



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 1 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

*The following terms and conditions apply to a purchase order placed by Nuvotronics Inc., a Delaware corporation with its principal place of business at 2305 Presidential Drive, Durham, North Carolina 27703 (“Buyer”).*

## 1. DEFINITIONS

The following terms shall have the meanings set forth below:

“Buyer” shall mean Nuvotronics Inc., a Delaware corporation with its principal place of business at 2305 Presidential Drive, Durham, North Carolina 27703

“Goods” shall mean the items sold by Seller to Buyer including, but not limited to, materials, supplies, equipment, hardware, systems, etc.

“On Time Delivery” (OTD) = No more than 5 days early and zero days late to PO Delivery Date

“Order” shall mean the purchase order form to which these General Terms and Conditions are annexed, and all other terms, conditions, schedules, appendices or other documents attached to the purchase order form or incorporated by reference therein.

“Seller” shall mean the person or entity entering into the order to provide the goods or perform the services specified therein for Buyer.

“Services” shall mean work, direction of work, technical information, technical consulting or other services, including but not limited to design services, analytical services, consulting services, construction management services, engineering services, quality assurance and other specialized services furnished by Seller to Buyer under the purchase order.

## 2. ACCEPTANCE

This Order expressly limits acceptance to the terms stated herein. Any additional or different terms proposed by the Seller are objected to and hereby rejected. Written acceptance by Seller of this Order, delivery of any of the Goods ordered, or the commencement of any work or the performance of any Services hereunder by Seller (including any work or services with respect to same) shall constitute acceptance by Seller of this Order and all of its terms and conditions. Any term or condition stated by the Seller in any proposal or in acknowledging or otherwise accepting this Order shall not become part of the Order unless specifically accepted in writing by Buyer.

## 3. TIME OF COMPLETION

Time is of the essence. The Services shall be started and performed and/or the Goods shall be delivered in accordance with On Time Delivery (OTD) as defined and the terms of any applicable specifications.

## 4. PACKING AND SHIPMENT

Shipment shall be in accordance with instructions specified in this Order and all Goods and material shall be suitably packed to secure lowest transportation costs and in accordance with the requirements of common carriers. No charge shall be made for boxing, crating, packing, storage, drayage, or other costs unless expressly incorporated on the face of this order. Buyer’s order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing list shall accompany each box or package shipment showing Order number and description of Goods and material. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists. Goods and materials shall be packed to assure against damage from weather or transportation. Shipments comprised in whole or in part, of hazardous materials shall comply with the applicable laws and regulations in the code of Federal Regulations, Title 49, and PL 93.633. Invoices shall be mailed in duplicate to the attention of Buyer’s Accounting Department immediately after each shipment. For shipments where the Buyer is responsible for payment of freight charges, the Seller shall not insure the shipment while in transit.

## 5. DELIVERY

Delivery shall be made strictly in accordance with the terms of this Order and the definition of OTD, unless advanced delivery is authorized in writing by Buyer. Any unauthorized advanced deliveries received may be stored at Seller’s expense, returned or offset against invoices received to include shipping charges. Seller shall be excused for default hereunder only if and to the extent that failure to so deliver results from causes beyond its reasonable control and without its, or its subcontractors, fault or negligence, and provided prompt written notice thereto is given to Buyer, and that such default is promptly cured by the seller.



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 2 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

## 6. TECHNICAL REPRESENTATIVES

The issuance of advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's or Seller's rights and obligations hereunder. The Seller shall not make any changes in the Goods or Services to be delivered, specifications and amendments thereto, or delivery requirements, or any other changes, unless authorized by an amendment to this Order.

## 7. INSPECTION

All Goods and Services covered by this Order shall be subject to final inspection and test by Buyer at destination designed herein notwithstanding prior payments, or inspection at source, it being expressly agreed that payment shall not constitute final acceptance. If inspection is required at Seller's facility, Seller shall provide, without additional cost to Buyer, all reasonable facilities therefore, and for the protection of Buyer's or its customers personnel while on Seller's premises.

## 8. SPECIAL TOOLS

If the price stated on the face of this Order includes jigs, dies, fixtures, tools, patterns, drawings, specifications, special test equipment or other special equipment and manufacturing aids used in the manufacture of the Goods, such items shall become the property of Buyer immediately upon their acquisition by Seller and Seller will identify such items as the property of Buyer as Buyer directs. Seller shall maintain such items in good condition and repair and from time to time replaced by Seller, all without expense to Buyer. Upon completion or termination of this contract such items will be delivered by Seller to Buyer or dispose of such items as Buyer may direct.

## 9. PRICE AND PAYMENT

**9.1** Unless otherwise provided herein, the price specified on this Order includes all taxes not expressly imposed by law on Buyer. Specifically, all taxes based upon gross or net income or receipts and imposed upon Seller shall be borne by Seller.

**9.2** Unless otherwise provided within this Order, compensation specified herein shall be due sixty (60) days after receipt of an acceptable invoice for completion of work in accordance with the terms of this Order and all applicable specifications and payable using an End of Accumulation Period batch payment process (EOAP). The EOAP batches payments into 30-day (monthly) accumulation periods beginning on the 1st Wednesday of each month All payments hereunder are expressly condition on a acceptance of the Goods or Services by Buyer; provided, however, that prior to final payment, Seller shall deliver to Buyer, if requested: (i) a release of all liens arising out of this Order or receipts in full covering all labor and materials for which a lien could be filed or a bond satisfactory to Buyer indemnifying it against such liens; and (ii) a release discharging Buyer, its successors and assigns, officers, employees and agents of and from all liabilities, obligations and claims arising under or by virtue of this Order. .

**9.3** If electric, civil or installation services are provided as part of this Order, Seller represents that it is familiar with the premises, nature of the work, and conditions relating to performance of the work, and that the compensation specified herein is based on an independent examination of the site and that Seller will make no claim for additional compensation if conditions encountered differ from those anticipated from such examination.

## 10. CANCELLATION/TERMINATION.

**10.1** Buyer may, for its sole convenience, cancel this Order in whole or in part at any time by giving written notice of its intention to do so. In the event of such cancellation, Seller shall be entitled to receive payment in accordance with the payment provisions of this Order for Services rendered, Goods delivered, or charges incurred prior to the effective date of termination. Seller shall not be paid for any work done or for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided after receipt of a notice of cancellation. In no event shall Buyer be liable for unabsorbed overhead or anticipatory profit or revenue on unperformed services.

**10.2** In addition to Buyer's right to cancel this Order for its convenience, Buyer may, by written notice of default to Seller, terminate the Order in whole or in part in the following circumstances:

(1) The Seller refuses or fails to perform its obligations under the Order, or fails to make progress so as to significantly endanger timely completion or performance of the Order in accordance with its terms, and Seller does not cure such default within a period of ten (10) days after receipt of written notice of default from Buyer or within such additional cure period as Buyer may authorize; or



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 3 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

(2) Reasonable grounds for insecurity arise with respect to Seller's expected performance and Seller fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the order) within ten (10) days after receipt of a written request by Buyer for adequate assurance; or

(3) Seller becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

**10.3** Upon receipt of a notice of cancellation or termination, Seller shall immediately discontinue all Services and work and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise and deliver immediately to Buyer all reports, plans, drawings, specifications, data, summaries or other material and information, whether completed or in process, accumulated by Seller in performance of the Order. In the event of termination for default, Seller shall not be entitled to receive any further payment until the work is finished and shall be liable to Buyer for all costs, fees and expenses incurred in finding a replacement supplier, including, but not limited to, the difference between the cost of cover to obtain the goods, work, or services from a substitute seller and this Order's price.

## 11. CHANGES

Buyer shall have the right to make changes by notice in writing as to the nature or extent of the work required by this Order, but no additional charge will be allowed unless authorized in writing by the Buyer. If any such change materially affects the completion date or cost of the work, Seller from its performance of the work hereunder as changed by Buyer but may be grounds for either of the parties to submit the issue to dispute resolution in accordance with the terms herein.

## 12. PAYMENT OF TAXES

As a condition of performance of this order, the Seller shall pay federal, state and local taxes incurred by the Seller and shall require their payment as appropriate by any subcontractor or any other persons in the performance of this Order. If applicable, satisfactory performance of this paragraph is a condition precedent to payment by Buyer under this Order.

## 13. OWNERSHIP OF WORK PRODUCT

Except for items that have preexisting copyrights, all exhibits, drawings, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other information prepared or furnished by Seller to Buyer in the performance of this Order (collectively "Work Product") shall become the property of Buyer and may be used by Buyer for any purpose without additional compensation to the Seller. Seller hereby grants Buyer an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to use all proprietary and confidential information and other intellectual property that may be incorporated into any of Seller's Work Product. Seller agrees not to use, reproduce, or disclose any data, designs, patterns, or tools or equipment or any other information supplied to it by Buyer, without express written permission by Buyer. Seller hereby represents and warrants to and for the benefit of Buyer and its successors and assigns that no part of the Work Product, Services or Goods will infringe any patent rights or copyrights or utilize any proprietary, confidential or trade secret information or other intellectual property for which Seller does not have the unqualified right to grant Buyer the license and sublicensing rights referred to above. Seller shall defend, indemnify and hold harmless Buyer, its successors and assigns, and their respective representatives, agents and employees from and against, any and all claims, defenses, obligations and liabilities which they may have or acquire under or with respect to any patent, copyright, trade secret, proprietary or confidential information, or any other form of intellectual property that may be asserted by Seller or any other person which arises out of, results from or is based upon the manufacture, use or sale by Buyer or any of its successors or assigns of any of the Work Product. Buyer shall have the right to select its legal counsel and control its defense in any litigation resulting from any such claim.

## 14. STANDARD OF PERFORMANCE.

Seller shall perform the Services with care, skill and diligence in accordance with normally accepted industry standards and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications and other items and services furnished under this Order. Seller shall comply with all applicable federal, state and local laws and ordinances, codes, and regulations in performing the Services and supplying the Goods. If any failure to meet the foregoing standard of performance appears within one (1) year after the Goods or Services are accepted by Buyer, Seller shall, at a minimum, reperform the work at no cost to Buyer and shall reimburse Buyer for any additional costs that may be incurred by Buyer or any of its contractors or subcontractors as a result of such substandard work. If Seller should fail to reperform the work, or if Buyer determines that Seller will be unable to correct substandard services before the time specified for



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 4 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

completion of the project, if any, Buyer may correct such unsatisfactory work itself or by the use of third parties and charge Seller for the costs thereof. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

## 15. WARRANTY.

Seller warrants that any Goods provided under this Order (a) shall be of good quality and free from all defects and deficiencies in workmanship, material and design, and suitable for the purposes intended by Buyer as disclosed to Seller; (b) shall be new; (c) shall be free from all liens, claims, demands, encumbrances and other defects in title; (d) shall conform to the specifications, if any, stated in this Purchase Order; and (e) to the extent designed by Seller, such design to be free from defects. If the Goods provided hereunder do not (in Buyer's reasonable opinion) comply with this warranty, then at Seller's expense Buyer may require Seller to correct or replace such Goods so that they conform with this warranty or return the Goods for a full refund. If Seller fails to repair or replace any Goods after being so instructed by Buyer, Buyer may, in addition to the foregoing, replace or correct the same and charge Seller its costs thereby incurred or terminate this Order for default. Seller shall honor or, if applicable, transfer to Buyer all guarantees and warranties offered by any third-party manufacturer of the Goods. The warranties of Seller, together with any service warranties and guarantees, shall run to Buyer and/or its customers, and shall survive inspections, acceptance, and payment. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

## 16. COUNTERFEIT PARTS

(a) Seller shall take every reasonable step to ensure that only new and authentic materials are used in all Goods delivered to Buyer. Seller may only purchase parts directly from Original Component Manufacturers (OCMs) and OCM franchised distributors. Use of product that was not provided by these sources is not authorized without Buyer's express, prior, and written consent. Seller must present compelling support for its request (e.g., OCM documentation that authenticates traceability of the parts), and include in its request all actions to ensure that the parts thus procured are authentic/conforming parts.

(b) Buyer shall impound any suspect counterfeit parts furnished by Seller under this Order and notify Seller of this action. Seller shall promptly replace such suspect counterfeit parts with parts acceptable to Buyer, and Seller shall be liable for all costs relating to the removal and replacement of those parts (including, without limitation, Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's Work after counterfeit parts have been exchanged). At Buyer's request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its customer for further investigation. Seller agrees that any Government or quasi-Government directive (e.g., GIDEP Alert) shall be deemed definitive evidence that Seller's parts contain counterfeit parts.

(c) Whenever Seller shall receive, either before or after shipment of Goods under this Order, notification that any of those Goods (including any component, part, or material thereof), is the subject of a GIDEP Alert, Seller shall promptly furnish such information to Buyer. Seller shall be responsible for ensuring the appropriate failure experience data report(s) (e.g., GIDEP Alert, GIDEP Safe Alert, GIDEP Problem Advisory) are generated whenever failed or non-conforming items, available to other buyers, are discovered during the course of performing this Order.

(d) Seller understands and acknowledges that providing counterfeit parts to Buyer in support of a U. S. Government contract may potentially constitute fraud under applicable U.S. statutes and regulations.

## 17. SECURITY

Seller warrants and represents, as applicable, that any and all Goods and Services provided under this Order shall conform to the most recent laws, regulations and industry standards for data security and privacy ("Security Standards"). Seller shall immediately inform Buyer if at any point Seller becomes aware of or reasonably suspects that the Goods or Services have been compromised, breached or no longer meet applicable Security Standards. For the avoidance of doubt, Seller agrees to indemnify Buyer for any breach of this provision in accordance with the Indemnification section herein.

## 18. INDEMNIFICATION.

Seller shall defend, indemnify and hold Buyer harmless from and against all claims and actions asserted by a third party (or parties) and related damages, losses and expenses, including attorney's fees, arising out of or resulting from Seller's, its employees, subcontractors, or agents, performance or neglect to perform in accordance with the terms hereunder; provided, however, that Seller's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole independent negligence of Buyer.



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 5 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

**19. LIMITATION OF LIABILITY**

BUYER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES WHICH MAY BE SUFFERED BY SELLER WITH RESPECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF PRESENT OR PROSPECTIVE PROFITS, LOSS OF INCOME OR REVENUE, EXPENDITURES, INVESTMENTS OR COMMITMENTS, OR LOSS OF BUSINESS OR DATA, WHETHER IN AN ACTION IN CONTRACT, EQUITY, NEGLIGENCE, INTENDED CONDUCT, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND STRICT LIABILITY IN TORT), EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AGGREGATE LIABILITY OF BUYER FOR CLAIMS ASSERTED UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL PURCHASE ORDER PRICE.

**20. INSURANCE.**

Seller shall procure and maintain, at its expense, the following types of insurance, in amounts at least equal to those specified below, issued by companies meeting Buyer's approval: (i) Worker's Compensation Insurance, including occupational diseases providing for the payment of statutory benefits as required by law, covering all persons employed by the Seller on work under the Order, Employers' Liability Insurance with a minimum limit of \$500,000; (ii) Comprehensive General Liability Insurance providing coverage with \$1,000,000 single limit for bodily injury and property damage each occurrence, such coverage to include contractual liability and products (including completed operations); and (iii) Comprehensive Automobile Liability Insurance providing coverage with limits as specified for Comprehensive General Liability Insurance. (b) Buyer may revise the types and limits of insurance at any time during the period of this Order. (c) Seller shall require each subcontractor to provide and maintain Statutory Worker's Compensation Insurance, Employer's Liability Insurance in the minimum amount of \$100,000, and other types and limits of insurance requested by Buyer, covering all persons employed by such subcontractors on work to be performed under this Order. (d) Seller shall furnish Buyer with certificates issued by the insurance company or companies issuing the insurance policies required by this provision (other than subcontractor's policies) prior to commencement of work. Such certificates shall provide that (i) Buyer is a named additional insured; and (ii) that written notices shall be sent to Buyer at least forty-five (45) days prior to any cancellation or change in any such policy.

**21. COMPLIANCE WITH APPLICABLE LAWS**

Seller agrees to observe and comply with all applicable Federal, State and Local laws, rules and regulations in the performance of this Order.

**22. CHOICE OF LAW / DISPUTES**

The validity, interpretation and performance of this Order shall be governed by and construed under the laws of the State of California, excluding its choice of law principles. The parties expressly waive California Civil Code Section 1654, which states "in cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Any controversy or claim arising out of or relating to this Order or the reach, termination, or invalidity thereof, shall be settled by binding arbitration to be conducted in San Diego, California, USA, in accordance with the commercial rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator appointed by the AAA trained in the law who shall have experience in arbitration of similar disputes. The language of the arbitration shall be English. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**23. FORCE MAJEURE**

The parties shall not be liable to each other for any loss, damage or other claim whatsoever to the extent arising out of a delay, failure or inability to perform any obligation(s) contained in the purchase agreement/Order that is beyond a party's reasonable control. Such causes may include, but are not limited to, any act of God, pandemic, epidemic, fire, flood, lightning, earthquake, tornado, labor disputes, transportation delays, war, terrorism, revolution, riot, sabotage, act of the public enemy, explosion, embargo, confiscation or act or failure to act of any government, agency, board or commission. Lack of finances shall in no event be deemed to be a cause beyond a party's control.

**24. BUYER'S RIGHTS NOT WAIVED BY PAYMENT.**

No payment made by Buyer shall be considered as acceptance of satisfactory performance of Seller's obligations under this Order. Nor shall any payment be construed as acceptance of substandard or defective work or as relieving Seller from its full responsibility under the Order.



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 6 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

## 25. NONWAIVER

A party's delay or failure to insist upon strict performance of any of the provisions of this Order, to exercise any rights or remedies provided by this Order or by law, or to notify the other party of any breach of or default under this Order shall not release or relieve the breaching or defaulting party from any of its obligations or warranties under this Order and shall not be deemed a waiver of any right to insist upon strict performance of this Order or any of the rights or remedies as to any subject matter contained herein; nor shall any purported oral modification or rescission of this order operate as a waiver of any of the provisions of this Order. The rights and remedies set forth in any provision of this Agreement are in addition to any other rights or remedies afforded the non-breaching or non-defaulting party by any other provisions of this Order, or by law.

## 26. SEVERABILITY

If any one or more of the provisions contained in this Order shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Order, but this order shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## 27. HEADINGS

The headings of sections and paragraphs of this Order are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

## 28. CONFLICT OF INTEREST

Seller shall act to prevent any actions or conditions which could result in a conflict with Buyer's best interests. This obligation shall apply to the activities of Seller's employees and agents in their relationships with Buyer's employees, their families, vendors, subcontractors and third parties accomplishing work under this order.

## 29. PUBLICITY

Seller shall not release any information for publication or advertising purposes relative to this Order or to the material, equipment and/or services furnished under this Order without the prior written consent of the Buyer.

## 30. RECORDS

If this Order is on a basis other than lump-sum fixed price, (a) Seller shall maintain complete and accurate books and records in accordance with generally accepted accounting principles and practices and in sufficient detail to reflect the actual cost of performing the work under this Order; (b) Seller shall furnish Buyer with statements of its actual cost at such times and in such form and detail as Buyer may request; (c) Buyer or its representatives may inspect and audit any and all of Seller's books, records and accounts relating to this Order at all reasonable times during performance thereof and for a period of one year after payment of the final invoice; and (d) if required by Buyer, Seller's invoices shall be certified by an authorized representative of Seller in a manner to be prescribed by Buyer.

## 31. PERMITS AND LICENSES

The Seller shall, at its own expense, obtain all applicable and necessary permits, licenses, certifications and any other similar authorizations required, or which may become required by a relevant government body for its performance hereunder.

## 32. OBSERVANCE OF RULES.

The Seller's personnel performing work or services hereunder on Buyer's premises shall observe all policies, fire prevention, security, and safety rules in force at the site of the work.

## 33. NO THIRD-PARTY BENEFICIARY RIGHTS.

No provision of this Order shall in any way inure to the benefit of any third parties (including the public at large) so as to constitute any such person a third-party beneficiary of the Order or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

## 34. KEY PERSONNEL CHANGES.

As may be specified in this Order, Seller shall secure prior written approval from Buyer for any changes of key personnel assigned to perform services under this order. Buyer reserves the right to reject any of Seller's employees whose qualifications and/or experience in Buyer's good faith and reasonable judgment do not meet the standards necessary for the performance of the services required under this Order.



# Nuvotronics, Inc. – Terms and Conditions for Goods and Services

<u>No.</u> F-352	<u>Page</u> Page 7 of 7
<u>Rev. #</u> -	<u>Rev. Date</u> 29 Nov 2023

## 35. INDEPENDENT CONTRACTOR

It is understood that in the performance of this Order Seller is acting solely as an independent consultant and contractor and not as an employee of Buyer. Further, nothing in this Order shall be construed or applied to create a relationship of partners, agency, joint ventures or of employer and employee. Since Seller is to be an independent contractor, it is understood that Buyer has no obligation under State or Federal laws regarding employee liability and Buyer's total commitment and liability in regard to this arrangement is Contractor's fee and expenses limited as described above.

## 36. SUBCONTRACTING

Seller shall not subcontract for the procurement of any Goods or Services, in whole or in part, covered by this Order without first securing the written approval of Buyer.

## 37. SET-OFF

All amounts paid or to be paid hereunder to Seller are subject to set off or recoupment for any present or future claim or claims which Buyer may have against Seller whether under this Order or otherwise.

## 38. ASSIGNMENT

Seller agrees that Seller may neither assign its rights nor delegate its duties under this Order without the prior written consent of Buyer, such consent not to be unreasonably withheld. Seller shall furnish Buyer with two signed copies of any assignment which is consented to by Buyer. Payment to an assignee in accordance with any such assignment shall be subject to set off or recoupment for any present or future claim or claims of any nature which Buyer may have against Seller. Buyer reserves the right to make without notice to the assignee direct settlements and/or adjustments in price with Seller under the terms of this Order notwithstanding any assignment of monies due or to become due hereunder.

## 39. ENTIRE AGREEMENT

This Order represents the entire and integrated agreement between Buyer and the Seller and supersedes all prior negotiations, representations, or agreements, either written or oral. This Order may be amended only by a written instrument signed by both Buyer and the Seller.

## 40. CORPORATE SOCIAL RESPONSIBILITY

Buyer complies with various laws and regulations to ensure a conflict-free and slavery-free supply chain, including the 2010 USA Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502 and the California Transparency in Supply Chains Act of 2010. To that end, Buyer requires its suppliers to use due diligence to comply with these legal requirements and to provide product which has neither been manufactured, created, nor assembled using slavery or forced labor; any of the worst forms of child labor, forced or indentured child labor, and child labor that is exploitative and/or interferes with a child's ability to participate in required schooling; nor directly or indirectly funds non-state armed groups. The term "conflict minerals" refers to tantalum, tin, tungsten, and gold or their derivatives regardless of their country of origin. Upon request, Seller shall provide a Conflict Mineral Supply Chain Status for products sold to Buyer. Seller shall advise Buyer if any conflict minerals sold to Buyer are identified to have directly or indirectly funded non-state armed groups. Upon request, Seller shall provide Buyer with evidence that products sold to Buyer by Seller have not been manufactured, created, or assembled using slavery or forced labor.

## 41. COVID COMPLIANCE CLAUSE

The Supplier shall comply with Cubic's workplace safety requirements, including the Cubic Vaccine Policy for Contracts and related SUBCONTRACTORS/ VENDORS CERTIFICATION OF CUBIC'S MANDATORY COVID-19 VACCINATION POLICY [\[CRP-EHS-01\]](#) and all other applicable laws relating to workplace safety and COVID-19 including Executive Order (EO) 14042 on Ensuring Adequate COVID Safety Protocols for Federal Contractors, DFARS 252.223-7999 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O009) and FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Oct 2021) (Deviation). The Supplier shall also comply with such other and further protocols and rules as may be announced by Cubic from time to time or required by additional US Government regulations, EOs or under the guidance of the Safer Federal Workforce Task Force.