

PURCHASE ORDER TERMS AND CONDITIONS

This Purchase Order includes and is subject to the following covenants, terms and conditions.

1. OFFER, ACCEPTANCE, MODIFICATION.

Written acceptance of this Purchase Order or commencement of performance of any work or services pursuant hereto shall constitute acceptance hereof. Such acceptance is limited to the terms and conditions stated herein. All terms and conditions proposed by Seller which are different from or in addition to this Purchase Order are expressly rejected by Buyer. Any acceptance by Buyer herein contained is expressly made conditional on Seller's assent to the terms and conditions contained herein which are additional to or different from those contained in any offer of Seller. No purported oral or verbal agreement or other understanding which attempts in any way to modify the conditions of the agreement resulting from this Purchase Order will be binding upon Buyer. Any modification to this Purchase Order shall be made only in writing signed by both parties hereto.

2. PRICE.

- ◆ This Purchase Order must not be filled at prices higher than those specified on the front of this Purchase Order, unless otherwise agreed to in writing by the Buyer. The price specified on the front of this Purchase Order includes all subcontracting costs associated with this Purchase Order. Buyer shall have no responsibility for any increased costs incurred by Seller in connection with any subcontractors unless such additional costs shall have been negotiated and agreed to in writing by Buyer.
- ◆ Seller warrants that the prices specified herein are no less favourable than prices given by Seller to any other customer for like merchandise (after consideration of all discounts, rebates and allowances). If Seller quotes a lower price to anyone or accepts payment of a lower price from anyone during the life of this contract, such lower price is to prevail in respect to any quantity undelivered hereunder. If Buyer is quoted a lower price by someone other than Seller and Seller does not wish to meet the lower price, Buyer may purchase any undelivered quantity hereunder at the lower price, thereby cancelling this Purchase Order with no further liability to Seller for such undelivered quantity.
- ◆ Unless otherwise agreed in writing by the Buyer, the prices specified on the front of this Purchase Order shall be inclusive of any value added tax and include all federal, state and local taxes which Seller is required by law to collect from Buyer and from which Seller cannot obtain an exemption. Such taxes shall be separately stated on Seller's invoices and shall be paid by Buyer unless an exemption is available.
- ◆ Unless otherwise agreed to in writing by the Buyer, the price specified on this Purchase Order includes all charges for packing, cartage, storage, drayage, and transportation to the F.O.B. point. Seller shall pay all delivery charges in excess of that Buyer has agreed to pay.
- ◆ Seller warrants that the prices will comply with applicable government law and regulations.

3. SHIPPING AND PACKING.

- ◆ All shipments shall be delivered, carriage paid, to the Buyer's place of business or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the goods.

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- ◆ If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material will only be returned to the Seller at the cost of the Seller.
- ◆ All shipments must be accompanied by a packing slip which describes the articles, states the Purchase Order number, and shows the shipment's destination. Seller agrees to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions. No charges will be allowed for packing, crating and transportation unless stated in this Purchase Order.
- ◆ Equipment shipped hereunder must be shipped without oil or any other fluids and must comply with all Buyer's specifications concerning compliance with local, state, and federal environmental regulations, including but not limited to those dealing with air pollution control, waste water control, chemical usage, and employee exposure. Seller shall bear all liability for spillage if the shipment does not so comply.

4. DELIVERY – RISK OF LOSS.

- ◆ Deliveries shall be made both in quantities and at times specified on the face of this Purchase Order or in Buyer's schedules and time is of the essence. Buyer shall not be required to make payment for goods delivered to Buyer which are in excess of quantities specified in Buyer's delivery schedule on this Purchase Order or in written releases issued by Buyer. Buyer may reject any deliveries made more than two weeks after or before the specified delivery date.
- ◆ In the event Seller fails to meet the agreed upon delivery requirements for reasons other than those specified in paragraph 12 below, and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified, Seller shall ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.
- ◆ Unless provided otherwise herein, all goods shall be sold F.O.B destination. Seller shall be responsible for and bear the risk of any loss or damage to the goods until received by the Buyer.

5. INVOICING.

- ◆ Seller agrees to promptly render after delivery of goods or performance of services, correct and complete invoices to Buyer and to accept payment by check or, at Buyer's discretion, other cash equivalent (including purchase cards or electronic transfer of funds). Payment shall be due on the 2nd day of the 2nd month following the date Buyer receives the goods or services, except as may otherwise be agreed by the parties in writing. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances, and claims on the goods or services provided under this Purchase Order. Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer, against any amount owed by Buyer to Seller, under this Purchase Order.

6. WARRANTIES OF SELLER.

- ◆ Seller expressly warrants that all goods or services covered by this Purchase Order (i) conform to the Purchase Order, specifications, drawings, samples, or descriptions furnished to or by the Buyer, (ii) are merchantable, of good material and workmanship and free from defect and (iii) are fit and sufficient for the particular purpose intended by Buyer. If Seller has participated in the design of the item or approved the design, Seller also warrants that the items are free from defects in design. All goods and services are subject to Buyer's inspection. Payment for, inspection of, or receipt of goods or services shall not constitute acceptance of the goods or a waiver of any breach of warranty.
- ◆ The Buyer's rights under these conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979.

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7. REJECTION OF GOODS.

Nonconforming or defective goods may be returned to the Seller for, at the Buyer's option, full credit or replacement with new goods at the Seller's risk and expense, including all expenses for labour and materials in dealing with or removing the defective parts, all charges for handling, sorting, packaging and transportation both ways. No replacement of nonconforming goods may be made except as authorized by a replacement order signed by Buyer.

8. CHANGES.

Buyer at any time in writing may make changes in the drawings, designs and specifications of the goods or otherwise change the scope of the work covered by this Purchase Order, including work with respect to such matters as drawings, designs, specifications inspection, testing or quality control, the method of packing and shipping, the place of delivery and shipping instructions and quantity or delivery schedules. Seller agrees to promptly make such changes. If such changes affect the cost or time required for performance and if Seller makes claim for adjustment in writing within fourteen (14) days of receipt of notification of change, an equitable adjustment shall be made by the parties, and this Purchase Order shall be modified accordingly. Otherwise, such claim for equitable adjustment is waived and the Purchase Order shall be deemed to be modified. Seller shall diligently continue performance of the Purchase Order, as changed, pending agreement on the amount of an equitable adjustment. Nothing contained herein shall relieve or excuse Seller from proceeding without delay in performing this Purchase Order as changed. Seller shall not make any change in design, processing, packing, shipping, or place of delivery without Buyer's written approval.

9. TERMINATION FOR BANKRUPTCY.

Buyer may immediately terminate this Purchase Order without liability if:

- ◆ any procedure is commenced with a view to the winding-up or re-organisation of the Seller and that procedure unless commenced by the Seller is not terminated or discharged within 15 days;
- ◆ any procedure is commenced with a view to the appointment of an administrator, receiver, administrative receiver or trustee in bankruptcy in relation to the Seller or all substantially all of its assets and that procedure (unless commenced by the Seller) is not terminated or discharged within 15 days;
- ◆ the holder of any security over all or substantially all of the assets of the Seller takes any step to enforce that security and that enforcement is not discontinued within 15 days;
- ◆ all or substantially all of the assets of the Seller are subject to attachment, sequestration, execution or any similar process and that proceeding is not terminated or discharged within 15 days;
- ◆ the Seller is unable to pay its debts as they fall due or enters into a composition or arrangement with its creditors or any class of them; or
- ◆ anything analogous to any of the events described in the paragraphs above occurs in any jurisdiction.

10. TERMINATION FOR CONVENIENCE.

In addition to any other rights of Buyer to cancel or terminate this Purchase Order, Buyer may terminate all or any part of this Purchase Order at any time and for any reason by giving written notice to Seller. Seller will thereupon immediately stop work on this Purchase Order or the terminated portion thereof, and notify any subcontractors to do likewise. Buyer shall pay to Seller the Purchase Order price for all goods or services which have been completed in accordance with this Purchase Order and not previously paid

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for. Where articles or materials are to be specifically manufactured for Buyer hereunder and where Seller is not in default, an equitable adjustment shall be made to cover Seller's actual cost, excluding profit, for work-in-process and raw materials as of the date of termination to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this Purchase Order. Buyer will not be liable for any charges or expenses incurred by Seller in advance of the normal lead time necessary to meet scheduled delivery dates nor for any expenses, charges or liability incurred subsequent to the giving of notice of cancellation. Buyer will make no payments for finished goods, work-in-process, or raw materials in amounts in excess of those authorized by Buyer or for any undelivered goods which are in Seller's standard stock or which are readily marketable. Seller shall submit any claim to Buyer within thirty (30) days after the date of termination or such claim shall be waived.

11. TERMINATION FOR DEFAULT.

In addition to any other remedies or rights afforded by law, Buyer reserves the right to cancel all or any part of this Purchase Order, for default of Seller, if Seller: (i) repudiates or breaches any of the terms of this Purchase Order, including Seller's warranties; (ii) fails to perform services or deliver goods as specified by Buyer; or (iii) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, and does not correct such failure or breach within ten (10) days after receipt of written notice from Buyer specifying such failure or breach. If Buyer terminates its purchase obligations pursuant to this paragraph, Buyer shall have no obligations to Seller in respect of the terminated portion of this Purchase Order and Buyer's liability shall be limited to the delivered portion of this Purchase Order at the rate specified on the face hereof. Buyer shall be entitled to recover all damages or losses attributable to such repudiation, breach, or failure by Seller.

12. EXCUSABLE DELAYS.

Neither party shall be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence, including but not limited to acts of God or the public enemy, actions by any domestic or foreign governmental authority (whether valid or invalid), fires, riots, wars, sabotage, acts of terrorism, labor problems (including lockout strikes and slowdowns), or inability to obtain materials. The affected party shall give written notice of such delay, including the anticipated duration thereof, to the other party within ten (10) days of the beginning of the delay. If Seller is the affected party, Seller shall take all reasonable action, including, but not limited to, utilizing temporary production facilities or a temporary workplace, or moving existing tooling to third party production facilities in order to ensure that the supply of product meets the requirements of this order. During the period of such delay or failure to perform by Seller, Buyer may purchase goods from other sources and reduce its schedule to Seller by such quantities without any liability. If requested by Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurances that the delay will cease within thirty (30) days, Buyer may immediately cancel this Purchase Order without liability.

13. LABOR DISPUTES.

Seller will notify Buyer four months in advance of the scheduled expiration of any current labour contract. If requested by the current Buyer, Seller will establish, at Seller's expense, a 30-day inventory of finished goods, at a site mutually agreed upon with Buyer, prior to the expiration of any such labour contract. Seller will notify Buyer immediately of any actual or potential labour dispute delaying or threatening to delay the timely performance of any open purchase order.

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14. PATTERNS, TOOLS, AND EQUIPMENT.

Buyer shall have title to and the right of immediate possession of any pattern, tools, jigs, dies, equipment or materials furnished or paid for by Buyer, and Seller shall not use such tooling while in its possession for any work other than that of Buyer. In the event Seller purchases such tooling with Buyer's funds or is reimbursed by Buyer, Seller shall execute a Bill of Sale and any and all other documents necessary to transfer title free and clear of any liens to Buyer. While in Seller's possession, such property shall be maintained in good and usable condition at no further cost to Buyer. Seller shall maintain and administer a program for the maintenance, repair and preservation of such property, and appropriate identification of its ownership in accordance with sound industrial practice. When requested, Seller shall furnish inventory schedules on the property, or return the property to Buyer in the condition in which it was received, except for reasonable wear and tear and consumption in the normal performance of work for Buyer. Any material furnished by Seller and paid for by or charged to Buyer shall be held on consignment by Seller and Seller shall assume the risk for any damage or loss thereto. Seller shall indemnify and hold Buyer, its agents and employees, harmless against all claims, demands, liabilities, costs and expenses, based upon or arising out of the use, storage or handling of the equipment and/or tooling until returned to Buyer's possession.

15. NON-DISCLOSURE OF INFORMATION, DESIGNS AND DATA.

Seller shall keep confidential the features of any equipment, tooling, patterns, designs, drawings, processes, engineering and business data and other technical and proprietary information (without limitation), furnished by Buyer and use such items only in production of supplies under Purchase Orders from Buyer, unless Buyer's written consent is first obtained. Upon termination or completion of this Purchase Order, Seller shall return all such items to Buyer or make other disposition, as directed by Buyer.

16. INTELLECTUAL PROPERTY.

- ◆ Seller warrants that any materials, supplies or other goods furnished to Buyer will not infringe any UK, EU or foreign patent, trademark, copyright or registered and unregistered design right, [or mask work right] by reason of their manufacture, use or sale, and will not misuse or misappropriate any trade secret.
- ◆ Seller agrees to (i) indemnify, defend, and hold harmless Buyer, its agents, employees, successors and customers against all such claims, demands, losses, suits, damages, liabilities and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, or registered and unregistered design right, [or mask work right] by reason of the manufacture, use, or sale of the goods or services Purchase Ordered, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (ii) waive any claim against Buyer including any copyright or mask work right infringement or the like, including claims arising out of compliance with specifications furnished by Buyer; and (iii) grant to Buyer a worldwide, non-exclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods Purchase Ordered hereunder. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights and mask work rights in any material created for Buyer under this Purchase Order.

17. INDEMNIFICATION AND INSURANCE.

- ◆ Seller shall indemnify, defend, and hold harmless Buyer, its agents, employees, customers, and users of its and their products against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorney's fees, resulting from the death or injury to any person or damage to any property arising out of or in any way connected with the performance of this contract by Seller or the goods provided hereunder, or with respect to matters and allegations

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that the goods are defective, unfit or unsafe, or that the goods do not meet applicable laws or regulations, even if the loss results from the, concurrent or partial negligence of Buyer. At Buyer's request, Seller shall defend such claims or suits at Seller's expense by reputable counsel satisfactory to Buyer.

- ◆ Seller shall, at its expense, maintain insurance coverage in amounts satisfactory to Buyer for Workers' Compensation, Employer's Liability and Comprehensive General Bodily Injury and Property Damage. Seller shall furnish Buyer with certificates setting forth the amounts of coverage, policy number(s) and expiration date(s).

18. TECHNICAL INFORMATION.

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this order.

19. COMPLIANCE.

- ◆ In providing goods or services hereunder, Seller will comply with any and all applicable UK law or foreign laws and regulations including but not limited to laws and regulations relating to:
 - (i) Occupational Health and Safety;
 - (ii) Environmental Protection; and
 - (iii) Employment.
- ◆ Seller represents that it is in compliance with all UK and foreign laws, rules and regulations relating to contracting with small and disadvantaged business concerns and to equal employment opportunity and affirmative action in the employment of minorities, women, individuals with disabilities, and certain veterans. All such laws, rules, and regulations are incorporated herein by reference and Seller agrees not to discriminate against any employee or applicant for employment because of age, race, colour, religion, sex, national origin, veterans' status, or physical/mental disability that is not related to the performance of the specific position.
- ◆ Seller will indemnify, defend, and hold harmless Buyer, its agents, employees, customers, and users of its and their products against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorney's fees, resulting from or arising out of any failure of Seller or Seller's employees, agents, and subcontractors to comply with any applicable laws and regulations.
- ◆ Seller agrees to provide all information necessary for Buyer to comply with all applicable laws, regulations and related legal reporting obligations in the country(ies) of destination. Seller agrees to provide all documentation and/or electronic transaction records to allow Buyer to meet customs related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable. Seller further agrees to assume, and to indemnify Buyer against, any and all financial responsibility arising from Seller's failure to comply with these requirements and/or to supply Buyer with the information required to meet legal reporting obligations, including, without limitation, any fines, penalties, forfeitures, or counsel fees incurred or imposed as a result of actions taken by the importing country's government.
- ◆ Seller shall comply with all applicable requirements of the European Union's ("EU") REACH legislation, including, without limitation, pre-registering and/or registering any substances supplied to Buyer and for which REACH registration is required, and designating an "Only Representative" to act as an importer under REACH for any substances supplied, directly or indirectly, by you for import by a Buyer entity into the EU. Seller shall provide Buyer with all documents and information Buyer may reasonably require to verify Seller's compliance with REACH. Seller shall

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indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses arising from or relating to Seller's noncompliance.

- ◆ Seller shall use commercially reasonable efforts to ensure that all goods supplied to Buyer and the processes used to make them shall minimize life-cycle environmental impact, including minimizing waste generation, the use of energy and nonrenewable resources, and the emission of greenhouse gases; and shall maximize the use of recycled, recyclable, biodegradable and nontoxic materials.

20. RIGHT TO AUDIT.

Buyer shall have the right, at any reasonable time, to send its authorized representatives to examine all of the Seller's documents and materials relating to Seller's obligations hereunder or relating to Seller's charges to Buyers. If requested by the Buyer, Seller will provide the Buyer, past, present and pro forma financial reports including, but not limited to, income statements, balance sheets, cash flow statements and supporting data for the Seller and any affiliate or subsidiary of Seller involved in producing, supplying, or financing the goods or any component part of the goods. The Buyer may use financial reports provided under this Section 20 only to assess the Seller's ongoing ability to perform its obligations under the Purchase Order and for no other purpose, unless the Seller agrees otherwise in writing. Seller shall maintain all pertinent books and records relating to this purchase order for a period of two years after completion of delivery of products pursuant to this purchase order.

21. ETHICAL CONDUCT.

Seller's employees shall comply with the BorgWarner Supplier Code of Conduct articulated within the BorgWarner Supplier Manual. Compliance with these standards is a mandatory component of Buyer's purchase contracts worldwide and must also apply to supplier subcontractors. Both the BorgWarner Supplier Code of Conduct and the BorgWarner Supplier Manual are incorporated by reference as part of this Purchase Order and are binding on the Seller.

22. QUALITY CONTROL.

Seller shall maintain adequate and consistent quality control inspection and testing to assure that goods will consistently conform to specified requirements, and shall, at Buyer's request, furnish substantiated results of quality control inspections and testing in accordance with the BorgWarner Supplier Manual. Seller shall notify Buyer in writing before changing in any way Seller's specified requirements or processes used in production of supplies ordered by Buyer under this Purchase Order. Buyer's specified requirements used in production must not be changed without Buyer's prior written consent and in accordance with the BorgWarner Supplier Manual.

23. RESPONSIBILITY FOR PRODUCT HAZARDS.

In the event that information is received which reasonably supports the conclusion that the goods are likely to be deemed a "defective product" under Section 2 of the Consumer Protection Act 1987 or fail to

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comply with any other applicable UK safety standards relating to product safety, Seller will, in addition to all other obligations hereunder, have the duty to rework or replace at Seller's expense all such goods at any time sold to Buyer (whether in possession of Buyer, its customers or others) and to pay all other costs of Buyer attributable to such product hazard.

24. SERVICES AT BUYER'S OTHER LOCATION.

If labour or services in connection with this Purchase Order are performed at any locations occupied or under control of Buyer or other party, Seller agrees to indemnify and hold harmless Buyer, its agents, employees, customers, and users of its and their products against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorney's fees, arising out of or related to the labour and services to be provided, whether or not related to the conduct of Buyer, its employees or agents.

25. REPLACEMENT PARTS

Seller shall, in the case of goods requiring servicing, stock replacement parts sufficient to meet Buyer's needs for a period of not less than seven (7) years after the last shipment of any goods. Replacement parts will be made available to Buyer at competitive prices not exceeding those charged to other comparable customers of Seller.

26. MISCELLANEOUS

This Purchase Order, together with any attachments, exhibits, or supplements specifically referenced herein, and any written, existing "Supplier Agreement" or the like between Buyer and Seller, constitutes the entire agreement between Seller and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements draft, undertaking, warranty, promise, assurance or arrangement of any nature whatsoever. Except in the case of fraud, no party shall have any right of action against any other party to this agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Purchase Order.

- ◆ Seller may not assign or delegate its obligations under this Purchase Order without Buyer's prior written consent.
- ◆ This Purchase Order includes all related customs duty and import drawback rights, if any, including rights developed by substitution and rights which may be acquired from Seller's supplier(s) which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback.
- ◆ The failure of either party at any time to require performance by the other party of any provision of this Purchase Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Purchase Order constitute a waiver of any succeeding breach of the same or any other provision.
- ◆ Seller and Buyer are independent contracting parties no action taken by the parties under this Purchase Order shall constitute a partnership, association, joint venture or other co-operative entity between the parties. Nothing in this Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
- ◆ This Purchase Order is to be construed according to English law and the parties submit to the exclusive jurisdiction of the English courts.
- ◆ If any term of this Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive Purchase Order, or other rule of law, such term shall be deemed reformed

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or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, Purchase Order or rule, and the remaining provisions of this Purchase Order shall remain in full force and effect.

- ◆ The rights and remedies reserved to Buyer in this Purchase Order shall be cumulative and additional to all other remedies available to Buyer in law or equity.
- ◆ Seller's covenants, representations and warranties hereunder shall survive any delivery, inspection, payment or acceptance and any completion, termination or cancellation of this Purchase Order.
- ◆ If this Purchase Order covers goods or services for Buyer's use in the performance of any contract, sub-contract, or purchase order in which the United States Government, or any agency or department hereof, is the principal contractor, then the additional terms and conditions set forth in Supplement A to this Purchase Order shall apply.
- ◆ The parties to this Purchase Order do not intend that any term of this Purchase Order will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

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