

**GENERAL PROVISIONS
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1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract.
- (c) ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGMENT HERE OF ARE HEREBY OBJECTED TO BY X5 MANUFACTURING AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY X5 MANUFACTURING.

2. APPLICABLE LAWS

- (a) This Contract and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract is issued, excluding its choice of law rules.
- (b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at Seller's expense.

(2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) If: (i) X5 MANUFACTURING'S contract price or fee is reduced; (ii) X5 MANUFACTURING'S costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on X5 MANUFACTURING; or (iv) X5

MANUFACTURING incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, X5 MANUFACTURING may proceed as provided for in subparagraph 2(b)(4) below.

(4) Upon the occurrence of any of the circumstances identified in subparagraph 2(b)(3) above, X5 MANUFACTURING may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

- (c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to X5 MANUFACTURING hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) SELLER shall provide to X5 MANUFACTURING with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

3. ASSIGNMENT

Any assignment of Seller's contract rights or delegation of duties shall be void, unless X5 MANUFACTURING gives prior written consent. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if X5 MANUFACTURING is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of X5 MANUFACTURING against SELLER. X5 MANUFACTURING shall have the right to make settlements and/or adjustments in price without notice to the assignee.

4. CHANGES

- (a) The X5 MANUFACTURING Procurement Representative may at any time, by written notice, and without notice to

sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) technical requirements and descriptions, specifications, statement of work ("SOW"), drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of X5 MANUFACTURING furnished property; and (vi) if this Contract includes services: (x) description of services to be performed; (y) time of performance (e.g., hours of the day, days of the week, etc.); and (z) place of performance. SELLER shall comply immediately with such direction.

- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, X5 MANUFACTURING shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to X5 MANUFACTURING Procurement Representative within thirty (30) days from the date of notice of the change, unless X5 MANUFACTURING and SELLER agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with paragraph 9 "Disputes/Jury Waiver." However, nothing contained in this paragraph 4 shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. CONTRACT DIRECTION

- (a) Only the X5 MANUFACTURING Procurement Representative has authority make changes in, to amend, or to modify this Contract. Such changes, amendments or modifications must be in writing.
- (b) X5 MANUFACTURING program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under paragraph 4 "Changes" and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the X5 MANUFACTURING Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph 5(a).
- (c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be sent to the X5 MANUFACTURING Procurement Representative.

6. CUSTOMER COMMUNICATION

X5 MANUFACTURING shall be solely responsible for all liaison and coordination with the Customer or any higher tier contractor(s) as it affects this Contract or any Work thereunder or related thereto. Except as required by law, SELLER shall not communicate with the Customer, and any higher tier contractor(s), with respect to this Contract or any Work thereunder or related thereto, without prior approval of the X5 MANUFACTURING Procurement Representative. SELLER shall promptly notify X5 MANUFACTURING of any communications, initiated by the Customer or any higher tier contractor(s) that affects this Contract or any Work thereunder or related thereto.

7. DEFAULT

- (a) X5 MANUFACTURING, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as X5 MANUFACTURING may authorize in writing) to cure any such failure after receipt of written notice from X5 MANUFACTURING. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) X5 MANUFACTURING shall not be liable to pay for any Work not accepted; however, X5 MANUFACTURING may require SELLER to deliver to X5 MANUFACTURING any supplies and materials, and drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. X5 MANUFACTURING and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.
- (d) If after termination under subparagraph 7(a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

8. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "X5MANUFACTURING" means the X5 MANUFACTURING legal entity as identified on the face of the Contract.
- (b) "X5 MANUFACTURING Procurement Representative" means the person authorized by X5 MANUFACTURING cognizant procurement organization to administer and/or execute this Contract.
- (c) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (d) "Customer" means the entity with which X5 MANUFACTURING has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of paragraphs 14 (FURNISHED PROPERTY) and 16 (INDEPENDENT CONTRACTOR RELATIONSHIP), "Customer" shall include any higher tier contractor(s).
- (e) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (f) "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (a) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or (b) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Contract, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of

example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.

- (g) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract".
- (h) "SELLER" means the party identified on the face of this Contract with whom X5 MANUFACTURING is contracting. For the purposes of paragraphs 6 (CUSTOMER COMMUNICATION) and 16 (INDEPENDENT CONTRACTOR RELATIONSHIP) only, "SELLER" shall also include Seller's agents, representatives, subcontractors, and suppliers at any tier.
- (i) "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.
- (j) "Work" means all required articles, materials, supplies, goods and services, including, but not limited to, technical data and Software constituting the subject matter of this Contract.

9. DISPUTES/JURY WAIVER

- (a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph 9(b) below. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by X5 MANUFACTURING.
- (b) X5 MANUFACTURING and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, X5 MANUFACTURING AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED; AND X5 MANUFACTURING AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.
- (c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, X5 MANUFACTURING AND SELLER EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. SELLER AND X5 MANUFACTURING FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.

10. ELECTRONIC CONTRACTING

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X5 MANUFACTURING and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither X5 MANUFACTURING nor SELLER shall contest the validity thereof, on the basis that this Contract, or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

11. EXPORT CONTROL

- (a) SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. SELLER shall obtain all required export licenses or agreements necessary to perform Seller's Work, as applicable.
- (b) Without limiting the foregoing, SELLER shall not transfer any export controlled item, data or services, to include transfer to "Foreign Persons" employed by or associated with, or under contract to SELLER or Seller's lower-tier suppliers, without the authority of a United States Government export license, export agreement, or applicable license exemption or exception. For purposes of this paragraph 11, "Foreign Persons" shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).
- (c) SELLER shall notify X5 MANUFACTURING if any export control laws or regulations applicable to SELLER restrict any use, sale, import or export by X5 MANUFACTURING of Work to be delivered under this Contract.
- (d) SELLER shall immediately notify the X5 MANUFACTURING Procurement Representative if SELLER is listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- (e) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- (f) Where SELLER is a signatory under a X5 MANUFACTURING export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the X5 MANUFACTURING Procurement Representative in the event of changed circumstances affecting said license or agreement.
- (g) SELLER shall be indemnify, hold harmless and, at X5 MANUFACTURING' election, defend X5 MANUFACTURING, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation

and/or settlement, and court costs, arising from or related to any act or omission of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this paragraph 11. SELLER shall include the requirements of this paragraph 11 in all agreements with lower tier subcontractors.

of SELLER and shall not for any purposes be considered employees or agents of X5 MANUFACTURING. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. X5 MANUFACTURING assumes no liability for SELLER personnel.

12. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

(b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any X5 MANUFACTURING benefit plan.

(c) SELLER personnel: (i) will not remove X5 MANUFACTURING or its Customer's assets from X5 MANUFACTURING or Customer's premises without X5 MANUFACTURING authorization; (ii) will use X5 MANUFACTURING or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use X5 MANUFACTURING computer networks and equipment, communications resources, programs, tools or routines as X5 MANUFACTURING agrees, all at Seller's risk and expense, and then only in compliance with applicable X5 MANUFACTURING policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. X5 MANUFACTURING may monitor any communications made over or data stored in X5 MANUFACTURING computer networks and equipment or communications resources.

(d) SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT X5 MANUFACTURING ELECTION, DEFEND X5 MANUFACTURING, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO ANY ACT OR OMISSION OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.

13. FOREIGN CORRUPT PRACTICES PROHIBITION

(a) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist X5 MANUFACTURING or SELLER in obtaining or retaining business.

(b) SELLER shall ensure that all lower tier subcontracts include this paragraph 13.

14. FURNISHED PROPERTY

(a) X5 MANUFACTURING may provide to SELLER property owned by either X5 MANUFACTURING or its Customer (Furnished Property). Unless previously authorized in writing by the X5 MANUFACTURING Procurement Representative, Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in X5 MANUFACTURING or its Customer as applicable. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify X5 MANUFACTURING of, any loss or damage to Furnished Property while in Seller's care, custody, or control. Without additional charge, SELLER shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.

(d) At X5 MANUFACTURING request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by X5 MANUFACTURING.

15. GRATUITIES/KICKBACKS PROHIBITION

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on Seller's behalf, to any employee of X5 MANUFACTURING with a view toward securing favorable treatment as a supplier.

16. INDEPENDENT CONTRACTOR RELATIONSHIP

(a) Seller's relationship to X5 MANUFACTURING shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between X5 MANUFACTURING and SELLER or X5 MANUFACTURING and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees

17. INFORMATION OF X5 MANUFACTURING

Information provided by X5 MANUFACTURING to SELLER remains the property of X5 MANUFACTURING. SELLER shall comply with all proprietary information markings and restrictive legends applied by X5 MANUFACTURING to anything provided hereunder to SELLER. SELLER shall not use any X5 MANUFACTURING provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of X5 MANUFACTURING.

18. INFORMATION OF SELLER

SELLER shall not provide any proprietary information to X5 MANUFACTURING without prior execution by X5 MANUFACTURING of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.

19. INSPECTION AND ACCEPTANCE

(a) X5 MANUFACTURING and its Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. X5 MANUFACTURING shall perform such inspections in a manner that will not unduly delay the Work. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

- (b) No such inspection (or election not to inspect) shall relieve SELLER of its obligations to furnish all Work in strict accordance with the requirements of this Contract. X5 MANUFACTURING final inspection and acceptance shall be at destination.
- (c) If SELLER delivers non-conforming Work, X5 MANUFACTURING may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- (d) When Work is not ready at the time specified by the SELLER for inspection, X5 MANUFACTURING may charge to the SELLER the additional cost of inspection.
- (e) X5 MANUFACTURING may also charge the SELLER for any costs of additional inspection and/or transportation when rejection makes reinspection necessary.
- (f) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

20. INSURANCE/ENTRY ON X5 MANUFACTURING OR CUSTOMER PROPERTY

- (a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of X5 MANUFACTURING or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation (with a waiver of subrogation in favor of X5 MANUFACTURING), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to X5 MANUFACTURING, and such other insurance as X5 MANUFACTURING may reasonably require. SELLER shall indemnify, hold harmless and, at X5 MANUFACTURING'S election, defend X5 MANUFACTURING, its directors, officers, employees, and agents from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury or death to any person arising from or related to the actions or omissions of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors while on the site(s) of X5 MANUFACTURING or its Customers. With respect to any injury, including, but not limited to, death, to employees of SELLER or Seller's agents, subcontractors or suppliers, Seller's obligation to indemnify and defend in accordance with this paragraph 20 shall apply regardless of cause. SELLER shall provide X5 MANUFACTURING thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. SELLER shall name X5 MANUFACTURING as an additional insured for the duration of this Contract. Insurance maintained pursuant to this paragraph 20 shall be considered primary as respects the interest of X5 MANUFACTURING and is not contributory with any insurance that X5 MANUFACTURING may carry. "Subcontractor" as used in this subparagraph 20(a) shall include Seller's subcontractors at any tier.
- (b) SELLER shall ensure that personnel assigned to work on X5 MANUFACTURING or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by X5 MANUFACTURING, Seller's personnel assigned to work on

X5 MANUFACTURING or Customer's premises shall while on X5 MANUFACTURING'S or Customer's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and/or (v) not solicit X5 MANUFACTURING employees for employment during business hours.

- (c) All SELLER personnel, property, and vehicles entering or leaving X5 MANUFACTURING or Customer's premises are subject to search.
- (d) SELLER shall promptly notify X5 MANUFACTURING and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to X5 MANUFACTURING or Customer's property, while on X5 MANUFACTURING'S or its Customer's premises.
- (e) X5 MANUFACTURING may, at its sole discretion, remove or require SELLER to remove any specified employee of SELLER from X5 MANUFACTURING or Customer's premises and request that such employee not be reassigned to any X5 MANUFACTURING premises under this Contract. Any costs arising from or related to removal of Seller's employee shall be borne solely by SELLER and not charged to this Contract.

21. INTELLECTUAL PROPERTY

Subparagraphs 21(a) and 21(b) are NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

- (a) SELLER agrees that X5 MANUFACTURING shall be the sole owner of all inventions, discoveries, improvements, technology, designs, works of authorship, mask works, technical information, data, Software, business information and other information, conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER and shall be used by SELLER solely in work for X5 MANUFACTURING. SELLER hereby assigns, conveys, transfers, and agrees to assign, convey or transfer all right, title, and interest in the foregoing to X5 MANUFACTURING, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at X5 MANUFACTURING'S request and expense, all assistance reasonably required and documentation necessary to perfect title therein in X5 MANUFACTURING. SELLER shall maintain and disclose to X5 MANUFACTURING written records of, and otherwise provide X5 MANUFACTURING with full access to, the subject matter covered by this paragraph 21 and that all such subject matter shall be deemed information of X5 MANUFACTURING and be subject to the protection provisions of the paragraph 17 entitled "Information of X5 MANUFACTURING." SELLER shall assist X5 MANUFACTURING, at X5 MANUFACTURING'S request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this paragraph 21.
- (b) SELLER grants and agrees that X5 MANUFACTURING shall have a nonexclusive, worldwide, irrevocable, paid-up, royalty-free license and right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information, conceived, developed,

generated or delivered in performance of this Contract. SELLER shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to X5 MANUFACTURING herein. SELLER acknowledges that the foregoing grant applies, without limitation, to pre-existing inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information contained in deliverable items provided by SELLER in accordance with this Contract.

- (c) SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- (d) SELLER shall indemnify, hold harmless and, at X5 MANUFACTURING election, defend X5 MANUFACTURING and its Customer from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, arising from or related to any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. If an injunction is obtained against X5 MANUFACTURING use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for X5 MANUFACTURING and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

22. MAINTENANCE OF RECORDS

- (a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles and good commercial practices to substantiate Seller's charges hereunder. SELLER shall retain such records for three (3) years from final payment of this Contract.
- (b) X5 MANUFACTURING shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained. Audit rights shall be available to X5 MANUFACTURING on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

23. NEW MATERIALS

Unless authorized in writing by the X5 MANUFACTURING Procurement Representative, all Work to be delivered hereunder shall consist of new materials, and shall not be used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

24. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract, and any lower tier subcontracts, shall accrue solely to the benefit of X5 MANUFACTURING. SELLER shall cooperate with X5 MANUFACTURING in the fulfillment of any foreign offset/countertrade obligations.

25. OPEN SOURCE SOFTWARE

Without the prior written approval of X5 MANUFACTURING, which X5 MANUFACTURING may withhold in its sole discretion, SELLER shall not incorporate any Open Source Software, including any source code governed by an Open Source license, into Work to be performed and/or delivered under this Contract. Before X5 MANUFACTURING will consider providing written approval for the incorporation of such Open Source Software, SELLER shall first identify all Open Source Software incorporated into Work to be performed and/or delivered under this Contract, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any licenses required to be accepted.

26. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the X5 MANUFACTURING Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be FOB Destination.

27. PARTS OBSOLESCENCE

X5 MANUFACTURING may desire to place additional orders for items purchased hereunder. SELLER shall provide X5 MANUFACTURING with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

28. PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net forty-five (45) days from the latest of the following: (i) X5 MANUFACTURING' receipt of Seller's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. X5 MANUFACTURING shall have a right of setoff against payments due or at issue under this Contract or any other contract between X5 MANUFACTURING and SELLER.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by X5 MANUFACTURING not to have been properly payable and shall also be subject to reduction for overpayments.
- (c) Payment shall be deemed to have been made as of the date of mailing X5 MANUFACTURING payment or electronic funds transfer.
- (d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

29. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special terms and conditions; (2) any master-type agreement (such as corporate, operating group, or blanket agreements); (3) representations and certifications; (4) these terms and conditions; (5) statement of work; and (6) specifications or drawings.

30. QUALITY CONTROL SYSTEM

- (a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to X5 MANUFACTURING and its Customers.

31. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by SELLER without the prior written approval of X5 MANUFACTURING Procurement Representative.

32. SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

33. STOP WORK ORDER

- (a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from X5 MANUFACTURING, or for such longer period of time as X5 MANUFACTURING and SELLER may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, X5 MANUFACTURING shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with paragraph 4 "Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

34. SURVIVABILITY

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- Applicable Laws
- Disputes/Jury Waiver
- Electronic Contracting
- Export Control
- Furnished Property
- Independent Contractor Relationship
- Information of X5 MANUFACTURING
- Insurance/Entry on X5 MANUFACTURING or Customer Property
- Intellectual Property
- Maintenance of Records
- Parts Obsolescence
- Release of Information
- Warranty

35. TERMINATION FOR CONVENIENCE

- (a) For specially performed Work: X5 MANUFACTURING may terminate part or all of this Contract for its convenience by giving written notice to SELLER. Upon receipt of such notice

SELLER shall immediately: (i) cease work; (ii) prepare and submit to X5 MANUFACTURING an itemization of all completed and partially completed deliverables and services; (iii) deliver to X5 MANUFACTURING deliverables satisfactorily completed up to the date of termination at the agreed upon prices in this Contract; and (iv) deliver upon request any Work in process. SELLER shall use reasonable efforts to mitigate X5 MANUFACTURING liability under this paragraph 34 by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses do not exceed the prices set forth in this Contract. X5 MANUFACTURING only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed in accordance with the Contract schedule prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of X5 MANUFACTURING, using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

- (b) For other than specially performed Work: X5 MANUFACTURING may terminate part or all of this Contract for its convenience by giving written notice to SELLER and X5 MANUFACTURING only obligation to SELLER shall be payment of Seller's standard restocking or service charge, not to exceed ten (10) percent of the price of the terminated Work.
- (c) In either case, SELLER shall continue all Work not terminated.
- (d) In no event shall X5 MANUFACTURING be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

36. TIMELY PERFORMANCE

- (a) Seller's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by X5 MANUFACTURING, X5 MANUFACTURING may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify X5 MANUFACTURING, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by X5 MANUFACTURING Procurement Representative.

37. WAIVER, APPROVAL, AND REMEDIES

- (a) Failure by X5 MANUFACTURING to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of X5 MANUFACTURING thereafter to enforce each and every such provision(s).
- (b) X5 MANUFACTURING approval of documents shall not relieve SELLER from complying with any requirements of this Contract.

- (c) The rights and remedies of X5 MANUFACTURING in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

38. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or six (6) months, whichever is longer, if SELLER is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer, if SELLER is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense. If repair or replacement or re-performance of Work is not timely, X5 MANUFACTURING may elect to return the non-conforming Work or repair or replace Work or re-procure the Work at Seller's expense. All warranties shall run to X5 MANUFACTURING and its Customers. Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.