

# Standard Terms and Conditions of Sale for Mueller Environmental Designs, Inc.

## 1. GENERAL

The sale of goods and/or provision of services by Mueller Environmental Designs, Inc. or any of its subsidiaries or affiliates, collectively and individually known as "**MED**", are subject to the following Standard Terms and Conditions of Sale. The purchaser of the goods and services shall be hereinafter referred to as PURCHASER. Upon the date of MED receipt of PURCHASER's written Purchase Order, PURCHASER and MED shall be deemed on such date to have entered into a legally binding and enforceable agreement for the purchase and sale of the goods and services described therein and, together with these Standard Terms and Conditions of Sale, shall constitute the "**Agreement**". As to PURCHASER and MED, respectively, "**Related Parties**" shall mean such party's parent, subsidiary and affiliated entities, and all of their respective officers, directors, employees, agents, contractors, and designees.

NOTWITHSTANDING THE TERMS AND CONDITIONS CONTAINED IN ANY OTHER AGREEMENT, NO TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER PLACED WITH MED, OTHER THAN THOSE STATED HEREIN, SHALL BE BINDING ON MED, UNLESS HEREAFTER MADE IN WRITING, SPECIFICALLY REFERRING TO THE MODIFIED TERMS AND CONDITIONS AND SIGNED BY AN AUTHORIZED OFFICER OF MED. IN ALL OTHER EVENTS THESE STANDARD TERMS AND CONDITIONS OF SALE SHALL GOVERN ANY PURCHASE ORDER PLACED WITH MED.

THESE STANDARD TERMS AND CONDITIONS OF SALE WILL SUPERSEDE AND GOVERN ALL AGREEMENTS BETWEEN THE PARTIES RELATIVE TO THIS TRANSACTION, AND THERE IS NO AGREEMENT COLLATERAL HERETO (WHETHER ENTERED INTO BEFORE OR AFTER THE PURCHASE ORDER IS PLACED WITH MED) OR ANY REPRESENTATION OR WARRANTY WHICH SHALL BE BINDING UPON MED UNLESS SIGNED BY AN AUTHORIZED OFFICER OF MED.

## 2. PURCHASER ACKNOWLEDGEMENT

MED reserves the right to require an authorized representative of the PURCHASER to provide to MED such written evidence as an authorized representative of MED may reasonably require acknowledging to PURCHASER's acceptance of these Standard Terms and Conditions of Sale. Notwithstanding that no such written evidence is provided, these Standard Terms and Conditions of Sale shall constitute part of the Agreement.

## 3. VALIDITY

MED's quoted prices for goods and services are valid only

for the time period stated in MED's written quotation.

## 4. DELIVERY OF GOODS

MED's goods and services are supplied in accordance with INCOTERMS 2010, and risk of loss shall pass accordingly. Title to the goods shall pass at the same time that risk passes to the BUYER. MED has sole discretion to determine the factory location for the provision of the goods and services. Actual delivery time will be subject to availability of manufacturing capacity at the date of the Agreement. Claims for any damage, shortage or loss in transit of goods supplied by MED must be made by PURCHASER to the carrier. All goods are shipped ExWorks (EXW) Incoterms 2010 unless otherwise agreed to in writing signed by an authorized representation of MED prior to shipping.

## 5. PAYMENT TERMS

Unless otherwise specified in the Agreement the following shall apply:

- MED may require progress payments, letters of credit or down payments at time of placement of order as specified in the Agreement. No interest or other amounts will be required to be accrued or paid by MED to PURCHASER in connection with such advance payments. All progress payments are considered nonrefundable. If the order is cancelled the Cancellation Schedule shall control.
- All letters of credit will be irrevocable, confirmed and drawn against a banking facility pre-approved by the MED. All letter of credit charges are responsibility of PURCHASER.
- PURCHASER agrees to pay all applicable taxes.
- All Payments shall be handled according to the payment terms contained in the MED Quote.

In the event credit is applied for and granted to PURCHASER, terms and credit limits shall be established in the Agreement. All amounts beyond set credit limits will be paid in full by PURCHASER prior to delivery. Payments for amounts within set credit limits are due in full from PURCHASER within thirty (30) days from the date goods are shipped or services are provided by MED, without setoff or deduction for any reason whatsoever.

## 6. REMEDY FOR FAILURE TO PAY

If the full payment is not received per the terms of the MED Quote and/or if the PURCHASER does not make arrangements with MED within thirty (30) days after (i) notification of availability of goods for shipment or (ii) an

invoice for payment is sent by MED, then MED may, in its sole discretion, charge interest at the rate of 18% per annum on unpaid amounts, calculated and compounded Monthly, until paid in full. The PURCHASER also agrees to pay all reasonable legal expenses and agency commissions sustained by MED in pursuit of any payment which is past due, on a full indemnity basis. MED shall have the right to file an M & M lien or statutory lien at its sole option and discretion. MED reserves the right to sell the goods and seek any and all damages for non-payment.

## **7. CANCELLATION**

Should PURCHASER cancel its order with MED the Cancellation Schedule attached to the MED Quote shall control.

## **8. LIMITATION OF LIABILITY FOR LOSS, ETC.**

(a) PURCHASER agrees that MED shall only be liable for any loss, damage expense or delay to the goods resulting from the negligence or the other fault of MED, such liability shall be limited to an amount equal to the Purchase Price of the goods or equipment sold to Purchaser;

(b) Where MED issues its own bill of lading and receives freight charges as its compensation. PURCHASER has the option of paying a special compensation and increasing the limit of MED's liability up to the shipment's actual value; however, such option must be exercised by written agreement, entered into prior to any covered transaction(s), setting forth the limit of MED's liability and the compensation received;

(c) In instances other than in (b) above, unless PURCHASER makes specific written arrangements with MED to pay special compensation and declare a higher value and MED agrees in writing, liability is limited to the amount set forth in (a) above;

(d) PURCHASER agrees that MED shall, in no event, be liable for consequential, punitive, statutory or special damages in excess of the monetary limit provided for above.

(e) MED does not assume, nor authorize any representative or other person to assume for it any obligation or liability other than as expressly set forth herein.

## **9. FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performance under the Agreement (other than for delay in the payment of any amount due and payable including accrued interest prior to the date of the Force Majeure, as hereafter defined) to the extent such failure or delay is caused by reasons of force majeure beyond that party's reasonable control and not caused by that party's fault or negligence ("Force Majeure") including, but not limited to, the occurrence of natural disasters such as earthquakes, hurricanes and floods, the occurrence of war, riot, acts of

terrorism or other major upheaval, the imposition of trade sanctions or trade embargoes (including denied and sanctioned parties), the failure of suppliers, subcontractors, and carriers, and/or other necessary parties to substantially meet that party's performance obligations under the Agreement. As a condition precedent to the non-performing party's claim of Force Majeure, the non-performing party must give written notice to the other party, within five (5) days after the Force Majeure, and provide complete details in respect of the occurrence of the cause relied upon to excuse performance. The dates by which performance obligations are scheduled to be met will be extended for that period of time which is equal to the time lost due to any delay caused by the Force Majeure. If a Force Majeure event occurs while MED is providing service work at a PURCHASER location, then MED will be paid at its then applicable personnel at stand-by rates during any such Force Majeure event. MED shall submit its invoice for the payment of such charges which shall be paid within thirty (30) days from the date of such invoice. The failure to pay for such charge shall release MED from any further performance obligation under the Agreement. If the Force Majeure event extends for a period of more than forty-five (45) days, MED has the right to terminate the Agreement and cancel the order and in that event, MED will refund any deposit or down payment after deducting the expenses that have been incurred by MED up to the date of receipt of notice by MED of the Force Majeure event, as determined by MED in its sole discretion.

## **10. LIMITED WARRANTY**

Unless otherwise specified in writing in the Agreement, MED warrants its goods to be free from defects in materials and workmanship for a period of 18 months from date of shipment from MED's factory location or one year from startup, whichever occurs first. Should any part of such goods be found, under normal use and service during the warranty period to be defective, MED will repair or replace such goods at its factory location, provided (i) that MED receives written notice of the defective product or part within the warranty period, (ii) such defective product or part is returned to that location by the PURCHASER on a prepaid freight basis no later than thirty (30) days after the expiration of the warranty period, (iii) that the MED return material authorization number, invoice number and PURCHASER'S purchase order number are noted on the shipping container and (iv) that inspection of the original goods establishes the claim defect to the satisfaction of MED in its sole discretion.

MED provides no warranty with respect to components manufactured by others which are subject to the warranties of their respective manufacturers that are used in MED's goods or sold by MED. Should any such component, provided by MED, fail within the manufacturer's warranty period, such component must be returned to MED by the PURCHASER on a prepaid freight basis in accordance with MED's return policy (section 11 below) so it can be returned to the original component manufacturer's facility for evaluation and disposition.

Any good that is repaired by MED is warranted to be free from defects in materials and workmanship for a period of ninety (90) days from the date of completion of repair or the remaining portion of the original warranty, whichever is longer.

No warranty shall apply (i) to goods upon which repairs or alterations have been made (unless authorized by MED), (ii) for goods misused, neglected and/or incorrectly installed, stored or operated or (iii) to goods which have not been operated or maintained by demonstrably competent personnel.

On-site warranty service may be provided by MED upon request by PURCHASER, and subject to conditions contained in section 11 below, during the original warranty period for MED's goods which cannot be returned by the PURCHASER to MED'S designated service location due to logistical or financial reasons acceptable to MED. PURCHASER will be responsible for all normal travel and living expenses incurred by MED's personnel during any warranty service call and all costs associated with the transportation, taxes, duties and importation costs of all replacement components. PURCHASER will also be responsible for the transportation, importation and exportation expenses associated with any special tools required for this warranty work. PURCHASER will not be responsible for daily service charges associated with on-site repairs which are determined by MED to be a covered warranty defect. Daily service charges for repairs determined by MED to be the result of misuse, neglect, modification or incorrect installation or operation will be the responsibility of PURCHASER.

MED's total liability and PURCHASER's sole remedy under this warranty is limited to such repair or replacement subject to the conditions stated herein, and no allowance will be made for repairs, replacements and/or alterations unless made with MED's prior written approval. **THE WARRANTIES CONTAINED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES, AND MED HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### **11. FIELD SERVICE SUPPORT**

MED may provide qualified personnel to provide field service support for final installation, commissioning, training and required service regardless of whether such work is determined by MED to be warranty work. MED reserves the right to decline to provide field service support upon request if qualified personnel are unavailable or if logistical issues and/or if geopolitical situations may, in MED's discretion, jeopardize the personal safety of MED's personnel. When personnel are dispatched to provide field service support, PURCHASER agrees to provide a purchase order for the amount of the estimated service costs, paid within thirty (30) days from invoice, in respect

of all MED's charges, including the prevailing daily service charges, mileage charges, normal travel and living expenses from the time that MED's personnel leaves MED's designated point of origin until the time that the personnel return to the point of origin. All such charges which exceed PURCHASER's approved available credit limit at the time of any field service call, must be prepaid to MED by PURCHASER before mobilization. MED shall have no obligation to supply such personnel until such charges are paid, unless alternative terms or credit limits determined by MED are established. Any parts which are deemed by MED's personnel to be defective in material or workmanship will be provided free of charge to PURCHASER during the warranty term as stated above; however, PURCHASER will be responsible for all transportation and importation costs associated with these components. Reimbursement to PURCHASER by MED for any excess prepaid costs, or for costs of parts replaced under warranty, will be made to PURCHASER within thirty (30) days from the date of MED's personnel return to MED's designated point of origin or the date of receipt of the defective parts in the MED's designated location, whichever is later.

When MED provides field services support for final installation, commissioning and training of PURCHASER'S personnel for certain goods, PURCHASER will be responsible for providing utilities, materials and labor to prepare the site for installation and pre-install goods in accordance with MED's written requirements. Failure of PURCHASER to complete these responsibilities prior to the arrival of MED's service personnel will result in additional charges and/or delays in completion of final installation and commissioning. If required, PURCHASER is to provide a technical translator familiar with the English language and in particular, familiar with industrial or transportation terminology to facilitate this process. Should the stay of MED's service personnel be extended as a result of causes beyond the control of MED or MED's personnel, PURCHASER agrees to reimburse MED for those documented expenses in excess of the pre-paid estimated or approved available credit limit amount within fourteen (14) days from invoice. MED may, in its sole discretion, charge interest at the rate of 18% per annum on unpaid amounts, calculated and compounded monthly, not in advance until paid in full. PURCHASER also agrees to pay all reasonable legal expenses and agency commissions sustained by MED in pursuit of any payment which is past due, on a full indemnity basis.

#### **12. RETURNS**

MED's return policy is independent from MED's warranty and service policies. MED must authorize, in writing, any returns before any return will be considered by MED for any refund. Goods returned without prior written authorization by MED will not be accepted. MED return material authorization number, invoice number and PURCHASER'S purchase order number must be noted on the shipping container and all supporting documentation

accompanying any authorized return shipment. Returns will be accepted only on new, unused, and/or standard stock goods returned within thirty (30) days of the date of the Agreement. PURCHASER must return goods on a freight prepaid basis. MED may, in its sole discretion, accept for return other items such as custom made goods, special order goods or goods requiring special processing.

If MED decides to accept for return such goods, MED may charge PURCHASER a restocking fee in order to do so. Electrical or electronic goods will not be accepted for return unless such goods fail to meet specifications or were shipped in error. A credit memo will be issued for those items determined by MED to be in compliance with this return policy. A credit memo will be issued for original freight charges only in those cases where the goods were defective, were shipped incorrectly and/or failed to perform as specified.

### **13. CHANGES**

Any requests for changes to the order for goods or services after the date of the Agreement will not be effective unless accepted in writing by both parties. Any request for changes must be initiated by the party seeking the change in the form of a written notice of such request. The request for such change can be for one or more of the following: (1) the goods (2) the specifications, drawings, designs or other such technical criteria; (3) field service needs; (4) goods quantities; (5) delivery dates; and (6) method or location of delivery. Notwithstanding the foregoing, MED expressly reserves its right to change, discontinue and/or modify the design and manufacture of its goods without obligation to furnish, retrofit or install goods previously or subsequently sold.

### **14. CONFIDENTIAL INFORMATION, TECHNOLOGY AND PROPRIETARY RIGHTS**

The parties acknowledge that certain confidential information may be exchanged in the course of executing this Agreement and that all aspects of all discussions and materials exchanged will be treated as confidential and will not be disclosed to any third parties, except as permitted herein. Both parties agree to protect the other parties' confidential information by not discussing, disclosing, copying and/or distributing this information to any employee who is not actively involved in the project. Furthermore, the terms of employment for employees involved in this project must include an agreement to protect the confidentiality of both parties' confidential information. Examples of confidential information include, but are not limited to, bids or proposals, methods of manufacturing, engineering or manufacturing drawings, specifications and tolerances, operating procedures and processes, test reports, test methods, control systems, computer programs and instructions and similar information which is not available (or should not be made available) to competitors. Both parties agree to specifically label all confidential information as such. No written information shall be regarded as confidential information

if it is not labeled or if it can be shown that such information: 1) is already in the public domain; 2) is already known to the other party; 3) is independently developed by the other party; 4) is disclosed by a third party through no fault of either party; and 5) is required by either party to be disclosed under applicable law or by a court of competent jurisdiction.

Any confidentiality obligation imposed by this agreement may be waived by written agreement of the parties. The parties acknowledge that their respective obligations hereunder will survive termination for a period of five (5) years after the effective date of termination of this Agreement. Within thirty (30) days after the effective date of termination of this Agreement, all written confidential information belonging to the other party will be returned or destroyed.

To the extent necessary to obtain subcontractor bids, to present design proposals to qualified customers, or to obtain governmental or regulatory body assessment/approval, MED is permitted to supply select portions of the confidential information to such third parties. Any such disclosure shall be reviewed and approved in writing by PURCHASER. Submissions of confidential information to third parties must be made under a signed confidentiality agreement prohibiting unauthorized disclosure, reproduction in any form, distribution or use of such information. Third parties are required to agree to return all confidential information upon request.

Both parties agree that the other party currently possesses certain core technology and proprietary rights to ideas, goods and processes related to their own area of expertise and business. Technology includes, but is not limited to, confidential and proprietary information developed by either party concerning their own existing or proposed goods and services, trade secrets and technical data. Proprietary rights include, but are not limited to, existing and proposed goods or methods which are covered by issued patents, pending patents or which are under review or development. The Agreement does not transfer the rights to one party's technology or proprietary rights to the other party or permit use of such rights except as expressly permitted by the Agreement. All documents, drawings, specifications, procedures, processes, methods and systems, which are developed by one party and supplied to the other party will remain the property of the originating party. Both parties agree not to design or build identical or similar goods either in part or in whole for any third party or for their own use using the other party's technology or proprietary rights.

### **15. INDEMNIFICATION FOR PATENT INFRINGEMENT**

PURCHASER agrees to indemnify MED, in respect of all losses, claims, damages, costs and expenses, including legal expenses on a full indemnity basis, arising out of patent infringement claims arising from modifications made by PURCHASER to MED's goods unless such

modification has been approved by MED in writing.

## **16. INSURANCE**

Both parties agree to maintain adequate insurance to support each party's obligations under the MED Quote sometimes referred to as RFQ. Upon written request by one party, the other party shall furnish to the requesting party certificates of insurance to evidence that adequate insurance is in place and is in full force and effect

## **17. COMPLIANCE WITH ANTI-CORRUPTION LAWS**

PURCHASER represents and warrants, in connection with the transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it shall take no action, directly or indirectly, that would constitute a violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), United Kingdom Bribery Act of 2010 as amended ("UKBA"), Canadian Corruption of Foreign Public Officials Act, or any other applicable anti-bribery or anti-corruption law, convention or regulation (collectively, "**anti-corruption laws**"). PURCHASER acknowledges and confirms that it and its Related Parties are familiar with the provisions of the anti-corruption laws. PURCHASER hereby agrees to indemnify, defend and hold harmless MED and its Related Parties from and against any and all losses, causes of action, liability, claims, demands, damages, judgments, awards, costs or expenses (including our legal fees and expenses on a solicitor-client basis) (collectively "**Claims**") arising in connection with any alleged breach by PURCHASER or any of its Related Parties of this section. MED reserves the right to terminate the Agreement in its entirety, without liability to PURCHASER, if MED has a good faith basis for believing PURCHASER or any of its Related Parties has violated or intends to violate any country's anti-corruption laws. PURCHASER agrees to comply with the FCPA, the UKBA, and all other anti-corruption and/or anti-bribery laws applicable in the jurisdiction in which MED is selling the Goods. PURCHASER hereby declares that it has read and understands the provisions of the FCPA and UKBA and, on that basis; it further represents and covenants that neither it nor any of its employees or agents have taken or will take any action to cause MED to be in violation of the FCPA or any other anti-corruption and/or anti-bribery laws. Specifically, PURCHASER hereby certifies that it has not paid, nor offered or agreed to pay, nor has caused to be paid, or offered or agreed to be paid, directly or indirectly, in respect of this Agreement, any political contributions, fees or commissions to any public or governmental employee or official anywhere for the purpose of influencing such official's act or decision to provide business to PURCHASER or MED.

## **18. COMPLIANCE WITH EXPORT RESTRICTIONS**

MED's products may be subject to the export control laws of the United States, Canada or other countries where its

products are sold. PURCHASER acknowledges that it will comply with all such laws and regulations, and obtain all licenses to export, re-export or import MED's products as may be required. PURCHASER will not, without first obtaining any necessary licenses, export or re-export any of MED's products, proprietary information or related technical data: (i) for any prohibited end uses; (ii) to any prohibited destinations; or (iii) to any individuals or entities that are presently on any denied party lists. Diversion contrary to U.S. law is prohibited.

PURCHASER agrees to assist MED in obtaining any necessary export licenses or end-use statements for MED's goods or services required for MED to deliver its goods and services to PURCHASER. MED shall not be liable to PURCHASER for any failure to provide goods, services or technical data as a result of any of the following governmental actions: (1) refusal to grant export or re-export licenses; or (2) cancellation of export or re-export licenses. MED reserves the right to not ship the goods or services and terminate the Agreement in its entirety, without liability to PURCHASER, if MED has a good faith basis for believing PURCHASER or any of its Related Parties has violated, or intends to violate, any country's export regulations. PURCHASER hereby agrees to indemnify, defend and hold harmless MED and its Related Parties from and against any and all Claims arising in connection with any breach, or alleged breach, of this section 17 by PURCHASER or any of its Related Parties.

## **19. INDEMNITY**

PURCHASER shall release, indemnify, defend and hold harmless MED and its Related Parties from and against all Claims for (i) damage to, or destruction of, property or injury (including death) to any person whatsoever, including without limitation to PURCHASER, its Related Parties, any of its or their customers, contractors or suppliers, arising from or related to the purchase or use or operation of MED's goods or services, **REGARDLESS OF THE CAUSE INCLUDING WITHOUT LIMITATION, THE NEGLIGENCE OR STRICT LIABILITY OF, OR BREACH OF CONTRACT, WARRANTY OR DUTY BY MED OR ITS RELATED PARTIES**; and (ii) for any breach of any of the terms and conditions of this Agreement by PURCHASER. Furthermore, notwithstanding anything contained in the Agreement to the contrary, to the maximum extent permitted under law, PURCHASER shall release, indemnify, defend and hold harmless MED and its Related Parties from and against any and all Claims, asserted by, derived from or in favor of any person, party or entity, in respect of or resulting from the failure of or damage to any gas compressor or gas processing equipment **REGARDLESS OF THE CAUSE INCLUDING WITHOUT LIMITATION, THE NEGLIGENCE OR STRICT LIABILITY OF, OR BREACH OF CONTRACT, WARRANTY OR DUTY BY MED OR ITS RELATED PARTIES**.

## 20. CONSEQUENTIAL DAMAGES WAIVER

Notwithstanding anything contained in this Agreement to the contrary, MED shall not, in any event, be liable for any special, incidental, consequential or indirect damages, loss of profits or revenues, or for any claims, damages, costs or expenses (including legal expenses) or delay caused by defective material or workmanship (all of the foregoing collectively "**Consequential Damages**") and PURCHASER hereby releases MED and its Related Parties from all such Consequential Damages, **REGARDLESS OF HOW SUCH CONSEQUENTIAL DAMAGES ARE CAUSED, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE OR STRICT LIABILITY OF, OR BREACH OF CONTRACT, WARRANTY OR DUTY BY MED OR ITS RELATED PARTIES.**

**Limitations on Seller's (MED) Liability – Statute of Limitations.** In no event shall MED be liable for anticipated profits or for incidental or consequential damages. MED's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. MED shall not be liable for penalties of any description. Any action resulting from any breach on the part of MED as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

## 21. DEFAULTS OR DELAYS

Seller shall not be liable for any default or delay in the delivery of all or any goods resulting either directly or indirectly from (a) accidents to, breakdowns, or mechanical failure of Seller's plant, machinery, or equipment; strikes or other labor troubles; labor shortages; fire; flood; wars; acts of the public enemy, acts of God; delays of suppliers; delays in transportation or lack of transportation facilities; embargos; shortages of, or reductions in energy sources; priorities, allocations, limitations, restrictions, or other acts required or requested by Federal, state, or local governments, or any subdivision, bureau or agency thereof; or (b) any cause beyond the control of Seller. In no event shall Seller be liable for any consequential, special, or contingent damages arising out of Seller's default or delay in filling Buyer's order.

## 22. WAIVER

The failure of either party to enforce any provision hereof will not constitute a waiver or preclude subsequent enforcement thereof. Waiver by a party of any breach of these provisions shall not be construed as waiver of any other breach.

## 23. SEVERABILITY

The fact that a provision contained herein is held invalid, illegal or unenforceable by a court of competent jurisdiction will not affect the other provisions hereof.

## 24. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Texas. Each party hereby irrevocably submits itself to the jurisdiction of the federal and state courts of Texas located in Houston, Texas, and waives any objection it may now or hereafter have to the placing of venue in any such courts and any right to remove any such action or proceeding to another court.

## 25. LEGAL EXPENSES

In the event it is necessary for any party to enforce any provision of the Agreement, then in that event, the prevailing party shall be entitled to recover reasonable legal expenses on a full indemnity basis.

## 26. NOTICES

All notices required or permitted to be given hereunder must be in writing and shall be deemed effectively given when received or, if not received, when deposited with the post office as certified mail, return receipt requested, to the address of the party as contained in the Agreement, or as otherwise provided by either party upon notice to the other party.

## 27. SCOPE OF GOODS AND SERVICES TO BE PROVIDED

MED will provide to PURCHASER the goods and/or perform services as described in and subject to the terms and conditions of this Agreement which may be amended or modified by supplementary change orders agreed to by both parties in such event, the goods and/or services to be provided shall be deemed to include the goods and/or services described in such supplementary change orders.

MED will provide such resources and utilize such employees and/or third party consultants as it deems necessary to provide the goods and services. The manner and means used by MED to perform the services desired by the PURCHASER are in the sole discretion and control of MED. MED shall use commercially reasonable efforts to meet the schedules and times of performance for the services as set forth in the Agreement.

PURCHASER and MED agree to cooperate in good faith to permit MED to provide the goods and services in a timely and professional manner. PURCHASER understands and agrees that MED's provision of the goods and services may depend on the completion of certain PURCHASER tasks or adherence to PURCHASER schedules within PURCHASER's control; consequently the schedule for provision of the goods and services or any portion thereof may require adjustments or changes in the event such PURCHASER tasks or schedules change or are modified or are not completed as anticipated. MED shall bear no liability or otherwise be responsible for delays in the provision of goods and services or any portion thereof occasioned by PURCHASER's failure to complete in a timely manner a PURCHASER task or adhere to a PURCHASER schedule.

## **28. ASSIGNMENT; SOURCE OF PRODUCTION**

PURCHASER shall not assign its rights or obligations hereunder without the prior written consent of MED, which consent shall not be unreasonably withheld or delayed. Any attempted assignment in contravention of the foregoing shall be void and of no force or effect.

Subject to compliance with PURCHASER's applicable product quality, specifications and delivery requirements specified in the Agreement, MED reserves the right to source production of the goods supplied hereunder from any facilities which are owned by any entity controlling, controlled by or under common control with MED. MED shall have no responsibility for meeting PURCHASER's country-of-origin product content requirements (if any) unless MED is notified in writing of such requirements at the time PURCHASER places its order with MED, or in the case of standing orders, at or before the latest time PURCHASER may place an order in accordance with MED's production scheduling requirements.

## **29. CONSTRUCTION**

No provision of this contract may be construed against MED as the drafting party. The term "including" means "including without limitation." The term "days" means calendar days unless otherwise expressly stated.

## **30. TERMINATION**

In addition to any other remedies available to MED at law, MED may terminate the Purchase Order with the PURCHASER in the event that:

- (a) PURCHASER fails to perform its obligations under or otherwise breaches any provisions of the Purchase Order or any other contract between PURCHASER and MED or any of MED's affiliates;
- (b) PURCHASER ceases to carry on its business substantially as such business is conducted on the date of the Purchase Order and such change in circumstances modifies MED's obligations or impairs either party's ability to discharge its obligations under the Purchase Order;
- (c) PURCHASER is the subject of creditor protection of bankruptcy, reorganization, liquidation receivership or similar proceedings;
- (d) PURCHASER is unable to pay its debts as they become due;
- (e) Any term, condition or provision of the Purchase Order or any other contract between the PURCHASER and MED becomes invalid or illegal under any applicable law, rule or regulation; or
- (f) An event of Force Majeure listed in section 9 above continues for a period of more than forty five (45) days.

