



## Standard Terms and Conditions of Purchase for GATESAIR

### 1. TERMS OF AGREEMENT

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between the GATESAIR entity ("GATESAIR") and the supplier (the "Supplier") identified in the Purchase Order. GATESAIR's submission of the Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on GATESAIR's agreement to such different or additional terms. Supplier's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Supplier's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer within the meaning of any commercial code, and may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if a master agreement covering procurement of the Work described in the Purchase Order exists between Supplier and GATESAIR, the terms of such master agreement shall prevail over any inconsistent terms herein.

### 2. DEFINITIONS

- a. "Deliverables" means the deliverables specified in the Purchase Order (and any SOW) to be delivered on or before the Delivery Date. b. "Delivery Date" means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.
- c. "Harmful Code" means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.
- d. "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- e. "Preexisting Materials" means any Intellectual Property Rights or tangible personal property of Supplier or GATESAIR created before the date of this Purchase Order or outside the scope of this Purchase Order.
- f. "Products" means tangible goods specified in the Purchase Order to be delivered on or before the Delivery Date. g. "Services" means the services that Supplier is to perform for GATESAIR specified in the Purchase Order.
- h. "SOW" means the document specifying, without limitation, the scope, objective, and time frame of the Work that Supplier will perform for GATESAIR.
- i. "Subcontractor" means a third party performing Work under an agreement (a "Subcontract") with Supplier.
- j. "Supplier Personnel" means Supplier's employees, consultants, agents, independent contractors and Subcontractors.
- k. "Third Party Intellectual Property" means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the Work. l. "Work" means the Deliverables, Products and Services specified in the Purchase Order, including any SOW.

### 3. DELIVERY

- a. Time is of the essence in Supplier's performance of its obligations under the Purchase Order. Supplier will immediately notify GATESAIR if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. GATESAIR's acceptance of Supplier's notice will not constitute GATESAIR's waiver of any of Supplier's obligations.
- b. If Supplier delivers Work after the Delivery Date, GATESAIR may reject such Work.
- c. GATESAIR will hold any Work rejected under this Purchase Order at Supplier's risk and expense, including storage charges, while awaiting Supplier's returns shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges GATESAIR incurs on Supplier's behalf. GATESAIR may, in its sole discretion, destroy or sell at a public or private sale any rejected Work for which GATESAIR does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.
- d. Supplier will provide all information required to comply with any applicable import and export laws and regulations, including but not limited to import classification (such as Harmonized Tariff Schedule), export classification (such as Export Control Classification Number), and country of origin of all Work supplied to GATESAIR. Supplier must include the relevant information on the commercial invoice and the packing list. If applicable, Supplier agrees to comply with U.S Customs Security Filing ("ISF") requirements and agrees to include the following "ISF data elements" on the commercial invoice: (1) manufacturer name and address; (2) Supplier name and address; (3) buyer name and address; (4) ship-to name and address; (5) HTSUS number; and (6) country of origin. Supplier must provide the

invoice to GATESAIR, including the "ISF" data, at least 72 hours before Work is laden on the vessel in the foreign port. If Supplier fails to provide such invoice on a timely basis, GATESAIR may reject the Work.

e. Supplier will preserve, pack, package and handle the Deliverables and Products so as to protect the Deliverables and Products from loss or damage and in accordance with best commercial practices in the absence of any specifications GATESAIR may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.

f. Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the GATESAIR part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.

g. Unless GATESAIR expressly instructs otherwise, Supplier will deliver all Work to GATESAIR's plant at the address set forth in the Purchase Order. Seller assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss for the Deliverables and Products does not pass to GATESAIR until acceptance in accordance with Section 6.

#### **4. PRICE AND PAYMENT**

a. Unless otherwise specified in the Purchase Order, the price for the Work includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Supplier will, at GATESAIR's request, individually identify all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist GATESAIR in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order.

b. GATESAIR will pay Supplier within sixty (60) days of the later of: (i) the Delivery Date; (ii) the date of GATESAIR's acceptance of all of the Work; or (iii) GATESAIR's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier's certification of conformance of the Work to the requirements. Payment will be in the currency of the country in which the GATESAIR entity or affiliate identified in the Purchase Order is located, and if the price set forth in the Purchase Order is not in the local currency, then GATESAIR will determine the local currency equivalent of the price as of date of payment. GATESAIR may, at any time, set-off any amounts Supplier owes GATESAIR against any amounts GATESAIR owes to Supplier or any of its affiliated companies.

#### **5. OWNERSHIP AND LICENSE**

a. Unless otherwise specified in a SOW and except as provided in Section 5.b, GATESAIR is the sole and exclusive owner of all Deliverables and Supplier hereby irrevocably assigns and transfers to GATESAIR all worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.

b. Unless otherwise specified in a SOW, each party owns all right, title, and interest in and to any of its Preexisting Materials. Supplier hereby grants GATESAIR a perpetual, irrevocable, worldwide, transferable, royalty-free, nonexclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce Supplier's Preexisting Materials in the Deliverables to the extent necessary for GATESAIR's exploitation of its rights in the Deliverables.

c. Unless otherwise specified in an SOW, Supplier will obtain and assign to GATESAIR a non-exclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all Third Party Intellectual Property Rights incorporated into, required to use, or delivered with the Work. Supplier will deliver copies of the above releases and licenses to GATESAIR upon GATESAIR's request.

#### **6. INSPECTION AND ACCEPTANCE**

GATESAIR may reject any or all of the Work which does not conform to the applicable requirements within thirty (30) days of Supplier's delivery of the Work. At GATESAIR's option, GATESAIR may (i) return the non-conforming Work to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Work; or (iii) require Supplier to repair the non-conforming Work so that it meets the requirements. As an alternative to (i) through (iii), GATESAIR may accept the non-conforming Work conditioned on Supplier providing a refund or credit in an amount GATESAIR reasonably determines to represent the diminished value of the non-conforming Work. GATESAIR's payment to Supplier for Work prior to GATESAIR's timely rejection of such Work as non-conforming will not be deemed as acceptance by GATESAIR.

#### **7. CHANGES**

a. As used in this Section 7, "Change" means a change GATESAIR directs or causes within the general scope of this Agreement and/or the applicable SOW.

b. GATESAIR, by written order ("Change Order"), may make Changes in accordance with this Section 7.

c. If Supplier asserts that GATESAIR has directed or caused a Change to the cost of or time for performance for which GATESAIR has not issued a Change Order, Supplier will promptly notify GATESAIR in writing of the Change, providing (i) a description of the action or inaction asserted to have caused the Change; (ii) an estimate of the equitable adjustment that would be required for Supplier to perform the Changed Work; and (iii) a date no less than thirty (30) days from the date of notice by which GATESAIR must respond to Supplier's notice so that Supplier may proceed with the Work unchanged. GATESAIR will evaluate Supplier's notice of Change in good faith, and if GATESAIR agrees that it has made a constructive change, GATESAIR will issue a Change Order to Supplier.

d. Supplier shall, as promptly as practicable, after giving the notice of the Change, or within ten (10) days of receiving a Change Order, submit a request for equitable adjustment specifying the adjustment in the price or time for performance resulting from the Change.

e. The parties shall negotiate an amendment to the applicable SOW to incorporate a Change Order providing for an equitable adjustment to the price, time for performance, or both.

f. Supplier will proceed with the Changed Work as directed, notwithstanding that the parties have not negotiated the amendment to this Agreement or the applicable SOW to incorporate the equitable adjustment.

#### **8. REPRESENTATIONS AND WARRANTIES**

a. Performance Warranties. Supplier warrants to GATESAIR and GATESAIR's customers for the longer of Supplier's normal warranty period or for one (1) year following the date of GATESAIR's acceptance of the Work that: (i) when GATESAIR receives them from Supplier, the Work will be free from defects in design, material,

workmanship, and manufacture; (ii) the Work will conform to the applicable documentation, or to other descriptions set forth in the Purchase Order; (iii) the Deliverables will be suitable for the purposes for which they are intended including without limitation purposes made known to Supplier; (iv) all Products will be new and unused, unless otherwise specified by GATESAIR; and (v) any Products consisting of software will (1) function properly in conformity with its documentation, (2) not contain any virus or other code that will damage or infect any Work or any other products, services or programs, and (3) not include any open source software. If Supplier is not the owner of any software included in the Work or the manufacturer of any Products, Supplier assigns to GATESAIR all warranties and remedies available to Supplier under its agreements with such owners or manufacturers. The foregoing warranties are in addition to all other warranties, whether express or implied, and will survive delivery, inspection, acceptance, or payment by GATESAIR.

b. Performance Remedies. Notwithstanding any acceptance by GATESAIR under Section 6, if any of the Work delivered by Supplier does not meet the warranties specified herein or otherwise applicable, GATESAIR has the right, at its option, to: (i) require Supplier to correct any defective or nonconforming Work by repair or replacement at no charge to GATESAIR; (ii) return any defective or nonconforming Work to Supplier at Supplier's expense and recover from Supplier all amounts paid heretofore; (iii) correct the defective or nonconforming Work itself and charge Supplier the cost of such correction; (iv) obtain a refund from Supplier for all amounts paid for any defective or nonconforming Work; or (v) use the defective Work and require an appropriate reduction in price. GATESAIR's approval of Supplier's product, services or design will not relieve Supplier of the warranties set forth herein, nor will GATESAIR's waiver of a requirement pertaining to any acceptance criteria, drawing or specification for one or more of the Work constitute a waiver of such requirements for the remaining Work to be delivered hereunder unless GATESAIR declares otherwise in writing.

c. General Representations and Warranties. Supplier represents and warrants that: (i) Supplier either has good, unencumbered title or sufficient licensed rights to every part of the Work, and has conveyed to GATESAIR such unencumbered title or sufficient licensed rights under the Purchase Agreement; (ii) the Services will be of professional quality and/or performed consistently with generally accepted industry standards; (iii) it will obtain and assign or otherwise provide to GATESAIR the benefits of its warranties and guarantees provided by manufacturers or suppliers of material or equipment incorporated into the Products or Services, and will perform its responsibilities so that such warranties or guarantees remain in full effect; (iv) there exists no actual or potential conflict of interest concerning the Work; (v) Supplier's performance does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party or otherwise violate any obligation of Supplier to any third party; (vi) Supplier will comply with all applicable laws and regulations (including, without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010, which prohibit the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it or GATESAIR in retaining or obtaining business or in performing the Work, any law or regulation in any jurisdiction world-wide on the use of hazardous substances, or the recycling or treatment of waste equipment including the laws implementing the European Directive (2002/95/EC) on the Restriction on the Use of Certain Hazardous Substances in Electronic and Electrical Equipment "RoHS Directive" and European Directive (2002/96/EC) on Waste Electrical and Electronic Equipment ("WEEE Directive")); (vii) Supplier will comply with all applicable import and export laws and regulations, and will ensure that any employees providing services to GATESAIR do not appear on relevant restricted party lists, including the U.S. Treasury Department's Specially Designated Nationals list and the U.S. Commerce Department's Denied Persons List; (viii) Supplier will comply with all applicable commercial and public anti-bribery laws, including, without limitation, the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010, which prohibit corrupt offers, directly or indirectly, to a government official (including any government employee or candidate for public office, or any employee of a government-owned or government-controlled company, public international organization, or political party) to secure any improper commercial advantage, and Supplier will not make any payment to induce officials to perform routine functions they are otherwise obligated to perform; (ix) Supplier is an equal opportunity employer, does not discriminate on the basis of age, race, creed, color, religion, sex, sexual orientation, national origin, disability, marital or veteran status or any other basis that is prohibited by law and will not so discriminate in providing the Work; (x) if Supplier processes, transmits or stores credit card PANs (Primary/Personal Account Numbers) for any purpose, Supplier will be currently and demonstrably PCI DSS compliant, via a "letter of attestation" or similar, and will maintain its compliance status as long as GATESAIR is a customer and for as long as Supplier is obligated by law to store such PAN information; and (xi) GATESAIR is an equal employment opportunity employer and is a federal contractor, and consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference. Supplier also agrees to comply with the provisions of Executive Order 13496 (29 CFR Part 471), relating to the notice of employee rights under federal labor laws.

d. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **9. ASSIGNMENT AND SUBCONTRACTING**

a. Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without GATESAIR's prior written consent, which GATESAIR will not unreasonably withhold. GATESAIR may, at its option, void any attempted assignment or delegation undertaken without GATESAIR's prior written consent.

b. Supplier may not subcontract any of its rights or obligations under the Purchase Order without GATESAIR's prior written consent. If GATESAIR consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify GATESAIR for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by GATESAIR or any third party and caused by the acts and omissions of Supplier's Subcontractors' and (iii) make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for work performed, GATESAIR will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold GATESAIR harmless for all damages and costs of any kind, without limitation, incurred by GATESAIR and caused by Supplier's failure to pay a Subcontractor.

c. To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

## **10. TERM AND TERMINATION**

a. The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.

b. GATESAIR may terminate this Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon fifteen (15) days written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform GATESAIR of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to GATESAIR whatever Work then exists. GATESAIR will pay Supplier for all Work performed and accepted through the effective date of the termination, provided that GATESAIR will not be obligated to pay any more than the payment that would have become due had Supplier completed and GATESAIR had accepted the Work. GATESAIR will have no further payment obligation in connection with any termination.

- c. Either party may terminate the Purchase Order, any SOW or both, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.
- d. GATESAIR may immediately terminate the Purchase Order upon written notice to Supplier if there is a change in ownership representing twenty percent (20%) or more of the equity ownership of Supplier.
- e. Either party may terminate this Purchase Order, any SOW or both, immediately by delivering written notice to the other party for any material breach not cured within thirty (30) days of receipt of notice of the breach. GATESAIR shall have no further payment obligation to Supplier under any terminated SOW if GATESAIR terminates the SOW under this Section 10.e.
- f. Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

#### **11. CONFIDENTIAL INFORMATION AND PUBLICITY**

- a. Subject to the additional requirements of Section 11.b regarding Personal Information, Supplier agrees that all information, data, and material it obtains from GATESAIR in connection with the Purchase Order will be "Confidential Information" and is the sole property of GATESAIR. Supplier will use Confidential Information solely for the purposes of providing Deliverables under the Purchase Order. Supplier will not disclose or make Confidential Information available to any third party, except as specifically authorized by GATESAIR in writing. Upon GATESAIR's written request, Supplier will promptly return all Confidential Information and copies, or certify in writing that it has destroyed all such materials. Supplier will not bring to GATESAIR or use in connection with the Deliverables any information, data, materials, or documents of a third party considered confidential or proprietary without the written authorization of such party and GATESAIR. Confidential Information does not include information that: (i) Supplier knew of without restriction before receipt from GATESAIR; (ii) is publicly available through no fault of Supplier; (iii) Supplier rightfully receives from a third party without a duty of confidentiality; or (iv) Supplier independently develops without reference to any Confidential Information. Supplier may disclose Confidential Information when compelled to do so by law if, where permitted by applicable law, it provides reasonable prior notice to GATESAIR.
- b. If, under the Purchase Order, Supplier receives, has access to, uses or stores Personal Information (as defined below), then Supplier agrees that it has the obligations set forth in this Section 11.b in addition to Section 11.a.
- c. "Personal Information" is any information collected from or about individual persons that Supplier obtains in any manner from any source in connection with the Purchase Order, including, without limitation, names, contact information, government ID information, financial account numbers and other financial or transaction information, demographic information, IP addresses, geolocation information, and any other information about individual persons or their use of GATESAIR products, services or tools. Personal Information will in all circumstances be treated as Confidential Information, and will not be subject to the exceptions in clauses (i) through (iv) of Section 11.a.
- d. Supplier will establish and implement, and thereafter maintain, administrative, physical, and technical safeguards ("Safeguards") that protect the security and privacy of Personal Information. The Safeguards will meet or exceed relevant industry standards and limit the collection, storage, disclosure, use of, or access to Personal Information solely to personnel and purposes authorized by the Purchase Order. The Safeguards will be appropriate to Supplier's role, operations, and exposure to Personal Information under the Purchase Order. Supplier will ensure that anyone acting on Supplier's behalf is subject to Supplier's Safeguards or otherwise provides equivalent or greater protections for the security and privacy of Personal Information. At any time upon GATESAIR's request, Supplier will cooperate with GATESAIR's reasonable efforts to assess the adequacy of Supplier's Safeguards and the safeguards of anyone acting on Supplier's behalf.
- e. Supplier will notify GATESAIR in the most expedient time possible under the circumstances and without unreasonable delay when Supplier has reason to believe that Personal Information has been, or is reasonably likely to have been, accessed for an unauthorized purpose or by unauthorized individuals (an "Incident"). Supplier will: (a) provide reasonable assistance to GATESAIR in investigating, remedying and taking any other action GATESAIR reasonably deems necessary regarding any Incident and any dispute, inquiry or claim that concerns the Incident, and (b) provide GATESAIR with reasonable assurances that Supplier has corrected all circumstances under Supplier's control that led to or caused the Incident. Supplier will provide reasonable prior notice to GATESAIR of any third party request or legal process relating to any Incident, including, but not limited to, any legal request or inquiry initiated by any governmental entity.
- f. Supplier agrees that it will comply with additional confidentiality and information protection obligations in accordance with GATESAIR's policies if, under the Purchase Order, Supplier: (i) has direct access to GATESAIR's users or customers; (ii) provides web applications, SaaS or other cloud services; or (iii) receives, has access to, uses or stores (a) Personal Information other than anonymized or publicly available Personal Information, (b) data subject to special legal requirements (e.g., medical records), (c) sensitive legal or financial information or information relating to GATESAIR's services, tools, systems, networks, computers or media containing such information. Such additional confidentiality obligations and information protection obligations will be set forth in a separate written agreement between the parties.
- g. Supplier shall obtain GATESAIR's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to GATESAIR.

#### **12. INDEMNIFICATION**

- a. As used in this Section 12, a "Claim" is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party (the "Indemnifying Party") may be obligated to defend, indemnify and hold the other party (the "Indemnified Party") harmless.
- b. Supplier shall defend, indemnify and hold GATESAIR harmless from and against any and all Claims as incurred, arising out of or in connection with any (i) act or omission of Supplier (including its Subcontractors) in the performance of the Work; (ii) any infringement of a third party's Intellectual Property Rights or any other rights; and (iii) a breach of any representation or warranty made by Supplier hereunder.
- c. GATESAIR shall indemnify and hold Supplier harmless from and against any and all Claims as incurred, arising out of or in connection with: (i) Supplier's use of GATESAIR's products or services in connection with the Work; (ii) Supplier's use of information or materials provided to Supplier by GATESAIR; or (iii) infringement a third party's Intellectual Property Rights or any other rights resulting from Supplier's adherence to GATESAIR's written instructions.

- d. Each party will indemnify and hold the other party harmless from and against any and all Claims, as incurred, arising out of any negligent or willful acts or omissions of the Indemnifying Party which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).
- e. The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnifying Party's behalf.
- f. If a third party enjoins or interferes with GATESAIR's use of any Work, then in addition to Supplier's obligations under Section 12.b, Supplier will use its best efforts to (i) obtain any licenses necessary to permit GATESAIR to continue to use the Work; (ii) replace or modify the Work as necessary to permit GATESAIR to continue to use the Work; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to GATESAIR the amount paid for any Work for which a third party enjoins or interferes with GATESAIR's use of the Work.
- g. Nothing in this Section 12 shall limit any other remedy of the parties.

### **13. LIABILITY**

- a. NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, GATESAIR WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT GATESAIR PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.
- b. IN NO EVENT WILL GATESAIR BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT GATESAIR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- c. THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

### **14. INSURANCE**

Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect GATESAIR in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

### **15. AUDIT**

Supplier will keep and maintain complete and accurate books, records and accounts relating to the Purchase Order. Within thirty (30) days of GATESAIR's request, Supplier will provide access to those books and records of Supplier that are reasonably necessary for GATESAIR to confirm fulfillment and compliance with the Purchase Order.

### **16. GOVERNING LAW**

- a. **Applicable Law.** This Agreement, and any disputes related to this Agreement, will be governed by and interpreted in accordance with the laws of the location listed in the "Choice of Law" column of Table 16 below based upon the GATESAIR business address as set forth in the Purchase Order, regardless of any principles requiring the application of any other law. The United Nations Convention on International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement.
- b. **Applicable Venue.** The parties agree that the exclusive venue for any action related to the dispute or interpretation of this Agreement will be as indicated in the "Venue" column of Table 16 below based upon the GATESAIR business address as set forth in the Purchase Order, and each party irrevocably submits to the jurisdiction of that venue in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in that venue. The prevailing party in any action related to the dispute or interpretation of this Agreement will be entitled to recover its reasonable attorneys' fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.
- c. **Jury Waiver.** IF APPLICABLE, THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY LAW, TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION RELATING TO THE DISPUTE OR INTERPRETATION OF THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE ITS TERMS.
- d. **Arbitration.** If arbitration is indicated in the "Venue" column of Table 16 based upon the GATESAIR business address as set forth in the Purchase Order, all disputes arising out of or in connection with this Agreement including its existence, validity or termination will be referred to and finally resolved by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution, which rules are deemed to be incorporated into this Agreement by reference. The appointing authority will be the International Centre for Dispute Resolution, the international division of the AAA. There will be a panel of three [one, if the parties agree the amount in controversy does not exceed U.S. \$250,000] arbitrators who will be appointed by agreement between the parties or failing such agreement in accordance with ICC rules. If the dispute concerns intellectual property issues, the arbitrators will possess expertise in intellectual property law. The chairperson of the arbitration panel shall, among other things: (a) have authority to resolve discovery disputes and issue appropriate subpoenas and orders to facilitate discovery; and (b) conduct the arbitration in the English language. The arbitration panel shall render its decision in the English language and have authority to award injunctive and other emergency relief, which will be enforceable by either the panel or any court with jurisdiction over the enjoined party or its assets. The arbitration panel shall not have authority to award punitive, special or consequential damages. Any monetary award of the panel will be payable in US Dollars free of any tax and reductions and will include interest from the date of breach of this Agreement to the date when the award was paid in full at a rate determined by the arbitral panel.

e. Injunctive Relief. Notwithstanding any provisions in this Agreement, Supplier agrees that GATESAIR has the right to seek temporary or permanent injunctive or other similar relief in any court or other authority of competent jurisdiction as permitted under applicable law.

<b>Table 16</b>		
<u>GATESAIR Location</u>	<u>Choice of Law</u>	<u>Venue</u>
North America (incl. Caribbean)	Ohio, U.S.A.	Courts with appropriate jurisdiction located in Mason, Ohio, U.S.A.
Central America/South America	Ohio, U.S.A.	Arbitration located in Mason, OH, U.S.A.
Europe/Middle East/Africa	England	Arbitration located in London, UK
Asia/Pacific	England	Arbitration located in Sydney, NSW, Australia

**17. CLAUSES INCORPORATED BY REFERENCE**

The following Federal Acquisition Regulations/Defense Federal Acquisition Supplement (“FAR/DFARS”) clauses are incorporated herein by reference, to the extent these clauses are applicable, with the same force and effect as if they are included in full text: 52.219-8 Utilization of Small Business Concerns, 52.222-26 Equal Opportunity, 52.222-35 Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era and other eligible Veterans, 52.222-36 Affirmative Action for Workers With Disabilities, 52.222-39 Notification of Employees Rights Concerning Payment of Union Dues or Fees, 52.247-64 Preference For Privately Owned U.S. Flag Commercial Vessels, 252.225-7014 Preference for Domestic Specialty Metals, Alternate I, 252.247-7023 Transportation of Supplies by Sea, and 252.247-7024

Notification of Transportation of Supplies by Sea.

**18. GENERAL**

- a. Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five (5) days of deposit in the mail.
- b. If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:
  - (1) A conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favor of the Purchase Order.
  - (2) A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favor of the SOW.
  - (3) A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW will be resolved in favor of the SOW.
- c. If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.
- d. Except as provided herein, no term or condition of the Purchase Order may be amended or deemed to be waived, except by a writing signed by both parties that refers to the Purchase Order.
- e. A party’s election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.