material authorization" number (RMA). If Seller fails to provide such RMA, it shall be deemed as Seller's default.
- 13) INTELLECTUAL PROPERTY INDEMNIFICATION. Seller agrees to indemnify and holds Buyer, Buyer's customers and their representatives, directors, officers, employees and agents (hereinafter the "**Indemnitees**") harmless against any loss, damage or liability (including any costs and/or expenses incidental thereto) incurred on account of any infringement of any patent or other proprietary rights with respect to any Goods furnished under this Order, provided that such Goods are not manufactured solely pursuant to a design furnished to Seller by Buyer. Seller also agrees that it will, at its own expense, defend the Indemnitees against any action, suit or claim in which infringement is alleged. Buyer shall notify Seller as to such suit or claim, as soon as practicable, provided, however, that failure to notify will not relieve Seller from its indemnification obligations, except to the extent Seller's rights and remedies were prejudiced by such failure. In case the Goods or any part thereof, are held to constitute an infringement or the use of the Goods or any part thereof is enjoined, Seller shall, at its own expense, either (1) procure for Buyer the right to continue using the Goods or any part thereof, (2) replace same with non-infringing Goods or parts thereof without impacting the form, fit or function of the Goods, or (3) modify the Goods so that they becomes non-infringing. Seller shall not be liable to Buyer only if the Seller proves that any infringement or claim thereof is based upon the use by Buyer of the Goods in combination with other items where such infringement or claim thereof would not have occurred from the normal use for which the Goods were designed.
- 14) LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWABLE BY LAW, IN NO EVENT SHALL BUYER BE LIABLE UNDER ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS ORDER (INCLUDING ANY THEORY OF CONTRACT, TORT OR STRICT LIABILITY) FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST REVENUE OR PROFITS, ATTORNEY'S FEES, LOSS OF DATA, OR COSTS OF PROCUREMENT OF



SUBSTITUTE GOODS OR SERVICES), EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 15) PROPRIETARY RIGHTS, RIGHTS IN DATA AND CONFIDENTIALITY. (a) Where performance under this Order includes experimental, developmental, or research effort or non-recurring engineering work, including tooling, and such effort or work is paid for in whole or in part by Buyer, Seller agrees to disclose to Buyer all confidential processes and/or know-how and/or trade secrets and/or any invention, discovery, proprietary information and/or any tooling resulting therefrom, and all patents, copyright, trade secrets, trademarks, or other intellectual property resulting therefrom shall be the sole property of the Buyer and Seller hereby assigns to Buyer each invention and proprietary rights resulting therefrom, including without limitation any patent or patent application, without additional charge. Seller shall provide support for Buyer's prosecution of such patent application. Buyer shall have the full right to use such property in any manner without any claim on the part of the Seller and without any duty to account to the Seller for such use. (b) Seller agrees that all information disclosed by Buyer to Seller, including without limitation information contained in drawings, specifications, or other documents, software or other items, which are submitted by Buyer to Seller under or pursuant to this Order, is proprietary to Buyer (hereinafter the "**Proprietary Information**"). Seller undertakes not to use such Proprietary Information, in whole or in part, except for the fulfilment of this Order, unless the Buyer otherwise approves in advance in writing, Proprietary Information shall not include information which the Seller can prove by evidence in writing to be in the public domain, other than through the fault or negligence of Seller, or which is known to Seller at the time of its disclosure without obligation of confidence, or is rightfully obtained without restriction by the Seller from a third party. Seller shall not disclose the Proprietary Information to any third party, and shall take all reasonable precautions to prevent the disclosure of the Proprietary Information to third parties. Receipt by Seller hereunder of Buyer's Proprietary Information shall not be deemed as a grant of any right or license to Seller with respect to such information. Upon the completion and/or termination of this Order, Seller shall immediately return to Buyer the Proprietary Information and all copies thereof, or pursuant to Buyer's request, destroy such Proprietary Information, and provide Buyer a written certificate of destruction. (c) Any advertising of this Order or any news release relating thereto or otherwise relating to Buyer or the use of Buyer's trademarks and trade names (including the Goods supplied hereunder and pictures, descriptions or samples thereof) by Seller is prohibited, except with Buyer's prior written approval. (d) The provisions of this Section 15 shall survive the completion and/or termination of this Order and continue to be in full force and effect for a period of ten (10) years thereafter.
- 16) TERMINATION. (a) Buyer reserves the right to terminate this Order, or any part hereof, and to cancel all or any part of the undelivered portion of this Order if Seller does not make deliveries as provided in this Order or if Seller otherwise breaches any of the terms hereof, including Seller's warranties. In addition to the aforesaid Buyer shall have the right to terminate this Order or any part thereof, and cancel all or any part of the undelivered portion, in the event of the occurrence of any of the following: (i) insolvency of Seller, and/or (ii) filing of an involuntary petition to have Seller declared bankrupt, (provided it is not cancelled within thirty days from date of such filing), and/ or (iii) upon the granting of a winding-up or similar order in respect of the Seller, or if a temporary or permanent liquidator or receiver is appointed in respect of the Seller, or if a temporary or permanent attachment Order is granted on all Seller's assets, or a substantial portion thereof, (provided such order or appointment is not cancelled within 30 days of the grant of such Order or the date of such appointment), and/or (iv) the execution by Seller of any assignment for the benefit of its creditors and/or (v) if the Seller passes a resolution for its voluntary winding-up. Buyer shall have no obligation to Seller in respect to the cancelled portion of this Order. Buyer's liability shall be limited to payment for the delivered and accepted portion of this Order which is usable by Buyer at the rate specified on the face hereof (reflecting quantity prices as though this Order had gone to full completion). If as a result of default of performance by the Seller, this Order is terminated in whole or in part and it is necessary to procure any of the specified Goods elsewhere, then Seller shall be liable for any re-procurement charges which exceed the amount which would have been due to the Seller if it had satisfactorily completed this Order. These remedies shall be cumulative and additional to any other remedies available to Buyer in law or in equity. (b) Buyer may, for its convenience, terminate work under this Order, in whole or in part, at any time, by giving notice to Seller in writing. Seller will thereupon immediately stop work on this Order, or the terminated portion thereof, and notify any subcontractors to do likewise. Seller shall be entitled to reimbursement for its actual costs and non-cancellable commitments incurred up to and including the date of termination, provided that such costs are justified considering the relative point in time of the order execution and that title to completed and partially completed Goods, including any material required, are



transferred to Buyer. Such costs and non-cancellable commitments will be determined in accordance with generally accepted accounting principles applicable to the Buyer, based on written evidence and documentation to be provided by Seller. Seller shall also be entitled to a reasonable profit on the work done prior to such termination at a rate not exceeding the rate used in establishing the original purchase price. The total of such claim shall not exceed the order price for the pro-rata portion of this Order which is cancelled, reduced by amounts previously paid to Seller hereunder.

- 17) PRICES. Unless otherwise specified in this Order, prices indicated in the Order are firm, fixed and final, not subject to any change or escalation and inclusive of all taxes, fees and levies.
- 18) PAYMENT TERMS. Payment terms shall be as agreed between Buyer and Seller and as specified in writing in the Order.
- 19) INDEMNITY. Seller shall indemnify and hold harmless the Indemnitees from and against all claims, judgments, liabilities, losses, injuries and damages of every and/or any nature, including without limitation, in respect of injuries or death to persons or damages to property (including all costs and expenses incidental thereto), caused by (i) the acts or omissions to act by the Seller, its officers, employees, agents, invitees or vendors, directly or indirectly arising out of the performance of this Order or any act or failure to act by subcontractors or suppliers of the Seller and/or (ii) the Goods delivered hereunder and/or (iii) the violation by Seller or its subcontractor(s) or their respective officers, employees, agents, invitees or vendors of the terms and conditions of this Order or any applicable laws, acts or regulations.
- 20) ASSIGNMENT. Seller shall not be entitled to assign its rights and obligations under this Order without Buyer's prior written consent. Buyer is entitled to freely assign all or any part of rights under this Order to any parent, subsidiary or associated company.
- 21) TAXES. Buyer shall not be liable under or in connection with this Order for any governmental, municipal or other taxes, duties, levies and/or compulsory payments.
- 22) COMPLIANCE WITH LAWS. Seller and all persons controlled by Seller shall at all times comply, at their expense, with all applicable Laws. Upon request, Seller shall provide Buyer with reasonable documentation demonstrating such compliance, and Seller further agrees to indemnify, defend and hold harmless Buyer from and against any loss or expense arising from Sellers' noncompliance with any applicable Laws. Without limiting the foregoing, Seller will comply with the following:
 - (i) Anti-Corruption/ Anti-Bribery- Seller shall comply with all applicable Laws relating to anti-corruption or anti-bribery, including, as applicable to Seller, but not limited to legislation implementing or the organization for Economic Co-operation and Development "Conventions on Combating Bribery of Foreign Public Officials in International Business Transactions" or other anti-corruption/anti-bribery convention, the Foreign Corrupt Practices Act, as amended (FCPA) and will not, directly or indirectly, pay, offer, give, or promise to give, anything of value to a non-U.S. public official or any person in violation of the FCPA and/or any applicable Laws relating to anti-corruption or anti-bribery.
 - (ii) Import/ Export Compliance. In performing the obligations under this Contract, each party shall at all times comply with all Export/Import Laws. The party conducting the export or import shall obtain all export or import authorizations which are required under the Export/Import Laws for such party to execute its obligations under this Contract. Each party shall reasonably cooperate and exercise reasonable efforts at its own expense to support the other party in obtaining any necessary licenses or authorizations required to perform its obligations under this Contract. Reasonable cooperation shall include providing reasonably necessary documentation, including import, end user and re-transfer certificates.
 - (iii) Conflict Minerals, as defined in the U.S. Dodd-Frank Wall Street Reform. Seller shall use due diligence to comply with Conflict Minerals legal requirements. Conflict Minerals include gold (Au), tantalum (Ta), tungsten (W) and tin (Sn) sourced from areas identified as conflict regions, including the Democratic Republic of the Congo (DRC) and Central Africa. Seller represents and warrants that no Conflict Minerals that originated in the DRC or an adjoining country are present in any Product. For the purposes of making such representation and warranty, Seller will use due diligence protocols, standards, and procedures that meet or exceed the reasonable country of origin inquiry described in the SEC rules and the relevant best practices developed by industry. Seller shall further assist Buyer with any requests for information, certifications, or other similar



documents as Buyer may reasonably request to ensure Goods' and Seller's compliance with this Section and shall notify Buyer promptly upon discovering or having reason to believe that any Goods fails to comply with the representation and warranty in this Section. (iv) Disposal Regulations. For any Goods subject to Disposal Regulations, Seller: (a) represents and warrants that such Goods are correctly labeled in accordance with the Disposal Regulations; (b) agrees to assist Buyer, as necessary in Buyer's reasonable opinion, to comply with its obligations, if any, under the Disposal Regulations; and (c) agrees to assume responsibility for taking back and disposing of Goods in the future upon the request of Buyer or its customer in accordance with the Disposal Regulations. No additional charges will be due to Seller from Buyer for Seller's agreement to undertake these responsibilities.

- 23) DISPUTES. Seller hereby agrees that all disputes between the Parties hereto which cannot be settled by agreement between the Parties shall be subject to the exclusive jurisdiction of the competent court in the location (country, state, city, county or province, as the case may be) of the main place of business of the Buyer's entity issuing this Order and in accordance with the Laws applicable in the location of such court.
- 24) PROHIBITED SOFTWARE. (a) This clause only applies to Goods that includes the delivery of software. (b) As used herein, "Prohibited License" means the general public license ("**GPL**") or lesser/library GPL, the artistic license (e.g., Perl), the Mozilla public license, the Netscape public license, the sun community source license, the sun industry standards license, or variations thereof, including without limitation licenses referred to as "GPL-compatible, free software license. (c) "**Prohibited software**" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source or "free" software, library or documentation, or (2) software licensed under or subjects the software to a prohibited license, or (3) software provided under a license that requires the delivered software to be licensed for the purpose of making derivative Goods or be redistributable at no charge, or obligates Buyer to make available in any way or accessible to any third party the delivered software, in any format, or any portion thereof, any products and/or object code and/or source code formats incorporating the delivered software. (d) Unless Seller has obtained Buyer prior written consent, which Buyer may withhold in its sole discretion, Seller shall not use in connection with this Order, or deliver to Buyer, any prohibited software. Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Order or the delivery of prohibited software.
- 25) COUNTERFEIT MATERIEL PREVENTION. Seller represents and warrants by acceptance of the Order and certifies with each shipment of deliverables that only new and authentic materials will be used and they contain no Counterfeit Materiel. Seller shall only purchase authentic materials/components directly from the OEM's/OCM's or through the OEM's/OCM's authorized or franchised distribution chain. Seller further represents and warrants that it has (or will have) and will make available to Buyer, at Buyer's request, all acquisition/procurement documentation from the OEM/OCM or their authorized or franchised distribution chain that authenticates traceability of each part, component, module or assembly of Seller's products or goods back to the applicable OEM/OCM. For purposes of this paragraph, "**Counterfeit Materiel**" shall mean a part, component, module, or assembly or Goods whose origin, material, source of manufacture, performance, or characteristics are misrepresented. The term "**Counterfeit Materiel**" includes, but is not limited to, (a) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (b) defective parts and/or surplus material scrapped by the original manufacturer, (c) previously used materiel pulled, repaired or otherwise reclaimed and provided as "new" or (d) materiel that have reached a design life limit.

If Counterfeit Materiel are furnished under this Order, Buyer shall have the right to act in accordance with the law including, impounding and destroying the materiel. Seller shall be liable for all costs related to the materiel impounding, destroying, removal and replacement. Buyer reserves the right to withhold payments for said materiel. Buyer also reserves the right to report and to turn over such Counterfeit Materiel to the relevant authorities. Seller shall include the terms of this article in its subcontracts to the extent relevant.

- 26) MISCELLANEOUS. (a) Failure of Buyer to enforce its rights under this Order shall not constitute a waiver of such rights or of any other rights under this Order or otherwise. Buyer's rights and remedies specified herein shall be cumulative and in addition to any other rights and remedies available in law or equity. (b) The invalidity, in whole or in part, of any provision hereof shall not invalidate or otherwise affect the validity of any other provision. (c) Seller



represents and warrants that this Order shall be performed by it as an independent contractor and that no employer-employee relationship shall exist in connection therewith. (d) Seller shall include this Order terms and conditions, to the extent relevant, in its subcontracts. (e) Unless otherwise agreed to in this Order, all documentation, labels, drawings, letters, and communications of any kind will be presented in the English language. (f) Buyer has the right to set-off any amounts owed to it by Seller against any amounts payable under this Order. (g) Acceptance of this Order by Seller shall be deemed to be an acknowledgment by Seller that there are no end-use limitations with respect to the Goods. (h) Non-performance of either party shall be excused only to the extent that performance is rendered impossible by fire, flood, earthquake, governmental acts or orders, or other force majeure events which are beyond the reasonable control and is not caused by the negligence of the non-performing party.

- 27) NOTICES. Notices required or desirable to be sent to either party hereunder, shall be sent by first class pre-paid air mail or by facsimile and by e-mail, to the address or facsimile number of the relevant party as indicated on the Order, and to the attention of the contact person indicated on the Order, to the extent indicated.