

This document, together with the attachments appended hereto constitutes the Terms and Conditions for the Contract between the parties, and acceptance is strictly limited to the terms and conditions contained herein. ***Additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document shall have no effect unless accepted in writing by Buyer. In particular, any limitation of liability or disclaimer of warranty is expressly rejected.*** Agreement by Seller to furnish the goods or services to these terms and conditions, or Seller's commencement of such performance or acceptance of payment shall constitute acceptance by Seller of these Terms and Conditions.

**1. Definitions:** Words, as employed in this Agreement, shall have their normally accepted meanings. The following terms shall have the described meaning:

"Buyer" shall mean MacAulay-Brown, Inc. and/or the entity identified as the Buyer in this Contract.

"Contract" shall mean the Purchase Order, these General Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.

"Goods or Services" shall mean those Goods or Services identified in this Contract, which may be changed, from time to time by the mutual written agreement of the parties.

"Seller" shall mean the party identified as the Seller in this Contract.

**2. Price:** (a) Unless otherwise specified, the prices established by this Contract are firm fixed prices. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions. (b) In the event Seller is liable to Buyer for any amounts pursuant to this Contract, Buyer may, at its election, set-off against any amounts payable to Seller under this Contract.

**3. Schedule and Delivery; Notice of Delay:** Seller shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of this Contract. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder.

**4. New Materials; Packaging and Shipping:** (a) All goods to be delivered hereunder shall consist of new materials. (b) Seller shall prepare and package the goods to prevent damage or deterioration and shall use customary and reasonable commercial practices for packing and packaging of items to be delivered under this Contract, unless otherwise specified in the Purchase Order.

**5. Inspection and Acceptance:** (a) Buyer's acceptance of Goods or Services shall be subject to Buyer's final inspection within sixty (60) days after receipt at destination, notwithstanding any payment or prior test or inspection. Final acceptance shall be at Buyer's facility or such other place as may be designated by Buyer. (b) Seller and its suppliers shall establish and maintain a quality control and inspection program as specified in the Purchase Order. (c) Seller shall keep and maintain proper and adequate inspection, test and related records, which shall be available for inspection by the Buyer or Buyer's representative and shall allow copies to be made and extracts to be taken and shall furnish all information which may be required by the Buyer or Buyer's representative. (d) If this purchase order is issued under a U.S. Government prime contract, the Government has the right to engage in the same inspection activities as Buyer.

**6. Rejection:** If Seller delivers nonconforming Goods or Services, Buyer may, at its option and Seller's expense: (i) return the goods for refund or credit; (ii) require Seller to promptly correct or replace the Goods or Services; (iii) correct the nonconformance; or, (iv) obtain conforming Goods or Services from another source. Buyer shall specify the reason for any return or rejection of nonconforming Goods or Services and/or shall describe the action taken. Seller shall be liable for any increase in costs, including procurement costs, attributable to Buyer's rejection of the nonconforming Goods or Services.

**7. Invoices:** (a) Invoices may be mailed when goods are shipped, but the time for payment shall not commence before Buyer's actual receipt, of items at their destination. Buyer shall promptly pay Seller the amount due using the payment terms identified in the Contract (or within 45 days if not identified elsewhere in the Contract) unless the invoiced amount is in dispute. Buyer may withhold payment for shortages and/or non-conforming Goods or Services.

**8. Changes:** (a) By written order, Buyer may from time to time direct changes of the following types: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer–furnished property; (vi) time of performance; and, (vii) place of performance. (b) If any such change causes an increase or decrease in the price or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision shall excuse Seller from proceeding immediately with the directed change(s). Whether made pursuant to this provision or by mutual agreement, changes shall not be binding upon Buyer except when specifically confirmed in a written Purchase Order or Change Order.

**9. Force Majeure:** The following events, and only the following events, shall constitute force majeure under this Contract: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a *Force Majeure* Condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the *Force Majeure* Condition.

**10. Termination for Convenience:** (a) Buyer may, by notice in writing, direct Seller to terminate this Contract or work under this Contract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination. (b) Seller shall immediately stop work and limit costs incurred on the terminated work. (c) If such termination is for the convenience of the Buyer and is not caused by the Seller's failure to fulfill the requirements, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by the Buyer being determined by negotiation, but in no event exceeding the total price of this Contract.

**11. Termination for Default:** (a) Buyer may, by written Notice of Default to Seller, terminate this Contract in whole or in part, or, at Buyer's sole discretion, require the Seller to post such financial assurance as Buyer deems reasonably necessary, if the Seller fails to: (i) deliver the goods or to perform the services within the time specified in this Contract or any extension; (ii) make progress, so as to endanger performance of this Contract; or, (iii) perform any of the other provisions of this Contract. (b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, services, information and contract rights (Materials) as Seller has produced or acquired for the performance of this Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller moneys otherwise due Seller for completed goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said goods and Materials. (c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**12. Compliance with Law:** (a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules, and regulations hereunder; and such compliance shall be a material requirement on this Contract. This shall include, but shall not be limited to compliance with FAA, DOT and other transportation regulations; as well as the Hazard Communication Standard promulgated pursuant to the Occupational Health and Safety Act. (b) Seller shall control the dissemination of and access to technical data, information and other items received under this Contract in accordance with U.S. export control laws and regulations.

**13. Ethical Standards of Conduct:** Seller shall neither receive nor give any gifts or gratuities in connection with this Contract. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall not participate in any unethical conduct during performance of this Contract. Seller shall not engage in any personal, business, or investment activity that may be defined as a conflict of interest, whether real or perceived.

**14. Proprietary Information and Rights:** (a) All Specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer without any restrictive rights on a non-proprietary basis. (b) All Specifications, information, data, drawings, software and other items which are: (i) supplied to Seller by Buyer; or, (ii) paid for by Buyer during the performance of this Contract shall be treated as proprietary to Buyer by Seller and shall not be disclosed to any third party without Buyer's express written consent. Seller agrees not to use any such furnished information except to perform this Contract. Nonetheless, the Seller has rights to use, in its direct contracts with the Government, information the Government owns or has a right to use.

**15. Intellectual Property:** Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret or intellectual property of any kind first made or conceived by Seller in the performance of this Contract or which is derived from the use of information supplied by Buyer shall be the exclusive property of the Buyer. Seller shall disclose promptly all such works, writings, ideas, discoveries, improvements, inventions, trade secrets or intellectual property to Buyer, and shall execute all necessary documents to perfect Buyer's title thereto and to obtain and maintain effective protection thereof. Any work produced under this Contract is to be deemed a work-for-hire to the extent permitted by law, and, to the extent not so permitted, shall be assigned to, and shall be, the exclusive property of, the Buyer. (b) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, in connection with the use, offer for sale, or sale of products provided to or work being performed for Buyer, an irrevocable, non-exclusive, paid-up worldwide license under any and all intellectual property (whether domestic or foreign), including patents, copyrights, industrial designs and/or mask works owned or controlled by Seller at any time or licensed to Seller, provided such a sublicense does not conflict with any provisions of the license to the Seller. (c) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, a perpetual, non-exclusive, paid-up worldwide license to reproduce, distribute copies of, perform publicly, display publicly, or make derivative works from any software included in or provided with Goods or Services under this Contract (Software Documentation) as reasonably required by Buyer in connection with Buyer's testing or use of the good or service. Nonetheless, the Seller has rights to use, in its direct contracts with the Government, information the Government owns or has a right to use.

**16. Goods Warranty:** Unless stated otherwise, in the documents accompanying these terms and conditions, Seller shall warrant all goods against defects in design and performance for a period of one year following delivery. If this Contract is for delivery of goods, Seller shall observe, comply with and afford Buyer all applicable Uniform Commercial Code warranties contained in the State of Ohio Consolidated Laws, and Seller hereby acknowledges that Buyer does not waive or accept any disclaimer of any such warranties.

**17. Services Warranty:** Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall warrant all services against defects in performance for a period of one year following delivery. If this Contract includes the provision of Services, Seller warrants that it has and will maintain sufficient trained personnel to promptly and efficiently execute the Services contemplated under this Contract. Seller further warrants that the services shall be performed to at least the standard of performance reasonably expected of similar service providers in Buyer's geographic area.

**18. Intellectual Property Warranty:** Seller warrants that the sale, offering for sale, use, or incorporation into manufactured goods and Materials (including software) of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture does not and will not infringe any valid patent, copyright, trade mark, or other proprietary or intellectual property rights.

**19. Extension to Buyer's Customers:** All warranties furnished pursuant to this Contract extend not only to Buyer but also to Buyer's customers.

**20. Indemnification:** (a) Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including reasonable attorneys'

fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation: (i) the breach of any warranty contained herein; (ii) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated cleanup costs; (iii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (iv) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller; and, (v) any claim by a third party against Buyer alleging that the Goods or Services (including but not limited to software), the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including reasonable attorneys' fees. (b) Should Buyer's use, or use by its distributors, subcontractors or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either: (i) substitute fully equivalent non-infringing Goods or Services; (ii) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Goods or Services; or, (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services. (c) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

**21. Release of Information:** Seller shall not publish any information developed under this Contract, nor disclose, confirm, or deny any details about the existence or subject matter of this Contract, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.

**22. Disputes:** - This Subcontract shall be construed in accordance with the laws of the State of Ohio, and any dispute hereunder shall be governed by the laws of the State of Ohio, except that any provision in this Subcontract [or Purchase Order for general T&Cs] that is: (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or; (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the United States Government. Any litigation under this contract, if commenced by the Seller, shall be brought in a court of competent jurisdiction in the State of Ohio (Greene County, Ohio if available or United States District Court for the Southern District of Ohio for disputes regarding federal law). If, in the opinion of MacAulay-Brown, Inc., the dispute relates to direction by the Government covered by the Prime Contract Disputes Clause, MacB may proceed to process the dispute pursuant to the disputes clause of the Prime Contract and any litigation under this subcontract shall be stayed pending final resolution pursuant to said Disputes Clause. Pending resolution of any dispute, the Seller shall proceed as directed by MacB in writing. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply.

**23. Assignments and Subcontracting:** (a) Neither this Contract nor any interest herein nor claim hereunder may be transferred, novated, assigned or delegated by Seller; nor may all or substantially all of this Contract be further subcontracted by Seller without the prior written consent of Buyer. Consent shall not relieve Seller of its obligations to comply fully with the requirements hereof. (b) Notwithstanding the above, Seller may, without Buyer's consent, assign moneys due or to become due hereunder provided Buyer shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the Contract without notice to or consent of the assignee. Buyer shall be given prompt notice of any assignment. Amounts so assigned shall continue to be subject to any of Buyer's rights to set-off or recoupment under this Contract or at law. (c) Buyer may assign this Contract to any successor in interest.

**24. Government Contracts:** For orders placed in support of and charged to a U.S. Government Prime Contract procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of the Prime Contract are

incorporated herein by reference as if set forth at length herein. In all clauses listed herein the terms "Government" and "Contractor" shall be revised to identify properly the contracting parties under the Purchase Order.

52.203-13, Contractor Code of Business Ethics and Conduct – only applies to this Order if the subcontract exceeds \$5,500,000 and performance of more than 120 days.

52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 – only applies if the subcontract is funded under the Recovery Act.

52.219-8, Utilization of Small Business Concerns – applicable when subcontract is expected to exceed the simplified acquisition threshold.

52.222-26, Equal Opportunity

52.222-35, Equal Opportunity for Veterans

52.222-36, Affirmative Action for Workers with Disabilities

52.222-40, Notification of Employee Rights under the National Labor Relations Act, if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

52.222-50, Combating Trafficking in Persons

52.225-26, Contractors Performing Private Security Functions Outside the United States

52.232-40, Providing Accelerated Payments to Small Business Subcontractors

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels – only applies if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

52.244-6, Subcontracts for Commercial Items

252.244-7000, Subcontracts for Commercial Items

For all other Contracts placed in support of and charged to a U.S. Government Contract: (i) the appendices to the Contract will include a list or lists of clauses set forth in the Federal Acquisition Regulation (FAR) or the Defense Federal Acquisition Regulation Supplement (DFARS); (ii) such appended FAR and DFARS clauses are hereby incorporated by reference as if set forth at length herein; and, (iii) the terms "Government" and "Contractor" contained in the FAR and DFARS clauses shall be revised to identify the Seller and the Buyer respectively.

Except as may be expressly set forth in this document with the Government Contracting Officer's express consent, the Seller shall not acquire any direct claim or direct course of action against the U.S. Government.

Seller shall include in each lower-tier award the appropriate flow down clauses as required by FAR and DFARS.

**25. EEO and Affirmative Action.** The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, national origin, sexual orientation or gender identity. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, sexual orientation or gender identity, and protected veteran status or disability.

Every vendor and supplier must also develop and maintain an Affirmative Action Program if the purchase order or subcontract amounts to \$50,000 and the company employs 50 or more employees, companywide.

**26. Order of Precedence:** In the event of a conflict between these Terms and Conditions and other portions of the Contract, the order of precedence shall be: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; (e) the specifications; (f) any other provisions set forth in the Buyer's Purchase Order including any terms and conditions stated or referenced therein.

**27. Independent Contractor Status:** Seller is, and shall remain, an independent contractor during the performance of this Contract, and shall be responsible for all damages and related costs relating to such performance.

**28. Communication with Buyer's Customer:** Buyer shall be solely responsible for any and all communication with Buyer's customer, and Seller shall not communicate with Buyer's customer regarding this Contract or any related contract without Buyer's express written consent.

**29. Survival:** All of the provisions of this Contract shall survive the termination (whether for convenience or default), suspension or completion of this Contract unless they are clearly intended to apply only during the term of this Contract.

**30. Audit Rights:** Buyer reserves the right to audit Seller's records to assure compliance with the terms of this Contract. Seller shall make available all data reasonably requested by Buyer. These audits, in general, will be performed within a one (1) year period of the delivery of the materials delivered against the Buyer's Purchase Orders being audited. If this purchase order is issued under a U.S. Government prime contract, the Government has the right to engage in same audit activities as Buyer.

**31. Purchase Order Clause for Subcontractors and Contract Manufacturers:** Only new and authentic materials are to be used in products delivered to MacAulay-Brown, Inc. No counterfeit or suspect counterfeit parts are to be contained within the delivered product. Parts shall be purchased directly from the OCMs/OEMs, or through the OCM/OEMs Franchised Distributor. Documentation must be available that authenticates traceability to the applicable OCM/OEM.

**Definitions:**

**Counterfeit** – A part that is a copy or substitute without legal right or authority to do so or one whose material, performance or characteristics are misrepresented.

**Suspect Counterfeit** – A part in which there is an indication that it may have been misrepresented by the supplier or manufacturer and may meet the definition of a counterfeit part.

**OCM** – Original component manufacturer

**OEM** – Original equipment manufacturer

**Franchise Distributor** – A distributor with which the OCM or OEM has a contractual agreement to buy, stock, re-package, sell, and/or distribute its product lines.