

# Marotta Controls, Inc.

## Purchase Order Standard Terms & Conditions

### **1. AGREEMENT OF CONTRACT**

**1.1** These terms and conditions of purchase are incorporated into and form a part of the purchase order (“Purchase Order” or “Order”) and/or scheduling agreement issued by Marotta Controls, Inc. The term “Buyer” refers to Marotta Controls, Inc. and/or designated Buyer representative of Marotta Controls, Inc. The term “Seller” refers to the legal entity associated to this Purchase Order agreement with the Buyer on the attached Purchase Order and/or scheduling agreement. “Buyer” and “Seller” are each a “Party” and collectively the “Parties.” The term “Supplier” is the entity that is a sub-tier provider of goods or services to the Seller as it pertains to the Goods provided to Marotta Controls, Inc. by the Seller. The term “Goods” refers to the goods and/or services to be provided to Buyer by Seller as specified on the Purchase Order and/or scheduling agreement.

**1.2** Marotta Controls, Inc. rejects any additional or inconsistent terms and conditions offered by Seller at any time. Any reference to Seller’s quotation, bid or proposal does not imply acceptance of any term, condition or instruction contained in that document, and Marotta Controls, Inc. specifically rejects any inconsistent or additional terms. The terms and conditions contained in this document together with the specifications, drawings, or other documents referred to on the face of the Purchase Order, or attached to the Purchase Order, or any documents incorporated by reference, supersede any prior contemporaneous communications, representations, promises or negotiations, whether oral or written, respecting the subject matter of this Purchase Order. All contract documents referenced in this Purchase Order are interpreted together as one agreement except as to the rejection of any inconsistencies contained in any other writing as set forth in Section 44 hereof.

**1.3** If the Seller becomes aware of any ambiguities, issues or discrepancies between this Purchase Order

and any specifications, design or other technical requirement applicable to this Purchase Order, Seller will immediately submit the matter to and agrees to abide by Marotta Controls, Inc. for resolution.

### **2. ACKNOWLEDGMENT**

This Purchase Order is deemed accepted when Seller returns acknowledgment of this Purchase Order or begins performing, whichever is earlier. Acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written.

### **3. DELIVERY**

**3.1** Seller will deliver Goods in the quantities and on the dates specified on the Purchase Order or Purchase Order schedule releases. Seller shall not deliver Goods prior to the delivery dates and/or schedule agreement unless authorized in writing by Buyer.

**3.2** Time is of the essence for Seller’s performance of all of its obligations under this agreement. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall:

- (a) Promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay;
- (b) Provide Buyer with a written recovery schedule; and
- (c) If requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible.

Unless Seller is excused from prompt performance as provided in the “force majeure” section of this contract (Section 31), the added premium transportation costs are to be borne by Seller. Buyer reserves the right to cancel all or any part of the undelivered portion of this Purchase Order at no

charge if Seller does not deliver in accordance with the required delivery dates or schedule releases. Seller agrees that pursuant to the “Confidential, Proprietary and Trade Secret Information and Material” section of this Purchase Order (Section 21), it will not sell or offer such Goods for sale to anyone other than Buyer without Buyer’s written consent.

#### **4. PACKAGING & SHIPPING**

Seller shall pack the Goods to prevent damage and deterioration. Buyer’s Order numbers and item controls numbers (“ICN”) must be plainly marked on all invoices, packages, bills of lading and shipping orders. A packing list shall accompany each box or package shipment. Specific shipments may require additional identification as stated on the Purchase Order. Unless otherwise specified in this Purchase Order, Goods sold origin (place of shipment) shall be forwarded collect. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.

#### **5. CUSTOMS REGULATIONS**

For Goods imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection (“U.S. Customs”) including, but not limited to, the Customs Trade Partnership Against Terrorism (“C-TPAT”) initiative (for information go to <http://www.cbp.gov/> and find the link to the C-TPAT section). At Buyer’s or U.S. Customs’ request, Seller shall certify in writing its compliance with C-TPAT and with all other applicable U.S. Customs laws and regulations. Seller shall provide both Buyer and U.S. Customs access to Seller’s facilities for the purpose of auditing Seller’s compliance with the foregoing. If the Goods are transported via ocean carrier into the United States, Seller must also comply with U.S. Customs’ Importer Security Filing (“ISF”) and provide the necessary data to the freight forwarder selected by Buyer who will act as Buyer’s agent for

filing of the ISF.

**5.1** Seller shall obtain all export licenses or authorizations necessary for the export of Goods, unless otherwise set forth in the Purchase Order, in which case Seller shall promptly provide to Buyer all information necessary to enable Buyer to obtain the licenses or authorizations. Seller shall promptly notify Buyer in writing of any material or components incorporated in the Goods that Seller purchases in a country other than the country in which Goods are delivered. Seller shall furnish any and all documentation and information necessary to establish the country of origin or to comply with the applicable country’s rules of origin requirements.

**5.2** Goods and the containers into which they are placed for shipment shall be marked in accordance with all U.S. laws including, but not limited to 19 C.F.R. § 1134 (as amended from time to time).

**5.3** Seller shall indemnify and hold Buyer harmless from and against any liability, claims demands or expenses (including attorney’s fees or other professional fees) arising from or relating to Seller’s noncompliance with this Section 5. Seller shall be responsible for the full costs of any delay in delivery of the Goods caused by its failure to comply with the requirements of this Section 5, including, but not limited to missing, incomplete, untimely or inaccurate data being furnished to Buyer, Buyer’s agents or any governmental authority.

#### **6. INSPECTION**

At no additional cost to Buyer, all Goods must be inspected and tested by Buyer at Seller’s premises, Seller’s Suppliers’ locations, or at Buyer’s premises after delivery. Buyer shall perform inspections, surveillance and test so as not to unduly delay the work. If an inspection or a testing is made on Seller’s or Seller’s Supplier’s premises, Seller will provide, without additional charge, all reasonable facilities and assistance required for the inspection and test. Seller shall maintain an inspection system acceptable to Buyer for the Goods purchased under this Purchase Order. In the event any Goods and/or documents are found to be defective in material, workmanship, or otherwise not in conformance with the requirements

of the Purchase Order within one (1) year from date of shipment, Seller shall promptly repair or replace such defective material at Seller's expense. Any such repaired or replaced Goods will be subject to all requirements of the Purchase Order unless otherwise stated on the rejection notice.

## **7. BUYER'S RIGHTS TO SURVEILLANCE**

Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance or quality control shall extend to the customers of Buyer that are departments, agencies or instrumentalities of the United States Government. Buyer may also, at Buyer's option, by prior written notice, extend such rights to other customers of Buyer. Seller shall cooperate with any such United States Government directed or Buyer directed inspection, surveillance, test or review without additional charge to Buyer. Nothing in this Purchase Order shall be interpreted to limit access to Seller's or Seller's Supplier's facilities pursuant to law or regulation.

## **8. ACCESS TO PLANT AND PROPERTIES**

Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer.

## **9. ACCEPTANCE AND REJECTION**

**9.1** Buyer shall accept the Goods or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Purchase Order or impair any rights or remedies of Buyer.

**9.2** If Seller delivers non-conforming Goods, Buyer may at its option and at Seller's expense:

- (a) Return the Goods for credit or refund;
- (b) Require Seller to promptly correct or replace the Goods;
- (c) Correct the Goods; or
- (d) Obtain replacement Goods from another source.

Following any of these actions, Seller shall reimburse Buyer for all costs, damages, and losses (whether foreseeable or not), incurred in connection with the nonconforming Goods, including but not limited to transportation costs, storage costs, administrative costs, and incidental expenses. No Goods returned under the terms of this Section shall be replaced without Buyer's written direction to do so.

If any defect in the Goods cannot be corrected, Buyer may (a) require the Seller to take necessary action to ensure that future performance conforms to applicable requirements, and (b) reduce the contract price to reflect the reduced value of the Goods provided. If Seller fails to promptly remedy a defect or to take the necessary action to ensure future performance in conformity with applicable requirements, Buyer may (a) procure by contract or other similar agreement the defective Goods and charge to the Seller any resulting cost incurred by Buyer, and/or (b) terminate this Order for Cause (as defined below).

## **10. TITLE; RISK OF LOSS AND DAMAGE**

Until acceptance by Buyer under Section 9 of these terms and conditions, title, risk of loss and damage shall remain with Seller notwithstanding Buyer's physical possession of the Goods. Seller is responsible for filing any loss or damage claims before Buyer accepts the Goods.

## **11. QUALITY**

**11.1** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased under the Purchase Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system within ten (10) calendar days of such knowledge and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation. Buyer reserves the right at any reasonable time to inspect, witness, review or otherwise audit Seller's quality assurance and quality

control procedures. Buyer shall have access to all parts of Seller's plant(s) and/or Seller's Supplier's plant(s) engaged in the manufacturing or processing of Goods in order to inspect, witness, review or otherwise audit the quality control processes being utilized at such plant(s). Seller shall furnish to Buyer the status of engineering, material procurement, production and shipping information upon request.

## **12. RECORDS AND ACCESS**

Seller shall maintain records regarding the Purchase Order, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy subcontract negotiation, administration, and audit requirements of government agencies and the Comptroller General. Seller shall retain all such records for the periods equivalent to those specified in Federal Acquisition Regulation ("FAR") 4.700. At no additional cost to Buyer, Seller shall make such records available for inspection by Buyer, Buyer's customer, and the customer's authorized representatives in a manner consistent with applicable federal and state law, regulation, and other authority. Audits shall be made upon reasonable notice to Seller and shall be conducted so as not to interfere unreasonably with Seller's normal business activities.

## **13. CHANGES**

**13.1** Buyer may, without notice to sureties and in writing, direct changes within the general scope of this Purchase Order to any of the following:

- (a) Technical requirements, descriptions, and specifications;
- (b) Statement of work, drawings, or designs;
- (c) Shipment or packing methods;
- (d) Place of delivery, inspection, or acceptance;
- (e) Quantities or delivery schedules or both;
- (f) Amount of Buyer-furnished property;
- (g) Terms and conditions of this Purchase Order required to meet Buyer's obligations under Government prime contracts or subcontracts; and, if this Purchase Order includes services, to the

following:

- (a) Description of services to be performed;
- (b) Time of performance (e.g. hours of the day, days of the week); and
- (c) Place of performance.

Seller shall comply immediately with such direction.

**13.2** If such change increases or decreases the cost or time required to perform this Purchase Order, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Purchase Order in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer in writing within fifteen (15) calendar days and deliver a fully supported proposal to Buyer within thirty (30) calendar days after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction. Seller shall not make any changes relating to Goods, including without limitation, in the Goods' contents, design, specification, processing, part or material substitutions, packaging, marking, shipping, price or date or place of delivery, except at Buyer's written instructions or Buyer's prior written approval. Seller shall ensure that these requirements are processed through the sub-tier supply chains that support the Goods on this Purchase Order.

**13.3** If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance.

## **14. SUBCONTRACTING AND ASSIGNMENT**

### **14.1 Subcontracts**

Seller may not enter into a lower-tier subcontract for the Goods to be provided under the Purchase Order without the prior written consent of Buyer. After approval of lower-tier subcontractors by Marotta Controls, Inc., Seller shall be responsible for the

disclosure of all applicable specifications and requirements to its lower-tier subcontractors to ensure product complies, meets, and conforms to Purchase Order requirements. Seller shall not without written authorization from Buyer disclose any information or knowledge to lower-tier subcontractors in connection with this Purchase Order which has been deemed confidential and proprietary information by Buyer. Seller agrees to cause its employees, officers, directors, agents, representatives, and lower-tier subcontractors to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. All documents containing proprietary information relating to the Goods produced or acquired by Seller in connection with this agreement shall belong to the Buyer.

#### **14.2 Assignment**

Seller may not assign or transfer any of its rights or obligations under this Purchase Order without the prior written consent of Buyer, except assignment or transfer to a successor in ownership of all or substantially all of the assets of Seller if the successor in ownership expressly assumes in writing the terms and conditions of this Purchase Order. Any attempted assignment without written consent will be void, except for an Assignment under the specific circumstances permitted by this Section. This Purchase Order shall inure to the benefit of and shall be binding upon the valid successors and assigns of the Parties.

#### **15. INDEPENDENT CONTRACTOR**

Buyer and Seller acknowledge that Seller and any partner, employee, officer, director, shareholder, or agent of Seller (collectively, "Seller Personnel") are not employees or agents of Buyer and will not represent themselves to anyone as such. Seller Personnel will at all times remain either employees of Seller or self-employed independent contractors, as determined by Seller in its sole discretion. Seller and Seller Personnel will be solely responsible for the payment of their own expenses, benefits, insurance, worker's compensation or contributions to any such similar program, and any taxes and requirements associated with employment or self-employment. Seller Personnel are not eligible to participate in any Buyer benefit plans or programs now existing or hereafter created for employees of

Buyer.

Seller shall not have any right, power or authority to make, create or negotiate any commitment, promise, obligation, warranty, liability, agreement, contract, offer or proposal of any kind of whatsoever, express or implied, on behalf of Buyer. Seller shall not at any time represent, suggest or imply that it is an agent or employee of Buyer or has any such right, power or authority.

#### **16. COUNTERFEIT WORK**

Seller is responsible to insure that all work, including the lowest level of separately identifiable items (for example: articles, components goods and assemblies' deliverable under the contract) are not Counterfeit Work. "Counterfeit Work" means work/Goods that contain items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes work/Goods that have reached a design life limit or have been damaged beyond possible repair, but are altered and misrepresented as acceptable by Seller.

(a) Seller agrees and shall ensure that the Counterfeit Work/Goods are not delivered to Marotta Controls Inc.

(b) Seller shall only purchase products to be delivered or incorporated as work/Goods to Marotta Controls, Inc. directly from the Original Component Manufacturer ("OCM")/ Original Equipment Manufacturer ("OEM"), or through an OCM/OEM authorized distributor chain. Goods shall not be acquired from independent distributors or brokers unless approved in advance in writing by Marotta Controls, Inc.

(c) Seller shall immediately notify Marotta Controls, Inc. with the pertinent facts if Seller becomes aware of, or suspects that Counterfeit Work/Goods have been furnished. When requested by Marotta Controls, Inc., Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

(d) In the event that work delivered under this contract constitutes or includes Counterfeit Work/Goods, Seller shall, at Seller's expense, promptly replace such Counterfeit Work/Goods with genuine work/Goods conforming to the requirements of this Contract. Notwithstanding any other

provision in this contract, Seller shall be liable for all costs related to the removal and replacement of Counterfeit Work/Goods, including without limitation, Marotta Controls, Inc. costs of removing Counterfeit Work/Goods, of reinserting replacement work/Goods and of any testing necessitated by the reinstallation of work/Goods after Counterfeit Work/Goods have been exchanged. The remedies contained in this Section are in addition to any remedies Marotta Controls, Inc., has at law, equity or under other provisions of this Purchase Order.

(e) This Section applies in addition to any quality provision, specification, statement of work or other provision included in this Purchase Order addressing the authenticity of work/Goods. To the extent such provisions conflict with this Section, this Section prevails.

(f) Seller shall include paragraphs (a) through (d) of this Section or equivalent provisions in lower-tier subcontracts for the delivery of items that will be included in or furnished as work/Goods to Marotta Controls, Inc.

## **17. WARRANTY**

Seller warrants that all Goods furnished (including all replacement or corrected Goods or components that Seller furnishes under this warranty) will be free from defects in material and workmanship; conform to applicable drawings, design, quality control specifications, samples, and other descriptions furnished or specified by Marotta Controls, Inc.; be merchantable to the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer; and be free from design and specification defects. This warranty shall survive inspection, testing and acceptance of, and payment for the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance. Non-conforming Goods may, at the Buyer's option, either be returned for credit or returned for correction or replacement. Seller shall bear expenses for all returned and re-delivered Goods. All Goods re-delivered to Buyer shall be subject to this Section and the Inspection Section of this contract (Section 6). Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to repair, rework or replace the Goods. If the Parties later determine that Seller did

not breach this warranty, the Parties shall equitably adjust the Purchase Order price.

## **18. INSURANCE**

Seller shall maintain and require subcontractors to maintain the following insurance coverage:

- (a) Comprehensive general liability insurance;
- (b) Comprehensive automobile liability insurance;
- (c) Business interruption insurance;
- (d) Workers compensation and employer's liability insurance covering all employees engaged in the performance of this Order for claims arising under any applicable workers' compensation, occupational disease or health and safety laws and/or regulations;
- (e) Aviation Product liability insurance;
- (f) Completed Operations liability insurance;
- (g) Privacy and Network Security (Cyber) insurance;
- (h) Umbrella liability insurance;
- (i) Such other insurance coverage as may be requested from time to time by Buyer in its sole discretion.

In each case Seller's insurance coverage will name Buyer and its affiliates (as applicable) as loss payee(s) and/or additional insured(s) and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts specifically set forth on Buyer's Insurance Addendum which, when published, will form part of the Order. Such insurance coverage shall among other things provide full fire and external coverage insurance for the full replacement value of all Seller's property and all bailed Buyer's property. Seller hereby waives all mechanic's liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Supplies and shall cause all its subcontractors, materialmen and Suppliers (and subcontractors of such parties) to provide similar waivers and agreements in a form satisfactory to Buyer. Seller shall furnish to Buyer a certificate showing full compliance with the requirements set forth in this Section 18 or certified copies of all insurance policies within ten (10) calendar days of Buyer's written request. The certificate shall provide that Buyer shall receive thirty (30) calendar days prior written notice from the insurer of any termination or reduction in the amount

or scope of coverage. The existence of insurance shall not release the Seller of its obligations or liabilities under the Order.

## **19. INDEMNIFICATION**

In addition to other indemnities provided for in these terms and conditions, Seller will indemnify, defend, and hold harmless Buyer, its employees, its agents, and its affiliates and subsidiaries from and against any and all liabilities, settlements, penalties, expense, fines, interest, loss, actions, claims, demands, costs, suits or judgments, including court costs and attorneys' fees, asserted against or incurred by Buyer, its employees, its agents, and its affiliates and subsidiaries that: (i) are related to bodily injury, death of any person, or damage to property resulting from the negligent or willful acts or omissions of Seller in performing this Purchase Order; (ii) are due and owed to the Internal Revenue Service, including any social security tax, income tax, or other tax; or (iii) arise out of or relate to the Goods provided by Seller under the Purchase Order, or to any breach of the Purchase Order (including all warranties) or violation of or failure to conform or comply with any applicable statute, treaty, regulation, ordinance or lawful order by Seller, its directors, employees, agents or subcontractors in performing this Purchase Order. Seller may not limit its obligation under this Section to the extent of any insurance available to Seller.

Buyer agrees to give Seller prompt notice of any such claim, demand, or action and shall, to the extent Buyer is not adversely affected, cooperate fully with Seller in defense and settlement of said claim, demand, or action. Buyer may participate, at its expense, in defending against such claim, demand, or action, and shall receive Seller's complete cooperation in pursuing that defense.

## **20. LIMITATION OF LIABILITY**

**20.1** Neither Buyer nor its officers, directors, employees, parents, subsidiaries and affiliates shall have any liability related to their obligations under this Purchase Order, or otherwise, for any indirect, special, incidental, exemplary, punitive, or consequential damages, including damages for loss of use, lost profits, lost savings, or other financial loss, even if they have been advised of the possibility of such damages. Further, Buyer shall not have any

liability to Seller or any other person in connection with the Goods purchased under this agreement, except for any liability for losses, claims, damages, or liabilities that have been finally determined, in accordance with the Disputes Section of this Purchase Order, to have resulted solely from Buyer's gross negligence or unlawful or willful misconduct. **20.2** In any event, the liability of Buyer to Seller for any reason and upon any cause of action shall be limited to the amount paid to Buyer by Buyer's customer for the Goods giving rise to the liability. This limitation applies to all causes of action in the aggregate, including breach of contract, breach of warranty, negligence, misrepresentations, and other torts. Both Parties agree that the fees, remedies, and limitations set forth in this Purchase Order form an essential element of the bargain and represent an equitable allocation of risks between the Parties.

## **21. CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIAL**

**21.1** Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all:

- (a) Confidential, proprietary and/or trade secret information;
- (b) Tangible items and software containing, conveying or embodying such information, and;
- (c) Tooling identified as being subject to this Section and obtained, directly or indirectly, from the other in connection with this contract or other agreement referencing this contract (collectively referred to as "Proprietary Information and Materials").

**21.2** Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Purchase Order and/or any other agreement referencing this Purchase Order. However, despite any other obligations or restrictions imposed by this Section, Buyer shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Goods delivered under this Purchase Order or any other agreement referencing this Purchase Order. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a

restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Purchase Order, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Section. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this Section relating to Proprietary Information and Material. Seller shall be liable to Buyer for any breaches of this Section regardless of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this Section shall survive the performance, completion, termination or cancellation of this contract.

**21.3** The Parties (defined to include, for the purposes of this provision, Buyer, Seller, Seller's lower-tier subcontractors, contactors, agents and their employees) shall not disclose any Proprietary Information and Materials or other information furnished hereunder in any manner contrary to the laws and regulations of the United States of America, or any Agency thereof, including but not limited to, the Export Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, and the Industrial Security Manual for Safeguarding Classified Information of the Department of Defense. Additionally, all Proprietary Information and Materials supplied to the Parties (identified above) shall only be disclosed to United States Citizens or Permanent Residents. Exceptions may be granted in writing by the

disclosing Party on a case by case basis. All disclosures to other than United States citizens shall be reported to Marotta Controls, Inc. at the time of disclosure.

## **22. PATENT PROTECTION**

Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, or industrial design based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action. Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnities. Seller will have no obligation under this Section with regard to any infringement arising from:

- (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or
- (b) Use or sale of Goods for other than their intended application in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller. For purposes of this Section only, the term "Buyer" will include all officers, agents and employees of Marotta Controls, Inc.

## **23. INTELLECTUAL PROPERTY**

**23.1** "Intellectual Property" shall mean and include patents, copyrights, trade secrets, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, designs, improvements, documentation, intellectual property/proprietary rights, rights in other tangible and intangible assets of a proprietary nature, and the like. "Intellectual Property Rights" means all forms of Intellectual Property protection or proprietary rights available throughout the world including, without limitation,



design patents, patent applications, design registrations, industrial designs, copyrights, trade secrets and rights in domain names.

**23.2** Seller warrants that the Goods and the sale and/or use thereof (before or after incorporation into products during manufacture) are original to Seller and do not and shall not infringe upon any third party's Intellectual Property Rights.

**23.3** Seller agrees:

(a) To defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents and any of their respective successors and assigns (each a "Buyer Indemnified Party") against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses (including attorney's and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Goods, including cases in which Seller has provided only part of the Goods; (b) To waive any claim against any Buyer Indemnified Party, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against such Buyer Indemnified Party for infringement of any Intellectual Property Right, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications; and (c) That if the sale or use of the Goods is enjoined, or in Buyer's sole and absolute judgment is likely to be enjoined, Seller shall, at Buyer's election in its sole discretion and at Seller's sole expense, procure for Buyer the right to continue using the Goods, replace the same with equivalent non-infringing Goods or modify such Goods so they become non-infringing.

## **24. BUYER'S PROPERTY**

**24.1** "Buyer's Property" shall mean and include: all information and materials, including tooling which has been furnished by Buyer to Seller or for which Seller has been reimbursed by Buyer (such as fixtures, gauges, patterns, castings, cavity dies, molds, etc., with all related appurtenances, accessions, and accessories, collectively herein

referred to as "Tooling"), packaging documents, standards, specifications, samples, trade secrets, manufacturing processes, marketing and pricing data, proprietary information and other materials and items (including whether or not such materials are in any way modified, altered or processed) furnished by Buyer either directly or indirectly to Seller to perform the Purchase Order, along with any and all supplies, Tooling deliverables, data and Intellectual Property Rights (as defined in Section 23.1) which are property of Buyer under the terms of this Purchase Order. Buyer's Property shall be and remain the sole and exclusive property of Buyer.

**24.2** With respect to Buyer's Property in the custody or control of Seller or Seller's Suppliers, contractors or agents:

- (a) Seller shall have a defined documented system required to clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Purchase Order.
- (b) Seller shall use Buyer's Property or permit its use only for the production of Goods for Buyer.
- (c) Seller shall keep Buyer's Property in good working condition and house, maintain, repair and replace it as necessary so that such Buyer's Property shall remain in a condition which meets the Buyer's expectations and requirements consistently.
- (d) Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors.
- (e) Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Purchase Order without Buyer's prior written consent.
- (f) Seller shall promptly notify Buyer if Buyer's property is lost, damaged or destroyed. Seller shall not release, relocate or dispose of Buyer's Property to any third party without the prior, express, written permission of Buyer. Seller shall promptly notify Buyer of the location of the Buyer's Property if located at any place other than the Seller's facility.

As directed by Buyer, upon completion, termination or cancellation of this Purchase Order, Seller shall deliver Buyer's Property, to the extent not

incorporated in delivered Goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this Section limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

**24.3** Buyer shall have the right to enter Seller's premises, or the premises of any of Seller's Suppliers, contractors or agents in possession of the Buyer's Property, to inspect Buyer's Property and Seller's records regarding Buyer's Property. Seller agrees neither to create nor permit any liens on the Buyer's Property and Seller agrees to immediately sign any form or documents reasonably required by Buyer to perfect Buyer's rights granted herein. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect and protect Buyer's interest in Buyer's Property.

**24.4** Immediately upon Buyer's request, pursuant to any bailment agreement or upon bankruptcy or insolvency filing, and without payment of any kind, Seller shall return Buyer's Property, and shall comply with Buyer's instructions relating to its return, including the method and location for its return. Seller shall be responsible for labor and all other costs incidental to such return of Buyer's Property. Seller shall cooperate with Buyer and shall provide Buyer with access to all facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section. Seller waives, to the extent permitted by law:

- (a) any lien or other rights Seller might otherwise have on any Buyer's Property, including molder's and builder's liens; and
- (b) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

## **25. TERMINATION FOR CAUSE**

Buyer may terminate the Purchase Order for Cause, without liability to Seller, which shall be effective upon delivery of written notice or upon such other

date specified by Buyer in writing. "Cause" for termination includes the following actions:

- (a) Seller breaches any representation, warranty or other term of the Purchase Order;
- (b) Seller repudiates breaches or threatens to breach any of the terms of the Purchase Order;
- (c) Seller fails to deliver, or threatens not to deliver, Goods in accordance with the terms of this Purchase Order;
- (d) Seller fails to meet applicable quality requirements so as to endanger timely and proper performance of the Purchase Order;
- (e) Seller makes an assignment for the benefit of creditors;
- (f) Proceedings in bankruptcy or insolvency are instituted by or against Seller;
- (g) Seller requests accommodations from Buyer, financial or otherwise, in order for Seller to meet its obligations under the Purchase Order;
- (h) Seller enters or offers to enter into a transaction or series of transactions that would cause a sale of a material portion of the assets used by Seller for the production and/or provision of Goods to Buyer;
- (i) Seller enters or offers to enter into a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller within the meaning of Section 409A of the Internal Revenue Code and regulations issued there under, in which case Seller shall notify Buyer within ten (10) calendar days after entering into any related negotiations (or the first period in which such negotiations can be made public consistent with applicable law) that could lead to such a transaction, provided that upon Seller's request, Buyer shall enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction; or
- (j) At any time in Buyer's sole judgment Seller's financial or other condition or progress on the Purchase Order shall be such as to endanger timely performance.

In the event Buyer elects not to terminate the Order in connection with an event that would constitute Cause for termination, Buyer may make such equitable adjustments in the price, payment terms, sole supply relationship and delivery requirements under the Purchase Order as Buyer deems appropriate to address changes in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty,

nonconforming Goods or other requirements under the Order, provided that Buyer must provide Seller with notice and details regarding the adjustments.

If Buyer terminates this Purchase Order for Cause, Buyer shall be entitled to seek damages for breach of this Purchase Order, including damages equal to the costs of procuring substitute performance to fulfill Buyer's obligations under the contract between Buyer and its customer and any other damages or losses Buyer sustains as a result of Seller's Termination for Cause.

Upon termination of this Purchase Order, Seller will cease all activities related to the Goods being provided, submit a final invoice, and promptly provide to Buyer, without additional cost to Buyer, any Goods completed by Seller while performing this Purchase Order and any materials provided to Seller by Buyer for performing this Purchase Order.

## **26. TERMINATION FOR CONVENIENCE**

Buyer may terminate all or part of this Purchase Order, effective as of the date specified by Buyer, in accordance with the provisions of FAR 52.249-2, "Termination for Convenience of the Government (Fixed Price)," which provisions, except for subparagraph (d), are incorporated herein by reference. The terms "Government" and "Contracting Officer" shall mean "Buyer," "Contractor" shall mean "Seller," and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place. The time for requesting an equitable adjustment under subparagraph (l - lower case letter L) is reduced to forty-five (45) calendar days. Settlements and payments under this Section may be subject to approval by the Contracting Officer and the Settlement Review Board.

Upon termination of this Purchase Order, Seller will cease all activities related to the Goods being provided, submit a final invoice, and promptly provide to Buyer, without additional cost to Buyer, any Goods completed by Seller while performing this Purchase Order and any materials provided to Seller by Buyer for performing this Purchase Order.

## **27. SUSPENSION OF WORK**

**27.1** Buyer may, by written order, suspend all or part

of the work to be performed under this Purchase Order for a period not to exceed one hundred (100) work days. Within such period of any suspension of work, Buyer shall:

- (a) Cancel the suspension of work order;
- (b) Terminate this Purchase Order in accordance with the "Termination for Convenience" Section of this Purchase Order;
- (c) Terminate this Purchase Order in accordance with the "Termination for Cause" Section of this Purchase Order; or
- (d) Extend the stop work period.

**27.2** Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if:

- (a) This Purchase Order is not canceled or terminated;
- (b) The suspension results in a change in Seller's cost of performance or ability to meet the delivery schedule; and
- (c) Seller submits a claim for adjustment within twenty (20) calendar days after the suspension is canceled.

## **28. DISPUTES**

Any dispute that arises under or is related to this Purchase Order that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. The Parties agree that the state and federal courts of New Jersey shall have exclusive jurisdiction for all disputes hereunder and that no Party shall object to lack of jurisdiction or forum non conveniens of the New Jersey courts. Pending final resolution of any dispute, Seller shall proceed with performance of this Purchase Order according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

## **29. GOVERNING LAW**

This Purchase Order shall be governed by and construed in accordance with the laws of the state of New Jersey. No consideration shall be given to New Jersey's conflict of laws rules. This Purchase Order excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

### **30. SPONSORED CLAIMS**

If Buyer initiates a claim, request for equitable adjustment, appeal, or similar action under the contract between Buyer and its customer (in whole or in part on behalf of Seller), and the subject matter of the action encompasses this Purchase Order, Seller shall fully cooperate with Buyer, pay proportional costs in pursuing the claim (or equitable adjustment, etc.) and hereby agrees to be bound by the resulting decision. Buyer's entire liability to Seller with respect to any matter pursued under the "Disputes" Section of the contract between Buyer and its customer shall be limited to the recovery obtained against the Buyer's customer for the share of claims (or equitable adjustment, etc.) attributable to this Purchase Order, less markups specifically allowed Buyer.

### **31. FORCE MAJEURE**

Seller shall not be liable for excess re-procurement costs pursuant to the "Termination for Cause" Section of this Purchase Order, incurred by Buyer because of any failure to perform this Purchase Order under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are:

- (a) Acts of God or of the public enemy,
- (b) Acts of the Government in either its sovereign or contractual capacity,
- (c) Fires,
- (d) Floods,
- (e) Epidemics,
- (f) Quarantine restrictions,
- (g) Strikes,
- (h) Freight embargoes,
- (i) Unusually severe weather
- (j) Terrorist Acts

In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller, and Seller shall notify Buyer in writing within ten (10) calendar days after the beginning of any such cause. If the delay is caused by delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess costs unless the Goods or services to be

furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules.

### **32. TAXES**

Unless this Purchase Order specifies otherwise, the price of this Purchase Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Purchase Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

### **33. PAYMENT**

Unless otherwise authorized by Buyer, Seller shall issue a separate original invoice for each delivery of Goods that shall include Buyer's Purchase Order number and line item number. Seller shall forward its invoice and all other applicable documents to the address specified elsewhere in this Purchase Order. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery of Goods date, the actual delivery of Goods date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Terms are as per Purchase Order. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller.

### **34. OFFSET CREDITS**

**34.1** To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits which might result from this Purchase Order. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.

### **35. SELLER FINANCIAL REVIEW**

If the Purchase Order exceeds \$250,000 and extends

for more than one year, and if requested, the Seller shall provide financial data on a quarterly basis or as requested by the Buyer, to the Buyer's Credit Office for credit and financial condition reviews. Said data shall include but not be limited to balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within seventy-two (72) hours of any written request by Buyer. All such information shall be treated as confidential.

### **36. COMPLIANCE WITH LAWS**

Seller warrants that all Goods furnished by Seller under the Order shall comply with all applicable local, state, Federal and all other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as those laws, ordinances and regulations are amended from time to time. Seller shall provide all permits, certificates, licenses, insurance approvals and inspections which may be required for the performance of the Purchase Order.

### **37. CODE OF CONDUCT**

Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically in connection with this Purchase Order, Seller shall report such behavior in writing to Marotta Controls, Inc. Buyer will not use the failure to report improper or unethical behavior as a basis for claiming breach of contract by Seller. Seller is encouraged to exert reasonable effort to report such behavior when warranted.

### **38. PUBLICITY**

Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same

regarding this Purchase Order or the Goods or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.

### **39. CLAUSES INCORPORATED BY REFERENCE**

Clauses applicable to this Purchase Order, including but not limited to FAR and Department of Defense Federal Acquisition Regulation Supplement ("DFARS") clauses as well as clauses from Buyer's prime contracts, are incorporated herein either by attachment to this document or by some other means of reference. These clauses shall apply to the same extent as if they were reproduced in full text.

### **40. RIGHTS AND REMEDIES**

**40.1** Buyer may, in its sole discretion, withhold payment on any claim by Seller for monies due (or to become due) from Buyer so that Buyer may effect a setoff or counterclaim arising out of this Purchase Order or any other order, contract, or agreement for performance between the Parties. Buyer may withhold payment of any amounts due Seller under this Purchase Order pending resolution of any claim asserted against Seller in regard to this Purchase Order or any other obligation of Seller to Buyer and such amounts will only be paid, without interest, when, without cost to Buyer, the basis of the withholding has been eliminated in full.

**40.2** Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Purchase Order, or in exercising any rights or remedies under this Purchase Order, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Purchase Order, the rights and remedies set forth herein are cumulative, and are in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Purchase Order is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

### **41. SURVIVAL**

All provisions of this Purchase Order which by their

nature should apply beyond their terms will remain in force after any termination or expiration of this Purchase Order including, but not limited to, those addressing the following subjects: Customs Regulations; Records and Access; Warranty; Indemnification; Limitation of Liability; Confidential, Proprietary and Trade Secret Information and Material; Patent Protection; Intellectual Property; Buyer's Property; Termination for Cause; Termination for Convenience; Disputes; Governing Law; Sponsored Claims; Taxes; Offset Credits; Seller Financial Review; Publicity; Rights and Remedies; Survival; Severability; Attorney's Fees; Reduction or Suspension of Contract Payments Upon Finding Fraud or Falsification; and Notice.

#### **42. ENTIRE AGREEMENT**

This Purchase Order constitutes the entire agreement with respect to Seller's Goods delivered to support Buyer's performance of the contract between Buyer and its customer and supersedes all prior communications, representations, agreements, and understandings, whether oral or written, pertaining to this Purchase Order.

This Purchase Order encompasses the following documents, set forth in their order of precedence should any conflict arise: the order document; specifications, schedules, exhibits, riders, agreements, and other writings expressly incorporated into the order document by reference; these Marotta Controls, Inc. Purchase Order Standard Terms and Conditions; and the set of FAR and DFARS clauses incorporated by reference pursuant to Section 39.

No amendment or modification of this Purchase Order shall bind either Party unless it is accepted as described in the Acknowledgment Section (Section 2) of these terms and conditions.

#### **43. SEVERABILITY**

In the event any provision of this Purchase Order is deemed illegal, invalid, void, or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions of this Purchase Order shall remain in full force and effect.

#### **44. COUNTEROFFERS**

Seller's commencement of performance under this

Purchase Order constitutes acceptance of all terms and conditions herein. Buyer expressly rejects any additional or different terms and conditions, including those which appear in any quotation, acceptance, shipping documentation, invoice, or acknowledgement of Seller. Seller may not assert, as a defense to enforcement of the conditions of this Purchase Order, any conditions or limitations made in its acceptance. This Section shall constitute a rejection of any additional terms and conditions offered by Seller pursuant to N.J.S.A.

12A:2-207(2)(a) and (c).

#### **45. ATTORNEY'S FEES**

In the event of any dispute over these terms and conditions and the applicability or interpretation thereof, Seller agrees to pay any and all reasonable attorney's fees and costs incurred by Marotta.

#### **46. FRAUD AND FALSIFICATION**

All Purchase Orders which fall under a Government prime contract are within the jurisdiction of the U.S. Government. Any knowing and willful act to falsify, conceal, or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this Purchase Order may be punishable in accordance with applicable Federal Statutes. Seller shall include the following statement on each Certificate of Conformance initiated by the Seller and provided to the Buyer in connection with the applicable Purchase Order:

**“Note: The recording of false, fictitious or fraudulent statements or entries on this document may be punishable as a felony under Federal Statute.”**

Seller agrees that all employees or other persons engaged in the performance of work under this Purchase Order, will be, if they have not been previously, informed of the above language and that there is a risk of federal criminal and civil penalties associated with any knowing and willful falsification, concealment, or misrepresentation in connection with work performed under Government contracts and associated subcontracts. Seller will make employees aware of the above prior to them commencing work under any government contract

Purchase Order. Any inability or unwillingness of a lower-tier subcontractor to comply with this provision should be documented in writing and submitted to Buyer.

#### **47. REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING FRAUD OR FALSIFICATION**

Seller agrees that Buyer may reduce or suspend further advance, partial or progress payments to Seller under this Purchase Order upon written determination by Buyer that substantial evidence exists that the Seller's request for advance, partial, progress, or milestone (performance based payments) payments is based on fraud, misrepresentation, or falsification. This Section is in addition to any rights or remedies available to the Buyer by law or in equity.

Actions taken by the Buyer under this Section shall not constitute an excusable delay, force majeure or otherwise relieve the Seller of its obligations to perform under this Purchase Order.

#### **48. MALPRACTICE**

All Sellers, Suppliers, subcontractors, sub-tier suppliers and their associated employees are prohibited of any action which may result in Malpractice under this Purchase Order. "Malpractice" is defined as any intentional or inexcusable deviation from established engineering, production, certification or inspection requirements and is a dereliction of professional duty or a failure of professional skill that results in less than contract compliance.

#### **49. AFFIRMATIVE ACTION**

During the performance of this Order, the Seller agrees to comply with all provisions of the President's Executive Order Number 11246 as amended, Section 503 of the Rehabilitation Act of 1973, and 38 U.S.C. § 4212 (The Vietnam Era Veterans Readjustment Assistance Act of 1974).

#### **50. CONFLICT MINERALS**

All parts and/or material supplied must be free of conflict minerals originating in the Democratic Republic of the Congo or the adjoining countries of

Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia ("Covered Countries"). Accordingly, when requested by Buyer, Seller shall certify:

- (a) Whether the parts and/or material supplied contain conflict minerals - tantalum, tin, tungsten or gold;
  - (b) If the parts and/or material contain conflict minerals:
    - i. The relevant identification number(s) of the parts and/or material that contain conflict minerals and which conflict minerals are incorporated in each item;
    - ii. That the conflict minerals did not originate in Covered Country;
    - iii. The Supplier or subcontractor from which Seller obtained the conflict minerals; and
    - iv. The smelter used to produce the conflict minerals.
- Seller shall include this Section or equivalent provisions in lower-tier subcontracts for the delivery of the items that will be included in or furnished as work/Goods to Marotta Controls, Inc.

#### **51. NOTICE**

All notices required or permitted under this Purchase Order shall be in writing and shall be deemed to have been duly given: (i) if delivered personally, on the date received, (ii) if delivered by facsimile, on the date received, or if received after the recipient's close of business, then on the next business day, (iii) if delivered by email, on the date received, or if received after the recipient's close of business, then on the next business day, (iv) if delivered by overnight courier, on the next business day after deposit with the courier service, and (v) if mailed, four (4) business days after mailing if sent by U.S. registered or certified mail. Any such notice shall be sent as follows:

To Marotta Controls, Inc.: The address specified on the face of this Purchase Order

To Seller: The address specified on the face of this Purchase Order

#### **52. OBSOLESCENCE**

If during the performance of this Purchase Order

Supplier becomes aware that any equipment, assemblies, subassemblies, parts, components or items sold under this Purchase Order will be going out of production or will no longer be commercially available Seller shall notify the Buyer of such obsolescence. Seller shall specifically identify those items by name or title, part number(s), function, and name and location of manufacturer. Seller shall provide Buyer with a “Last Time Buy Notice” at least twelve (12) months prior to the actual discontinuance. Seller shall flow down to Subcontractor(s) the requirements of this Clause.