

1. **Basic Agreement**

This Agreement is entered into between Moog, Inc., a corporation formed pursuant to the laws of the State of New York, United States of America, or its subsidiary or affiliate named on any purchase order or any agreement to which these terms and conditions are attached to or referenced therein ("Moog" or "Seller"), having its office at 400 Jamison Road East Aurora, N.Y., 14052, and "Customer," (individually "a Party" and collectively "the Parties"). The Seller hereby agrees to sell and Customer agrees to purchase "Products" or "Services" as set forth on the face of the Purchase Order in United States Dollars, in accordance with these terms and conditions of this Agreement.

2. **Definitions**

Throughout this Agreement, the following definitions shall apply unless stated otherwise:

"**Agreement**" means this document including all Exhibits, Annexes, and Attachments hereto and any other document expressly incorporated as part of the Agreement.

"**day**" means calendar day.

"**Dollars**" or "**\$**" means United States Dollars.

"**Equitable Adjustment**" means any mutually agreed upon formal change in price, delivery schedule, and/or other provisions of this Agreement to reflect resolution of unforeseen occurrences affecting one or both Parties to this Agreement.

"**month**" means calendar month.

"**Products**" includes services and both tangible and intangible items provided pursuant to this Agreement. Unless specifically called out separately, the definition of Products shall also include Prototypes.

"**Prototypes**" the first, sample(s) or preliminary Product(s) developed by Seller from which the final Products shall be developed often, but not always, delivered "for engineering approval," "on consignment," "for developmental purposes," "for evaluation," or terms of similar import.

"**Subject Data**" all recorded information produced, generated, measured or observed in the performance of this Order, regardless of the form or method of recording. It shall include, but not be limited to, data derived from Seller property, Customer property, third party property, anonymized operator information and atmospheric or environmental conditions.

"**Working day**" in relation to the place of doing of an action means any day other than a Saturday and Sunday or public holiday in that place or any other formal holiday in that place as published in writing either in applicable company/organization policies or directives.

3. **Payment Terms**

Unless Seller provides otherwise on the invoice, payments are due and payable in full within thirty (30) days of issuance by Seller. The total price of the Products or Services covered under this Agreement is reflected on the Purchase Order in United States Dollars, and payment is to be made in United States currency. Past due amounts are subject to an additional fee of 1% per month on any outstanding balance—at the discretion of Seller.

4. **Delivery**

Delivery shall be FCA, Moog Dock, (Incoterms 2020) and shall take place according to the delivery schedule of the Order. Title will transfer from Seller to Customer at time of delivery to the carrier.

5. **Prices**

The stated prices for the Products are Firm Fixed Price unless otherwise specified herein. Unless otherwise agreed in writing, the price specified in this Agreement is FCA Free Carrier and specifically excludes the cost of shipping, insurance or (non-USA) taxes. Such items if directly billed by a third party shall be for the account of the Customer.

6. **Delivery and Freight; Title and Risk of Loss**

The Incoterm FCA Free Carrier applies to all shipment(s) unless otherwise specified herein. This term means title and risk of loss transfers to Customer, or an agent of Customer, including a common carrier, upon delivery to the customer designated carrier. Any prepayment by Seller of freight or insurance charges shall be for the account of Customer and shall be included in the amount of the invoice and repaid by Customer on presentation thereof, and shall not affect the obligations of Customer or alter Customer's risk of loss status with respect to delivery.

7. **Packaging**

All deliverable items shall be packaged in accordance with Seller's standard commercial practice.

8. **Prototype/Product Warranty**

8.1 Unless otherwise specified, Seller covenants and agrees that the Products delivered under this Agreement shall be free from defects in material and workmanship at the time of delivery. Seller will, at its option and expense, repair, correct or replace, any such Product which proves to be defective, provided that Seller is given written notice by Customer of any such defect no later than one (1) year after delivery. Seller may, at its option, participate in defect investigation of the Products at the installation site and repair, correct or replace the defective item at such site or at its designated facility.

8.2 Repair, correction or replacement of the Products in the manner provided above shall constitute fulfillment of all of Seller's obligations under this assurance. Such assurance shall not apply to design or to the Products, or any portions thereof, which have been subjected to accident, misuse or unauthorized alteration, or normal wear (which includes components with innate limited life), or to defects caused by not complying with Seller's installation and service requirements (if the failed equipment or parts were not installed by Seller).

- 8.3 This assurance shall apply to and include correction of Technical Data pertinent to Products as the extent delineated herein above, but in no event to include computer software. If the repair, correction, or replacement of the Products is not within the scope of this clause, then Seller shall require a separate purchase order from Customer.
- 8.4 If incurred, Customer shall be responsible for all travel, lodging, meals and incidental expenses.
- 8.5 THE FOREGOING COVENANTS ARE EXCLUSIVE AND ARE IN LIEU OF ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY OF QUALITY WHETHER EXPRESS, STATUTORY OR IMPLIED.
- 8.6 *Exclusion of Damages under all Warranties.* IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
9. **Specifications**
- The Products shall be provided in accordance with the Specification incorporated by reference on the Order. All of the Products are built to best commercial practices in accordance with internal guidelines unless otherwise specified. The Products delivered hereunder may vary according to Seller's established limits, sizes and tolerances in effect at the time of delivery.
10. **Special Tooling and Special Test Equipment**
- Unless Customer pays the full cost of special tooling and other equipment necessary to manufacture the products, such tools and equipment shall remain the property of Seller.
11. **Spare Parts**
- Unless specifically stated otherwise, the Purchase Prices for the products do not include spare parts, except to the extent of replacing defective parts pursuant to any Limited Warranty servicing.
12. **On-site/Service**
- Seller shall comply with applicable United States statutes, acts, ordinances, regulations, codes and laws that apply to Seller's performance of the Work. Seller shall comply with job/site requirements as mutually agreed upon by the parties. Seller is an independent contractor and is not responsible for oversight or supervision of work, property, or employees of others, including health, safety or security. Seller's employees, subcontractors, and representatives shall be given unobstructed access to the site and the work. Seller's time and expense for any delays not caused by Seller shall be charged to Buyer. Buyer shall be responsible for any damage to or loss of property of Seller property if such damage/loss if not caused by Seller or its subcontractors. If the applicable scope of work is being performed by Seller is at a location or involves a scope considered 'high risk' as defined by the Sellers in its sole but reasonable discretion, then Seller's Field Service Terms for High-Risk Assignments

shall be deemed to apply and are incorporated herein by reference and attached to the applicable Order.

13. **Furnished Items**

- 13.1 If it is necessary for a Party to furnish the other Party with machinery or equipment ("Furnished Items") for the sole purpose of accomplishing delivery of the Products hereunder, such Furnished Items are provided on an "AS IS" basis without warranty of any kind and the furnishing party shall retain exclusive ownership of the Furnished Items at all times. The Furnishing Party shall be responsible for maintenance and repair of the furnished Item(s) unless repair is made necessary due to the negligence of the Furnished Party. The Furnished Party shall have the risk of loss of, or damage to the Furnished Items while in its care, custody and control and unless otherwise agreed by the Parties, shall return the Furnished Items to the furnishing party as soon as practicable when their use is no longer required hereunder.
- 13.2 The furnished party shall indemnify and hold harmless furnishing party, including its parent or any affiliated entity, subcontractors and any of their respective officers, agents and employees, against all expense, loss, attorney's fees, costs, damage or liability arising from any claim or action for its use of or loss or damage to the Furnished Items while in the furnished party's care, custody and control. At the request of the furnishing party, the Furnished Party shall defend, at its own expense, all such claims or actions, provided that furnishing party shall be entitled, at its election, to participate in such defense.
- 13.3 Customer shall indemnify and hold harmless Seller, including its parent or any affiliated entity, subcontractors and any of their respective officers, agents and employees, against all expense, loss, attorney's fees, costs, damage or liability arising from any claim or action for product defect where the alleged defect relates to design, labeling or manufacture specifications supplied by Customer. At the request of Seller, Customer shall defend, at its own expense, all such claims or actions, provided that Seller shall be entitled, at its election, to participate in such defense.

**14. Limitation of Liability**

- 14.1 Customer's sole remedies for Seller's breach of any and all warranties, representations, covenants or undertakings hereunder, and its sole remedies with respect to Seller's liability of any kind relating to products provided hereunder, and any other performance by Seller under or pursuant to this Agreement, shall be limited to the remedies herein. In no event shall Seller's liability to Customer for damages of any nature exceed 10% of the price of the Products if the liability arises pursuant to this Agreement or the performance thereof or in any way related thereto.
- 14.2 This limitation of liability shall apply irrespective of the nature or the cause of action or inaction including, but not limited to, breach of contract, negligence or other tort, breach of a statutory duty or liability of Seller or Seller's agents and subcontractors. However, this limitation of liability shall not apply to circumstances which, by law, cannot be excluded, such as claims in respect to or arising out of death or personal injury, or any other liability which Supplier is specifically required by law or statute or this Agreement to be indemnified under a policy of insurance.
- 14.3 UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES DUE TO ANY BREACH OF THIS AGREEMENT OR FOR ANY FAILURE OF THE PRODUCTS OR ANY COMPONENT THEREOF OR SERVICE OR WARRANTY RELATED THERETO, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, REVENUES, USE, OR DATA EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- 14.4 Customer agrees that Seller will not have any responsibility for any hardware, software, or other items, or any services provided to any person other than those authorized in writing by Seller or its authorized representatives. No action arising out of the sale of the products or the performance of services under this Agreement may be brought by either Party more than one (1) year after the cause of action arises, but in no event later than eighteen (18) months after the initial Limited Warranty commences, except that an action for nonpayment may be brought by Seller within two (2) years of the date of the last payment made by Customer hereunder.

**15. Product Improvements and Changes**

Seller reserves the right to change, modify or discontinue models, designs, specifications, and accessories of all products at any time without notice or obligation to any purchaser. Seller reserves the right to make process and design changes in the Products, including the right to substitute any components or spare parts, which do not adversely affect form, fit or function without prior approval of, or notification to, Customer. Customer may request changes in process or design of products only if Customer agrees to accept such changes in delivery or price, which are in Seller's judgment, reasonably necessitated thereby.

**16. Excusable Delay**

- 16.1 Seller shall not be liable for delays or defaults in delivery due to acts of God or public enemies, war or military activity, riots, insurrection or sabotage, fires, floods, explosions or other catastrophes, unusually severe weather accidents, epidemics or quarantine restrictions, acts of local, state or national governments or public agencies, labor disputes or shortages, energy or material shortages, utility or communication failures or delays, delays of a supplier of Seller, failure of Customer to make purchase price payments in a timely manner, or any other causes beyond the reasonable control and without the fault or negligence of Seller. In the event of any such Excusable Delay, any agreed to dates for delivery shall be deferred for a period equal to the time lost by reason of such Excusable Delay.
- 16.2 If an Excusable Delay occurs within the meaning of Section 15.1 of this Agreement, Seller shall, as soon as reasonably practicable thereafter, notify and advise Customer of the cause, nature, and extent of the Excusable Delay conditions referred to above. In the event of an Excusable Delay, and upon Seller's written request, Customer shall equitably adjust those contractual provisions, including price and delivery that are affected by the delay. If an Excusable Delay, which affects Seller's ability to continue performance, continues for ninety (90) days or longer, this Agreement may be terminated by either Party in whole or in part, and settlement for such termination shall be in accordance with Section 32 of this Agreement, Termination.

**17. Taxes**

All prices are exclusive of any applicable federal, state, or local sales, use excise, or other similar taxes. All such taxes shall be for Customer's account and paid by Customer. Any taxes (including, but not limited to income, stamp and turnover taxes), duties, fees, charges, or assessments of any nature, levied by any governmental authority other than of the U.S.A. in connection with this transaction, whether levied against Customer, against Seller or its employees, or against any of Seller's subcontractors or their employees or otherwise,

shall be for Customer's account and shall be paid directly by Customer to the governmental authority concerned. If Seller is required by law or otherwise to pay any such levy and/or fines, penalties, or assessments in the first instance, or as a result of Customer's failure to comply with any applicable laws or regulations governing the payment of such levies by Customer, the amount of any payments so made by Seller shall be reimbursed by Customer to Seller upon submission of Seller's invoices.

**18. Returns**

Authorization must be obtained from Seller prior to the return of any of the Products for any reason, including return for repair, replacement or credit. Issuance of credit for any returned Products shall be made at Seller's option upon Customer's request. Seller shall have the right, prior to return, to inspect at Customer's or Seller's plant any products claimed to be defective or nonconforming. Risk of loss or damage to any Products returned to Seller for adjustment shall remain with Customer until they are received by Seller. Shipping charges are the responsibility of the shipper during authorized returns transactions. Customer waives all claims of which Seller is not notified in writing within thirty (30) days after delivery of the Products or in respect of goods disposed of or returned without Seller's consent.

**19. Experimental Prototypes/Data Collection**

19.1 *Experimental Products.* If Seller delivers Prototypes, Unless Customer has received Seller's prior written approval, Customer agrees that such Prototypes are confidential and experimental in nature, that Customer will limit their availability only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the Parties and to no others, and that all information concerning such Prototypes received or generated by Customer shall become and remain the proprietary property of Seller, and shall not be disclosed to any third party. Customer's receipt, use and evaluation of such Prototypes are subject to the provisions hereof relating to "Limitation of Liability."

19.2 *Data Collection.* Subject Data shall remain the property of Seller and may be used by Seller for any lawful purpose without restriction. That notwithstanding, Seller shall treat as proprietary to Customer any Subject Data produced, generated, measured or observed in the performance of this Order which is exclusively derived from Customer property and it shall be protected from disclosure to third parties unless such disclosure is authorized in writing by Customer.

- a. All Subject Data disclosed hereunder by Seller to Customer, its officers, employees, personnel and agents, is deemed proprietary to Seller unless otherwise identified in writing by Seller to the contrary. All Subject Data shall be protected from disclosure to third parties by using all reasonable precautions and shall not be used by Customer unless such use is authorized in writing by Seller.

- b. Customer agrees that the data received is restricted to the sole use by the Customer for the purpose intended, and shall not be used, directly or indirectly, for the purpose of "reverse engineering," complete or partial manufacture of the product, or the manufacture of any spare parts for the Seller Products, including any portion thereof.
- c. Further, Customer agrees that it will not convey, in any manner or form whatsoever, to any third party, any of the technical information or data received from Seller under the terms of this Order, without the prior express written permission of Seller. The provisions of this clause shall survive the expiration, completion, or termination of this Order.
- d. Seller hereby grants a "Special Purpose License" to the Customer for Subject Data which provides the Customer with a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to make use of the Subject Data for research or other permitted Customer purposes, as expressly authorized herein. Research or other permitted Customer purposes do not include the right to have or permit others to practice an Invention or use, duplicate, prepare derivative works, distribute or disclose copyrighted works or confidential or proprietary information of Seller for commercial purposes.

**20. Infringement**

20.1 Seller makes no representation or warranty that the Products delivered hereunder are free from infringement of any non-U.S. patent, registered design, trademark or copyright not owned by the Seller, or under which Seller is not licensed. In the event Customer is made aware of an alleged infringement Customer shall immediately advise Seller and comply with Seller's instructions.

20.2 Seller shall indemnify, defend and hold harmless Customer, its officers, agents and employees against any expense, loss, attorney's fees, costs, damages or liability to the extent any claim or action based upon the use of the Products supplied by Seller to Customer infringe any United States patent or copyright or proprietary right.

20.3 Seller's obligations to indemnify, defend and hold harmless are expressly contingent upon Customer's prompt notification to Seller in writing of the claim or action. Customer shall permit Seller to defend, compromise or settle the claim and provide all available information, assistance and authority to enable Seller to do so.

20.4 Should any Product supplied by Seller to Customer become, or in Seller's opinion be likely to become, the subject of a claim of infringement, Seller may (i) procure for Customer, at no cost to customer, the right to continue use of the Product, (ii) replace or modify the Product to make it non-infringing, provided it performs the same function,



or (iii) grant to the Customer credit on the original price thereof as depreciated on a straight-line five (5) year basis.

20.5 THIS ARTICLE STATES THE ENTIRE LIABILITY OF SELLER WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR PROPRIETARY RIGHT TO ANY PRODUCT SUPPLIED BY SELLER.

20.6 Customer warrants that any design, instruction, equipment, software or data provided by Customer to Seller, either directly or indirectly, shall not cause Seller to infringe on any patent, registered design, trademark or copyright. In the event Seller is made aware of an alleged infringement, Seller shall immediately advise Customer and Customer will take all actions necessary to resolve the alleged infringement. Customer shall indemnify, defend and hold harmless Seller, its officers, agents and employees against any expense, loss, attorney's fees, costs, damages or liability to the extent any claim or action based upon the use of items supplied by Customer infringe any United States patent or copyright or proprietary right.

**21. Intellectual Property Rights**

21.1 For the purposes of this provision, "Intellectual Property" shall be defined as trade secrets, patents, copyrights, design rights, trademarks, service marks, know-how and database rights (whether registered or unregistered). Each party shall exclusively own intellectual property it developed at its own expense prior to, or separately from, development of the Products delivered hereunder ("Background Intellectual Property"). Due to Seller's substantial time and investment incurred in development of the Products, Seller shall also exclusively own any and all Intellectual Property developed in the course of the development of the Products hereunder. Each Party grants to the other Party a non-exclusive, royalty-free, non-transferable license to use the other Party's Background Intellectual Property as necessary to develop and use the Products to be delivered hereunder. Such license specifically does not convey the right to reverse engineer or create derivative works from the other Party's Background Intellectual Property.

21.2 Except as otherwise stated in this Section, sale of the Products or Prototypes to Customer does not convey a license, implied or otherwise, under any patent, or "Patent Pending" in which Seller has an interest nor does it convey rights to any software or source code, descriptive data, including, but not limited to, Seller's manufacturing drawings, secrets, processes or tooling except as expressly set forth in this Agreement.

21.3 To the extent the Products contain software, Seller grants to Customer a non-exclusive, royalty-free, non-transferable (unless Seller has given its prior written approval for transfer) license to use the software solely in conjunction with Customer's use of the Products delivered hereunder. This license specifically does not include the right to reverse engineer or create derivative works from such licensed software.

**22. Customer Obligations**

22.1 Customer shall deliver to Seller fully operational equipment and/or data and/or other information in the quantities and at such time(s) and location(s) as are set forth on the Order. All freight and insurance costs both ways shall be the responsibility of the Customer. All data and/or other information shall be accurate, complete and suitable for use. Customer recognizes and agrees that Seller relies on the accuracy of the data and/or other information provided Customer for performance of its obligations hereunder.

22.2 In the event Customer Furnished Equipment, Data or Information fails, becomes outdated or otherwise becomes non-available for Seller's use, Seller, upon discovery, shall notify Customer. Customer shall take action immediately to repair or replace the equipment or correct or replace the data or information or authorize Seller to do the same at Customer's expense.

22.3 Customer will perform its obligations under this Agreement at the times and in the manner described in this Agreement or, if not described herein, at reasonable times and in a reasonable manner. If Customer fails to fulfill its obligations or otherwise prevents Seller's strict and timely compliance with Seller's obligations under this Agreement, there shall be an Equitable Adjustment to this Agreement to fully compensate Seller for such Customer failure. If Customer fails to perform an obligation for a period of ninety (90) calendar days or longer, and such failure prevents or hinders performance by Seller, Seller has the right to terminate the Agreement and settlement for such termination shall be in accordance with Section 33 hereof, "Termination".

**23. Claims**

Claims for shortages, incorrect materials or invoicing errors must be made by Customer within twenty (20) days after receipt of shipment. Failure to assert a claim within the twenty (20) day period stated above, shall represent a waiver by the Customer to assert any further claim under this provision.

**24. Technical Information**

All data disclosed hereunder by Seller to Customer, its officers, employees, personnel and agents, is deemed proprietary unless otherwise identified in writing by Seller to the contrary. Such data shall be protected from disclosure to third parties by using all reasonable precautions and shall not be used by Customer unless such use is authorized in writing by Seller. Customer agrees that the data received is restricted to the sole use by the Customer for the purpose intended, and shall not be used, directly or indirectly, for the purpose of "reverse engineering," complete or partial manufacture of the product, or the manufacture of any spare parts for the Products, including any portion thereof. Further, Customer agrees that it will not convey, in any manner or form whatsoever, to any third party, any of the technical information or data received from Seller under the terms of this Agreement, without the prior express written permission of Seller. The provisions of this clause shall survive the expiration, completion,

or termination of this Agreement.

**25. Waiver**

Failure by Seller to insist upon strict performance of any provision hereof by Customer shall not be deemed a waiver by Seller of its rights or remedies, or a waiver by it of any subsequent default by Customer. No claim or right arising out of a breach of this Agreement can be discharged in whole, or in part, by a waiver or renunciation of the claim or right, unless such waiver or renunciation is in writing signed by the aggrieved Party.

**26. Assignment**

This Agreement is not assignable or transferable by Customer whether voluntary or by operation of law, in whole or in part, without the prior written consent of Seller. That notwithstanding, Seller is hereby authorized to unilaterally assign this Agreement to any parent or affiliated entity.

**27. Notices**

All notices shall be in writing and shall be sent by certified or registered mail, return receipt requested, or by facsimile (FAX). Seller's address for such notices is the same as is set forth in Section 1 of this Agreement, with the addition of an Attention line to the Contracts Department. Customer shall establish its points of contact for Notices not later than (7) days after the effectivity of this Agreement. Either Party may change its point of contact information by written notice to the other Party. All notices sent by certified or registered mail shall be effective three (3) days after mailing. All notices sent by FAX shall use those FAX numbers established at the time of this Agreement unless either Party specifies otherwise. Such FAX notices shall be confirmed in writing, sent by Federal Express or similar overnight delivery type mail, and shall be effective on the date of the FAX transmission.

**28. Corrections**

Clerical errors, or obvious errors or omissions, whether in documents accompanying deliverables, or otherwise are subject to correction.

**29. Order of Precedence**

For the purpose of interpreting this Agreement, in the event of any inconsistency or contradiction, it shall be interpreted in accordance with the following order of precedence, from greatest to least:

1. Supplemental Terms for Service in High Risk Assignment
2. Commercial License Agreement
3. These Terms and Conditions;
4. Special Terms and Conditions (if any);
5. Statement of Work;
6. Specification

**30. Headings**

The headings used in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**31. Termination by Seller**

Seller shall have the right to terminate this Agreement without liability to Seller in the event that the occurrence of any one of the following is not remedied by Customer within thirty (30) days after written notice thereof: (a) Customer has not made arrangements satisfactory to Seller for payment for any part of the purchase price of the products pursuant to the "PAYMENT TERMS" of this Agreement; or (b) Customer neglects or fails to perform or observe any of its existing or future obligations hereunder; or (c) if any assignment is made of Customer's business for the benefit of creditors, or if a petition in bankruptcy is filed by or against Customer, or if a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of its property or if Customer is adjudicated as bankrupt; or (d) a delay shall have occurred in the providing of Seller's products for more than ninety (90) days for any of the reasons set forth in Section 15 of this Agreement, "Excusable Delay."

**32. Governing Law**

This Agreement shall in all respects be governed by the substantive laws of the State of New York, United States of America. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods is inapplicable to this Agreement. In the event that any part, term or provision of this Agreement shall be finally determined illegal, void or in conflict with any federal, state or local law of the United States, the validity of the remaining portions or provisions hereof shall not be affected or rendered invalid thereby. Further, the Parties agree to insert a replacement provision which most closely approximates the intent and economic effort of any stricken provision. Any controversy or claim arising out of or related to this Agreement, or the breach thereof, which cannot be settled by the Parties shall be finally settled by a court. The Parties expressly agree that only the courts located in the City of Buffalo, County of Erie, State of New York, in the USA shall have jurisdiction and venue to resolve such a dispute.

**33. Termination**

33.1 Customer may terminate this Agreement in whole or in part subject to the following provisions as hereinafter set forth. Any termination must be transmitted as a written notification in accordance with Section 26 of this Agreement, "Notices", and specifically identify the work being terminated. The effective date of the termination shall be thirty (30) days after Seller receipt of the termination notice. Upon receipt of the termination notice Seller will take action to limit Customer's future cost exposure; however, Seller may complete any work-in-process that can be completed prior to the termination effective date.

33.2 Promptly after the effective date of the termination, Seller shall submit its invoice, and be paid the Agreement price, for articles completed but not yet invoiced. Additionally, the Seller shall, within a reasonable time thereafter, submit a termination claim for an Equitable Adjustment to the total price of this Agreement

as may be appropriate as the result of the termination, considering partially completed work, termination costs, and other factors.

- 33.3 In the event that only part of the work under this Agreement has been terminated (partial termination) the non-terminated portion may require Equitable Adjustment to reflect the change in costs of performance, and schedule revisions, if any, which result from the partial termination.
- 33.4 In the event of termination and subject to the terms, as set forth herein, any moneys paid by the Customer that exceed the value of completed articles and Seller's termination claim shall be refunded to Customer within thirty (30) days after conclusion of the termination settlement.
- 33.5 In the event Seller terminates this Agreement as otherwise provided for herein, the termination process shall be in accordance with Sections 32.2 through 32.4 above.

**34. Inspection and Final Acceptance**

- 34.1 Inspection and Final Acceptance of the Products shall occur at the time of delivery as described in Section 6 of this Agreement, "Delivery and Freight; Title and Risk of Loss", and shall be performed according to Seller's standard commercial practice by Seller's Quality Assurance Personnel. Subject to U.S. Government security restrictions, Customer has the right to send a representative or appoint a suitable agent to witness Inspection and Final Acceptance; if done, this will be at Customer's expense.
- 34.2 Seller shall inform Customer thirty (30) days in advance of the approximate date for Inspection and Final Acceptance and shall confirm the exact date at least seven (7) days in advance. In the event the Customer elects not to send a representative or appointed agent to witness the Inspection and Final Acceptance, the Seller will proceed with the Inspection and Final Acceptance.
- 34.3 A "Completion of Inspection and Final Acceptance" will be certified by the Seller's Quality Assurance personnel and Customer's representative or appointed agent signing the "Certificate of Inspection and Final Acceptance" in the format contained in Annex 1 to this Agreement. In the event Customer is not represented, the Seller will sign the "Certificate of Inspection and Final Acceptance" on behalf of the Customer.

**35. Government Requirements and Approvals**

This Agreement and performance hereunder shall be subjected to the issuance of such governmental approvals, export licenses, Technical Assistance Agreements, validations, clearances and rulings as may be reasonable deemed necessary or desirable by each of the Parties hereto. Each Party shall exercise its best efforts to obtain such approvals, licenses, validations, clearances, and rulings as may be required to achieve the purposes of this Agreement and shall promptly notify the other Party in writing when all such approvals, validations, clearances or rulings are required by the government of either Party hereto. That fact shall promptly be communicated to the other Party by way of written notice. In the event that any approval/authorization is requested and is not

given, or is subsequently withdrawn, and, as a result, Seller is unable to perform any or all of its contractual obligations, the matter shall be treated as Excusable Delay within the meaning of Section 15 of this Agreement. Notwithstanding any provision to the contrary in this Agreement, Seller shall be entitled to recover all costs incurred until such point.

**36. Foreign Corrupt Practices Act**

The Customer, by its representative's signature on this document, affirms knowledge of the existence of the FCPA, and agrees not to make any payments to governmental officials for the purpose of gaining business with the Seller, or at least not to do so without consultation with the Seller and receiving confirmation that such activity will not violate the FCPA.

**37. Classified Information**

All government classified information provided under this Agreement will be transferred and safeguarded by both of the Parties in accordance with security agreements between the governments of Seller and Customer.

**38. Resale or Other Transfer**

It is understood by the Parties hereto, that the product is to be purchased by Customer for the sole and exclusive use of the Customer, and not for resale. Accordingly, the Customer is prohibited from reselling or conveying, under any circumstances, the product, and parts of the product, or any technical information or data related to the product, to any third party, without the prior express written permission of the Seller, and if controlled under the ITAR, the permission of the United States Government.

**39. Changes in Law**

This Agreement shall be equitably adjusted if affected by changes in any non-U.S. laws, decrees, rules, and regulations promulgated or effected subsequent to the date of this Agreement.

**40. Amendments**

This Agreement shall be equitably adjusted if affected by changes in any non-U.S. laws, decrees, rules, and regulations promulgated or effected subsequent to the date of this Agreement.

**41. Entire Agreement**

This Agreement represents the entire Agreement and understanding of the Parties relating to the subject matter hereof and supersedes and replaces all prior letter of intent, agreements, and understandings on the subject matter hereof. There are no oral or written representations, agreements or understandings. This Agreement may not be changed, canceled or terminated orally, and no change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the Party against whom the same is thought to be enforced.

If Customer and Seller have executed an overriding agreement covering the sale of products to which this document relates, the terms of such overriding agreement shall prevail over the terms stated herein to the extent of any conflict.

**42. Language and Units of Measure**

The official language of this Agreement shall be English. All documentation, both technical and administrative, and correspondence exchanged between Seller and Customer shall be in English and use U.S. units of measure.

**43. Agreement Effectivity**

This Agreement shall become a binding contract under the terms and conditions set forth herein when it is accepted by the Customer. However, any such acceptance shall be valid only if made within thirty days of the date of this instrument or such other time period specified herein. If this instrument is an acknowledgment, it constitutes Moog's acceptance of the Customer's order, subject, however, to the terms and conditions set forth herein. This Agreement shall be severable such that the invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision. If any portion or provision of this Agreement is held invalid or unenforceable, the balance of the Agreement shall be construed and enforced as if it did not contain such invalid or unenforceable portion or provision. In such event, however, the Parties shall negotiate a new portion or provision of this Agreement that will, as nearly as is lawful and enforceable, have the same economic effect and accomplish the same objectives as the portion or provision of this Agreement that was declared invalid or unenforceable.