

# EDEX Machining, LLC

## Purchase Order Terms and Conditions

### (Rev A dated March 29, 2018)

#### SECTION 1 – GENERAL TERMS FOR ALL CONTRACTORS

##### 1. DEFINITIONS

The following terms shall have the meanings set forth below unless otherwise indicated:

- a) **“EDEX”** means EDEX Machining, LLC, acting through its duly authorized procurement representative, and any persons named on the Purchase Order or Contract as Authorized Representative(s). The procurement representative and Authorized Representative(s) are the only persons authorized to direct the efforts of Contractor.
- b) **“ARTICLES”** refers to the goods, products, supplies, parts, assemblies, or other items constituting the subject matter of the Purchase Order or Contract, which are to be furnished by Contractor to EDEX.
- c) **“CHANGE ORDER”**, **“SUPPLEMENTAL AGREEMENT”**, or **“AMENDMENT”** mean a formal written order describing the change to be made that is issued and signed by EDEX.
- d) **“COMMERCIAL COMPONENT”** means any component that is a **“COMMERCIAL ITEM”**, as used in Government funded contracts, and as defined in FAR 2.101 Definitions.
- e) **“CONTRACT”** means a mutually binding legal relationship between EDEX and Contractor that obligates Contractor to furnish Articles or Services and EDEX to pay for them, evidenced by a written agreement signed by EDEX and Contractor.
- f) **“CONTRACTOR”** means the vendor, seller, individual, partnership, corporation, or other entity contracting to furnish Articles or Services.
- g) **“PURCHASE ORDER”** means any purchase order issued by EDEX for the procurement of Articles or Services, as amended by any change order issued in accordance with these Terms and Conditions.
- h) **“SERVICES”** include all services performed by either professional or non-professional individuals or entities. Services include those for (1) maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment; (2) routine recurring maintenance of real property; (3) housekeeping services; (4) advisory and assistance services; (5) operation of Government-owned equipment, facilities, and systems; (6) communication services; (7) architect-engineer services; (8) transportation and related services; and (9) research and development.
- i) **“SUBCONTRACT”** means all contracts placed by Contractor or its Subcontractors for the specific purpose of performing any portion of work under the Purchase Order or Contract, and includes, but is not limited to, purchase orders, changes, and modifications thereto.
- j) **“SUBCONTRACTOR”** means any person or entity that performs any portion of the work under the Purchase Order or Contract, other than Contractor.
- k) **“TECHNICAL DATA”** means data of a scientific or technical nature and includes all applicable drawings, associated lists, specifications, standards, performance requirements, quality assurance provisions, and packaging details.

Note: Definitions, terminology and references obtained from (FAR), (DFAR), and The Government Contracts Reference Book (2<sup>nd</sup> edition, 1998).

##### 2. TERMS AND CONDITIONS

These Terms and Conditions apply to all purchases by EDEX of Articles or Services, unless EDEX expressly agrees to different terms in a signed writing. EDEX hereby objects to, rejects, and is

not bound by, any additional or different terms proposed by Contractor, including those contained in Contractor's quote or purchase order acknowledgement, unless EDEX expressly agrees to those terms in a signed writing. No other terms and conditions shall be binding upon EDEX unless accepted by EDEX in writing.

##### 3. ACCEPTANCE OF TERMS AND CONDITIONS

Contractor shall be deemed to have accepted EDEX's Purchase Order and these Terms and Conditions when (1) Contractor begins performance; or (2) Contractor transmits acknowledgement of EDEX's Purchase Order by written or electronic means, whichever occurs first.

##### 4. PRECEDENCE

In the event of a conflict between the terms of the Contract (if any), EDEX's Purchase Order, and these Terms and Conditions (which documents constitute the entire agreement between EDEX and Contractor), the order of precedence is:

- a) The Contract between EDEX and Contractor, if any; then
- b) The price, quantity, description of Articles or Services, delivery schedule, late payment charge (if any), and express written exceptions, changes, or amendments (if any) to these Terms and Conditions set forth in EDEX's Purchase Order; and then
- c) These Terms and Conditions.

Unless a Contract is executed between EDEX and Contractor, the price, quantity, description of Articles or Services, delivery schedule, and late payment charge (if any) set forth in EDEX's Purchase Order, together with these Terms and Conditions, constitute the agreement between EDEX and Contractor for EDEX's purchase of Articles or Services.

##### 5. PRICES

The prices for the Articles or Services shall be as set forth in the Purchase Order. Unless otherwise stated in the Purchase Order, prices are exclusive of any applicable sales tax, but inclusive of all other charges. EDEX will reimburse Contractor for up to \$100 for actual shipping costs incurred by Contractor in delivering Articles to EDEX. EDEX will reimburse Contractor for actual shipping costs in excess of \$100 incurred by Contractor in delivering Articles to EDEX only if such costs are set forth in EDEX's Purchase Order or otherwise agreed to in writing by EDEX. Any shipping costs to be reimbursed by EDEX to Contractor will be set forth as a separate line item on Contractor's invoice.

##### 6. DELIVERY DATES

The delivery dates for the Articles or Services shall be as set forth in the Purchase Order and, unless otherwise set forth in the Purchase Order, Articles shall be delivered DDP EDEX's Greenville location (Incoterms 2000). Time is of the essence. Contractor shall strictly adhere to the Purchase Order's promise date(s), schedule delivery date(s), or completion schedule(s). Charges for late deliveries, if any, shall be as set forth in the Purchase Order. Contractor shall not deliver Articles more than fifteen (15) calendar days prior to these dates unless authorized in writing by EDEX. Articles delivered to EDEX in advance of schedule on the Purchase Order and without written authorization may be returned at Contractor's expense and without any obligation to EDEX.

In the event of any anticipated or actual delay in performance, Contractor shall:

- 1) Promptly notify EDEX in writing of the reasons for the actual/anticipated delay and the actions being taken to overcome or minimize the delay;
- 2) Provide EDEX with a written recovery schedule; and
- 3) If EDEX requests, Contractor shall, at Contractor's expense, ship via air or other expedited routing to avoid the delay or minimize it as much as possible.

Contractor agrees to flow down all applicable provisions in these Terms and Conditions to its Subcontractors and notify EDEX when there are anticipated or actual delays at a subcontractor level that

could affect performance. Notification shall not be construed to relieve Contractor of its obligation to comply with delivery requirements. EDEX shall be entitled to either an equitable price reduction for a late delivery (or late payment charge, if specified in the Purchase Order), or the right to terminate the Purchase Order for default for a late delivery. Failure of the parties to reach agreement on an equitable price reduction shall be a dispute under the **DISPUTES** section. Contractor has a duty to continue performance pending resolution of the dispute.

## 7. CHANGES

EDEX may at any time, by written change order, and without notice to sureties, if any, make changes to the Purchase Order in any one or more of the following:

- 1) Technical requirements and descriptions, statements of work, drawings, designs, or specifications;
- 2) Method of shipment or packing;
- 3) Place of delivery, inspection, acceptance, or performance;
- 4) Reasonable adjustments in quantities, delivery schedules, or both; and/or
- 5) Amount of EDEX furnished property.

Contractor shall comply immediately with such direction.

If any change increases or decreases the cost or time required to perform the Purchase Order, Contractor may submit a "Proposal For Equitable Adjustment" within thirty (30) calendar days from the date of receipt of the written change order to reflect the reasonable and unavoidable costs incurred by Contractor and caused directly by such change (and shall not include any consequential damages or lost profits), and EDEX and Contractor shall negotiate an equitable adjustment in price or schedule, or both, to reflect the increase or decrease.

If Contractor's proposal includes the cost of property made obsolete or excess by the change, EDEX shall have the right to prescribe the manner of the disposition of the property.

Failure of the parties to reach an agreement on an equitable adjustment shall be addressed under the **DISPUTES** section. In any event, Contractor has a duty to proceed with its performance pending resolution of the dispute, and nothing in this section shall excuse Contractor from proceeding with the Purchase Order as changed.

## 8. DISPUTES

If a legal claim (except for matters relating to a claim that a party has breached the non-disclosure of confidential information or similar provision or unless EDEX is seeking specific performance or injunctive relief) arises out of or in any way relates to the Purchase Order or these Terms and Conditions, and if the dispute cannot be settled through negotiation, the parties will first try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other formal dispute resolution procedure. Any such dispute shall be submitted to a mediator selected by mutual agreement of the parties. Unless the parties agree to an alternative arrangement, the mediator's fee and expenses shall be equally divided between the parties. Notwithstanding the dispute, and pending final resolution, Contractor agrees to proceed with the performance of the Purchase Order to the extent directed by EDEX.

Should any legal claim (except for matters relating to a claim that a party has breached the non-disclosure of confidential information or similar provision or unless EDEX is seeking specific performance or injunctive relief) arising out of or in any way relating to the Purchase Order or these Terms and Conditions not be resolved by negotiation or mediation, it shall be subject to binding and final arbitration in Greenville County, South Carolina, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, the cost of which shall be equally shared between the parties. The arbitrator shall be selected by mutual agreement of the parties. If the parties cannot agree on an arbitrator within 30 days after written request for arbitration is made by one party to the controversy, a neutral arbitrator shall be appointed according to the procedures set forth by

the American Arbitration Association. In rendering the award, the arbitrator shall have the authority to resolve only the legal dispute between the parties, shall not have the authority to abridge or enlarge substantive rights or remedies available under existing law, and shall determine the rights and obligations of the parties according to the substantive and procedural laws of South Carolina. In addition, the arbitrator's decision and award shall be in writing and signed by the arbitrator and accompanied by a written concise explanation of the basis of the award. The award rendered by the arbitrator shall be final and binding, and judgment on the award may be entered in any court having jurisdiction thereof. The arbitrator is authorized to award any party a sum deemed proper for the time, expense, and trouble of arbitration, including arbitration fees and attorneys' fees. Claims that a party has breached the non-disclosure of confidential information section or a similar provision regarding confidentiality or claims in which EDEX is seeking specific performance or injunctive relief shall not be subject to this dispute procedure.

## 9. RIGHT TO ADEQUATE PERFORMANCE ASSURANCE OF

When reasonable grounds for insecurity arise with respect to the performance of either party, the other party may in writing demand adequate assurance of due performance, and until the party receives such assurance, it may, if commercially reasonable, suspend any performance for which the party has not already received the agreed return.

After receipt of a justified demand, failure to provide within thirty (30) calendar days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the Purchase Order.

## 10. ON-SITE REPRESENTATION

In the event that EDEX assigns on-site representation for the Purchase Order, Contractor shall provide the use of office space, office supplies, furnishings, telephones, and other equipment reasonably requested by EDEX for the period of performance or as mutually agreed to by EDEX and Contractor. EDEX's on-site representatives shall interface with Contractor and monitor Contractor's progress and performance with respect to specific technical, quality, and schedule requirements contained in the Purchase Order.

## 11. TECHNICAL ASSISTANCE

EDEX's engineering and technical personnel may, from time to time, render assistance or give technical advice to, or effect an exchange of information with, Contractor's personnel in a liaison effort concerning the Articles or the Services. Such an exchange of information or advice shall not authorize Contractor to change the Articles or Services or the Purchase Order. No change shall be made without EDEX's prior written consent.

## 12. WAIVERS/APPROVALS

No waiver, alteration, or modification of any of the provisions of the Purchase Order or these Terms and Conditions shall be binding on EDEX unless evidenced by a written agreement signed by EDEX. If Contractor is responsible for design work, EDEX's approval of Contractor's design shall not relieve Contractor of the warranties or any other requirements in the Purchase Order or these Terms and Conditions. Any waiver by EDEX of any drawings or specification requirements for one or more Articles or Services shall not constitute a waiver of such requirements for the remaining Articles or Services unless so stated in writing by EDEX. The provisions of this section shall not limit or affect the rights of EDEX under the **ACCEPTANCE OF ARTICLES OR SERVICES** section.

## 13. SUSPENSION OF WORK

EDEX may, by written order, suspend all or part of the work to be performed under the Purchase Order for a period of up to six (6) months. Within a period of suspension of work, EDEX may, in writing:

- 1) Cancel the order suspending work; or
- 2) Terminate the Purchase Order in accordance with the

3) **TERMINATION FOR CONVENIENCE** section 1.14, or the **TERMINATION FOR DEFAULT** section 1.15 (if applicable).

Upon receipt of a work suspension order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs (including stand-by costs) allocable to the work covered by the order during the work stoppage.

Contractor shall resume work whenever a suspension is canceled or the work suspension period expires.

EDEX and Contractor shall negotiate an equitable adjustment in price or schedule or both, if the suspension results in a change in Contractor's cost of performance or ability to meet the delivery schedule, and Contractor submits a claim for adjustment within thirty (30) calendar days after the suspension is canceled or terminates.

#### 14. TERMINATION FOR CONVENIENCE

EDEX may terminate performance of work under the Purchase Order in whole or in part at any time. If EDEX elects to terminate the Purchase Order in whole or in part, it will issue to Contractor a Notice of Termination specifying the extent of termination and the effective date.

After receipt of a Notice of Termination, and except as directed by EDEX, Contractor shall immediately proceed with the following obligations:

- 1) Stop work as specified in the Notice of Termination;
- 2) Place no further subcontracts or orders except as necessary to complete the continued portion of the Purchase Order;
- 3) Terminate all subcontracts to the extent they relate to the work terminated;
- 4) Complete performance of the work not terminated; and
- 5) As directed by EDEX, transfer title and deliver to EDEX:
  - a) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
  - b) The completed or partially completed plans, drawings, information, and property that, if the Purchase Order had been completed, would be required to be furnished to EDEX.

In the event of termination for convenience, EDEX shall pay to Contractor, as Contractor's sole remedy, the following amounts without duplication: (i) the price for all Articles or Services completed in accordance with the Purchase Order, delivered to EDEX, and not previously paid for, and (iii) the reasonable actual costs of work-in-process and raw materials incurred by Contractor in furnishing the Articles or Services affected by the Notice of Termination.

Notwithstanding the foregoing, EDEX shall not be obligated to make payments for: (1) Articles that are returned by EDEX and are part of Contractor's standard stock or are readily marketable, (2) any work-in-process or raw materials that are part of Contractor's standard stock or are readily marketable, (3) any costs that are incurred but can be recovered by Contractor through providing services or selling materials to a third party, (4) any loss of anticipated profit, consequential loss, or administrative or other indirect costs, or (5) any claims of subcontractors of Contractor.

If Contractor and EDEX fail to agree on the entire amount to be paid because of the termination of work, failure of the parties to reach agreement shall be a dispute under the **DISPUTES** section. A dispute shall not excuse continued performance on the non-terminated portion of the Purchase Order.

When applicable (FAR 52.249-2) **Termination for Convenience of the Government (Fixed-Price)** or (FAR 52.249-6) **Termination (Cost-Reimbursement)** takes precedence over this section.

#### 15. TERMINATION FOR DEFAULT

- A. EDEX may, subject to paragraph (c) of this section, by written notice of default to Contractor, terminate the Purchase Order

in whole or in part if Contractor fails to:

1. Deliver the Articles or perform the Services within the time specified in the Purchase Order;
2. Make progress, so as to endanger performance of the Purchase Order; or
3. Perform any of the other provisions of the Purchase Order.

EDEX's right to terminate the Purchase Order under paragraphs (a) (2) and (a) (3) of this section may be exercised only if Contractor does not cure such failure within 10 days after receipt of written notice from EDEX specifying the failure.

- B. If EDEX terminates the Purchase Order in whole or in part, it may acquire from another source, under the terms and in the manner that EDEX considers appropriate, Articles or Services similar to those terminated, and Contractor will be liable to EDEX for any excess costs of those Articles or Services. Contractor shall continue the work not terminated.
- C. Contractor shall not be liable for any failure to perform the Purchase Order if such failure arises from causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include (1) acts of God or of public enemy, (2) acts of the Federal Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) freight embargoes, and (8) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Contractor and Contractor must give EDEX prompt notice detailing the cause of the failure to perform and its anticipated duration, and, if possible, Contractor must take reasonable steps to relieve such cause as quickly as possible. Contractor must notify EDEX promptly upon termination of such cause. During the period when Contractor suspends performance under this section, EDEX may likewise suspend performance of all or part of its obligations.
- D. If EDEX terminates the Purchase Order for default, EDEX may require Contractor to transfer title and deliver to EDEX, as directed by EDEX, any (1) completed Articles, and (2) partially completed Articles that Contractor has specifically produced or acquired for the terminated portion of the Purchase Order. Upon direction of EDEX, Contractor shall also protect and preserve property in its possession in which EDEX has an interest. EDEX shall pay the purchase price for completed Articles and Services delivered and accepted. Contractor and EDEX shall agree on the amount of payment for partially completed Articles and Services that are delivered and accepted. Failure to agree will be a dispute under the **DISPUTES** section. EDEX may withhold from these amounts any sum that EDEX determines to be necessary to protect EDEX against loss because of outstanding liens or claims of former lien holders.
- E. If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of EDEX.
- F. Contractor agrees that any acceptance of delinquent or nonconforming items will be solely for the purpose of mitigating damages. It is not the intention of EDEX to condone any delinquency, waive any defect, or waive any rights.
- G. The rights and remedies of EDEX in this section are in addition to any other rights and remedies provided by law or in equity.
- H. When applicable (FAR 52.249-6) **Termination (Cost-Reimbursement)** or (FAR 52.249-8) **Default (Fixed-Price Supply and Service)** takes precedence over this section.

#### 16. EDEX AND/OR GOVERNMENT FURNISHED PROPERTY

In connection with manufacturing Articles or providing Services, EDEX may furnish to Contractor EDEX and/or government furnished property. Title to EDEX and government furnished property shall remain in EDEX or the government, as applicable. Contractor shall use the EDEX and/or government furnished

property only in connection with performance of the Purchase Order. Contractor shall maintain adequate property control records in accordance with sound industry practice and as obligated by these Terms and Conditions (see INSPECTION) or stated on the Purchase Order, and shall make such records available for EDEX's inspection at all reasonable times.

With respect to EDEX and government furnished property that consist of parts or products to be altered or modified in accordance with EDEX's designs and specifications (or designs and specifications created by Contractor as part of the Purchase Order), upon delivery of such EDEX and/or government furnished property to Contractor, Contractor assumes the risk and responsibility for its loss or damage, except to the extent that property is consumed in performing the Purchase Order as contemplated by, and in accordance with, the designs and specifications. Without limiting the foregoing, if Contractor damages or destroys any parts or products furnished to Contractor by EDEX (including, without limitation, deforming, changing shape, altering chemical structure, or otherwise modifying parts or products in a manner that is inconsistent with the designs and specifications or inconsistent with industry standards), Contractor will be liable for, and will pay to EDEX, the full replacement value for the damaged or destroyed part or product. In addition, Contractor will be liable for, and will reimburse EDEX for, any fees and penalties that EDEX is required to pay to its customers as a result of such damage or destruction, including any late fees. With respect to all other EDEX and government furnished property, upon delivery of such EDEX or government furnished property to Contractor, Contractor assumes the risk and responsibility for its loss or damage, except

1. For reasonable wear and tear; and
2. To the extent property is consumed in performing the Purchase Order.

Contractor shall promptly notify EDEX if EDEX or government furnished property is lost, damaged, or destroyed.

Upon completing the Purchase Order, Contractor shall follow the instructions of EDEX regarding the disposition of EDEX and government furnished property not consumed in performing the Purchase Order.

EDEX and the government and their respective designees shall have access at all reasonable times to the premises in which any EDEX or government property is located for the purpose of inspecting the EDEX and government property.

#### **17. POLICY REQUIRING ETHICAL BEHAVIOR**

EDEX Machining, LLC maintains a strict policy requiring ethical behavior of its employees and prohibits falsification of company documents. Likewise, EDEX Machining, LLC requires material and process suppliers to maintain policies pertaining to their own employees that require ethical behavior and prohibit behavior that violates such policies.

#### **18. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

Articles delivered under the Purchase Order shall be in compliance with OSHA standards. Contractor agrees, at its expense, to repair, modify, or replace any Articles not in compliance with OSHA standards, and to hold harmless and indemnify EDEX and its customers from any liability and expense (including reasonable attorneys' fees) by reason of property damage or personal injury (including death) occasioned in whole or part from a violation of OSHA standards.

#### **19. ELIMINATION OF OZONE DEPLETING SUBSTANCES**

In accordance with Public Law 102-484 National Defense Authorization Act for Fiscal Year 1993, Section 326, Contractor (or related Subcontractors) shall not perform any work that can only

be met by, or requires the use of, a Class I ozone-depleting substance (as identified in Section 602(a) of the Clean Air Act, 42 U.S.C. § 7671a(a)) unless such use is specifically authorized in writing by EDEX.

#### **20. PACKING, MARKING, AND SHIPPING**

Unless otherwise specified in the Purchase Order, all Articles shall be packed, marked, and shipped in accordance with good commercial practices to ensure protection in shipment and storage. Contractor shall be liable for any expense incurred by EDEX as a result of improper preservation, packaging, packing, marking, or method of shipment and shall reimburse EDEX for any such expense.

#### **21. HAZARDOUS MATERIALS**

Prior to bringing any hazardous material or chemical (as determined by OSHA regulation at 29 CFR Section 1910.1200(d)) onto EDEX's property or work site, Contractor shall provide to EDEX, under separate cover, a "Material Safety Data Sheet" for each such material or chemical. The Material Safety Data Sheet shall contain all of the information required by 29 CFR Section 1910.1200(g).

#### **22. INSPECTION**

Contractor shall provide and maintain an inspection system in accordance with sound business practices. Records of all inspection work by Contractor shall be kept complete and available to EDEX during the performance of the Purchase Order and for ten (10) years after final payment.

At no additional cost to EDEX, EDEX's customers, and applicable regulatory authorities shall have the right of access to all applicable areas of Contractor's or Subcontractor's facilities, and the right to inspect and test the Articles or observe the Services at reasonable times and places, including Contractor's and its Subcontractors' locations. EDEX and its customers shall perform inspections and testing so as not to unduly delay the work. If EDEX or any of its customers perform an inspection or test on the premises of Contractor or its Subcontractors, Contractor shall furnish, and require its Subcontractors to furnish, without additional charge, reasonable data, facilities, access, and assistance.

#### **23. ACCEPTANCE OF ARTICLES AND SERVICES**

EDEX shall accept Articles and Services or give Contractor notice of rejection within a reasonable time after delivery.

Notwithstanding the foregoing, no inspection, test, delay, or failure to inspect or test, or failure to discover any defect or other nonconformance, shall relieve Contractor of any obligations under these Terms and Conditions (including obligations relating to warranties and indemnification) or impair any rights or remedies of EDEX or its customers.

#### **24. SUBSTITUTION**

All Articles and Services provided to EDEX must meet all of the specifications stated in the Purchase Order. Any substitutions, not approved in writing by EDEX, will be rejected and returned via collect freight.

#### **25. DELIVERY OF EXCESS QUANTITIES**

Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If Contractor delivers and EDEX receives quantities of any item in excess of the quantity called for (after considering any allowable variations in quantity), such excess quantities will be treated as being delivered for the convenience of Contractor, and EDEX may retain such excess quantities up to Two Hundred and Fifty US Dollars (US\$250.00) in value without compensating Contractor, and Contractor waives all right, title, or interest therein. Quantities in excess of \$250 will, at the option of EDEX, either be returned at Contractor's expense or retained and paid for by EDEX at the Purchase Order unit price.

## 26. WARRANTY

Contractor warrants that it will deliver to EDEX good title to all Articles and Services, free and clear of encumbrances. Contractor warrants that all Articles and Services shall be free from defects in materials and workmanship and shall strictly conform to all designs and specifications provided by EDEX and any other customary industry specifications. In addition, if Articles are not manufactured pursuant to detailed designs furnished by EDEX, such Articles shall be free from defects in design and fit for their intended purpose. If Contractor provides Services, Contractor warrants that it has the requisite expertise, ability, and legal right to render the Services and will perform the Services with care, skill, and diligence, in accordance with applicable industry standards, and will be responsible for the professional quality, completeness, and coordination of all documents and other items delivered in connection with the Services. Contractor further warrants that the Articles and Services will be produced and provided in compliance with all applicable law and that the Articles and Services will not infringe the intellectual property rights of any person or entity (provided that this warranty will not apply if infringement results solely from the use of designs provided by EDEX).

The foregoing warranties are in addition to all other warranties, either express or implied, and shall survive inspection, testing, acceptance of, and payment for the Articles and Services. The warranties shall run to EDEX and its successors, assigns, and customers. The warranties shall extend for a period of five (5) years after delivery of Articles or Services to EDEX, except that with respect to latent defects, the warranties shall extend until one year after EDEX discovers the defect.

If any Articles or Services do not meet the foregoing warranties, EDEX may, at its election:

1. Require Contractor to correct, at no cost to EDEX, any defective or nonconforming Articles and Services by repair or replacement;
2. Accept the Articles or Services with an equitable adjustment in price or other consideration; or
3. Return the defective or nonconforming Articles to Contractor and recover from Contractor a refund of the price of the Articles, plus transportation charges.

In addition, Contractor agrees to indemnify and hold harmless EDEX for all damages and reasonable costs and expenses (including reasonable attorneys' fees) arising from late, defective, or non-conforming Articles and Services, including, without limitation, the cost of any wasted raw materials, cost of expedited shipping, and cost for replacement for the Articles and Services.

The foregoing remedies are in addition to all other remedies at law or in equity and shall not be deemed to be exclusive.

## 27. LIMITATION OF EDEX DAMAGES

To the maximum extent permitted by applicable law, EDEX disclaims any and all warranties not expressly made in the Purchase Order or under these Terms and Conditions, including without limitation, any and all warranties of merchantability and fitness for any particular purpose. To the maximum extent permitted by applicable law, in no event shall EDEX be liable to Contractor (or any of Contractor's agents or employees or Subcontractors) for any special, incidental, indirect or consequential damages (including without limitation, loss of business profits, business interruption, loss or damages due to changes, modifications, or terminations of the Purchase Order, loss of business information or any other pecuniary loss) arising out of the Purchase Order, even if EDEX has been advised of the possibility of such damages.

## 28. MANDATORY CERTIFICATION REQUIREMENTS

EDEX considers all certifications and quality acceptance documentation a deliverable item on any Purchase Order.

Suppliers must provide a certificate of conformance stating that material was tested and prevent counterfeit parts. At EDEX's discretion, this data can be detailed in the Purchase Order as a line item, or can be imposed by inclusion of a data requirement on a drawing, specification, or by reference. Should this data be requested but not provided at the time of shipment, or be requested but only supplied in part or with exceptions or omissions, payment will be withheld until such time as all information is supplied.

## 29. INVOICES AND PAYMENT

Contractor shall normally submit a separate invoice for each delivery/completion of Articles or Services. Unless Contractor provides a single monthly invoice (as described below), each invoice shall be for completion and delivery of only one Purchase Order.

In the event that Contractor delivers (and is expected to continue to deliver) in excess of five (5) invoices per month, Contractor agrees to, at EDEX's request, provide EDEX with a single monthly invoice that invoices for multiple items. This invoice shall clearly state the appropriate Purchase Order for each line item on the invoice, and each line item shall be for only one Purchase Order. Contractor shall not submit any invoice for Articles or Services prior to the schedule delivery date, or actual delivery date, whichever is later.

Each Contractor invoice shall contain as a minimum the Purchase Order number, Purchase Order line item for each Article or Service, Article or Service description (including serial numbers, if required), and quantity delivered of each Article, invoiced amount for each Article or Service, and the total amount of the submitted invoice. Unless otherwise stated in the Purchase Order, invoiced amounts for Articles and Services must exactly match what is in the Purchase Order.

Payment due date, including prompt payment discounts, shall be based on the date Articles are received or Services completed, or the date a correct invoice is received, whichever is later. Payment shall be deemed made when it is deposited in the mail.

All payments will be made in US Dollars (US\$) unless otherwise noted on the Purchase Order. All Payment Terms are 2%/10 *net* 45 days unless otherwise noted on the Purchase Order. EDEX shall be entitled at all times to set-off any amounts owed by Contractor to EDEX against any amount payable by EDEX to Contractor.

Unless provided for in the Purchase Order, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by EDEX.

## 30. DISCOVERIES, DEFINITION, AND NON-CONFORMING MATERIALS

Contractor shall notify EDEX, within 24 hours of discovery, of any nonconforming product shipped (escapement) and/or any changes in product or process definition.

In the event of an escapement, Contractor shall send a "Notification of Escapement" in writing to the buyer and shall contain the following information as a minimum:

- Supplier Name
- Description of Nonconformance
- All affected Part Numbers
- All affected EDEX Purchase Order Numbers
- Packing Sheet Numbers
- Quantities and Dates Shipped, and
- Information regarding quarantine of all related work- in-process and/or Finished Goods.

For nonconforming product or service, Contractor is required to notify EDEX within 48 hours of the nonconforming event. Contractor is required to provide as much detailed information as

possible including a complete description of the defect, part numbers affected, PO numbers affected, quantity, method of discovery, and any traceability information and/or that any inspection/test data that may be applicable.

Suppliers must supply a Certificate of Conformance providing that all materials were tested to prevent counterfeit parts.

Upon discovery of non-conforming product, Contractor/Supplier shall immediately quarantine all affected product and cease work immediately on the affected product until EDEX provides written direction as to what steps the Contractor should take.

If Contractor is issued a Corrective Action, Contractor shall submit a Root Cause Corrective Action Report to EDEX within the date specified in EDEX's request, or no later than 14 days if no date is specified. Failure of Contractor to respond may result in the loss of approval status in EDEX's approved supplier listing.

### 31. RECORDS

Contractor shall retain all pertinent books, documents, papers, and records involving transactions related to the Purchase Order for a period of ten (10) years after final payment on the Purchase Order. Upon written request by EDEX, Contractor shall immediately make them available for examination by EDEX.

### 32. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

Contractor shall hold Confidential Information in confidence and shall not divulge to any person or entity at any time Confidential Information obtained from EDEX. Contractor agrees to promptly inform EDEX of any breach of confidentiality of Confidential Information by any other person or entity that comes to Contractor's attention. "Confidential Information" means information relating to EDEX's products, services, future products, future services, and business that is not generally known by or readily ascertainable to the public, and includes, without limitation, (i) the existence of transactions between EDEX and Contractor and the terms of those transactions; (ii) inventions, discoveries, copyrights, intellectual property, improvements, know-how, methods, manufacturing processes, and methods employed or sold by EDEX; (iii) designs, specifications, and technical information; (iv) business plans and financial information; (v) research and development information; (vi) product or service cost; and (vii) trade secrets as defined by South Carolina Code § 39-8-20. Confidential Information includes, without limitation, documents, records, tapes, files, media, and any other medium of communicating information. This provision does not apply to information that is reportable to the U.S. Government pursuant to Public Laws or Regulations. Contractor recognizes that irreparable damage will result to EDEX in the event of the breach of any of the covenants and assurances made by Contractor in this section. Contractor therefore agrees that EDEX shall be entitled, in addition to any other remedies or damages available to it under the South Carolina Trade Secrets Act or other statutory or common law, to obtain injunctive relief without bond in order to restrain the violation of such covenants by Contractor (and is not bound by the **DISPUTES** section). In the event that EDEX prevails, in whole or in part, in any such action, Contractor shall be liable to EDEX for all of its costs and expenses, including, without limitation, reasonable attorneys' fees and expert witness fees.

### 33. INSURANCE

Before commencing work, the Vendor shall procure and maintain at its own expense until final completion and acceptance of the work, the following minimum insurance on forms and with insurance companies reasonable and customary in the industry. Upon EDEX's request, EDEX will be named as a loss payee and/or additional insured in such policies, and Contractor will provide EDEX with certificates of insurance evidencing such coverage.

A. **Worker's Compensation Insurance** for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including where applicable the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act and the Jones Act, Employers' Liability Insurance shall be provided with a minimum limit of \$100,000 per accident.

B. **Comprehensive Automobile Liability Insurance** with the following minimum limits of liability:

- a. Bodily Injury Liability - \$300,000 - Each Occurrence
- b. Property Damage Liability - \$25,000 - Each Occurrence

This insurance is to apply to all owned, non-owned, and hired vehicles used by the Vendor in the performance of the work.

C. **General Liability, Contractual Liability and Products/Completed Operations Liability insurance** covering all operations required to complete the work, including coverage for damage caused by explosion, collapse or structural injury and damage to underground utilities with the following minimum limits of liability:

- a. Bodily Injury Liability - \$300,000 - Each Occurrence
- b. Property Damage Liability - \$25,000 - Each Occurrence

The Products/Completed Operations Liability Insurance shall be provided for a period of at least one year after completion of the work.

The Contractual Liability Insurance coverage shall insure the performance of the contractual obligations assumed by the Vendor by acceptance of this order, including specifically, but without limitation thereto, the mentioned indemnity agreement in the following section.

### 34. INDEMNIFICATION

Contractor agrees to indemnify and hold EDEX and its managers, members, officers, employees, agents, and representatives harmless from any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees) for:

- 1) Property damage or personal injury including death, of whatever kind or nature, arising out of, as a result of, or in connection with Contractor's, its employees', agents', and Subcontractors', performance of the Purchase Order, including but not limited to such damage or injury occurring on EDEX's premises;
- 2) Nonconformance to Cost Accounting Standards, if flowed down, including the proposal or submission of unallowable costs, expenses, or other charges incurred or anticipated to be incurred on the Purchase Order;
- 3) Liability that arises as the result of failure of Contractor or its Subcontractors to comply with any applicable law;
- 4) Liability that arises as the result of a breach by Contractor or its Subcontractors of the Purchase Order or these Terms and Conditions; and
- 5) Liability from any actual or alleged patent, copyright, trademark, or trade secret infringement by reason of the manufacture, use, or sale of Articles or Services delivered by Contractor (unless resulting solely from the use of designs provided by EDEX), or for any items manufactured from designs, specifications, drawings, blueprints, data, or technical information delivered by Contractor.

### 35. INTELLECTUAL PROPERTY

All technical work product, including, but not limited to, ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by or for Contractor, either alone or with others, in the course of or as a result of any work performed by or for Contractor that is covered by the Purchase Order using funds paid by EDEX under the Purchase Order shall be the exclusive property of EDEX and shall be delivered to EDEX promptly upon request.

All inventions conceived, developed, or first produced by or for Contractor, either alone or with others, in the course of or as a result of any work performed by or for Contractor that is covered by the Purchase Order using funds paid by EDEX under the Purchase Order, and any patents based on any such inventions (both domestic and foreign), shall be the exclusive property of EDEX. Contractor shall promptly disclose all such inventions to EDEX in written detail, and execute all papers, cooperate with EDEX, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications to EDEX.

All works of authorship, including, but not limited to, documents, drawings, software, software documentation, photographs, video tapes, sound recordings, and images, created by or for Contractor, either alone or with others, in the course of or as a result of any work performed by or for Contractor that is covered by the Purchase Order using funds paid by EDEX under the Purchase Order, together with all copyrights subsisting therein, shall be the exclusive property of EDEX. To the extent permitted under United States copyright law, all such works shall be works made for hire, with the copyrights therein vesting in EDEX. The copyrights of all other such works, including all of the exclusive rights therein, shall be promptly transferred and formally assigned free of charge to EDEX.

In the event of any inconsistency between this section and any Government section incorporated by reference into these Terms and Conditions, the incorporated Government section shall govern.

### **36. ASSIGNMENT AND SUBCONTRACTING**

Contractor shall not engage or assign any Subcontractors or other third parties that are not employees of Contractor to perform any of the work under the Purchase Order, unless consented to by EDEX in writing prior to performance of the work, which consent is in EDEX's sole discretion. If any Subcontractor or third party performs any Work, Contractor shall be liable for all action and omissions of such Subcontractor or third party and Contractor shall enter into a written agreement with such Subcontractor or third party whereby such Subcontractor or third party agrees to comply with all of the obligations of the Contractor under the Purchase Order and these Terms and Conditions.

Without limiting the foregoing, if Contractor provides any EDEX furnished parts or products to any Subcontractor (with or without EDEX's prior written consent) and such Subcontractor damages or destroys any of such parts or products (including, without limitation, deforming, changing shape, altering chemical structure, or otherwise modifying parts or products in a manner that is inconsistent with the designs and specifications or inconsistent with industry standards), Contractor will be liable for, and will pay to EDEX, the full replacement value for the damaged or destroyed part or product.

### **37. BANKRUPTCY**

In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Contractor's property, or for any act or petition in bankruptcy, whether voluntary or involuntary, as defined in the Bankruptcy Reform Act of 1978, Title 11, United States Code, as amended, EDEX may terminate the Purchase Order without further obligation, except that EDEX shall be obliged to pay for any Articles or Services accepted prior to such termination at the prices specified in the Purchase Order.

During the performance of the Purchase Order, Contractor shall submit financial information at such times and in such content and form as EDEX may reasonably require. EDEX may terminate the Purchase Order in accordance with the **TERMINATION FOR DEFAULT** section if, in EDEX's reasonable judgment, Contractor's financial condition may jeopardize performance of the Purchase Order.

### **38. EXPORT OF TECHNICAL DATA**

Contractor represents and warrants that no Technical Data furnished to it by EDEX or developed by Contractor during performance of the Purchase Order shall be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with the United States, without first complying with all requirements of the Subchapter M - International Traffic in Arms Regulation, (22 CFR Section 120 et seq.); the Export Administration Act, and Department of Defense Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure" (32 CFR Section 250) including the requirement for obtaining an export license, if applicable.

Contractor shall first obtain the written consent of EDEX prior to submitting any request for authority to export any such Technical Data.

### **39. RIGHTS AND REMEDIES**

Any failures, delays, or forbearances of either party in insisting upon or enforcing any provisions of the Purchase Order or these Terms and Conditions, or in exercising any rights or remedies under the Purchase Order or these Terms and Conditions, 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. The rights and remedies set forth in these Terms and Conditions are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of these Terms and Conditions becomes void or unenforceable by law, the remaining provisions shall be valid and enforceable.

### **40. ADDITIONAL FLOW DOWN SECTIONS**

In the event that any section that is not already incorporated herein is required to be included in these Terms and Conditions by law, regulation, or EDEX's contract with its customer (the "Prime Contract"), or in the event that EDEX's Prime Contract is modified subsequent to the effective date of the Purchase Order so as to modify or add any additional requirement, Contractor agrees to enter into a modification of the Purchase Order and these Terms and Conditions to insert the requirement. If any such additional requirement causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Purchase Order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, pursuant to the **CHANGES** section.

### **41. APPLICABLE LAWS**

Irrespective of the place of performance, the Purchase Order and these Terms and Conditions shall be governed by and construed according to the laws of the State of South Carolina, without regard to conflicts of law principles, except that when Federal common law of Government contracts exists on substantive matters requiring construction under the Purchase Order and these Terms and Conditions, such Federal common law shall apply in lieu of state law.

### **42. COMMERCIAL ITEMS AND COMPONENTS ON GOVERNMENT CONTRACTS**

**FAR 52.244-6 Subcontracts for Commercial Items** and/or commercial components in its entirety is incorporated herein by reference and is applicable only for procurement of commercial items or commercial components on Government funded contracts.

### **43. ENTIRE AGREEMENT**

The Contract (if any), the Purchase Order, and these Terms and Conditions contain the entire agreement of the parties, and supersede any and all prior agreements, understandings, and communications between EDEX and Contractor related to the subject matter of the Purchase Order.

### **44. AUTHORITY**

If Contractor is an entity, Contractor warrants that it is duly organized or incorporated. Contractor warrants that it has full power and authority to enter into and to consummate the transactions

contemplated by the Purchase Order and these Terms and Conditions and to perform its obligations under the Purchase Order and these Terms and Conditions. If Contractor's legal name set forth in the Purchase Order is not accurate, Contractor will promptly notify EDEX of its correct legal name, and will still be bound by all of the terms provided in these Terms and Conditions upon acceptance of the Purchase Order.

#### **45. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS**

Contractor represents and warrants that it shall comply with all U.S. export and import laws and regulations. Further, by acceptance of this Order, Contractor certifies that it is registered in accordance with the U.S. Department of State as required by Subchapter M - International Traffic in Arms Regulations (22 C.F.R. Parts 120-130), if required. Any commodities, technical data and/or services provided by EDEX to Contractor in connection with this Order (hereinafter referred to as "Items Provided by EDEX"), as well as any commodities, technical data and/or services developed or produced therefrom by Contractor (hereinafter referred to as "Items Produced by Contractor for EDEX under the terms of the Purchase Order"), are subject to the requirements of the International Traffic in Arms Regulations (ITAR), (22 C.F.R. Part 120, et seq.) the Export Administration Regulations (EAR), (15 C.F.R. Part 730, et seq.) and/or Department of Defense Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure".

Contractor represents and warrants that neither the Items Provided by EDEX, nor the Items Produced by Contractor for EDEX under the terms of the Purchase Order, will be exported, transferred or disclosed outside the United States or to any foreign person, as defined under ITAR and the EAR, unless any necessary United States Government export license or other authorization has been obtained.

Contractor shall obtain the written consent of EDEX prior to exporting, transferring or disclosing any Items Provided by EDEX or Produced by Contractor outside the United States or to any foreign person, and also shall obtain the written consent of Contractor prior to submitting any application for a license or other authorization under ITAR and/or EAR. Contractor shall indemnify and hold EDEX harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from Contractor's failure to comply with this section, the stated statutes and regulations, as they may be amended.

#### **46. FLOWDOWN OF FEDERAL ACQUISITION REGULATION (FAR) SECTIONS**

The following sections from Federal Acquisition Regulation (FAR) are incorporated by reference and made a part of the contract:

- 52.222-26 – Equal Opportunity (EO 11246)
- 52.222.35 – Affirmative Action for Disable Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212)
- 52.222.36 – Affirmative Action for Workers with Disabilities (29 U.S.C. 793)

#### **47. FLOWDOWN EXECUTIVE ORDERS**

The following Executive Order(s) are incorporated by reference and made a part of these Terms and Conditions:

Executive Order 13201 Compliance. Contractor agrees to comply with the provision of 29 CFR part 470 under the heading of "Executive Order 13201 Compliance". This Executive Order is flowed down on all subcontracts over \$100,000 and is applicable to these Terms and Conditions.

#### **48. INDEPENDENT CONTRACTOR**

Contractor shall be paid as an independent contractor for the work performed under the Purchase Order, and shall be solely responsible for the reporting, for purposes of federal, state, or local tax and FICA, of any payments made to it by EDEX. EDEX shall not withhold any taxes or make any payments on behalf of Contractor or its employees or Subcontractors and shall report any payments to Contractor to the

Internal Revenue Service on a form 1099.

The parties intend that an independent contractor relationship will be created by the terms of the Purchase Order. EDEX is interested only in the result to be achieved, and, except as otherwise provided in the Purchase Order, the conduct and control of the work described in the Purchase Order will lie solely with Contractor. Contractor is not to be considered an agent or employee of EDEX for any purpose, and neither Contractor nor its employees are entitled to any of the benefits that EDEX may provide for its own employees.

#### **49. STATUTORY EMPLOYEES**

Notwithstanding the language contained in other provisions herein, Contractor agrees that it undertakes to perform or execute the work under the Purchase Order that is part of the trade, business, or occupation of EDEX and therefore its employees, agents, and Subcontractors, for purposes of the applicable state's workers' compensation laws, are, to the maximum extent permitted by law, considered statutory employees under such applicable state's workers' compensations laws. Therefore, the exclusive remedies for any personal injury suffered by Contractor's agents, employees or Subcontractors while performing any of the work shall be the remedies under the applicable state workers' compensation laws, including, if necessary, under EDEX's workers' compensation insurance coverage, and EDEX is entitled to tort immunity to the maximum extent permitted by law. Contractor agrees that it will not take nor permit its workers' compensation carrier or other similarly situated party to take any position inconsistent with the provisions of this section.

### **SECTION 2 – ADDITIONAL TERMS FOR CONTRACTORS WORKING ON EDEX PREMISES**

This section applies to all Contractors (and their Subcontractors as applicable) who do work on EDEX premises, defined as the "plant" or "facility" where EDEX routinely conducts business, and any area owned, leased, occupied, or controlled by EDEX.

#### **50. SECTION 2 DEFINITIONS**

The same definitions apply to Section 2 as those provided in the section **DEFINITIONS** in Section 1.

#### **51. COMPLIANCE WITH COMPANY'S POLICIES**

Notwithstanding the fact that it is an independent contractor, while on the EDEX premises, Contractor shall observe and obey and cause its employees and agents and Subcontractors to observe and obey, all policies, procedures, rules, and regulations of EDEX applicable to EDEX's own employees.

#### **52. COOPERATION**

In the event any accident or other incident should occur in the course of Contractor performing the work under the Purchase Order, Contractor agrees to cooperate and provide reasonable assistance to EDEX in the investigation of such accident or incident as EDEX may request, which assistance and cooperation may include, but not be limited to, retaining legal counsel independent of Contractor's workers' compensation carrier and making its employees and legal counsel available for interviews by EDEX and/or its legal counsel.

#### **53. SAFETY/SECURITY RULES AND REGULATIONS**

A) Contractor shall adhere to all safety and security rules and regulations as more fully described in the safety handbook entitled "EDEX Machining Technologies Employee Safety Handbook." A copy may be obtained at <http://www.EDEXmachining.com> or at the reception desk of EDEX. Agents and employees of Contractor or Subcontractor shall also abide by rules, regulations, or policies applicable to EDEX employees while on EDEX premises.

B) Contractor agrees that the work performed under the Purchase Order will represent its best efforts and will be of the highest professional standards and quality and shall comply with all applicable laws, rules, regulations, ordinances or other governmental requirements in performing the work. Contractor shall make all efforts



necessary to perform the work.

C) Contractor undertakes and assumes all obligations for the safety of its employees and Subcontractors in performing the work under the Purchase Order, but shall at a minimum comply with and ensure that its employees and Subcontractors comply with all safety procedures and policies of EDEX, which Contractor represents and warrants it has read and understood. Contractor acknowledges that EDEX will rely on Contractor to undertake whatever safety measures may be necessary or advisable to ensure the safety of its employees and Subcontractors in addition to the safety measures required by the procedures and policies of EDEX.

D) Contractor shall report to EDEX any OSHA or other safety violations, whether Contractor participated in or observed such violation.

E) Contractor hereby represents, warrants, and covenants to EDEX that as of the date of the acceptance of the Purchase Order and at all times when work under the Purchase Order is being performed (i) Contractor has and shall maintain a written safety policy, (ii) that each of its employees and agents and Subcontractors performing the work has and shall have received all necessary training to perform the portions of the work assigned to them safely and professionally, (iii) Contractor has and shall maintain all necessary licenses in each of the states in which it is performing the work, and (iv) that the information provided by Contractor to EDEX regarding the training, licensing, and certifications of each of the Contractor's employees is current and accurate.

#### 54. CONTRACTOR RESPONSIBILITY

Contractor is not relieved of any responsibility because of ignorance of conditions or by any prior understandings. In the event such a dangerous condition is found, or if other work is necessary that is not described in the specifications, such conditions and/or work will be immediately called to the attention of EDEX and Contractor shall cease from performing any work until the situation has been adequately remedied. Except as otherwise stated in the Purchase Order, Contractor agrees that it will supply all instrumentalities, tools, implements, appliances, personal protection equipment and other safety equipment (including but not limited to lock out locks), and other materials needed for the work under the Purchase Order and will bear all routine business and operational expenses incurred to perform the work, including all out-of-pocket expenses. No employee or agent of Contractor or Subcontractor may bring into or use within any EDEX facility any photographic, video recording or other image capturing device (including cell phones with photographic capability) without written approval by EDEX.

Contractor further agrees to comply with all the requirements and standards that EDEX maintains in the selection of its own employees, but nothing in this provision shall be construed as modifying the relationship of principal and independent contractor existing between EDEX and Contractor.

#### 55. FACILITIES AND UTILITIES FURNISHED BY EDEX

Unless otherwise specified, EDEX will furnish drinking water and toilet facilities where they are now permanently located and designated. No new or temporary facilities will be provided. Other services or utilities such as electrical service, steam, air, etc., will be provided only as approved by EDEX. Modifications for connections will be the responsibility of Contractor.

EDEX reserves the right to discontinue services when the use appears to be excessive or abused.

#### 56. EMERGENCY MEDICAL TREATMENT

If requested, or if Contractor is not able to make a request and EDEX reasonably assesses that any of Contractor's employees require medical treatment, EDEX will supply emergency medical treatment to Contractor's employees, under the terms and conditions stated in this section.

EDEX will bill the Contractor for all services rendered. Contractor shall promptly make payment directly to EDEX all invoiced charges incurred by its employees or its Subcontractors.

#### 57. INSURANCE

During the entire performance of the Purchase Order, Contractor shall, at its own expense, provide and maintain insurance coverage as more fully described below:

- 1) Contractor shall maintain such Workers Compensation, General Liability, Automobile Liability, and such other insurance as will furnish reasonable protection against claims, which may arise from operations, under the Purchase Order and these Terms and Conditions, whether such operations be by Contractor or anyone directly or indirectly employed by it. Minimum insurance coverage's are stated below:
  - a. Workers Compensation and Employer's Liability
    - i. Workers Compensation - Shall be obtained by **ALL** Contractors regardless of the number of employees. If occupational diseases are not compensated under the Workers Compensation Laws of the State of South Carolina, they shall be covered under the Employer's Liability section of the insurance policy.
    - ii. Employer's Liability - \$100,000
  - b. Comprehensive General Liability
    - i. Including coverage for contractual liability assumed by Contractor under the Indemnification provisions of these Terms and Conditions.
      1. Bodily Injury - \$500,000 per occurrence
      2. Property Damage - \$500,000 per occurrence
  - c. Comprehensive Automobile Liability
    - i. Shall include coverage for owned, hired, and non-owned automobiles
      1. Bodily Injury - \$500,000 per person - \$500,000 per occurrence
      2. Property Damage - \$500,000 per occurrence
  - d. Umbrella Liability  
Providing limits which, in addition to the primary limits described in subparagraphs (b) and (c) above, shall total, for each such coverage respectively, a minimum of \$2,000,000 per occurrence and \$2,000,000 annual aggregate. **EDEX has the option of reducing this amount, pending the type of work being done and other factors involved. This is at EDEX's discretion. Contractor must receive EDEX's reduction of this amount in writing.**
- 2) Coverage - The coverages referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.
- 3) Waiver - Contractor waives and releases on behalf of itself and its insurer(s), by subrogation or otherwise, all claims against EDEX and the Government, on account of risks covered under all policies of insurance that are secured and maintained by Contractor and that are in any way related to the performance of work under the Purchase Order. Contractor shall obtain a waiver from such Subcontractor, which meets the requirements of this paragraph.
- 4) Before commencing work under the Purchase Order, Contractor shall provide EDEX a copy of proof (Certificate) that the required insurance has been obtained. **The vendor shall show EDEX Machining Technologies LLC as a "Certificate Holder" on the Certificate of Insurance.** Further, EDEX shall be provided a **fifteen (15) days**

advance written notice, by registered mail, of any change, cancellation, or termination of this insurance, in whole or in part. This notice shall be sent to EDEX Machining Technologies LLC, Insurance Department, 54 Concourse Way, Greer, SC, 29650.

- 5) In the event Contractor does not intend to use any automotive equipment in the performance of the work, a statement, in writing, to that effect from Contractor shall be accepted in lieu of Automobile Liability and Property Damage insurance.
- 6) All persons entering upon the premises at the direction, or with the consent of Contractor, shall submit to and comply with safety regulations, physical examinations, searches of the person, and other rules, which EDEX requires of its own employees.
- 7) Contractor shall, at all times, exercise reasonable precautions for the safety of employees on the work and shall comply with all applicable provisions of federal, local, state, and municipal safety laws and construction codes.
- 8) In the event Contractor engages any Subcontractors to perform any part of the work, it shall impose the requirements of this section upon any such Subcontractor, including providing a copy of proof (Certificate) of required insurance coverage and it shall be made available to EDEX or the Government upon request.
- 9) Contractor will ensure that all of its agents, employees, and agents and employees of its Subcontractors maintain, at Contractor's own cost workers' compensation as required by the law of the state where work under the Purchase Order is to be performed, and Contractor hereby certifies that it has complied with all applicable state workers' compensation statutes relative to coverage of its employees performing the work.

## 58. INDEMNIFICATION

Contractor agrees to defend, indemnify, and hold EDEX, its subsidiaries and affiliates, and its and their respective managers, members, officers, directors, employees, agents and servants (hereinafter referred to collectively as "EDEX" for the purposes of this section), harmless from and against all liability, loss or expense (including costs and reasonable attorneys' fees) for any suit, claim, settlement, award, penalty, fine or judgment (hereinafter referred to singly or collectively as "Claim") because of –

- 1) personal injury (including death); and
- 2) loss of or damages to property (including loss of use thereof);

arising out of, resulting from, or in consequence of the performance of the work under the Purchase Order, unless such Claim is caused solely by the gross negligence or willful misconduct of EDEX. Such indemnification and hold harmless obligations include, but are not limited to, any claims brought by Contractor, its employees or agents or any of its Subcontractors' employees or agents, regarding any loss, cost, damage, expense, or liability by reason of property damage relating to the entry of or damages sustained on premises occupied by or under the administrative control of EDEX in the performance of the Purchase Order. Contractor shall, upon EDEX's request, permit EDEX to participate in the defense or settlement of any Claim against EDEX that is subject to the provisions of this section. Contractor shall obtain indemnity protection from all Subcontractors for the benefit of EDEX, which protection shall include provisions that are no less stringent than the provisions of this section. The provisions of this section shall survive the expiration or termination of the Purchase Order and performance of the work.

Contractor assumes exclusive liability for any payroll or other taxes with respect to its employees imposed upon the employer by a federal or state law.

## 59. STORAGE AREAS, BUILDINGS, OFFICES, AND OPERATIONS AREAS

When necessary (at EDEX's discretion), EDEX shall provide to Contractor storage areas or buildings and offices. EDEX reserves the right to designate the manner, quantities, and type of materials or equipment stored or used.

Temporary buildings, facilities, office/storage trailers, and utilities may be cited or erected by Contractor only upon the written approval of EDEX and shall be built or placed and dismantled or removed at Contractor's expense unless Contractor requests and EDEX accepts responsibility for the expense.

If any such structure referenced in this section contains a lock or similar security device, EDEX shall receive a key, security code, or similar item to be used to open and enter the structure. Contractor agrees that EDEX may search the structure at any time and for any reason.

**EDEX shall, at all times, have access to the premises wherein the work is being performed.**

## 60. EXISTING UTILITIES AND STRUCTURES

The existence and location of underground utilities indicated on the plans or specifications are not guaranteed and shall be investigated and verified in the field by Contractor before starting work. Excavation in the vicinity of existing structures or utilities shall be carefully done by hand.

Contractor will be held responsible for repairing or replacing any damage to (and for the proper protection of) utilities and/or structures in the area of its work caused by the Contractor's improper usage of the utilities and/or structures. However, EDEX reserves the right to repair or replace any damage or destruction of utilities (power, water, communications, etc.) or property that constitutes a hazard to personnel or property or will interfere with the normal operation of the plant. EDEX shall submit an itemized statement of expenses incurred in the repairs or replacements and, within thirty days after receipt of the statement, Contractor will reimburse EDEX for the full amount shown on the statement.

If any temporary changes or alterations in water, oil, or gas pipelines, sewers, drains, conduits, fences, tracks, electric lines or power lines; telephone or other wires, poles, etc., are necessary for the convenience of Contractor or for the performance of the work, the responsibility for making such changes will rest with Contractor. Unless provided otherwise in the Purchase Order, Contractor shall arrange for making such changes at its own expense with written approval of EDEX.

Contractor shall carefully preserve benchmarks, reference points, and stakes, and in case of willful or careless destruction, Contractor will be charged with the resulting expense and shall be responsible for any mistake that may be caused by its unnecessary loss or disturbance.

## 61. INTERRUPTION OF UTILITY SERVICES

Written request for the interruption of any plant utility must be submitted to EDEX within fourteen working days prior to date interruption is expected. Contractor must have written approval from EDEX before discontinuing any utility service. If a road is to be blocked, a written request for approval of Contractor's proposed blockade should also be submitted to EDEX. This should include a sketch showing proposed detour and proper warning signs.

## 62. ORDER OF COMPLETION

When requested by EDEX, Contractor shall submit (for approval) schedules showing the order and dates Contractor proposes to carry out the work. Contractor shall not deviate from approved schedules given in the plans and/or specifications without written permission from EDEX.

## 63. COMMUNICATION DEVICES

The Contractor will not be permitted to operate or use a cell phone, two-way radio equipment, PDA (Personal Digital Assistant), copying equipment, camera, or any other communication or replication device while on the EDEX premises except with the prior authorization of EDEX.

#### **64. TOOLS, EQUIPMENT, AND MATERIAL**

No tools, equipment, or material shall be delivered to or placed on EDEX's property until Contractor is prepared to receive it.

EDEX shall have the right to inspect all materials, tools, tool boxes, equipment, and other property that is the property of Contractor at any time whether at the job site or stored in a warehouse. If stored in a locked container, Contractor agrees to provide EDEX the ability to enter the container.

All Contractor owned tools, equipment, and material must be clearly marked before it is brought onto EDEX's premises. If there is any discrepancy between Contractor and EDEX as to the ownership of any tools, equipment, or material, Contractor agrees to leave item(s) in question at EDEX's premises until resolution on the matter can be obtained by Contractor and EDEX. Any disputes on this matter will be resolved under the section **DISPUTES** in Section 1.

#### **65. REMOVAL OF EDEX OR GOVERNMENT OWNED PROPERTY**

For work done on EDEX premises, all items, including, but not limited to, Technical Data, tools, equipment, and material, supplied by EDEX and/or the Government to Contractor, must remain on EDEX premises during completion of the Purchase Order by Contractor. Contractor may only remove these items from EDEX premises with written approval by EDEX, whose decision on the matter shall be final. Government-owned property will not be removed from the plant areas unless accompanied by an approved shipping document issued by EDEX.

#### **66. SECURITY BADGES**

All persons performing work on EDEX's premises must have a security badge. These badges are either temporary visitor (two weeks or less) that requires an EDEX escort at all times, or a permanent type (two weeks or more) badge which permits wearer to pass in-and-out of the main entrance to the building to-and-from his work area without an EDEX escort. Temporary badges are issued for a one-week period and renewable for another one-week period, maximum of two weeks. Badges, regardless of type, must be turned in to the front desk upon completion of the work effort. Failure to turn in badges will result in withholding of payment until all badges have been accounted.

A Contractor representative must escort all personnel obtaining a badge to EDEX's front desk. This representative signs documentation that his employee meets EDEX criteria and is suitable for a badge to be issued.

All persons applying for a badge must be able to show proper identification (in the form of a U.S. Driver's License or U.S. Passport) proving that they are U.S. citizens. All persons who are non-U.S. citizens must have on their person their Green Card or other appropriate documentation before a badge can be issued.

#### **67. BACKGROUND CHECK, DRUG AND ALCOHOL POLICY**

Upon accepting EDEX's Purchase Order and these Terms and Conditions, Contractor agrees to run and secure a background criminal check (the "Check") and a drug and/or alcohol tests (the "Tests") for its agents and employees and the agents and employees of its Subcontractors before they enter EDEX's premises. Such Check and Tests must meet minimum specifications set forth from time to time by EDEX, the results of all such Check and Tests must be available to EDEX on request, and the fees and costs of such Checks and Tests must be borne by Contractor.

EDEX reserves the right, and Contractor hereby approves any additional effort by EDEX, in EDEX's sole discretion, to conduct any Check and/or Test of any agent and employee of Contractor and the agents and employees of its Subcontractors that performs work on the EDEX premises at any time, including but not limited to a) prior to commencing work relating to any Purchase Order; b) random checks or testing; c) for reasonable cause (based on actions as observed by

EDEX employees and/or officers); d) after any incident (including post-accident situations); and e) in any other instance EDEX deems necessary and/or is legally required or permitted to conduct a Check or a Test. The refusal of any agent or employee to be tested can lead to the dismissal of such employee or agent from EDEX's premises. EDEX shall pay for and provide to Contractor the results of any Test or Check defined in this paragraph.

Contractor hereby indemnifies and agrees to hold EDEX harmless as a result of any action, claim, loss, or other damage relating to any Check or Test.

#### **68. DEBARMENT OF CONTRACTOR AND/OR CONTRACTOR PERSONNEL**

EDEX may, at its discretion, remove from the plant site and debar from working at EDEX any Contractor's employee who is:

- a) Found smoking inside the plant's limited area and not in a designated smoking area.
- b) Under the influence of alcoholic beverages as determined by EDEX.
- c) Under the influence of illegal drugs as determined by EDEX.
- d) Found to be in an unfit condition (mental or physical) for work as determined by EDEX and/or the Contractor employee's supervisor.

Continued violations of the above by a Contractor's employees will result in the Contractor being debarred from performing work at EDEX.

#### **69. SAFETY INSPECTIONS**

The EDEX Safety Department will conduct routine inspections of all Contractor work. The inspections will be used to ensure that all safety requirements, including those requirements unique to EDEX, are being met. If an employee is interviewed and found to be unaware of the specific job hazards or the general plant hazards, he or she will be asked to leave the premises until he or she can meet this requirement.

All persons entering upon the premises at the direction, or with the consent of, Contractor shall submit to and comply with safety regulations, physical examination, searches of the person, and other rules that EDEX requires of its own employees.

#### **70. SAFETY PRECAUTIONS**

Under no circumstances shall Contractor allow its employees to enter buildings or facilities or operating areas not involved in the work specified by the Purchase Order, unless EDEX has given specific permission to do so. Contractor will not allow its employees to operate any EDEX equipment unless EDEX has given its express permission to do so. Contractor's employees will not be permitted to walk on, stand on, or support ladders, scaffolds, or pickboards on any process or utility pipelines, equipment, vessels, or unstable objects without approval by EDEX, and if approval is granted, then Contractor agrees to comply with all OSHA standards during the work.

Contractor shall immediately report the presence of any propellant or unfamiliar materials to EDEX. Contractor shall advise EDEX of any unique hazards presented by Contractor's work, or of any hazards found by Contractor's work.

Contractor shall report all injuries sustained by Contractor's employees or its Subcontractor's employees on EDEX premises to EDEX within 24 hours of the occurrence of the injury. Failure to report injuries could result in withholding of partial or final payments, and Contractor being debarred from performing work at EDEX.

#### **71. PERSONAL PROTECTIVE EQUIPMENT**

While on the EDEX premises, Contractor's employees, agents, and Subcontractors agree to wear all protective equipment (including, but not limited to hard hats, eye protection, and safety shoes) as required in certain areas by EDEX policy. This applies to all craftsmen, supervision, and other visitors. Additional equipment may be required as detailed in the specifications. The furnishing and maintaining of these items shall be at Contractor's expense. EDEX must authorize

any deviation from this requirement. Failure to follow these procedures will result in Contractor being debarred from performing work at EDEX.