

**1. Formation and content of the Contract.** The following terms shall have the meaning defined herein: *ICE*, means Fox Chase Management, Inc. DBA Irwin Car and Equipment or any of its subsidiaries or affiliates; *Seller*, means the person so described in the order; *Party*: ICE or the Seller, together the Parties; *Contract*: the contract for the sale and purchase of the goods and/or the supply and acquisition of the services; *Work*: good(s) and/or service(s) ("Services") to be delivered by Seller to ICE under the Contract as detailed under Section 2; *Delivery Date*: date the Work is due to be actually delivered in accordance with Article 19 below.

**2. Contract Order.** *The Contract shall consist of and the Purchase Order, of precedence shall be in the following declining order: the Purchase Order, which may or may not include any Special Conditions of Purchase and/or any Exceptions (the Purchase Order may interchangeably be referred to herein as the "Order" and/or "Contract") the order including the Special Conditions of Purchase; these General Conditions of Purchase; the technical specifications referred to on the Order; other documents incorporated by reference into the Contract. Commencement of design, manufacture, shipment, delivery, invoicing or supply of the goods or services implies acceptance of the Contract by the Seller under these General Conditions of Purchase. No terms or conditions or exceptions or clarifications stated by Seller verbally, or in its proposal, or in accepting or acknowledging the Contract or the order shall be binding unless expressly incorporated herein in writing by ICE in accordance with the provisions of Article 24.*

**3. Scope of supply.** In strict accordance with the Contract, Seller shall furnish all labor, materials, equipment, tools, supplies, software,

licenses, services, permits, certifications, documentation and all other things, free of liens or other adverse lien against title, and necessary to perform its scope of work for the Contract ("Work").

**4. Materials and Workmanship.** The Seller shall be responsible for all materials and workmanship in the Work, whether the Work is manufactured by the Seller or purchased from a supplier of Seller.

**5. Flow down.** Where the Contract is for the furnishing or performance of a portion of the work under a prime contract between ICE and a customer and such prime contract is identified in the Contract, the prime contract is specifically incorporated herein as part of the Contract, and the Work shall be performed in accordance therewith, to the extent applicable to the Contract. In such case, the term "ICE" shall be deemed to represent ICE and its customer, and the Seller acknowledges having full knowledge of the terms and conditions of the prime contract.

**6. Representations.** Seller warrants and represents that it has examined all of the documents forming the Contract and the order of preference set forth in Section 2, and the requirements of the various governmental agencies having jurisdiction, and is fully familiar with same and from its own investigations has satisfied itself as to the nature and location of the Work, the general and local conditions, and all matters which may in any way affect the Work or its performance. Seller acknowledges that no representations as to the Work have been made by ICE or by any one on its behalf, except as are expressly set forth in the Contract.

**7. Contract price.** ICE shall pay Seller the price(s) indicated in the Contract for the satisfactory performance and completion of the Contract. Unless otherwise stated in the Contract, the

Contract price(s) shall not include any price increase or escalation for the duration of the Contract and shall include, without exception, all expenses related to the performance of the Work. Unless otherwise stated in the Contract, the payment of sums due to the Seller shall be made in US Dollars. Payment of the invoices issued by the Seller in conformity with the Contract shall be made by ICE within sixty (60) days of the later of: the date of acceptance of the Work, per Section 21, or the receipt of Seller's invoice.

**8. Seller personnel.** All Seller personnel shall be qualified and capable of meeting industry standards of workmanship and performance to fulfill the requirements hereunder. ICE may request the replacement of any of Seller's personnel at no additional cost to ICE.

**9. Taxes.** Seller shall be responsible for the payment of all taxes, duties, levies and charges of whatsoever nature or kind in respect of the performance of the Work and Services and completion of the Contract. Seller shall pay and hold ICE harmless from any such taxes, duties, levies and charges (including penalties and interest) assessed by any taxing jurisdiction which Seller is required to pay.

**10. Bonds.** ICE shall have the right to require Seller to furnish, at Seller's sole expense at any time, a performance bond and/or a labor and material payment bond in order to guarantee the faithful Contract performance, in a form and amount specified by ICE. Such bonds shall be issued by a duly incorporated surety company approved by ICE and licensed to issue such bonds in the State of New York and shall be maintained in good standing until fulfillment of the Contract, including any warranty obligation. If the Contract price is modified, the amount of the bond shall be adjusted accordingly.

**11. Insurance.** Seller shall procure in its name and maintain at its expense from insurance companies satisfactory to ICE, Commercial General Liability, including products and completed operations coverage for a minimum of two (2) years following completion of the Work or any Services performed under the Contract and Professional Liability insurance, each with a minimum amount of five million (\$5,000,000.00) dollars per event, as well as Worker's Compensation insurance as required per statute, including Employer's Liability insurance with a minimum limit of one million (\$1,000,000.00) dollars per accident. Seller shall not permit any policy furnished hereunder to expire or be cancelled before the two (2) year anniversary of the date that all obligations under the Contract have been fulfilled and final completion and acceptance by ICE's customer has occurred. Seller shall add and maintain ICE as an additional insured on each such policy, except for Worker's Compensation and Professional Liability. All such policies shall provide for a waiver of subrogation in favor of ICE.

**12. Escrow Agreement.** In the event Seller's scope of Work includes any proprietary software or designs, Seller agrees to execute and maintain at its sole expense, an escrow agreement with an agreed upon escrow agent, which in the event Seller cannot complete the Work or is unable to fulfill the terms of the Contract, due to the default of Seller, ICE and/or its customer shall be able to obtain a license to use the proprietary software or designs to either produce or have produced or to maintain Seller's goods and/or services.

**13. Proprietary and confidential data.** The Seller agrees to keep confidential all documents, patterns, plans, drawings, specifications, information, data and the like communicated to the Seller by ICE, and such other information as to the

businesses of ICE as may be supplied by ICE to the Seller that is not generally ascertainable from public or published information or trade sources, which the Seller might become aware of in the course of the performance of the Contract or is created by Seller in the performance of the Work or the provision of Services. The provisions of this article shall remain effective during the performance of the Contract and until the expiry of five (5) years after completion (including the warranty obligation period), cancellation or termination of the Contract.

**14. Intellectual property rights.** Seller agrees that ICE shall be the owner of all designs, technologies, creative ideas, discoveries, inventions, and improvements, whether or not patentable, conceived, developed and/or reduced to practice as a result or in connection with the performance of the Contract by or on behalf of the Seller, all of which shall be the property of ICE as mutually agreed upon. The Seller warrants and represents to ICE that the sale or use of the Work or the provision of the Services does not infringe any Intellectual Property Right of any third party. Seller hereby grants to ICE and ICE's customers a non-exclusive paid-up license throughout the world to integrate in ICE's or ICE's customers' products any software or any Seller copyrighted material developed by Seller independently from the Contract. Seller agrees to indemnify and to save ICE, its officers, agents, employees, and vendees harmless from any and all loss, expense, damage, liability, claim or demand either at law or in equity for actual or alleged infringement of any patent invention, design, trademark, or copyright arising from the purchase, use or sale of materials or articles required by the Contract, except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by ICE.

**15. ICE's Property.** All tools, equipment or material of every description furnished to Seller by ICE or paid for by ICE, and any replacement thereof, or any materials affixed thereto ("ICE's Property"), shall be and remain the personal property of ICE. Seller shall not substitute any property for ICE's Property and shall not use such property for any other purpose than the performance of the Work or as otherwise instructed by ICE. Such ICE's Property, while in Seller's custody or control, shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to ICE. Data, drawings, tooling, patterns, materials, specifications, and any other goods or information supplied to Seller under the Contract are the property of ICE and must be returned upon completion, termination or cancellation of the Contract or upon request of ICE.

**16. Data Rights.** The term "subject data" used in this Section 16 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. It includes the proprietary rights of the following:

- a. Shop drawings and working drawings
- b. Technical data including manuals or instruction materials, computer or microprocessor software
- c. Patented materials, equipment, devices or processes
- d. License requirements

The Seller shall protect proprietary information provided by ICE to the fullest extent of the law.

ICE reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data for its purposes: (1) any subject data required to be developed

and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which ICE purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract.

**17. Liability for damages and personal injury.**

Seller hereby assumes sole responsibility and liability for any and all bodily injury (including death) to all persons, whether employees of Seller or otherwise, and damage to all property, to the extent such damage or injury is caused by, results from, arises out of, or occurs in connection with Seller's execution of the Work or the provision of Services. Seller shall defend, indemnify and save harmless ICE from and against any and all claims, damages, losses, liabilities, injuries, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of or resulting from Seller's execution of or failure to execute the Work or the provision of the Services hereunder to the extent any such claim, damage, loss, liability, injury, cost and expense is caused by any act or omission, including negligence, of Seller or anyone directly or indirectly employed by Seller or anyone for whose acts Seller may be liable for. Notwithstanding any other provision in the Contract to the contrary, ICE shall under no circumstances be liable to the Seller for any indirect, incidental, special or consequential damages (including, without limitation, any damages arising from loss of use or lost business, revenue, profits, data or goodwill) arising in connection with the Contract, whether in an action in contract, tort, strict liability or negligence, even if advised of the possibility of such damages.

**18. Compliance with law.** Seller shall, at its sole cost and expense, comply with all Federal, State, municipal and local laws, ordinances, rules,

regulations, orders, notices and requirements, and be responsible for and shall correct at its sole expense any violation of any law, ordinance, rule, regulation, order, notice or requirement resulting from or in connection with the performance of the Work or the provision of the Services. If the Seller performs all or part of the Contract at ICE's or the customer's premises, it shall comply with all environmental, health and safety regulations as ICE or the customer may require.

**19. Changes in Law.** Any change in Work or Services to be provided under the Contract which is necessitated by laws and regulations enacted after the effective date of the Contract may result in price changes. Any proposed change in Work or Services to be provided under the Contract which is purportedly necessitated by changes in laws and regulations enacted after the Effective Date of the Contract for which a price change is requested must be supported with invoice, supporting documentation, and confirmation of changes in law and regulations to support the requested pricing change. Without adequate support, to be determined in the discretion of ICE, no price change will apply. If a price adjustment is indicated, either upward or downward, it shall be negotiated between ICE and the Seller and the final Contract price will be adjusted upwards or downwards to reflect such changes in Law, provided however, that no such price adjustment will be made for laws and regulations enacted prior to the later of the Proposal Date or BAFO Date which include effective dates after the Proposal Due Date or BAFO Date. Any such price adjustment is subject to audit.

**20. Scheduling and delivery.** Seller shall provide lead-times for every part or component quoted. ICE shall attempt to accommodate Seller's lead-time requirements when developing the Material Delivery Schedule. Regarding

the Delivery of Goods, Work or provision of Services shall be delivered/provided by the Seller in accordance with the requirements set forth in ICE's Purchase Order. Seller shall provide ICE with written acknowledgement of acceptance of each Purchase Order. Seller shall maintain accurate control of all Purchase Order and maintain regular contact with the appropriate ICE Buyer to verify overall production requirements and their impact on the ability of the Seller to meet delivery/service requirements. Seller shall immediately notify ICE of any changes or conditions, which may affect required delivery/service dates. If Seller deliveries fall behind schedule, resulting in use of premium cost transportation, the Seller shall pay all the added costs for that premium transportation. ICE shall return unauthorized over-shipments to Seller at the Seller's expense. Delays, adjustments or interruptions to ICE's work program may cause ICE to make changes in the schedule. If Seller makes any material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the requirements set forth in the Purchase Order, Seller shall do so at its own risk. ICE shall have no liability for the Seller's costs associated with changes to the schedule notwithstanding the foregoing, the total quantity and types of materials set forth in the Purchase Order or subcontract, as may be adjusted through change orders, shall be delivered by Seller, and accepted by ICE if otherwise conforming to contractual requirements, by the date specified in the Purchase Order. All deliveries shall be subject to ICE's incoming inspection and acceptance. Materials furnished but not installed by Seller shall be delivered to ICE specified site in accordance with the Contract, unless otherwise provided. The method of shipment shall be designated by or approved by ICE. If Seller would like to use a method of shipment different than the ICE's freight routing instructions, Seller shall contact the ICE to obtain

instructions or approval prior to the first shipment. Packing Slip and Invoice must contain ICE Purchase Order number, proper line item number, part number, revision level, and bar code must be provided on all packing slips and invoices. Prior to the first delivery, a sample invoice and packing slip shall be submitted for ICE approval. Lack of such detail will lead to payment delays and ICE reserves the right to enforce Section 26 Backcharge for cost incurred related to Seller's lack of compliance. Service Contracts: Where the scope of supply is comprised solely of Services, the parties shall apply the general principles of scheduling to develop a schedule for performance of Work under the Contract. Other Provisions Applicable: This Section 20 is subject to the provisions of Section 25 regarding delays and remedies.

**21. Inspection and quality.** ICE and its customer shall have the right to visit and inspect any part of the Work either at Seller's facility or Seller's supplier's facilities. Seller shall perform in-process and final inspection and testing to ensure that the Work conforms to the specifications and quality standards required. ICE reserves the right to witness any testing and Seller agrees to keep and make available to ICE upon request, adequate quality records which clearly demonstrate the Seller's inspection of the Work prior to source inspection. Performance of source inspection at Seller's facility does not waive the rights of ICE under this article or any other article herein. The Work will be deemed accepted by ICE thirty (30) days after date of delivery, unless ICE issues a rejection notice of the Work anytime between the date of delivery and the end of the warranty period. In such case, Seller shall grant to ICE a credit for the full value of any Work rejected in accordance with Section 26 Backcharge. The Seller agrees to reimburse ICE for all costs incurred. The Seller shall maintain a quality control system compliant with the requirements

of the Contract and will provide ICE with factual evidence of its effectiveness upon request.

**22. Liquidated damages.** If the Seller does not achieve delivery and/or installation and/or delivery of the Work and/or completion of the Services within the dates specified in the Contract, save for reasons solely and entirely attributable to ICE or force majeure events as defined under Section 25 below, ICE may apply liquidated damages for compensation for delay, without any prior notice. Seller agrees that the liquidated damages are not penalties, but are a reasonable attempt to establish an agreed measure of damages for delay that would be difficult or impossible to ascertain. Unless otherwise stipulated in the Purchase Order, liquidated damages, applicable in the event of a delay of the Seller, shall be calculated at the greater of 1.0% of the Contract Price as defined under Article 7 hereof, excluding taxes, per week of delay or part thereof, or the amount of any liquidated damages imposed upon ICE by the customer of ICE identified under the prime contract described in Section 5 hereof.

**23. Warranty.**

(a) Seller warrants that all good and materials utilized in the Work shall be new, and of the specified quality, free from faults and defects in material, workmanship and design, and in conformity with the Contract requirements. The Seller shall, at ICE's sole discretion, replace or repair any all goods and materials utilized in the Work or component part thereof found not to be in conformity with the preceding paragraph, provided that ICE notifies the Seller of such non-conformity within the greater of twelve (12) months after delivery, or the warranty period imposed upon ICE under the prime contract between ICE and the customer of ICE as described in Section 5 hereof. Should Seller not respond within twenty-four (24) hours of notice, unless otherwise

indicated in ICE's notification, ICE shall repair, scrap or replace all goods and materials utilized in the Work and debit Seller's account in accordance with Section 26, Backcharge. In addition and at any time, the if all goods and materials utilized in the Work used under normal operating conditions suffer from an excessive level of similar defects as decided by ICE, Seller shall promptly and at its expense (a) diagnose the source of the failures, (b) correct all defects or non-conformities which are the source of such failures, (c) provide ICE with a summary of such diagnostic and correction activities, and (d) in accordance with ICE's correction plan, repair or replace all affected goods with fully conforming items. For Work all goods and materials utilized in the Work that has been replaced or repaired either by ICE or by Seller, the period stated under Section 23 shall restart when ICE receives the replaced or repaired Work. Seller shall defend, indemnify and hold ICE harmless from the consequences of any breach of the warranty provided by this Article, which shall not be to the exclusion of any other remedy provided to ICE by the Contract or at law.

(b) In addition to the requirements outlined in the Contract, Seller expressly warrants as follows:

- (i) Should the manufacturer or supplier of a component or part furnished under this Contract have a manufacturer's warranty that is greater in length or more beneficial to the ICE than required by the Contract, the superior warranty, shall pass on to the ICE. Seller will provide the ICE with information about any superior warranties, including the conditions and limitations of such superior warranties.
- (ii) The Seller agrees to promptly correct, by repair or replacement, any defect that may develop within the

warranty period. Any part or component replaced under this Section will extend the warranty on that part or component by one (1) year.

- (iii) ICE may, at its sole option, elect to repair or replace any defective component or part. In the event that ICE elects to repair or replace any defective component or part during the warranty period, the Seller agrees to reimburse the ICE for any labor, material, or reinstallation costs incurred by ICE in making such correction.
- (iv) In the event that, during the warranty period, specific repairs or modifications for any part or component are required on more than 5% units of that part or component, that will be considered a fleet defect. In the event of a fleet defect, the Seller will promptly perform a failure analysis to determine the cause of the fleet defect. If the Seller determines that the failure is attributable to defects in design, material, or workmanship, the Seller agrees to pay for all necessary labor and material to effect repairs or modifications on all affected parts or components, regardless of whether those affected parts or components are still under warranty. The warranty on any parts or components used to remedy fleet defects shall begin again when the fleet defect is remedied.

**24. Change orders, additions and deletions.** ICE may, at any time during the performance of the Work, require any change to the Work, without obligation to give notice to any surety. Seller shall execute the change to the

Work as directed in writing by ICE. With the exception of schedule changes in accordance with Section 20, Seller shall be entitled to an equitable adjustment in the Contract price and/or schedule for the costs and/or time caused by the directed change, provided a request for an equitable adjustment by Seller was made within fifteen (15) days after the issuance of the directed change by ICE. The value of any change to the Work that will result in an addition to or deletion from the Contract price shall be determined and applied in accordance with the Contract, where applicable.

**25. Delays and remedies.** If the performance of an obligation hereof is prevented, restricted or delayed by a case of force majeure, such as any act of God, or the public enemy, any delay in acting, or failure to act of any governmental agency, or authority, or fire, flood, epidemic, quarantine, freight embargo, war, insurrection or riot, such performance shall be amended accordingly, providing the Party affected by an event of force majeure shall promptly inform the other Party in writing and shall take all reasonable steps to mitigate the consequences of such situation, in particular to avoid or limit any delay in the delivery of the Work and the performance of the Services. Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of the Contract, Seller shall immediately give notice to ICE.

**26. Backcharge.** Without waiving any of its rights under hereunder, ICE shall be entitled to recover from the Seller any and all costs incurred by ICE, which shall include a minimum administrative fee not less than five hundred dollars (\$500) per occurrence to (i) perform corrective action on the Work or the Services, and/or (ii) provide such services as are necessary to complete the Work or the Services in the event the Seller is unable or unwilling to complete or fails to complete the Work or the Services in an

acceptable and timely manner. In such case, the provisions of Section 27 shall apply.

**27. Withholding and set-off of payment.** ICE shall have the right at any time to set-off, and/or withhold against Seller from any payment then due or thereafter to become due an amount which it reasonably deems sufficient to compensate ICE for and indemnify it against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by it based on Seller's failure to meet the Contract requirements. If the amount retained together with the balance due under the Contract is insufficient to discharge Seller's obligation above, Seller shall be liable for the difference and pay the same to ICE upon demand.

**28. Suspension of Work or Services.** ICE may at any time and for any reason within its sole discretion issue a written order to the Seller suspending, delaying or interrupting all or any part of the Work or services for a specified period of time.

The Seller shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work or Services covered by the suspension during the period of Work stoppage. Seller shall continue the Work and Services that are not included in the suspension and shall continue such ancillary activities as are not suspended. The Seller shall resume performance of the suspended Work and Services upon expiration of the notice of suspension, or upon direction from ICE.

The Seller shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the contract time, to the extent that cost or delays are shown by the Seller to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Seller, or for which an

equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of Work/Service notice, the Seller shall submit to ICE a detailed price and schedule proposal for the suspension, delay or interruption.

**29. Termination for default.** ICE may terminate the Contract in whole or in part at any time if (i) Seller is in default of its obligations under the Contract, and does not cure the default or submit a plan reasonably acceptable to ICE to cure such default within ten (10) days from the receipt of the notice given to it by ICE or (ii) Seller becomes insolvent or is adjudicated as bankrupt or goes into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or makes a general assignment for the benefit of creditors, or otherwise acknowledges insolvency. In the event of termination under Article 29, ICE may (i) terminate the Contract for all or any portion of the Work or the Services, or (ii) perform the Work or the Services or subcontract the Work or the Services to a third party or third parties and deduct the cost thereof from any moneys due or to become due to Seller hereunder.

In the event ICE wrongfully terminates the Seller for default, such termination shall be deemed a termination for convenience and Seller shall be compensated in accordance with Article 30 herein.

**30. Termination for Convenience.** The performance of Work and/or the Services under this Contract may be terminated by ICE in accordance with this clause in whole, or from time to time in part, whenever ICE shall determine that such termination is in the best interest of ICE. Any such termination shall be effected by delivery to the Seller

of a notice of termination specifying the extent to which performance of Work or the Services under the Contract is terminated, and the date upon which such termination becomes effective.

Upon receipt of a notice of termination, and except as otherwise directed by ICE, the Seller shall do the following:

- a. Stop Work and Services under the Contract on the date and to the extent specified in the notice of termination.
- b. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work and Services under the Contract as is not terminated.
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work or Services terminated by the notice of termination; assign to ICE in the manner, at the times, and to the extent directed by ICE, all of the right, title and interest of ICE under the orders and subcontracts so terminated, in which case ICE shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of ICE, to the extent he or she may require, which approval or ratification shall be final for all the purposes of this clause. Transfer title to ICE and deliver in the manner, at the times and to the extent, if any, directed by ICE the fabricated or un fabricated parts, work in process, completed work, supplies and other material

produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to ICE.

- d. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by ICE, any property of the types referred to above, however, that the Seller shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by ICE, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by ICE to the Seller under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as ICE may direct.
- g. Complete performance of such part of the Work and the Services as shall not have been terminated by the notice of termination.
- h. Take such action as may be necessary, or as ICE may direct, for the protection or preservation of the property related to this Contract that is in the possession of the Seller and in which ICE has or may acquire an interest. ICE shall be paid its costs, including Contract close-out costs, and profit on Work or Services performed up to the time of termination. The Seller shall promptly submit its termination

claim to ICE to be paid the Seller.

**31. Disputes, claims, and controversies.**

In the event that the dispute is not resolved amicably by the Parties, it shall then be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The proceedings shall take place in Hornell, New York. The language of such arbitration shall be English. The award shall be final and binding upon the Parties hereto, and judgment on the award rendered by the arbitrator or arbitrators may be entered in any Court having jurisdiction thereof. Each Party shall bear its own costs in connection with the preparation and presentation of such arbitration. Costs of the proceedings shall be assessed against the non-prevailing Party as determined by the arbiter. Seller shall proceed diligently with the performance of the Work or the Services during the pendency of any dispute and in accordance with any determinations by ICE.

**32. Governing law.** The Contract shall be governed by and construed and enforced in accordance with the laws of the State of New York without regard to choice of law or conflicts of law.

**33. Assignment.** Neither the Contract nor any rights or obligations hereunder shall be assignable or otherwise transferable by the Seller in whole or in part without receiving prior written consent of ICE. It shall be deemed an assignment, requiring advance written consent of ICE, for any change in the equity ownership of the Seller of 50.0% or more of the voting equity interests of the Seller.

**34. Amendment.** Any amendment to the Contract shall only be valid and binding upon the Parties if concluded in writing and signed by an authorised representative of each of the Parties and

formally expressed as constituting an amendment hereto.

**35. Waiver.** No failure or delay on the part of any Party to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any Party of any right preclude any future exercise thereof or the exercise of any other right.

**36. Notices.** All notices under this agreement will be in writing and will be deemed given when: delivered personally; sent by confirmed facsimile; sent by electronic mail that can be confirmed as having been received; five (5) days after having been sent by registered or certified mail, return receipt requested; or one (1) day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt. All communications to us should be sent to the address indicated on the order. All communications to Seller will be sent to the address specified on order, or to such other address as may be designated by either Party by written notice to the other Party.

**37. Limitation of Liability** In carrying out any of the provisions of this Contract or in exercising and power or authority granted to them thereby, there will be no liability upon the board members, officials, agents or employees of ICE, either personally or as officials of the ICE, it being understood that in such matters they act solely as representatives of the ICE.

**38. Security Interest.** The Seller hereby grants to ICE a security interest in the items being purchased hereunder and described herein, to the fullest extent provided by law, whereby the Seller grants to ICE a security interest in the Work, whether now owned or hereinafter acquired, including any parts to be used for, parts assembled in, and parts to be assembled in, such Work, as

well as the cash and non-cash proceeds, increases, substitutions replacements, additions and accessions of all of the foregoing, to secure the performance of Seller's obligations under this Contract, which include, but are not limited to the amount of funds paid by ICE to Seller before delivery of the Work to Purchaser and acceptance thereof by ICE, and all other past, present and future consideration, other value, indebtedness, or obligations owed or to be owed by Seller to ICE under this Contract, any other agreement, or by law. On default by Seller in any of its obligations hereunder, ICE may exercise any and all remedies of a secured party under Article 9 of the Uniform Commercial Code in addition to all remedies stated in this Contract or otherwise available by law. Seller authorizes ICE to file a UCC-1 financing statement or its equivalent as necessary to provide notice of and otherwise perfect ICE's security interest hereunder, but failure to so file shall not limit any of ICE's rights hereunder. Seller shall not grant, or permit to attach, any liens or encumbrances against the Work other than the security interest herein granted to ICE.

**39. Fraud or Falsification**

**Requirement.** Any knowing and willful act to falsify, conceal or alter material fact, or any false, fraudulent, or fictitious statement or representation in connection with the performance of work under this Purchase Order may be punishable in accordance with applicable Federal Statutes.