



These general terms and conditions of sale ("GTCS") are the only terms that apply to any purchase order ("PO" together with the GTCS, the "Agreement") placed by an entity ("Buyer") to Mersen USA Newburyport-MA LLC having its registered office at 374 Merrimac street, Newburyport, MA 01950, U.S.A. ("Mersen") for the provision of Mersen's products, equipment, systems, and parts (individually and collectively, "Goods") and/or services, such as repair services, field services, and engineering services ("Service(s)"). Buyer and Mersen are referred to herein individually as "Party" and collectively as "Parties".

1. OTHER TERMS AND CONDITIONS

1.1 **ANY ADDITIONAL OR CONTRADICTORY TERMS OR CONDITIONS OF BUYER SHALL NOT APPLY, UNLESS EXPRESSLY AGREED IN WRITING BY BOTH PARTIES. MERSEN'S ACCEPTANCE OF A PO SHALL NOT BE DEEMED AS AN ACCEPTANCE OF ANY ADDITIONAL OR CONTRADICTORY TERMS OR CONDITIONS OF BUYER.**

1.2 **PRIOR COURSES OF DEALING OR USAGE OF TRADE SHALL NOT CHANGE, ADD TO OR DEDUCT FROM THE PROVISIONS STATED HEREIN.**

2. ORDER AND ACCEPTANCE

2.1 Buyer shall place a PO by any agreed written means. In addition to any mandatory information, Buyer shall indicate in the PO (i) Mersen's reference for the Goods and/or Services, (ii) the Goods' quantity, delivery date, and International Commercial Terms Ed. 2010 (the "INCOTERMS"), and (iii) prices and payment terms.

2.2 For any PO of less than USD 200, Mersen reserves the right to either reject such PO or charge for supplementary costs (e.g., logistic costs, transportation costs).

2.3 Mersen shall be bound by a PO only upon occurrence of either (i) Mersen's express written acceptance of the PO, which shall be made in a timely manner or (ii) upon delivery of the Goods and/or Services by Mersen.

2.4 The cancellation before shipment of any PO which has been confirmed by Mersen shall be subject to Mersen's prior written approval. For engineered-to-order Goods or Services, the cancellation will be subject to the terms stated in Sections 13.2 and 13.3 of these GTCS.

3. SHIPMENT, RISK OF LOSS, AND DELIVERY

3.1 Mersen shall use reasonable efforts to meet any performance dates to render services specified in the PO and any such dates shall be estimated.

3.2 Goods shall be delivered or made available to Buyer according to the applicable INCOTERMS at the agreed delivery place. Risk of loss will pass to Buyer according to the applicable INCOTERMS.

3.3 Delivery of quantities that differ from the quantity specified on the PO shall not relieve Buyer from its obligation to accept delivery of the Goods as well as the balance of the PO.

3.4 Mersen may from time to time change the Services without consent of Buyer provided such changes do not materially affect the nature or scope of the Services, or the fees or performance dates set forth in the PO.

3.5 Changes in delivery schedules, special shipping or packaging, handling conditions requested by Buyer are subject to price adjustment. If Buyer requests that delivery be postponed, the Goods may be stored at Buyer's expense and risk.

3.6 **MERSEN SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR PENALTY FOR DELAY IN SHIPMENT, DELIVERY, OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY.**

4. INSPECTION

4.1 Buyer shall within five (5) days of receipt (i) carefully inspect the Goods against any non-conformity to the PO such as erroneous Goods, quantity (if applicable), or apparent defects, (ii) notify the carrier of any apparent damage or loss according to the applicable law, and (iii) notify Mersen of such damage or loss.

4.2 Buyer's inspection and/or acceptance tests shall not exceed the inspection and/or test procedures customary in the industry for the Goods furnished and are at Buyer's expense.

4.3 If Buyer wants to return the Goods, Buyer shall request a return material authorization and return the Goods in the original shipping packaging and all packing materials.

5. PRICE, PAYMENT, AND TRANSFER OF TITLE

5.1 Price.

5.1.1 The price of Goods is the one offered by Mersen to Buyer for the sale of the Goods and/or the provision of the Services and specified accordingly in the applicable PO. Unless otherwise agreed in writing, prices include standard packaging but are exclusive of any freight, handling and shipping insurance charges. Prices do not include any national, state or local sales, use, value added, import, export or other taxes. Buyer shall pay any such taxes, if applicable. Buyer shall bear sole responsibility for any withholding tax liabilities.

5.1.2 Seller may increase the price of the Goods without notice before delivery of the Goods to a carrier for shipment to Buyer in case of (i) a major increase of the following costs: transportation costs, fuels' costs, labor's costs, and other production costs, or (ii) major significant changes of currency exchange rates, taxes, duties, laws, rules, regulations; and this Agreement shall be construed as if the increased price was originally inserted therein and Buyer shall be billed on the basis of such increased price.

5.2. Payment.

5.2.1 Buyer shall pay all invoices within thirty (30) days net from the date of invoice. All payments shall be in USD, unless otherwise agreed to in writing. Payment is deemed made when Mersen's bank account is credited with the full amount corresponding to the invoice. Buyer shall reimburse Mersen for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

5.2.2 If, at any time, Mersen reasonably determines that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Mersen's other rights under this Agreement, at law or in equity, Mersen may, without liability or penalty, take one or more of the following actions: (i) on ten (10) day's prior written notice, modify the payment terms specified in Section 5.2.2 for outstanding and future PO; (ii) reject any PO received from Buyer and not yet accepted; (iii) delay or withhold any further shipment of the Goods or delivery of the Services to Buyer; (iv) stop delivery of any Goods in transit and cause such Goods in transit to be returned to Mersen; and/or (v) terminate the unpaid PO and any unpaid PO previously accepted by Mersen, as provided for in Section 13.1.2. Lastly, for the following PO, Mersen reserves the right to request payment on the date of Mersen's written acceptance of the PO.

5.2.3 In no event shall Buyer be entitled to set-off any amount claimed to be due by Mersen against any amount due to Mersen, without the express written approval of Mersen.

5.3 Transfer of Title. Transfer of title to the Goods is subject to full and complete payment of the price.

6. WARRANTIES AND REMEDIES

6.1 Mersen warrants that all Goods will be free from defects in design (unless such design is provided or requested by Buyer), material, and workmanship for a period of twelve (12) months from the delivery date unless indicated otherwise in Mersen's offer ("**Warranty Period**"). Notwithstanding the foregoing, Mersen's warranty for any tools, accessories or goods, which are not manufactured by Mersen but sold by Mersen in connection with the provision of the Goods or Services hereunder, shall not exceed the terms and period of warranty granted by its suppliers or manufacturers to Mersen. Mersen warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications in accordance with generally recognized industry standards for similar services.

6.2 The warranties set forth in Section 6.1 do not apply to and Mersen makes no representations or warranty whatsoever with respect to defects caused by: (i) wear and tear, (ii) improper transportation, handling, storage, (iii) maintenance not operated as per recommendation or instructions provided by Mersen, or by skilled personal, (iv) installation by Buyer of the Goods not in compliance with instructions provided by Mersen, (v) Goods operated beyond their performance rates as per agreed specifications, or (vi) any repair or replacement of a part of the Goods by Buyer or a third party, without Mersen's prior written authorization ("**Warranty Exclusions**").

6.3 The warranties set forth in Section 6.1 apply provided that (a) Mersen is notified in writing by Buyer within thirty (30) days after discovery of defects; (b) at Mersen's option, either Buyer



- returns the defective Goods to Mersen at Buyer's expense, or provides Mersen with access to the Goods on Buyer's site as stated in Section 6.4; and (c) Mersen's examination of such Goods shall disclose that such defects or failures have not been caused by any of the Warranty Exclusions.
- 6.4 Mersen's sole and maximum liability for breach of the warranty stated in Section 6.1 is limited to the obligation, at Mersen's sole discretion, to repair, replace or reimburse Buyer for the purchase price of any Goods or Services delivered hereunder which is found by Mersen to be defective under the terms of these warranties. The terms of these warranties shall apply to any repaired or replacement Goods or Services supplied by Mersen for the remaining term of the relevant Warranty Period. In case Mersen elects to inspect and/or repair the Goods on Buyer's site, Buyer shall (i) provide reasonable access to equipment and material, facilities and documents and other data of Buyer for the purpose of examining the conditions of receipt, handling, storage, maintenance, installation and operation as aforesaid, and (ii) make available to Mersen Buyer's personnel, facilities equipment and tools on site to assist in any repair and other activities by such warranties.
- 6.5 **TO THE EXTENT PERMITTED BY APPLICABLE LAW, SECTION 6.4 SETS FORTH MERSEN'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE WARRANTIES SET FORTH IN SECTION 6.1, AND BUYER WAIVES ALL OTHER REMEDIES, STATUTORY OR OTHERWISE.** In the event that the foregoing exclusive remedies under this warranty are determined upon judicial or arbitral review to be inadequate by law, the alternate exclusive remedy shall be the refund of the purchase price of the defective Goods or Services. **MERSEN'S OBLIGATION TO HONOR THE WARRANTY HEREIN IS CONTINGENT UPON MERSEN'S RECEIPT OF PAYMENT IN FULL FOR THE GOODS OR SERVICES ENTITLED TO THIS WARRANTY.**
- 6.6 **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 6.1, MERSEN MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY EXPRESS OR IMPLIED WARRANTY ARISING OUT OF TRADE USAGE OR OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE.**
7. INTELLECTUAL PROPERTY
- 7.1 Mersen is and shall remain the owner of any and all right, title, and interest in any and all intellectual property rights to the Goods and Services, without limitation, including all know-how, invention, patent, design, drawings, plan, samples, specifications made or developed, trademarks, and copyrights ("**Background IP**"). Subject to payment of all monies due for the corresponding Goods and Services, Mersen grants Buyer a limited, non-exclusive, non-transferable, non-sublicensable (except to end-customers), and revocable license to use its Background IP for the sole purpose of using the Goods and Services or incorporating the Goods or Services in the end-customer's application in order to use and operate the Goods or Services.
- 7.2 All goodwill associated with any Mersen's trademarks inures solely to Mersen, and Buyer shall take no action to damage the goodwill associated with Mersen's trademarks or Mersen.
- 7.3 Mersen's grant of rights to Buyer hereunder is made with full reservation by Mersen of any and all rights not expressly granted herein.
8. INDEMNIFICATION
- 8.1 Mersen will defend at its own expense any claim against Buyer brought by a third party to the extent that the action is based upon a claim that any Goods or Services infringe any third-party intellectual property rights and Mersen will pay those costs and damages finally awarded against Buyer by a court of competent jurisdiction or competent arbitration court in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.
- 8.2 Mersen's obligations in this Section are subject to the conditions that: (i) Mersen is notified promptly in writing by Buyer of any claim; (ii) Buyer does not make any acknowledgement of liability of which it seeks to be indemnified under this Section; (iii) Mersen has sole conduct, authority, and control of the defense and all negotiation for any settlement or compromise thereof; and (iv) Buyer provides Mersen with all information and reasonable assistance to handle the defense or settlement of the claim.
- 8.3 Notwithstanding anything to the contrary contained herein, Mersen shall have no obligation to indemnify Buyer with respect to any claim relating to, based on, or arising out of: (i) any modification or servicing made to the relevant Goods or Services by Buyer or any third party without Mersen's approval; (ii) the combination, integration, application, operation or use of the relevant Goods or Services with any equipment, device, apparatus, program, code or data that is not manufactured, provided, indicated as being compatible with the Goods or Services or developed by Mersen, and where such combination, integration, application, operation or use is the object of the claim; (iii) any use not intended by Mersen; (iv) claims in issued patents that are essential or necessary to implement an industry standard promulgated by a recognized industry trade group or standard setting organization; (v) Buyer's failure to use materials or instructions provided by Mersen which would have rendered the relevant Goods, Services or their use non-infringing; and (vi) the continued sale, distribution, or use of the relevant Goods or Services after Buyer has been provided with and fails to implement modifications or updates that would have avoided the alleged infringement within a reasonable time period or after Mersen has terminated the PO involving the relevant Goods or Services as per Section 8.4.
- 8.4 Should the relevant Goods or Services become (or in Mersen's opinion be likely to become) the subject of any infringement claim, Mersen will have the option, at its sole discretion: (i) to procure for Buyer the right to continue using the relevant Goods or Services; (ii) replace the relevant Goods or Services with a substantially equivalent non-infringing product; (iii) modify the relevant Goods or Services so it becomes non-infringing; or (iv) if solutions stated in (i), (ii), and (iii) are not technically and/or commercially feasible or suitable, terminate immediately, in whole or in part, the applicable Agreement involving the relevant Goods or Services and reimburse Buyer for the Goods' or Services' purchase price.
- 8.5 **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS SECTION 8 AND SECTION 9 BELOW SET FORTH MERSEN'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INTELLECTUAL PROPERTY RIGHTS CLAIMS RELATING TO THE GOODS, AND BUYER WAIVES ALL OTHER REMEDIES, STATUTORY OR OTHERWISE.**
9. LIMITATION OF LIABILITY
- 9.1 **TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY UNDER THESE GTCS AND ANY PO HEREUNDER (WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OTHER TORT THEORY, CONTRIBUTION, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST PROFITS, LOSS OF DATA, LOSS OF PRODUCTION, LOSS OF REVENUE, INTERRUPTION OF BUSINESS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**
- 9.2 **TO THE EXTENT PERMITTED BY APPLICABLE LAW, MERSEN SHALL NOT BE HELD LIABLE FOR ANY DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OR MISUSE OF THE GOODS OR SERVICES BY BUYER, ITS EMPLOYEES, CUSTOMERS OR OTHERS.**
- 9.3 **TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MERSEN'S MAXIMUM LIABILITY FOR ANY CLAIM ARISING HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF THE FOLLOWING AMOUNTS: (I) THE AMOUNT PAID BY BUYER FOR THE PO UNDER WHICH THE CLAIM ARISES; (II) IN CASE OF TAILOR-MADE/ENGINEERED-TO-ORDER GOODS OR SERVICES, THE TOTAL AMOUNT PAID BY BUYER TO MERSEN**

DURING THE TWELVE MONTHS PRECEDING THE DATE ON WHICH MERSEN RECEIVES SUCH CLAIM; OR (III) IN CASE OF A BLANKET PURCHASE ORDER, THE AMOUNT PAID BY BUYER FOR THE GOODS OR SERVICES UNDERLYING THE CLAIM, REGARDLESS OF THE AMOUNT OF THE BLANKET PURCHASE ORDER AND WHERE "BLANKET PURCHASE ORDER" MEANS A PURCHASE ORDER, WHICH PROVIDES A FRAMEWORK OF AGREED TERMS AND UNDER WHICH GOODS WILL BE DELIVERED SUBJECT TO A SUBSEQUENT ORDER.

9.4 THE FOREGOING LIMITATION OF LIABILITY SHALL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF WHETHER BUYER'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

10. CONFIDENTIALITY

10.1 "Confidential Information" means all information, processes, know-how, ideas, specifications, and documentation which either Party may have imparted to the other relating to the Goods or Services or to each Party's business and which relates to the subject matter of this Agreement and includes among others, the price, specifications, and the design of the Goods or Services, information relating to the personnel, policies, clientele or business strategies of either Party, and any information relating to the terms upon which the Goods or Services are to be sold under these GTCS and PO. Notwithstanding the foregoing, the following shall not be considered as Confidential Information hereunder any information that: (i) is already in possession of the receiving Party at the time of disclosure by the disclosing Party and continues to be held in confidence in accordance with the terms on which it was obtained; (ii) is or subsequently comes into the public domain through no fault or action or failure to act on the part of the receiving Party; (iii) is lawfully obtained by the receiving Party from a third party having the right to disclose it; or (iv) is independently developed by the receiving Party without use of any Confidential Information of the disclosing Party.

10.2 The Parties shall refrain from disclosing and prevent their employees, agents or legal successors from revealing to any third party any Confidential Information regarding the other Party, without its prior written approval. Each Party shall use the other Party's Confidential Information solely to perform under this Agreement.

11. FORCE MAJEURE

11.1 A Party shall not be liable for delay in performance or failure to perform in whole or in part its obligation under this Agreement or to be in breach of this Agreement due to causes beyond the reasonable control of such Party and/or any event of Force Majeure. "Force Majeure" means any cause existing or future, which is beyond a Party's reasonable control including but not limited to acts of God, storm, fire, flood, earthquake, strike, lock-out or any combination of workmen which may interfere with the commencement or progress of the work, equipment failures, interruptions of or delay in transportation, or power, energy failures, steelworks stoppages, shortages of raw materials, faulty castings or forging, embargo, prohibition of trade, sabotage, interference by civil or military authorities, acts (including delay or failure to act), regulations or orders of any governmental authority, acts of war (declared or undeclared), hostilities.

11.2 The period of performance for the Party affected by such a cause shall be extended by the duration of said cause, provided, however, if any such delay shall continue for more than thirty (30) days, then each Party may cancel the affected PO by written notice to the other Party at any time, without incurring any liability of such Party toward the other Party.

12. COMPLIANCE WITH LAWS AND CODE OF ETHICS

12.1 Buyer shall comply fully with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply fully with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer, including, without limitation EU and US export and import control laws. Buyer further agrees to accept and assumes all responsibility for shipments of the Goods

requiring any government import clearance. Mersen may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods or Services.

12.2 Dedicated to sustainability and responsible commercial practices, the MERSEN Group attaches great importance to labour, competition, anti-corruption and money-laundering legislation and has joined the United Nation Global Compact. Mersen requires its suppliers and customers to comply with its Code of Ethics and to maintain a corporate policy that will respect the commitments of the United Nation Global Compact by applying the ten principles of the Global Compact regarding Human Rights, Labour Laws, Environment and anti-corruption to themselves and their own suppliers and customers. To consult these principles visit the following website: <http://www.unglobalcompact.org>. To consult the Mersen Code of Ethics visit the following website: <https://www.mersen.com/sites/default/files/inline-files/2017-07-en-mersen-code-of-ethics.pdf>.

12.3 The Goods, including any software, documentation, and any related technical data included with, or contained in, such Goods, and any products utilizing any such Goods, software, documentation, or technical data (collectively, "Regulated Goods") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Regulated Goods to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Regulated Goods is prohibited by applicable federal or foreign law, regulation, or rule. Buyer shall be liable for any breach of this Section 12.3 by its, and its successors' and permitted assigns', parent, affiliates, employees, officers, directors, partners/members/shareholders, customers, agents, distributors, resellers, or vendors. Buyer shall comply with all applicable federal and foreign laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Regulated Goods.

12.4 OFAC Representation. Buyer represents that it is in compliance with all Laws administered by the US Treasury Department's Office of Foreign Assets Control ("OFAC") or any other Governmental Entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries, entities, and persons (collectively, "Embargoed Targets"). Buyer represents that it is not an Embargoed Target or otherwise subject to any Economic Sanctions Law.

12.5 OFAC Covenant. Without limiting Section 12.1, Buyer shall comply with all Economic Sanctions Laws, including without limitation, Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver the Goods or Services or any portion of the Goods or Services to an Embargoed Target or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

12.6 Buyer's failure to comply with the terms of this Section shall constitute a material breach.

13. TERMINATION

13.1 Termination for breach.

13.1.1 In addition to any rights or remedies available under the Agreement, at law, and equity, either Party shall have the right to terminate a PO immediately at any time by giving notice in writing to the other Party with effect from the date specified in such notice: (i) if the other Party commits a material breach of any of its obligations under the Agreement which is not capable of remedy; (ii) if the other Party has committed a material breach of any of its obligations under the Agreement which is capable of remedy but which has not been remedied within a period of thirty (30) days following receipt of written notice to do so; (iii) if the other Party (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (c) makes or seeks to make a general assignment for the benefit of its creditors, or (d) applies for or has appointed



a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (iv) pursuant to Section 11 (Force Majeure).

- 13.1.2 In addition to any rights or remedies available under the Agreement, at law, and equity, Mersen may terminate a PO and any unpaid PO previously accepted by Mersen if Buyer fails at any time to pay any amount due and payable to Mersen under the relevant PO and such failure continues for thirty (30) days after Buyer's receipt of written notice of non-payments.
- 13.2 **Termination for convenience.** For engineered-to-order Goods or Services, Buyer may elect to terminate the PO without cause, upon reasonable prior written notice; provided that Buyer may not terminate a PO from achievement of certain milestone as indicated in the PO acceptance.
- 13.3 **Amounts payable to Mersen.** In the event of a termination under Section 13.2, Buyer shall pay Mersen for: (i) any applicable non-recurring expenses, such as without limitation, R&D, tooling; (ii) any unpaid work previously delivered to Buyer or fully completed by the time Mersen receives Buyer's notification of termination; (iii) the amount for any work under progress at the time Mersen receives Buyer's notification of termination, corresponding to a percentage of the price to be paid for the ongoing milestone and equal to the percentage of completion of the work; and (iv) all costs incurred by Mersen, such as without limitation, costs for raw materials, services, which were acquired to complete the work according to the agreed schedule and were not used at the time Mersen receives Buyer's notification of termination, and which cannot be resold to its supplier or any third party, nor be used by Mersen for itself or for other customers. Mersen will issue an invoice corresponding to the amounts stated in this Section, less any down payment or other partial payments already made by Buyer. Buyer shall pay such invoice according to the agreed payment terms. Upon completion of payment, Mersen shall deliver all the corresponding works and raw materials according to the applicable INCOTERMS hereunder. Risk of loss to such works and raw materials will pass to Buyer upon delivery. Title will pass to Buyer upon full payment of the invoice.
14. **GOVERNING LAW, JURISDICTION, AND JURY TRIAL WAIVER**
- 14.1 This Agreement shall be construed and interpreted in accordance with the laws of New York, without regards to its conflicts of law. This Agreement will not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of

which is expressly excluded by the Parties and does not apply to the interpretation or enforcement of a PO.

- 14.2 The Parties agree that all disputes, actions, claims or controversies which may arise out of or in connection with the interpretation or performance of this Agreement shall be exclusively submitted to the United States District Court for the Southern District of New York, or, if such court should not hold proper jurisdiction, to the New York State Supreme Court located in New York County (Manhattan) and the Parties acknowledge the jurisdiction of such court.
- 14.3 **THE PARTIES FURTHER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THE AGREEMENT.**
15. **MISCELLANEOUS**
- 15.1 These GTCS (and the accompanying PO/quotation/confirmation of sale/invoice) embody the entire understanding between the parties and supersede all previous agreements, understandings or representations whether in writing or orally regarding its subject matter. All agreed additions or modifications to these GTCS shall be made in writing and signed by duly authorized representatives of both Parties, failing which such modifications and amendments shall be deemed null and void.
- 15.2 In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and these GTCS shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 15.3 In no event may a Party assign any of its rights, interests or obligations under this Agreement without the other Party's prior written approval. No assignment or delegation relieves a Party of any of its obligations under this Agreement.
- 15.4 The failure of a Party to enforce a provision, exercise a right or pursue a default of this Agreement shall not be considered a waiver. The express waiver of a provision is to be effective only in the specific instance, and as to the specific purpose, for which it was given.
- 15.5 The relationship between the Parties is that of independent contractors.
- 15.6 The Parties' rights and obligations which by their sense and context are intended survive any termination or expiration of the Agreement shall so survive, including but not limited to Sections 1, 6, 7, 8, 9, 10, 11, 14, and 15.