



GEA Direct Material Conditions of Purchase

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**GEA DIRECT MATERIAL CONDITIONS OF PURCHASE
GE APPLIANCES**

1. ACCEPTANCE AND TERMS AND CONDITIONS:

(a) Supplier agrees to be bound by and to comply with Buyer's Blanket Purchase Agreement ("BPA"), Purchase Order ("PO"), Material Arrival Schedule ("MAS") or Blanket Release ("Release") issued hereunder (each individually or together referred to herein as an "Order"), these Conditions of Purchase, including any supplements thereto, and all specifications and other documents referred to in an Order or herein, all of which are incorporated herein by reference, and are collectively referred to as the "Contract". Written acceptance or commencement of performance of the work specified in this Order shall be deemed acceptance thereof and of this Contract. This Contract does not, expressly or impliedly, constitute an acceptance by Buyer of any Supplier offer to sell, quotation, or proposal and reference in this Contract to any such Supplier offer shall neither constitute a modification of any of the terms and conditions of this Contract nor any intent or indication by Buyer to be bound by any such offer, quotation or proposal. Each of Buyer and Supplier may be referred to as a "Party" or together as the "Parties". **UNLESS OTHERWISE AGREED TO IN WRITING, THIS CONTRACT CONSTITUTES THE SOLE AGREEMENT BETWEEN BUYER AND SUPPLIER RESPECTING GOODS AND SERVICES SPECIFIED IN AN ORDER AND BUYER HEREBY OBJECTS TO AND REJECTS ANY ADDITIONAL OR DIFFERENT TERMS.**

(b) Supplier agrees to participate in all of Buyer's current and future electronic commerce applications and initiatives upon Buyer's request. For contract formation, administration, changes and all other purposes, each electronic message sent between the Parties within such applications or initiatives will be deemed: (i) "written" and a "writing"; (ii) "signed" (in the manner below); and (iii) an original business record when printed from electronic files or records established and maintained in the normal course of business. The Parties expressly waive any right to object to the validity, effectiveness or enforceability of any such electronic message on the ground that a "statute of frauds" or any other law or rule of evidence requires written, signed agreements. Between the Parties, any such electronic documents may be introduced as substantive evidence in any proceedings as business records as if originated and maintained in paper form. Neither Party shall object to the admissibility of any such electronic document for any reason including without limitation, the hearsay (FRE 802) and best evidence (FRE 1002) rules. By placing a name or other identifier on any such electronic message, the Party doing so intends to sign the message with his/her signature attributed to the message content. The effect of each such message will be determined by the electronic message content and by Delaware law, excluding any such law requiring signed agreement or otherwise in conflict with this paragraph.

2. APPLICABLE LAW: Supplier and Buyer hereby consent to the sole application of the internal substantive laws of the State of Delaware, U.S.A., without giving effect to its conflict or choice of law rules. **The United Nations Convention on the International Sale of Goods shall not apply.**

3. BUYER'S COMMITMENT UNDER AN ORDER:

(a) Buyer is not committed to purchase any products, equipment and/or services (the "Products") except for Products in quantities specified as follows (each a "Commitment"):

- (i) BPA – those Product quantities:
 - a. indicated on POs and/or Releases issued against the BPA; and
 - b. on Buyer's forecast under the BPA that fall within the "Commitment Period";



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- (ii) MAS – the first three (3) columns of the MAS (Finished Product, Work In Process (“WIP”) and Raw Material); or
- (iii) PO – the quantity of Products identified.

Under no circumstances shall Buyer be under an obligation to Supplier for Products not specifically covered by an Order in an amount in excess of the Commitment.

(b) Supplier shall sell Products to Buyer pursuant to this Order. Unless otherwise agreed to in writing, Supplier shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the Commitment of an Order. Products shipped in advance or in excess of such requirements may be returned to Supplier at Supplier's risk and expense, and Supplier shall reimburse Buyer for all costs incurred for warehousing, storage and handling of said Products.

4. CHANGES:

(a) Buyer shall have the right at any time to make changes of any kind (including quantity and Buyer's specifications) to this Contract. If Supplier believes that such change affects the price or delivery date for such Products, Supplier shall so notify Buyer in writing (with adequate supporting documentation) within five (5) working days after receipt of Buyer's change notice and an equitable adjustment may be considered by Buyer. Supplier's request for any adjustments shall be waived unless submitted within such five (5) day period. If released in writing by Buyer, Supplier shall comply with and perform such change during the time Supplier and Buyer require to mutually agree upon an equitable adjustment, if any.

(b) Supplier shall notify Buyer in writing in advance of any and all changes to the Product or its specifications or composition, and of all process changes, plant moves, equipment changes or moves, or sub-supplier changes, and no such change shall occur without Buyer's prior written consent. Supplier shall give Buyer prior written notice of any such change and Buyer may conduct such audits, surveys and testing as necessary to determine the impact of such proposed change on the Product. All such changes shall be documented by Supplier by following change procedures issued by Buyer from time to time. It shall be the responsibility of Supplier to obtain, complete and submit proper documentation regarding any and all changes. Any such change made without the explicit written consent of Buyer shall constitute a material breach, and Buyer shall have the right to terminate this Contract immediately and without prior notice to Supplier.

5. BUYER'S PROPERTY:

(a) Buyer assumes no obligation to furnish Supplier with any tools, equipment or materials for the performance of Supplier under this Contract except as may be expressly provided otherwise; however, if Supplier or its subcontractors or the employees, representatives, agents or invitees of any of them, make use of any tools, equipment or materials owned by Buyer, such tools, equipment or materials shall be accepted in “as is” condition, without any warranty whatsoever, express or implied, and Supplier shall indemnify and save harmless Buyer (including its directors, officers, employees and agents) from and against any and all loss or liability (including reasonable attorneys' fees and court costs) relating to or in respect of any failure of such tools, equipment and/or materials to be suitable for their intended purpose or for any damage, destruction, injury or death arising from the use of such tools, equipment and/or materials.

(b) Any and all tools, equipment, material, and components furnished to Supplier by Buyer or specially paid for by Buyer and any replacements thereof or attachments thereto shall be and remain the



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property of Buyer. Such property shall be adequately identified by Supplier if held in the U.S. as “*Property of GE Appliances*” or if held outside the U.S. as property of Buyer’s designated affiliate, stored separately from Supplier’s property, and properly maintained by Supplier. Supplier shall not substitute any other property for Buyer’s property and shall not use such property except in filling Buyer’s orders. Buyer’s property while in Supplier’s custody or control shall be held at Supplier’s risk and shall be kept free of encumbrances and insured by Supplier, at Supplier’s expense, in an amount equal to the replacement cost with loss payable to Buyer. Such property shall be subject to removal at Buyer’s request, in which event Supplier shall prepare such property for shipment and shall redeliver such property to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted, all at Supplier’s expense.

6. BUYER’S RIGHT TO ENTER PREMISES: Supplier shall permit and obtain from its sub-suppliers permission for Buyer to have reasonable access to the sites where the work under this Contract is performed in order to assess (a) work/Product quality, (b) conformance with Buyer’s specifications and requirements, and (c) conformance with Supplier’s representations, warranties, certifications and covenants under this Contract. As used in this Contract, “**Sub-Suppliers**” means Supplier’s sub-suppliers and Supplier’s service providers. This provision shall include but not be limited to the right to inspect and test all Products, tooling, and workmanship and to inspect and audit Supplier’s and its sub-supplier’s facilities and performance. The failure to audit, test or inspect by Buyer will neither relieve Supplier of any liability for defects or Contract noncompliance, nor create any liability on the part of Buyer.

7. DEFAULT AND REMEDIES: Should Supplier breach this Contract, in whole or in part, Buyer shall have the right to terminate this Contract, in whole or in part, pursuant to Section 8 below, without further obligation or liability and shall have all remedies available to it at law or in equity.

8. TERMINATION, CANCELLATION AND SUSPENSION:

(a) This Agreement may be terminated as follows:

- (i) without cause with fifteen (15) calendar days’ prior written notice to Supplier by Buyer; or
- (ii) by either Party thirty (30) days after written notice to the other Party of breach or default of any material obligations hereunder, which default has not been cured within said thirty (30) calendar days after receipt of notice of such default or within such additional cure period as the non-defaulting Party may authorize in writing; or
- (iii) effective immediately, in the event the other Party becomes insolvent or is subject to similar bankruptcy or reorganization proceedings under applicable law, or in the event of an assignment or other arrangement for the benefit of the other Party’s creditors.

Buyer shall retain any and all fully vested rights that exist on the effective date of this Agreement’s termination.

(b) Buyer also reserves the right to modify an Order hereunder, or suspend work or shipments of all or any part of Products, without cause or default on the part of Supplier.

(c) In the event of any termination, modification or suspension by Buyer, Supplier shall immediately stop all work under this Contract, cause any of its sub-suppliers to cease such work, minimize charges related to the Products, including diverting materials to other uses, comply with any instructions from Buyer



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as to work in progress and take such actions as may be necessary to protect Buyer's property in the possession or control of Supplier or its sub-suppliers. If Buyer's termination, modification and/or suspension hereunder without cause or default of Supplier causes additional cost to Supplier not due to Supplier's fault or neglect, a mutually agreeable adjustment may be made provided that a written claim (with adequate supporting documentation) by Supplier is asserted within thirty (30) days from the date of termination or modification or, in the case of a suspension, from the date of a start order for resumption of work. In no event shall Buyer's obligation hereunder exceed that which Buyer would have had to Supplier in the absence of a termination, modification or suspension. Buyer shall not be obligated to purchase any Supplier raw materials or to pay any Supplier termination charges. Buyer shall not be liable for any work done after notice of termination, modification or suspension is given or for costs that reasonably could have been avoided by Supplier or its sub-suppliers. Buyer shall not, by reason of the termination, modification, suspension, expiration or non-renewal of this Contract, be liable to Supplier for any damages or injunctive relief of any kind, including but not limited to, compensation, reimbursement or damages on account of loss of prospective profits on anticipated sales, or on account of expenditures, investments, losses or commitments in connection with the business or goodwill of Supplier. **IN NO EVENT SHALL BUYER BE LIABLE TO SUPPLIER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES OR LOST PROFITS.**

9. DELIVERY:

(a) Time is of the essence under this Contract. If Supplier for any reason anticipates that deliveries will not be made as required, it shall immediately give Buyer written notice setting forth the cause(s) of the anticipated delay. If delay or inability to perform arises from interruption of supply or scarcity of raw materials or parts used by Supplier, Buyer's orders shall be given priority in production scheduling. Buyer reserves the right, without liability, to take any or all of the following actions if for any reason Supplier does not substantially comply with its delivery obligations: (i) assess a late delivery fee of no more than one percent (1%) per day of the invoice amount of late deliveries of Products, (ii) submit a revised Order, (iii) terminate the Order, or this Contract and purchase the Products elsewhere, and Supplier shall be liable for any resultant loss, (iv) direct Supplier to ship by a method other than that indicated in this Contract, work such overtime or do whatever is necessary to avoid the delay, and pay any and all transportation charges, concessions to Buyer's customers, liquidated damages, and any other costs and expenses incurred by Buyer, or (v) seek specific performance of Supplier's obligation to deliver.

(b) Supplier shall use only Buyer-approved carriers and forwarders for transportation of Products. Supplier shall reimburse Buyer for all costs and expenses incurred by reason of shipment by an unapproved method or carrier.

(c) Unless otherwise stipulated in writing, title to and risk of loss of the Products shall pass to Buyer at Buyer's dock or at the dock of Buyer's designee, upon completion of unloading of the Products and Supplier shall bear the risk of loss of the Products until such delivery. If the Products are to be delivered in installments, title to each installment shall pass in the same way as provided in this Contract.

(d) The Products shall be suitably packed and/or protected for shipment and transportation, the cost for which shall be borne by Supplier or Supplier's representative. Each package shall bear Buyer's order number and be accompanied by a readily accessible packing note detailing the contents and conforming with any applicable importation regulations. Failure of Supplier to comply with the shipping and transportation instructions or to provide sufficient packing shall render Supplier liable for any resulting damage and/or expense incurred by Buyer.



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10. FORCE MAJEURE: Neither Party shall be liable for any failure or delay in performance caused by or due to acts of God, war, riot, terrorism, sabotage, accident or casualty. If Supplier is unable to perform for more than thirty (30) days due to any such circumstances, Buyer may cancel this Contract without penalty. Failure or delay due to labor strike or other form of work stoppage, delay of Supplier's sub-suppliers or scarcity of materials or parts shall not excuse Supplier's performance.

11. COMPLIANCE WITH LAWS:

(a) Supplier shall comply with, and shall ensure that all of its sub-suppliers shall comply with, all applicable laws and ordinances and all orders, rules, and regulations issued thereunder (including anything required thereby to be included or incorporated by reference or operation of law in this Contract). From time to time, at Buyer's request, Supplier shall provide certificates to Buyer relating to Supplier's compliance with any applicable legal requirements or to update the representations, warranties, certifications or covenants contained in this Contract, in each case in form and substance satisfactory to Buyer.

(b) Acceptance of this contract by Supplier shall be deemed a certification that Supplier is in compliance with any and all requirements imposed by law, regulation or Executive Order upon prime contractors or subcontractors under contract with any governmental agency, including the Equal Opportunity Clause set forth in 41 CFR Chapter 60-1.4, the Affirmative Action Clause regarding Special Disabled Veterans and Veterans of the Vietnam Era set forth in 41 CFR Chapter 60-250.5(a), the Affirmative Action Clause regarding Workers with Disabilities set forth in 41 CFR Chapter 60-741.5(a) and any other provisions of contractual clauses required by the OFCCP as set forth in 41 CFR Chapter 60, as well as any Executive Orders as now or hereafter issued, amended or codified which requirements are incorporated herein by reference. By accepting or performing this Contract Supplier certifies in accordance with 41 CFR part 60 - 1.8 with respect to orders exceeding \$10,000 and not otherwise exempt from the Equal Opportunity Clause (E.O. 11246 as amended by E.O. 11375) that it does not and will not maintain segregated facilities or permit its employees to perform services at any location under its contract where segregated facilities are maintained, and that it will obtain similar certification before the award of any non-exempt contract. Executive Order 13201 Compliance: Supplier agrees to comply with the provisions of 29 CFR 470. Supplier further agrees to provide Disadvantaged Business Enterprises (including but not limited to minority and women-owned businesses) utilization and demographic data upon request. Where Products or services being procured from Supplier are in support of a United States Government end-user, Supplier agrees to comply with the terms and conditions of the most current version of FAR 52.212-5(e) or 52.244-6 to the extent those terms are applicable to "*commercial off-the shelf*" or "*commercial Item*" and as appropriate for the dollar value of this Contract.

(c) Supplier represents, warrants, certifies and covenants that Products will be produced and provided, in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(d) Supplier represents, warrants, certifies and covenants that it is not involved in human trafficking and none of the Products supplied hereunder have been or will be produced or supplied (by Supplier or its sub-suppliers) utilizing forced, indentured, convict or child labor or utilizing the labor of persons in violation of the minimum working age law in the country of manufacture or in any jurisdiction in which services are provided, or in violation of minimum wage, hour of service or overtime laws of the country of manufacture or provided services.

(e) Supplier represents, warrants, certifies and covenants that it has adopted policies and established systems to procure tantalum, tin, tungsten and gold from sources that have been verified as



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conflict free, and to provide to Buyer upon request supporting data regarding its supply chain for tantalum, tin, tungsten, and gold, on a platform to be designated and/or provided by Buyer. Supplier further agrees to report to Buyer any changes to the source, quantity or chemistry of any such material and to the use of such material pursuant to the Change provisions set forth in Section 4(b) above.

(f) Supplier shall comply with all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Contract.

(g) Supplier represents, warrants, certifies and covenants that it has established an effective program to ensure that the activities of its sub-tier suppliers in regards to the Products sold or otherwise transferred to Buyer hereunder will be in compliance with Section 11(a)-(f) above and Section 12 below

(h) If Buyer determines that any of Supplier's representations, warranties, certifications or covenants contained in this Contract is incomplete or untrue, Buyer shall have the right to immediately require Supplier to bring Products into conformity with its representations, warranties, certifications and covenants or, at Buyer's sole option, to terminate this Contract without further compensation to Supplier. In addition, Supplier shall compensate Buyer for any damages suffered by Buyer as a result of any untrue or incomplete representation, warranty, certification or covenant of Supplier, or breach thereof hereunder by Supplier, and Supplier shall defend, indemnify, release and hold harmless Buyer, its directors, officers, employees, agents, representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities resulting from or in any way connected with Supplier's breach of any of the representations, warranties, certifications or covenants contained in this Contract. Supplier agrees to include this clause in any subcontracts issued hereunder. The provisions of this Section 11 shall survive any termination or expiration of this Contract.

12. ENVIRONMENTAL, HEALTH, SAFETY AND SECURITY REQUIREMENTS:

(a) Supplier represents, warrants, certifies and covenants that it shall perform all activities required under this Contract in compliance with all applicable national, EU, state/provincial and local labor, environmental, health and safety laws and regulations.

(b) For all Products and other materials sold or otherwise transferred to Buyer under this Contract, Supplier shall provide all relevant information including without limitation, safety data sheets in the language and the legally required format of the location to which the Products will be shipped and mandated labeling information, required pursuant to applicable requirements such as: (i) Occupational Safety and Health Act ("OSHA") regulations codified at 29 CFR 1910.1200, or (ii) Regulation (EC) No 1907/2006 ("REACH") or EU Directive 67/548/EC, as amended, if applicable, and (iii) any other applicable law, rule or regulation, or any similar requirements in any other jurisdictions to which Buyer informs Supplier the goods are likely to be shipped, whether or not the standard applies to the activities of Supplier.

(c) Supplier represents, warrants, certifies and covenants that each chemical substance constituting or contained in the Products sold or otherwise transferred to Buyer (including packing) hereunder is on the list of chemical substances compiled and published by (i) the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 USC Section 2601 et seq.) as amended; (ii) the European Inventory of Existing Commercial Chemical Substances ("EINECS") or the European List of Notified Chemical Substances ("ELINCS"); or (iii) any equivalent lists in any other jurisdictions to which



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Buyer informs Supplier or Supplier knows the Products will likely be shipped to or through; or that Supplier is exempt from the foregoing lists, in which case Supplier shall provide adequate documentation of the validity of the claimed exemption. Supplier further represents, warrants, certifies and covenants that each chemical substance constituting or contained in Products sold or otherwise transferred to Buyer hereunder is manufactured, imported, used and supplied in full compliance with the provisions REACH, and is pre-registered or registered, if required, under REACH, is not restricted under Annex XVII of REACH and if subject to Authorization under REACH Annex XIV, is authorized for Buyer's use. In each case, Supplier will timely provide Buyer with supporting documentation, including without limitation, (iv) pre-registration numbers for each such substance, (v) the exact weight by weight percentage of any REACH Candidate List (as defined below) substance constituting or contained in the Products, (vi) all relevant information that Buyer needs to meet its obligations under REACH to communicate site use to its customers and (vii) the documentation of the authorization for Buyer's use of an Annex XIV substance.

(d) Supplier shall notify Buyer if it decides not to register substances that are be subject to registration under REACH and constitute or are contained in Products supplied to Buyer at least six (6) months before their registration deadline. Supplier will monitor the publication by the European Chemicals Agency of the list of substances meeting the criteria for authorization under REACH (the "**Candidate List**") and immediately notify Buyer if any of the Products supplied to Buyer is manufactured by Supplier with or contains a substance officially proposed for listing on the Candidate List. Supplier shall provide Buyer with the name of the substance as well as with sufficient information to allow Buyer to safely use the Product or fulfill its own obligations under REACH.

(e) Supplier shall disclose to Buyer the existence of any and all hazardous materials contained in Products and other materials sold or otherwise transferred to Buyer hereunder. Supplier represents, warrants, certifies and covenants that none of the Products supplied under this Contract contains any: (i) lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), polybrominated diphenyl ethers (PBDEs) (flame retardants), or any other hazardous substances the use of which is restricted under EU Directive 2002/95/EC (27 January 2003) (RoHS Directive), as amended; (ii) arsenic, asbestos, benzene, polychlorinated biphenyls (PCBs), or carbon tetrachloride; (iii) any chemical restricted under the Montreal Protocol on ozone-depleting substances; (iv) any substance listed on the REACH Candidate List, subject to authorization and listed on Annex XIV of REACH, or restricted under Directive 76/769/EEC and when it shall be repealed, Annex XVII of REACH; or (v) any other chemical or hazardous material the use of which is restricted in any other jurisdictions to which Buyer informs Supplier or the Supplier knows the goods are likely to be shipped to or through; unless Buyer expressly agrees otherwise in writing as an addendum to this Contract and Supplier identifies an applicable exemption from any relevant legal restriction on the inclusion of such chemicals or hazardous materials in the Products sold or transferred to Buyer. Upon request from Buyer and subject to reasonable confidentiality provisions which enable Buyer to meet its compliance obligations, Supplier will provide Buyer with the chemical composition, including proportions, of any substance, preparation, mixture, alloy contained in or incorporated into the Products supplied under this Contract and any other relevant information or data regarding the properties including without limitation test data and hazard information. Supplier also represents, warrants, certifies and covenants that any substance contained in Products which is a "*hazardous substance*" as defined under CERCLA, is produced in compliance with applicable state and federal requirements and Occupational Safety and Health Act (OSHA) regulations.

(f) Supplier represents warrants, certifies and covenants that, except as specifically listed in writing as an addendum to this Contract, none of the goods supplied under this Contract are (i) subject to electrical or electronic reuse or recycling take back requirements pursuant to applicable law, or (ii) contain



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batteries or accumulators or are batteries or accumulators subject to labeling or take back requirements pursuant to applicable law.

(g) Supplier represents that any wood packing, wood pallet materials, and/or Products containing wood fiber are in compliance with the import restrictions and treatment requirements of the United States Code of Federal Regulations, 7 CFR 319.40-1 through 319.40-11, as may be changed or amended, the International Plant Protection Convention Standards on Wood Packing Materials, any requirements of the Formaldehyde Standards for Composite Wood Products Act, which amended the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the Lacey Act (16 U.S.C. 3371 et seq., as amended), and, for those Products sold in California, Proposition 65 labeling requirements and the California Air Resources Board 93120 for emissions. Supplier shall provide Buyer with any certifications required by Buyer to evidence such compliance.

(h) Supplier also represents, warrants, certifies and covenants that it has developed and implemented a company security and crisis management plan and procedures ("**Security Plan**") that provide for measures that ensure the physical integrity and security of all shipments against the unauthorized introduction of harmful or dangerous materials in accordance with (i) the recommendations of the United States Customs Service under the provisions of the Customs-Trade Partnership Against Terrorism ("**C-TPAT**") for Supplier's type of business, (ii) the requirements or recommendations of the EU Authorized Economic Operator ("**AEO**") program, and (iii) any other governmental program for protection of international supply chains in which Buyer does or may in the future participate. The Security Plan shall include improvements in physical security, access control, procedural security, personal security, and awareness education and training. Supplier shall (iv) communicate C-TPAT security recommendations or other relevant security recommendations to its sub-suppliers and transportation providers and condition its relationship with those entities upon their implementation of a Security Plan, and (v) upon request of Buyer, provide a written copy of the Security Plan. If Supplier is found not to be compliant with C-TPAT, AEO or any other relevant program, Supplier shall immediately take such steps as required to be compliant and hold Buyer harmless and reimburse Buyer for all costs, losses, claims or penalties charged to or imposed upon Buyer by reason of Supplier's noncompliance.

(i) Supplier represents, warrants, certifies and covenants that it has established an effective program to ensure that the activities of any suppliers that it utilizes to provide any chemicals, substances, mixtures, preparations, components, finished products or services that will be incorporated into the Products or services supplied under this Contract will be conducted in conformance with this Section 12.

13. BUYER POLICIES. Supplier acknowledges that it has received a copy of Buyer's Integrity Guide for Suppliers, Contractors and Consultants (the "**Guide**"), which Guide is available on Buyer's website at <https://supplierportal.geappliances.com>, and agrees that it will comply fully with the Guide in the performance of this Contract. Where Supplier's personnel will be on Buyer premises regularly, have access to Buyer's network or Confidential Information (as defined below), interact with governments of Buyer's behalf or are otherwise in sensitive positions, Supplier also agrees that it will: (a) provide a copy of the Guide to Supplier's personnel; (b) instruct Supplier's personnel to comply with such documents; (c) be responsible for any failure of Supplier's personnel to comply with such document; and (d) upon reasonable notice, cause its relevant personnel to attend and participate in compliance briefings conducted by Buyer representatives. As of the date hereof and at all times during the term of this Contract, Supplier shall be in compliance with Buyer's supplier qualification standards and the Guide, as amended from time to time.

14. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL OR PROPRIETARY INFORMATION:



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(a) No knowledge or information disclosed to Buyer by Supplier which in any way relates to Products, shall, unless otherwise specifically agreed in writing by Buyer, be deemed to be confidential or proprietary information, and Buyer shall acquire all such knowledge and information free from any restrictions (subject to Supplier's patent rights), as part of the consideration for this Contract and Buyer's Order.

(b) Any and all technical and other knowledge or information obtained or learned by Supplier as a result of this buyer/supplier relationship and all technical and other information furnished by Buyer or jointly developed by Buyer and Supplier (collectively, "**Confidential Information**") shall remain Buyer's property and Supplier shall maintain in confidence and safeguard all Confidential Information. Supplier agrees to use any Confidential Information only for conducting business with Buyer in a manner contemplated by this Contract.

(c) Supplier shall restrict disclosures of any Confidential Information to only those Supplier employees who have a need to know and shall bind such employees to obligations of confidentiality consistent with this Contract. Upon completion or termination of this Contract or upon request of the Buyer, Supplier shall promptly return all materials incorporating any such Confidential Information and any copies thereof.

(d) Supplier agrees and represents that all rights, title and interest in and to any programs, systems, data, materials, drawings or any other property furnished or supplied to Supplier by or on behalf of Buyer are and shall remain the property of Buyer and shall be returned to Buyer on the termination or expiration of this Contract. Upon request, Supplier shall provide to Buyer drawings, specifications or other documentation evidencing the Products and/or all parts used in manufacture of the Products. Buyer shall have no obligations of confidentiality with respect to said drawings unless otherwise agreed in a separate writing signed by both Parties.

(e) Supplier represents and warrants that, except as otherwise agreed by Buyer in writing, no software constituting or contained in Products supplied to Buyer hereunder is subject to or distributed under any license, other agreement or understanding, that: (i) would require the distribution of source code with the software of any Product into which it is or becomes incorporated, or which would require source code to be made available when such is distributed to any third party; (ii) would impact, restrict or impair in any way Buyer's ability to license such software pursuant to terms of Buyer's choosing; or (iii) would impact or limit Buyer's ability to enforce Buyer's patent or other intellectual property rights against any third party in any manner (a "**FOSS License**"). Supplier represents and warrants it has not modified any software or other component that is subject to a FOSS License. Supplier will not incorporate any software or other component subject to a FOSS License into the software constituting or contained in Products supplied to Buyer hereunder, including by virtue of embodiment of background software into such software other than as expressly approved in writing in advance by Buyer.

(f) Supplier further agrees and represents that Supplier shall comply with all applicable Buyer information technology guidelines and encryption requirements in accessing Buyer networks and in transmitting data electronically into Buyer networks in order to preserve and protect the integrity of Buyer systems and/or Buyer Confidential Information. Failure by Supplier to comply with the obligations set forth herein is considered a material breach of this Contract. Buyer reserves the right to conduct at any time, subject to a prior written notice, an on-site verification of Supplier's compliance with obligations relating to the requirements contained in this Section 14(f), and Supplier shall provide access to all concerned facilities, equipment and records in order to conduct such verification.



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15. PUBLICATION: Without Buyer's prior written consent, Supplier shall not advertise, promote or publish the fact that Buyer has contracted to purchase Products from Supplier, disclose information relating to this Contract, publicly identify Buyer as a customer of Supplier, or use the name of Buyer or any of Buyer's customers in advertising or any other publications or on any websites.

16. IMPORTS:

(a) Unless otherwise specifically provided by Buyer in writing, Buyer shall be Importer of Record.

(b) Supplier warrants and covenants that all sales made hereunder are and shall be made in circumstances that will not give rise to the imposition of anti-dumping or countervailing duties under United States law (19 U.S.C. § 1671), European Union (Council Regulation (EC) No. 384/96 of December 22, 1995, Commission Decision No. 2277/96/ECSC of November 28, 1996), similar laws in such jurisdictions or of any other country to which the Products may be exported, as currently in force or as may be amended. To the full extent permitted by law, Supplier shall indemnify, defend and hold Buyer harmless from and against any costs or expenses (including but not limited to any countervailing and/or dumping duties which may be imposed and, to the extent permitted by law, any preliminary dumping duties that may be imposed) arising out of or in connection with any breach of the above warranty and covenant.

(c) If Supplier is Importer of Record, Supplier agrees that Buyer will not be a party to the importation of Products, that the transaction(s) contemplated by this Contract will be consummated subsequent to importation, and that Supplier will neither cause nor permit Buyer's name to be shown as "importer of record" on any customs entries or declarations. Upon request and where applicable, Supplier will provide Buyer with all documents and properly executed forms as required by U.S. export control laws and regulations and will further provide all commercial invoices in proper form to allow Buyer to apply for and receive duty drawback. Supplier will not disclose any information regarding Buyer and/or Products contrary to export control laws and regulations of the U.S.

(d) Supplier shall provide, in a timely, complete and accurate manner, to Buyer or Buyer's designated agent, all data required to enable Buyer's compliance with the U.S. Customs Importer Security Filing and additional Carrier Requirements regulation, 19 C.F.R. Part 149 (the "ISF Rule") for all of Supplier's ocean shipments of Products to Buyer destined for or passing through a United States port, including without limitation, the timely, complete and accurate provision of the ISF-10 Elements thereunder. Supplier shall indemnify and hold harmless Buyer, its directors, officers, employees, agents, representatives, successors and assigns from and against any and all actions or proceedings, at law or in equity, and from and against any and all claims, demands, losses, judgments, damages, costs, fines, expenses or liabilities resulting from or in any way connected with Supplier's breach of its obligations under this Section 16(d). The provisions of this Section 16 shall survive any termination or expiration of this Contract.

17. FOREIGN TRADE ZONE: If Buyer and Supplier agree to operate from any Foreign Trade Sub-Zone established by Buyer, any benefit arising from operation in such Foreign Trade Sub-Zone will inure to Buyer, and both Parties will cooperate and adopt procedures designed to capture and maximize such benefit. Supplier shall be reimbursed immediately for any reasonable additional expense incurred to capture and maximize such benefit for Buyer.

18. INDEMNIFICATION AND INSURANCE:

(a) Supplier shall release, defend, hold harmless and indemnify Buyer (who shall control its own defense), its directors, officers, employees, representatives, successors, assigns distributors, dealers,



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affiliates and customers during the term of this Contract and thereafter, from any and all actual or alleged claims, demands, losses, liability, judgments, damages, costs, expenses or liabilities (including attorney fees, overhead and court costs) including without limitation claims for death, personal injury, or property damage, resulting from, arising out of or in any way connected with any act, failure to act, neglect or omission of Supplier, its agents, employees, subcontractors or sub-suppliers (including any employee, agent or invitee of any of them) during the performance of this Contract or the Products or parts thereof including (i) any failure of Products to comply with applicable specifications (functional, design or otherwise), warranties, or certifications under this Contract; (ii) the negligence of Supplier or its sub-suppliers in design, manufacture or otherwise with respect to Products or parts therefore or services rendered hereunder; (iii) claims based on strict or product liability relating to Products; (iv) failure to warn or inadequate warnings or instructions or (v) failure of Products to perform in accordance with their intended use. Buyer reserves the right to settle all such claims at its own expense, but such settlement shall not relieve Supplier from any of its liabilities under this Contract. Supplier agrees to include this clause in all related subcontracts. Upon Buyer's request, Supplier shall advance all attorneys' fees and other dispute resolution expenses related to any indemnified claim. The provisions of this Section 18 shall survive the termination or expiration of this Contract.

(b) Insurance.

- i. During the Term and for a period of five (5) years thereafter, Supplier shall, at its own expense, maintain and carry in full force and effect, at least the following types and amounts of insurance coverage, subject to the requirements set forth in (b)ii.
 - a. Commercial General Liability with limits no less than \$2,000,000 for each occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage as well as \$2,000,000 in products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Supplier under this Agreement;
 - b. Worker's Compensation & Employer's Liability as required by applicable state or country law with a minimum limit of \$1,000,000 for each accident, \$1,000,000 for each disease and \$1,000,000 policy limit; and
 - c. Umbrella (excess) liability for the coverage in Section (b)ia, and (b)iic. With no less than \$5,000,000.
- ii. Additionally, Supplier shall ensure that all insurance policies required pursuant to this section:
 - a. be issued by insurance companies reasonably acceptable to Buyer with a Best's Rating of no less than A-;
 - b. provide that such insurance carriers give Buyer at least 30 days' prior written notice of cancellation or non-renewal of policy coverage, *provided that*, prior to such cancellation, Supplier has new insurance policies in place that meet the requirements of this (b)i.



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- c. provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Buyer shall be excess and non-contributory; and
 - d. name Buyer and its affiliates, including, in each case, all successors and permitted assigns, as additional insureds.
 - e. waive any right of subrogation of the insurers against Buyer and any of its affiliates.
- iii. If Supplier fails to procure or maintain in force the insurance specified herein, Buyer may secure such insurance and the cost thereof shall be borne by Supplier. It is understood and agreed that the insurance provided by Supplier hereunder shall operate independent and apart from any obligations imposed on Supplier under the indemnity provisions in this Contract.

19. NON-ASSIGNMENT: Supplier shall not assign this Contract, or any interest, right or obligation created hereby or any payment due or to become due hereunder without Buyer's written consent. Any attempt by Supplier to make such assignment (or any such assignment by operation of law) shall be null and void.

20. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY: Supplier warrants that Products do not infringe any patent, copyright or other intellectual property right of any third party. Supplier shall hold Buyer harmless against and handle, defend or settle any claim, demand, suit or proceeding brought against Buyer or Buyer's customers that is based on an allegation that any article, apparatus, material, component or part thereof constituting Products, as well as any article, device or process resulting from the intended use thereof or any process or method furnished by Supplier for making or using Products, constitutes an infringement of any patent, copyright or other intellectual property right, and Supplier shall pay all damages and costs awarded therein or all costs incurred and payment due in settlement thereof, including but not limited to any royalties due for the continuing purchase of, or use of Products from Supplier. If any article, apparatus, material, component or part thereof, or any device or process necessarily resulting from the use thereof or process or method for using Products, is held in such suit or proceeding to constitute infringement or misappropriation and the manufacture, sale or use of the article, apparatus, material, component, part, device, process or method is enjoined, Supplier shall, at its own expense and at Buyer's option, either procure for Buyer the right to continue making, using or selling the article, apparatus, material, component, part, device, process or method, or if the form, fit, function or performance thereof will not be materially adversely affected, replace same with a non-infringing article, apparatus, material, component, part, device, process or method, or modify it so it becomes non-infringing, or remove the article, apparatus or material or component and refund the purchase price and the transportation and installation costs thereof. The provisions of this Section 20 shall survive the termination or expiration of this Contract.

21. PRICING: Unless otherwise agreed in writing, the prices specified in this Contract are prices for all Products ordered under this Contract, inclusive of the packaging for exportation or delivery in full container load quantities of such Products and any taxes and duties imposed on and/or payable by Supplier. No additional charges of any kind, including charges or expenses incurred in connection with boxing, containerization, cartage or other transportation or insurance will be allowed.

22. PAYMENTS:



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(a) Payment by Buyer will be made following issuance of an Order hereunder and acceptance of the Products ordered thereunder by Buyer, and, where applicable, receipt of Supplier's invoice. Unless Buyer directs otherwise, if Supplier is required to submit an invoice for payment, Supplier shall use Buyer's e-Invoicing system on iSupplier Portal or SupplierNet, as applicable. Supplier hereby represents that its wire or electronic funds transfer and other payment instructions shall comply with all applicable banking and currency control laws, rules and regulations. If payment is to be made by means of wire or electronic funds transfer, then such transfer will be initiated within the agreed payment terms. Buyer's Terms and Conditions for ACH/EFT Payment and Implementation as in effect from time to time are incorporated herein by reference and shall govern such electronic funds transfers for Products.

(b) In addition to any other rights that Buyer may have under this Contract, Buyer may charge Supplier if Supplier fails to submit accurate invoices, reports or other documents or data required by Buyer. The intent of these charges is to reimburse Buyer for the additional out-of-pocket costs associated with auditing and otherwise correcting or accommodating Supplier's failure to comply with the requirements of this Section. Such payments are intended as a good faith defrayal by Supplier of Buyer's additional costs and not as a waiver of or substitute for the payment of any damages or indemnity otherwise provided under this Contract. **EACH PAPER INVOICE RECEIVED BUT NOT APPROVED BY ACCOUNTS PAYABLE SHALL BE ASSESSED A PROCESSING FEE OF \$100 OR LESS. Buyer shall have no obligation to pay for Products, or services if Buyer receives required invoices more than six months after Supplier is required to submit such invoices or if relevant accounts cannot be reconciled within six months of receipt of Product due to the fault of Supplier. Except as time barred under any applicable statute of limitations of lesser duration, any claims by Supplier shall be time barred unless Supplier commences an arbitration proceeding with respect to such claim within two (2) years after the cause of action has accrued.**

23. PRODUCT RECALL: If at any time (a) any governmental agency having jurisdiction provides written notice to either Buyer or Supplier, or (b) either Buyer or Supplier have a reasonable basis to conclude that any Products contain a defect which could create a potential safety hazard or unsafe condition, pose an unreasonable risk of serious injury or death, contain a quality or performance deficiency, or are not in compliance with any applicable code, standard or legal or regulatory requirement, thereby making it advisable, or required, that such Products be subject to corrective action including, without limitation, product recall, retrofit, refund, replacement and/or repair (hereinafter "**Corrective Action**"), Supplier or Buyer will promptly communicate relevant facts to each other. Buyer shall determine whether any Corrective Action involving the affected Products is warranted or advisable unless notice to that effect has been received from any governmental agency having jurisdiction. If Corrective Action is required under the law or Buyer determines that it is advisable, Supplier shall promptly undertake Corrective Actions, including those required by any applicable consumer product safety or similar law and the regulations thereunder, and shall file all necessary papers, descriptions of Corrective Action, and other related documents and carry out the correction action. Buyer shall cooperate with and assist Supplier in any such filings and Corrective Action; provided, however, that nothing contained in this Section shall preclude Buyer from taking such action, and in such event, Supplier shall cooperate with and assist Buyer in any such filings and implementing the Corrective Action it elects to undertake. Supplier shall reimburse Buyer for all reasonable out-of-pocket costs and expenses incurred by Buyer in connection therewith. In either case, Supplier shall reimburse Buyer for all reasonable out-of-pocket costs and expenses incurred by Buyer in connection with any such (voluntary or mandatory) Corrective Action, including without limitation, the cost of locating, identifying and notifying Buyer's customers, the cost of repairing, or where repair of the Product is impracticable or impossible, repurchasing or replacing the recalled Product, any costs of packing and shipping the recalled Product, and the cost of media notification, if such form of notification is necessary. The Parties recognize that it is possible that other Supplier-manufactured products might contain the same



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defect, noncompliance or quality or performance deficiency as do Products manufactured for Buyer. Buyer and Supplier agree that any Corrective Action involving Products for Buyer shall be treated separately and distinctly from similar Corrective Action of other products of Supplier; provided that such separate and distinct treatment is lawful and Supplier shall in no event fail to provide at least the same protection to Buyer on such Products as Supplier provides to its other customers in connection with similar Corrective Action. Each Party shall consult the other before making any statements to the public or a governmental agency relating to potential safety hazards affecting Products, except where such consultation would prevent timely notification required by law. The provisions of this Section 23 shall survive any termination or expiration of this Contract.

24. REPLACEMENT PARTS:

(a) Replacement parts of Products ("**Parts**") sold to Buyer and/or its affiliates are included in the definition of Products under this Contract. To the extent applicable, Supplier shall provide Parts to Buyer and/or its affiliates for a period of twelve (12) years after production of the Products ceases. Supplier shall continue to supply such Parts past the twelve (12)-year period if collectively, Buyer and/or its affiliates order at least one hundred (100) Parts per year during such twelve (12)-year period. If Supplier is unable to supply Parts for a period of twelve (12) years after production for any reason, Supplier shall secure an alternate source of supply for such Parts. Supplier shall reimburse Buyer for its affiliates, as applicable, for all costs incurred by it associated with maintaining the Parts supply chain or in fulfilling Buyer and/or its affiliates customer obligations, including but not limited to, customer concession costs, engineering costs, supplier qualification costs, inventory carrying costs (for "*lifetime buy*" quantities), etc., due to supplier's failure to supply Parts or securing an alternate source for Parts Supplier is unable to supply. Parts purchased by Buyer and/or its affiliates in the first two (2) years of the twelve (12)-year period shall be at those prices in effect at the time production of the Product ceases, and no set-up charges shall be permitted or paid during this two (2)-year period. Thereafter, prices shall be negotiated based on Supplier's actual cost of production of such Parts plus any special packaging. No minimum order requirements shall be allowed during production and in the first two (2) years post-production. Thereafter, any minimum order quantities must be mutually agreed to in writing and shall not exceed more than twenty-five percent (25%) of the estimated annual usage of the Part in question. The provisions of this Section 24 shall survive any termination or expiration of this Contract.

(b) All Parts shall be ready for delivery within the agreed upon lead times established under an Order from Buyer or its affiliate. Supplier shall ship only that Order quantity of Parts ordered by Buyer or its affiliate identified as a Commitment and only for delivery on the delivery date specified in the Order; any excess or early Parts may be returned to Supplier or warehoused by Buyer or its affiliate at Supplier's expense. Supplier shall pay to Buyer or its affiliate, as applicable, an administrative fee equal to five percent (5%) of the invoice price of each Parts Order issued by Buyer or its affiliate, as well as premium transportation charges, customer concessions and other costs and expenses incurred by Buyer or its affiliate for Parts delivered to Buyer or its affiliate in excess of the quantity ordered or outside the period of seven (7) days before ("**Early**") or seven (7) days after ("**Late**") the delivery date specified in the Order. In addition, pay terms shall commence on the delivery date specified in the Order for Parts delivered Early and on the date of actual receipt for Parts delivered Late. Buyer may exercise its right of setoff hereunder for any transportation or warehouse expenses or administrative fees allowed pursuant to this Section.

(c) Supplier shall complete an Advance Shipping Notice ("**ASN**") in iSupplier or SupplierNet (as applicable) for every Parts shipment prior to physical shipment. Supplier shall print out the ASN report and put one readable, scanable copy on any side of each pallet of Parts in the shipment. In the case of a loose-box of Parts, Supplier shall tape one (1) copy to the box. If a container load of Parts is sent un-palletized,



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Supplier shall place in an envelope and tape to a box at the back of the container a number of copies of the ASN equivalent to the number of pallets the boxes represent, for the freight forwarder to use while palletizing the container load. Printed ASNs must be legible and not faded so that the barcodes are scannable. Shipments without ASNs will not be received at the warehouse until an ASN is created by the Supplier and sent directly to the warehouse. Buyer or its affiliate, as applicable, may assess a fee of five percent (5%) of the invoice price of any shipment of Parts without an accompanying ASN and Supplier shall be responsible for any fees incurred by Buyer and/or its affiliate to store the Parts until an ASN is provided.

(d) Supplier shall notify Buyer and/or its affiliate and receive written approval at least one hundred twenty (120) days before scrapping any tooling used to make Parts. Parts packaged by Supplier for Buyer and its affiliate shall pass all International Safe Transit Association ship test requirements.

25. **RECORDS AND AUDITS:** Buyer has the right at any reasonable time and upon reasonable notice to verify any data Supplier has prepared or submitted under this Contract, including financial information of Supplier, its sub-suppliers and its affiliates. Supplier shall supply financial information reasonably requested by Buyer.

26. INSPECTIONS AND REJECTIONS:

(a) All Products covered by this Contract shall be received subject to Buyer's right of inspection, count, testing and rejection. Such right shall be extended to Buyer's customers. Payment for Products delivered hereunder shall not constitute acceptance thereof, and all payments against documents shall be made with a reservation of rights by Buyer for defects in Products or documents, including, without limitation, defects apparent on the face thereof. Supplier shall provide and maintain inspection and process control systems acceptable to Buyer for production of the Products. Records of all inspections by Supplier shall be kept complete and available to Buyer during the performance of this Contract or for such longer period as may be required by law. Buyer may inspect Products at Supplier's plant and any other place of manufacture at any time without waiving its right subsequently to reject or revoke acceptance of such Products for any defects. Failure of Buyer to inspect shall not relieve Supplier from any of its responsibilities hereunder. Supplier, at its expense, shall furnish, or cause to be furnished, facilities and assistance reasonably necessary to ensure the safety and convenience of any such inspections.

(b) If any of the Products are found at any time to be defective in design, materials or workmanship or otherwise to be not in conformity with the requirements of this Contract, including any applicable specifications, samples, drawings, designs, plans, instructions or delivery dates, Buyer, in addition to such other rights as it may have under this Contract, at law and/or in equity, at its option may: (i) reject and return such Products at Supplier's expense; (ii) require Supplier at its expense to replace the rejected Products under a revised Order submitted by Buyer; or (iii) require Supplier to inspect Products and remove and replace nonconforming Products with Products conforming to this Contract. Buyer may at its option inspect, sort, remove, correct and replace such Products and Supplier shall pay the actual cost thereof. If any Products are rejected, Buyer will deduct from the current invoice of Supplier the cost of rejected Products. Buyer may also charge to Supplier all direct and indirect costs incurred by Buyer as a result of any nonconforming Products whether or not Buyer rejects such Products. Buyer will itemize such costs to Supplier, which may include, but not be limited to, cost of defective materials, a fifteen percent (15%) handling charge, transportation charges, incidental material and labor costs, sorting and rework expenses, lost production starts directly caused by the defect(s) (including late delivery), or any other ascertainable costs creating a loss to Buyer.



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27. QUALITY:

(a) At all times, Supplier and the Products shall meet the requirements specified in Buyer's Supplier Quality Manual ("**SQM**") (<https://supplierportal.geappliances.com>) incorporated herein by reference.

(b) Products delivered by Supplier shall meet Buyer's standard quality levels. Per the Quality Composite Scorecard ("**QCS**") defined in the SQM. Suppliers are required to maintain a QCS of eighty (80) or higher. In the event Supplier's QCS falls below eighty (80), Supplier shall be categorized as a "**Non-Performing Supplier**". Buyer shall have the right to apply a two percent (2%) discount to Product produced during the period Supplier is categorized as a Non-Performing Supplier with a Level 2 alert quality level (as defined in the SQM). Supplier shall log onto iSupplier or SupplierNet, as applicable, and submit real time production SPC data from the CTQ or additional process measurements as determined by Buyer's Purchased Material Quality organization for the duration of a Product's production life. Supplier's failure to submit required data may result in Buyer withholding up to two percent (2%) of the price of the Products received until such data is input into the Supplier Process Quality system.

(c) In the event of an Excessive Failure, as defined below, Supplier shall reimburse Buyer for its documented costs incurred in investigating, repairing or replacing affected Products. An "**Excessive Failure**" will have occurred in the case of any Product, if during the longer of the consumer warranty period on the Product or of the appliance product constituting or containing such Product, the Service Call Rate, as determined below, for a particular Product part number constituting or contained in the appliance product manufactured within a particular production quarter exceeds one-half percent (0.5%). The Service Call Rate for a particular Product constituting or contained in an appliance product will be calculated by computing the quality percentage equal to (i) the actual number of customer service calls concerning the Product for a given quarter of manufacture of the appliance product divided by (ii) the total number of appliance products constituting or containing the specific Product produced during the same quarter of manufacture. Consumer service calls resulting from (iii) unforeseeable misuse, abuse, negligence or accident, (iv) improper installation, service or maintenance, (v) transportation of Products by Buyer; (vi) improper storage of Products by Buyer; or (vii) defective designs owned by Buyer shall not be included in the calculation of the Service Call Rate. The provisions of this Section 27(c) shall survive any termination or expiration of this Contract.

(d) Buyer and Supplier shall cooperate and consult in the qualification of Products. Supplier shall produce an agreed upon number of Product samples, which Buyer shall evaluate in accordance with criteria used by Buyer in its commercial operations or developed by Buyer for use in connection with the Products. At Buyer's request, all data and documentation produced from compliance and reliability testing shall be submitted to Buyer for review. Supplier shall maintain, for the period of production of the Products hereunder, and for a period of two (2) years after production of a Product has ceased, and shall make available to Buyer within forty-eight (48) hours of Buyer's request, any and all data and documentation produced from energy, compliance and reliability testing, including without limitation, test data associated with tests performed to satisfy the requirements of the U.S. Department of Energy. Such data and documentation shall be indexed in such a fashion as to make it readily accessible for review by Buyer. Supplier shall also provide Buyer copies of any and all certification reports submitted to the DOE, as well as to the Federal Trade Commission, EnergyStar and California Energy Commission, simultaneously with the filing of such reports with such agencies or entities. Buyer shall advise Supplier in writing if the Product samples meet its criteria, at which time the Product shall be qualified for sale under this Contract, and the associated design, specifications and tolerances relating thereto shall become the quality procurement specifications ("**QPS**") for such Product and shall be documented in writing and be included as part of the



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Product specifications. Buyer shall have no obligation to purchase any Product until the Products are qualified pursuant to the above process.

28. SUPPLIER'S EMPLOYEES: Supplier's relationship and that of its agents, servants and employees to Buyer in performance of this Contract shall be that of independent contractor and not as an agent, servant or employee of Buyer. Supplier and its employees shall comply with all rules, including safety, traffic and security, established by Buyer for operations within Buyer's location(s).

29. SET-OFF: Buyer shall have the right at all times to set off any amounts owing at any time from Supplier to Buyer, any unincorporated component of Buyer or any of its affiliates, against any amount payable at any time by Buyer to Supplier.

30. SUBCONTRACTING: The Parties recognize that the nature of the work of Supplier may require Supplier to procure materials and/or services from third parties; however, should Supplier elect to subcontract any work under this Contract, it shall subcontract only after obtaining Buyer's prior written consent. Any consent so granted by Buyer shall not relieve Supplier of its obligations hereunder. No contract shall be created or construed to exist between Buyer and Supplier's sub-suppliers as a result of such consent.

31. WARRANTIES: Notwithstanding any other provision in this Contract:

(a) Supplier warrants that all Products will be free of any claim of any nature by any third party and that Supplier will convey clear title to Buyer.

(b) Supplier warrants that all Products sold to Buyer will be new and of merchantable quality, fit for Buyer's particular purpose and will contain new parts and components and be free from all defects, whether latent or patent, in design, workmanship and materials, and shall comply with all applicable national, state and local laws. Supplier further warrants that all Products will strictly conform to all specifications, samples, drawings, designs, plans, instructions or other requirements (including functional performance specifications) furnished, approved or adopted by Buyer.

(c) Supplier represents and warrants that it has not engaged in any sharing or exchange of prices, costs or other competitive information or undertaken any other collusive conduct with any third party supplier or bidder in connection with the preparation of any bid or proposal to Buyer or negotiation of this Contract.

(d) The foregoing warranties shall survive Buyer's inspection, acceptance, sale and use of the Products. The warranties contained in this Section shall be in addition to, and shall not be construed as restricting or limiting, any warranties or remedies of Buyer, express or implied, which are provided by contract or law.

(e) In the event that any Products do not conform to any of the foregoing warranties, Supplier at its sole expense and at Buyer's option shall promptly repair or replace such goods and/or re-perform the services. In the event of Supplier's failure to do so, Buyer may make such repair or replacement or have the service re-performed at Supplier's expense, after notice to Supplier. Any goods repaired or replaced or service re-performed under this provision shall be warranted as provided herein.



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(f) Supplier hereby extends to Buyer any and all warranties received from Supplier's sub-suppliers and agrees to enforce such warranties on Buyer's behalf. All of Supplier's warranties shall run collectively and separately to Buyer, its successors, assigns, customers and users of Products sold by Buyer.

(g) Any claim by Buyer under this paragraph (or any other provision of this contract), shall be asserted through a notice of arbitration filed within four (4) years after the cause of action has accrued.

32. RELIANCE ON CERTAIN SUPPLIER FURNISHED INFORMATION: Supplier acknowledges and agrees that Buyer will use and rely upon the specifications, drawings and other information furnished by Supplier to Buyer in developing and printing labels and other packaging (including packing slips and Customs and other governmental declarations) and selling material. Supplier will indemnify and hold Buyer harmless from any and all costs and damages suffered by Buyer as a result of any inaccuracies in any information furnished to Buyer by or on behalf of Supplier that Buyer uses or relies upon in designing or printing Buyer's labels and other packaging and selling material.

33. DISPUTE RESOLUTION:

(a) All disputes, controversies and questions directly or indirectly arising out of, in connection with or in relation to this Contract or its subject matter, including, without limitation, all disputes, controversies and questions relating to the validity, negotiation, interpretation, construction, performance, termination and enforcement of this Contract (each and all, "**Dispute(s)**"), shall be resolved finally and conclusively in accordance with this section, which shall be the sole and exclusive procedure for the resolution of any Dispute.

(b) The Parties shall attempt in good faith to resolve any Dispute promptly by negotiation. If the matter has not been resolved within sixty (60) days after a Party's request for negotiation, either Party may initiate arbitration as provided herein. Any Dispute, which has not been resolved as provided above, shall, at the request of either Party, be finally settled by arbitration under the International Institute for Conflict Prevention & Resolution ("**CPR**") Rules for Non-Administered Arbitration of Business Disputes in effect on the date of this Contract, by an independent and impartial arbitrator jointly selected by the Parties. If the Parties cannot agree on an arbitrator, then CPR shall appoint a person whom it deems qualified to serve as the arbitrator. The validity of this arbitration provision, the conduct of the arbitration, any challenge to, confirmation of, or enforcement of any arbitral award or order, or any other question of arbitration law or procedure shall be governed exclusively by the Federal Arbitration Act, 9 U.S.C. sections 1-16; however, the award can be modified or vacated on grounds cited in the Federal Arbitration Act. The place of arbitration shall be in Louisville, Kentucky. The language of arbitration shall be English. The federal and state courts located in the Commonwealth of Kentucky shall have exclusive jurisdiction over any action brought to enforce this arbitration provision, and each Party irrevocably submits to the jurisdiction of those courts for that purpose. Notwithstanding the foregoing sentence, either Party may apply to any United States District Court of competent jurisdiction, wherever situated, for enforcement or confirmation of any judgment on an arbitral award.

(c) Notwithstanding any other provision of this Contract, the Parties expressly agree that before the first meeting of the arbitral tribunal, either shall have the right to apply to any state or federal court in Kentucky, or any other court that would otherwise have jurisdiction, for provisional or interim measures.

(d) Each Party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving more than the Parties. The prevailing Party or parties in any arbitration conducted under this paragraph shall be entitled to recover from the other Party or parties (as part of the arbitral award or



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order) its or their attorneys' fees and other reasonable costs of arbitration. Supplier and Buyer hereby mutually agree to waive to the extent permitted by law, trial by jury in any litigation in any court in connection with or arising out of this Contract or the Supplier/Buyer relationship. The provisions of this Section 33 shall survive any termination or expiration of this Contract.

34. WAIVER: No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the waiving Party. The failure of Buyer to enforce at any time or for any period of time any of the provisions of this Contract shall not be construed to be a waiver of such provisions nor the right of Buyer thereafter to enforce each and every such provision.

35. LIENS: Unless otherwise agreed by Buyer in writing, Supplier hereby waives the right to assert and hereby releases any and all liens, claims or encumbrances which Supplier may assert against Buyer, Buyer's property or the Products. In addition, Supplier shall pay, satisfy, and discharge all liens, claims, encumbrances or other obligations or liabilities which may be asserted against Buyer or its property by reason of any act or omission of Supplier, its employees, agents, subcontractors, or sub-suppliers in connection with or relating to performance under this Contract. Before any final payment from Buyer, Supplier shall be required to show payment and release of all debts, taxes, liens, claims, charges and obligations arising out of or connected with the performance of this Contract. Supplier shall execute affidavits or provide such lien release certificates as Buyer may require evidencing such release. In the event a lien is asserted against Buyer or its property by reason of any act or omission of Supplier, its employees, agents, subcontractors or sub-suppliers, Buyer may exercise its right of setoff hereunder for any amounts paid by Buyer to release such lien.

36. PERSONAL DATA PROTECTION: (a) Supplier agrees that Buyer Personal Data shall be kept confidential, and shall only be viewed, Processed or disclosed to third parties to the extent necessary to perform this Contract or upon Buyer's written instructions, and agrees that for the purposes of this Contract: (i) "**Personal Data**" is any information relating to an identified or identifiable natural person ("Data Subject"); (ii) "**Processing**" of Personal Data shall mean and include any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction; and (iii) "**Buyer Personal Data**" shall include (1) Personal Data obtained by Supplier from Buyer; (2) Personal Data (from whatever source) being Processed by Supplier on behalf of Buyer; and (3) Personal Data (from whatever source) pertaining to Buyer personnel.

(b) Supplier shall implement technical and organizational measures to ensure the security and confidentiality of Buyer Personal Data in order to prevent, among other things: (i) accidental, unauthorized or unlawful destruction, alteration, modification or loss of Buyer Personal Data, (ii) accidental, unauthorized or unlawful disclosure or access to Buyer Personal Data, (iii) unlawful forms of Processing. The security measures taken shall be in compliance with applicable data protection regulation and shall be adapted to the risks represented by the Processing and the nature of the Buyer Personal Data to be Processed, having regard to the state of the art and the cost of implementation. Supplier shall immediately inform Buyer of any breach of this security and confidentiality undertaking and shall immediately identify and mitigate the effects of any of (i), (ii) or (iii) above, at Supplier's expense.

(c) Supplier's staff shall Process and have access to Buyer Personal Data only on a need-to-know basis, in connection with the performance of this Contract. Supplier shall implement all measures necessary to ensure compliance by its staff with the obligations relating to Buyer Personal Data, and shall



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require its staff as a condition of having access to Buyer Personal Data to sign individual confidentiality agreements in which they each agree individually to comply with the obligations of this "Personal Data Protection" section of the Contract. Buyer may also require Supplier's staff, as a condition of participating in specific assignments, to sign individual confidentiality agreements that are tailored for specific assignments.

(d) Failure by the Supplier to comply with the obligations set forth in this Contract relating to Buyer Personal Data and Personal Data is considered a material breach of this Contract. Buyer reserves the right to conduct at any time, subject to a prior written notice, an on-site verification of Supplier's compliance with obligations relating to Buyer Personal Data, even after the termination of this Contract. Supplier shall provide access to all concerned facilities, equipment and records in order to conduct such verification. Upon termination of this Contract, for whatever reason, Supplier shall stop any Processing of Buyer Personal Data and shall return to Buyer any copy and reproduction of Buyer Personal Data. These undertakings remain in force even after termination of this Contract for whatever reason.

(e) If in the course of the Parties' performance of this contract, any Personal Data will be transferred from a member state of the European Union (EU) to a jurisdiction outside the EU that has not been declared "adequate" for personal data protection by the European Commission, the Party becoming aware of this situation will inform the other, and Buyer and Supplier (or other Processor, if approved by Buyer) will enter into the EU Commission's Standard Contractual Clauses for Controller-to-Processor Transfers, or a mutually agreeable document with equivalent protections for the Personal Data.

(f) If Supplier Processes any Buyer Data that is "*protected health information, including any medical, demographic, visual or descriptive information that can be used to identify a particular patient/individual*" subject to the U.S. "Health Insurance Portability & Accountability Act of 1996" and regulations promulgated under that Act (collectively "**HIPAA**"), Supplier agrees to the terms and conditions on the subcontractor Business Associates Agreement (BAA).

(g) If Supplier Processes any Buyer Personal Data or other information of Buyer's customers ("**Customer Information**") that is subject to Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 and regulations promulgated under that Act (collectively "**GLB**") or other federal, state, and local laws, rules, regulations, and ordinances governing the privacy and security of Customer Information (collectively "**Customer Information Privacy Laws**"), Supplier agrees to comply with GLB and other Customer Information Privacy Laws, and to protect and maintain the privacy of such Customer Information accordingly. Such compliance shall include, but not be limited to, Supplier: (i) not disclosing any Customer Information to any third party except as expressly provided in this Contract or otherwise directed or authorized in writing by Buyer; (ii) ensuring that its employees and subcontractors who obtain or have access to Customer Information comply at all times with the Privacy Laws and the provisions of this Contract regarding the use and protection of Customer Information; and (iii) protecting and maintaining the security of all Customer Information in Supplier's custody or under Supplier's control. Supplier shall immediately report to Buyer any unauthorized disclosure or use of or any unauthorized access to any Customer Information in Supplier's custody or under Supplier's control.

(h) If Supplier Processes any Personal Data that is obtained in the context of a person's working relationship with Buyer or an Affiliate of Buyer ("**Employment Data**"), Supplier will process the data consistent with Buyer's "*Employment Data Protection Standards*." Such persons include, for example, job applicants, employees (whether temporary or permanent), contingent workers, retirees, and former employees, as well as any dependents or others whose personal data have been given to Buyer or an



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Affiliate by such persons. Supplier must obtain prior written approval from Buyer regarding the scope of Employment Data to be collected and the consent language to be used.

(i) Supplier understands and agrees that Buyer may use any "*Contact Information*" (such as name, address, telephone number, e-mail address, etc.) provided by Supplier or any of its representatives for purposes reasonably related to the performance of this Contract, including but not limited to supplier administration and payment administration, and that such contact information may be transferred to and stored in a global database located in the United States of America and maintained by Buyer or one of its Affiliates. Supplier agrees that it will comply with all legal requirements (e.g., obtaining consent of the Data Subject, where required) prior to the transfer of any Contact Information or other Personal Data to Buyer. The Contact Information will not be shared beyond Buyer, its Affiliates and their contractors who will be contractually bound to use the information only as reasonably necessary to for purposes of performing under their contractual obligations with Buyer and its Affiliates. Buyer will take appropriate measures to ensure that Contact Information is stored securely and in conformity with applicable data protection laws.

37. TRADEMARKS: The names and trademarks of each Party shall remain the sole and exclusive property of that Party or its affiliates and shall not be used by the other Party for any purpose whatsoever unless expressly authorized by the owning Party.

38. NOTICES: Notices and other communications required to be made under this Contract must be in writing in English, addressed to the Parties at such addresses as may be designated in writing by either Party to the other and shall be deemed received when a) delivered by hand, b) on the date indicated on the signed receipt if mailed by first-class registered or certified mail, postage prepaid, return receipt requested, c) delivered by overnight courier or d) delivered through electronic media such as email or fax.

39. ENTIRE AGREEMENT: This Contract, any Confidentiality Agreement or Nondisclosure Agreement entered into by the Parties, and anything referenced and incorporated herein, including all terms and conditions on the Order, sets forth the entire agreement between the Parties as to the subject matter herein and supersedes any prior or contemporaneous agreements, written or oral, between the Parties. The order of precedence for resolution of conflicts is: (a) any separate, written supply or sourcing agreement under which the Order containing this Contract is issued; (b) this Contract; and (c) Buyer Standing Instructions, Specifications and Standards. If not specifically noted which controls, any conflicts existing in those documents shall be resolved by Buyer's written direction specifying which provision is applicable. Product prices under this Contract may only be amended by a written agreement signed by Buyer and Supplier.