

Purchase Terms and Conditions E251

1. Agreement.

1.1. **Acceptance.** These Purchase Terms and Conditions E251 (“Terms”) have been incorporated by reference into a purchase order, order confirmation, contract, agreement or other written instrument issued or signed by an authorized employee of Herbert Systems(each, a “Herbert SystemsPurchase Document”) regarding the purchase of products (“Products”) and/or services (“Services”). These Terms and the Herbert Systems Purchase Document issued by Herbert Systems shall be collectively referred to herein as this “Agreement.”

1.2. **Precedence.** In the event of any conflict between the terms and conditions of a Herbert Systems Purchase Document and these Terms, these Terms shall take precedence.

1.3. **Entire Agreement.** This Agreement, including any attachments, supplements, exhibits, Internet links or other written documents that are explicitly incorporated by reference in the text of this Agreement, constitutes the entire agreement between Herbert Systems and Seller regarding the subject matter of this Agreement and may not be modified except in writing signed by a duly authorized employee of Herbert Systems and Seller.

1.4. **Seller Documents.** Herbert Systems shall not be bound by the terms and conditions of any quotation, order confirmation, sales order or other instrument issued by Seller (each, a “Seller Document”) unless such Seller Document is counter-signed by an authorized employee of Herbert Systems. Herbert Systems’ performance under this Agreement shall not, under any circumstances, be deemed Herbert Systems’ acceptance of any of the terms and conditions contained in a Seller Document. If Seller issues a Seller Document, then such issuance shall be deemed to constitute Seller’s acceptance of the terms and conditions of this Agreement, but all other terms and conditions contained in the Seller Document shall be of no force or effect and shall not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of this Agreement. Seller’s performance or fulfilment of any part of the tasks described in the Herbert Systems Purchase Document or Seller’s acceptance of any payment by Herbert Systems for any Products or Services described in the Herbert Systems Purchase Document shall also be deemed to constitute Seller’s acceptance of all of the terms and conditions of this Agreement.

2. Shipping and Delivery.

2.1. **Shipping.** Seller shall notify Herbert Systems at the time of shipment as to the quantity of Product shipped and the specific shipping information. Shipping quantities may not vary from those established by the Herbert Systems Purchase Document unless otherwise mutually agreed upon in writing by the parties. In the event that any shipment is delayed and may not be delivered on time, Herbert Systems may direct Seller to ship such Product by premium transportation designated by Herbert Systems, and Seller shall bear the expense of any difference in cost due to such premium transportation. Seller shall ship the Product to the delivery address(es) set forth in the applicable Herbert Systems Purchase Document. Herbert Systems may, from time to time, instruct Seller to deliver all or a portion of the Product ordered pursuant to a Herbert Systems Purchase Document to

non-Herbert Systems locations, or to store all or portions of such Product for subsequent shipment without charge following packaging. Until the Product is shipped, Seller shall store the Product separately from any other material stocks.

2.2. Delivery. Unless otherwise specified in the Herbert Systems Purchase Document, all Products shall be delivered DDP (INCOTERMS 2010). Title and risk of loss shall pass from Seller to Herbert Systems at Herbert Systems' designated final delivery location.

2.3. Packing. Seller shall be responsible for the safe packaging of the Products, and Seller warrants that upon their delivery the Products shall be undamaged and in marketable condition. Seller shall separately number all containers showing the corresponding number on the invoices. An itemized packing slip, bearing Herbert Systems' order number, must be placed in each container. No extra charge will be made for packaging or packing materials.

2.4. Time of Delivery. Time of delivery is of the essence. Herbert Systems reserves the right to cancel any order and reject any Product upon default by Seller in the time of delivery. Herbert Systems also reserves the right to refuse shipments made in advance of the schedule of deliveries requested by Herbert Systems.

3. Changes.

3.1. No Unauthorized Changes. Following the date of this Agreement, Seller covenants that no Changes will be made to any Product, including, but not limited to, changes to any assembly, subassembly, component, subcomponent or part, except with the written consent of Herbert Systems Engineering Department. The term "Change" means alterations to any (i) specifications, (ii) form, fit or function, (iii) version or revision (including version or revision number), (iv) software code, (v) layouts or designs, (vi) colours or materials of any items, internal or external to the Product, (vii) data sheets, manuals or instructions, (viii) testing protocols or (ix) manufacturing locations.

3.2. Revision Numbers. Seller covenants that all Products shall be manufactured to the revision number that is specified in the Herbert Systems Engineering Department. Exceptions to this requirement shall not be permitted except with the written consent of Herbert Systems' Engineering Department.

3.3. Repairs and Replacements. Seller covenants that all spare and replacement parts, components and supplies provided with the Products, as well replacements of Products (whether during a warranty period or thereafter) shall also strictly adhere to the requirements set forth in this Section 3.

3.4. Certificates of Conformance. Whenever requested by Herbert Systems, Seller shall deliver a certificate of conformance on a form approved by Herbert Systems Engineering Department, certifying that Seller, or one or more Products, conform to the requirements set forth in this Section 3.

3.5. Engineering Changes. Herbert Systems may at any time request that Seller incorporate engineering changes into a Product or Service. Such requests shall include a description of the proposed engineering changes sufficient to permit Seller to evaluate their feasibility and cost. Seller's evaluation, which shall be delivered promptly to Herbert Systems, shall state the increase or

decrease in Seller's actual costs (if any) expected to result from such engineering change and the amount of time (if any) required to implement such engineering change. Seller shall not proceed with the engineering change unless and until it receives written instructions to do so from Herbert Systems, in which case (i) the Product and/or Service price (as applicable) shall be adjusted in the amount of such increase or decrease in Seller's actual costs (including, without limitation, the cost of Unusable Inventory (as defined in Section 7) due to such engineering change), (ii) the delivery schedule for the Product and/or Service shall be amended to reflect such additional implementation time and (iii) the specifications for the Product and/or Service shall be amended to reflect the engineering change. Seller shall not refuse to implement any engineering change requested by Herbert Systems unless Seller reasonably determines that such engineering change is technically unworkable.

4. Inspection. Herbert Systems shall have the right, but not the obligation, to (i) inspect the work conducted and Services provided by Seller under this Agreement; (ii) inspect and test Seller's facility(ies) and any equipment used by Seller in the performance of any such work or Services, including, without limitation, any areas where the Products (or components thereof) are stored, handled, packaged or manufactured; and (iii) inspect and obtain copies of all books and records (including financial and technical books and records), licenses, authorizations, approvals and written communications from any governmental agency or regulatory authority, to the extent related in any way to the performance of work or Services of the type(s) performed under or in connection with this Agreement. Seller covenants that it shall retain all such books and records (including financial and technical books and records), licenses, authorizations, approvals and written communications, and that it shall make them available for inspection and copy by Herbert Systems, for a period of 10 years from the date of shipment of the Product/completion of the Services to which they relate.

5. Confidentiality.

5.1. Confidential Information. "Confidential Information" shall mean any and all information and materials disclosed by Herbert Systems to Seller (whether or not in writing whether disclosed before or after the date of this Agreement) that is marked or identified as, or provided under circumstances indicating that such information or material is, confidential or proprietary. The term Confidential Information includes, without limitation, the terms and existence of this Agreement, all Technical Information and Materials (as defined in Section 8.1) and all information concerning Herbert Systems' employees, customers and performance requirements.

5.2. Restrictions on Disclosure and Use of Confidential Information. Seller shall not use any Confidential Information except for the purpose of performing its obligations under this Agreement. Seller shall maintain all Confidential Information in strict confidence. Unless Herbert Systems grants specific, written, advance permission to do so, Seller shall not disclose any Confidential Information to any third party. Seller shall limit access to Confidential Information to those employees of Seller who have a need to know such information in order to perform their obligations under this Agreement and who are bound by confidentiality and non-use obligations to Seller at least equivalent to Seller's obligations to Herbert Systems under this Agreement. Should Seller determine that it needs to disclose Confidential Information of Herbert Systems to any non-employee (including consultants or contractors) in order to perform its obligations under this Agreement, Seller shall not do so without the prior written permission of Herbert Systems. Upon receiving such

permission, Seller may proceed, but only after binding any such non-employee to confidentiality and non-use obligations to Seller at least equivalent to Seller's obligations to Herbert Systems under this Agreement. Seller shall be responsible to Herbert Systems for the acts and omissions of its employees and of any other party to whom it provides Confidential Information.

5.3. Return of Confidential Information. Upon any expiration or termination of this Agreement or upon the request of Herbert Systems, Seller shall return or destroy, at Herbert Systems's option, all Confidential Information and any copies thereof. In addition, Seller shall promptly destroy any electronic or otherwise non-returnable embodiments of the Confidential Information.

6. Price and Payment.

6.1. Price. The price for all Products and Services shall be as set forth in the Herbert Systems Purchase Document.

6.2. Payment Terms. Payment terms shall be as set forth in the Herbert Systems Purchase Document. Invoices for amounts due shall reference the Herbert Systems Purchase Document, line item (if applicable) and description and quantity of Products shipped and Services rendered and shall be sent to the "Bill To" address specified in the Herbert Systems Purchase Document. Payment of an invoice shall not constitute acceptance by Herbert Systems of the Products or Services covered thereby and is without prejudice to any and all claims Herbert Systems may have against Seller in connection therewith. Seller shall be conclusively presumed to have waived Seller's right to receive payment for Products or Services covered by any Herbert Systems Purchase Document if Seller has not submitted an invoice for the Products or Services within ninety (90) days of the date the Product or Service (as applicable) is delivered.

6.3. Taxes. Except if separately itemized in the Herbert Systems Purchase Document, the price of all Products and Services specified in the Herbert Systems Purchase Document shall be deemed to include all applicable taxes. All applicable taxes, include, without limitation, sales, use, VAT, duties, tariffs, excise or other taxes (and all interest and penalties) that may be assessable in connection with the design, manufacture, transport, export, import, delivery, installation, or use of the Products or performance of the Services, each of which amounts shall be remitted by Seller to the appropriate tax or other governmental authority. Notwithstanding the foregoing, each party is responsible for its own respective income taxes or taxes based upon gross revenues, including, without limitation, business and occupation taxes.

7. Cancellation. Herbert Systems may cancel this Agreement for convenience, in whole or in part, at any time by delivery of written notice. To the extent that any unused inventory (or portion thereof) procured by Seller cannot be used by Seller in the manufacture, testing or assembly of other products for Herbert Systems or any of Seller's other customers ("Unusable Inventory"), Seller shall use its best efforts to (i) cancel any pending orders for such Unusable Inventory and (ii) return any such Unusable Inventory in Seller's possession to the applicable suppliers. If Seller is unable to return any Unusable Inventory in its possession to the applicable suppliers, Seller shall notify Herbert Systems of such Unusable Inventory and, at Herbert Systems's instruction, Seller shall either deliver such Unusable Inventory to Herbert Systems or use its best efforts to resell such Unusable Inventory. After such efforts have been completed, Herbert Systems shall pay Seller for Products and Unusable Inventory affected by the cancellation as follows: (i) the contract price for all finished Products in

Seller's possession that are delivered to Herbert Systems and accepted by Herbert Systems, (ii) the cost of all Unusable Inventory delivered to Herbert Systems, (iii) the difference between the cost of all Unusable Inventory that was resold by Seller at less than cost and the proceeds from such resale, (iv) the difference between the cost of all Unusable Inventory that could not be resold by Seller and the salvage value thereof and (v) any vendor cancellation charges incurred with respect to the Unusable Inventory accepted for cancellation or return by the vendor. Notwithstanding any of the foregoing, Seller shall use best efforts to mitigate the amounts payable by Herbert Systems under this Section 7.

8. License.

8.1. License to Technical Information and Materials. Subject to the terms and conditions of this Agreement, Herbert Systems hereby grants to Seller, for the period required to perform its work under this Agreement, a non-exclusive, non-transferable, non-sublicensable license for Seller to use the information, specifications, drawings, data, knowledge, tools and materials furnished to it by Herbert Systems or paid for by Herbert Systems (collectively, "Technical Information and Materials"), but solely for Seller to manufacture the Products and perform the Services for Herbert Systems.

8.2. Restrictions and Reservation of Rights. Seller agrees not to use the Technical Information and Materials except as expressly permitted in Section 8.1. Title to, including all intellectual property rights in and to, the Technical Information and Materials are and shall at all times remain owned exclusively by Herbert Systems, subject only to the license rights expressly granted to Seller in Section 8.1. Any and all rights not expressly granted to Seller herein are reserved by Herbert Systems.

8.3. Information Exchange. Herbert Systems shall provide to Seller such Technical Information and Materials as Herbert Systems determines in its sole discretion is advisable to facilitate Seller's manufacture and delivery of the Products and performance of the Services. All Technical Information and Materials shall constitute the Confidential Information of Herbert Systems.

9. Intellectual Property.

9.1. Work Product. As used in this Agreement, the term "Work Product" shall include, without limitation, all discoveries, ideas, inventions, concepts, developments, know-how, trade secrets, works of authorship, materials, software (source and object code), algorithms, HTML, writings, drawings, designs, processes, techniques, formulas, data, specifications, technology, patent applications (and contributions thereto), and other creations (and any related improvements or modifications to the foregoing or to any Confidential Information), whether or not patentable, that are conceived, created or otherwise developed by Seller (alone or with others), or result from or are suggested by any work performed by Seller (alone or with others) if (i) based on any of the Confidential Information, including any Technical Information and Materials or (ii) stemming from or relating to any non-recurring engineering (NRE) performed under or associated with the fulfillment of this Agreement.

9.2. Assignment. Seller agrees to disclose promptly in writing to Herbert Systems all Work Product. Seller further agrees that any and all Work Product shall be considered "work made for hire" (as such term is defined in 17 U.S.C. §101) and shall be the sole and exclusive property and Technical

Information and Materials of Herbert Systems. To the extent that the Work Product may not be considered “work made for hire,” Seller hereby irrevocably assigns and agrees to assign to Herbert Systems all right, title and interest worldwide in and to the Work Product (whether currently existing or conceived, created or otherwise developed later), including, without limitation, all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual and proprietary rights related thereto (the “Proprietary Rights”), effective immediately upon the inception, conception, creation or development thereof. The Proprietary Rights shall include, without limitation, all rights, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world, related to the Work Product, together with all national, foreign and state registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, substitutions and re-examinations); all goodwill associated therewith; and all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations of any rights relating thereto; and to settle and retain proceeds from any such actions). Seller retains no rights to use the Work Product and agrees not to challenge the validity of Herbert Systems’ ownership in the Work Product.

9.3. License to Work Product; Waiver of Rights. To the extent, if any, that any Work Product or Proprietary Rights are not assignable or that Seller retains any right, title or interest in and to any Work Product or any Proprietary Rights, Seller (i) unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Herbert Systems with respect to such rights; (ii) agrees, at Herbert Systems’ request and expense, to consent to and join in any action to enforce such rights and (iii) hereby grants to Herbert Systems a perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple levels of sublicensees), exclusive, worldwide right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, sell, offer to sell, import and otherwise use and exploit (and have others exercise such rights on behalf of Herbert Systems) all or any portion of such Work Product, in any form or media (now known or later developed). The foregoing license includes, without limitation, the right to make any modifications to such Work Product regardless of the effect of such modifications on the integrity of such Work Product, and to identify Seller, or not to identify Seller, as one or more authors of or contributors to such Work Product or any portion thereof, whether or not such Work Product or any portion thereof has been modified. Seller further irrevocably waives any “moral rights” or other rights with respect to attribution of authorship or integrity of such Work Product that Seller may have under any applicable Law (as defined in Section 10.2) or under any legal theory. Seller hereby waives and quitclaims to Herbert Systems any and all claims, of any nature whatsoever, which Seller now has or may hereafter have for infringement of any Work Product or Proprietary Rights assigned and/or licensed hereunder to Herbert Systems.

9.4. Assistance. Seller agrees to cooperate with Herbert Systems or its designee(s), both during and after the term of this Agreement, in applying for, obtaining, perfecting, evidencing, sustaining and enforcing Herbert Systems Proprietary Rights in the Work Product, including, without limitation, by providing information regarding development, disclosure, use, implementation and reduction to practice, identifying inventors, executing such written instruments as may be prepared by Herbert Systems and doing such other acts as may be necessary in the opinion of Herbert Systems to obtain

a patent, register a copyright, or otherwise enforce Herbert Systems rights in such Work Product (and Seller hereby irrevocably appoints Herbert Systems and any of its officers and agents as its attorney in fact to act for and on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller).

10. Representations and Warranties.

10.1. Products and Services. Seller represents, warrants and covenants that (i) the Services performed and Products furnished hereunder shall conform in all respects to their applicable specifications as of the date of this Agreement and other requirements stated in the Herbert Systems Purchase Document, including any revision number specified therein, and shall meet the quality, operating conditions and performance requirements described in all applicable specifications and the Herbert Systems Purchase Document; (ii) any Services furnished hereunder shall be performed in a professional and competent manner, consistent with the highest industry standards; (iii) the Products shall be merchantable, free from defects in workmanship and material, and new, fit and sufficient for the particular purpose of Herbert Systems and Herbert Systems customers; and (iv) Seller has good and marketable title to the Products to be furnished hereunder and there are no liens, claims or encumbrances of any kind whatsoever against the same. Seller's representations and warranties contained in this Section 10.1 shall survive acceptance of and payment for the Products and/or Services, shall inure to the benefit of Herbert Systems, its successors, assigns, customers and end users, and shall not be deemed to be exclusive of any other representations and warranties available under any applicable Law or otherwise inferable from the text of this Agreement or the nature of the Products and Services provided. In addition to any other remedies available under the terms of this Agreement or applicable Law, Seller agrees to replace or correct (at Herbert Systems election) any Products or Services not conforming to the foregoing warranties promptly, without expense to Herbert Systems, when notified of such nonconformity by Herbert Systems, provided Herbert Systems elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming Products or Services promptly, Herbert Systems may make such corrections or replace such Products and Services and charge Seller for the cost incurred by Herbert Systems in doing so.

10.2. Compliance with Law Generally. Seller represents, warrants and covenants that Seller shall comply with all Laws applicable to its performance pursuant to this Agreement, including, without limitation, the provision of Products and Services hereunder. The term "Law" shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy or rule of common law, or any governmental requirement or other governmental restriction or similar form of decision or determination, or any interpretation or administration of any of the foregoing by any national, state or local government (or any association, organization or institution of which any of the foregoing is a member, or to whose jurisdiction any of the foregoing is subject, or in whose activities any of the foregoing is a participant), whether now or hereafter in effect.

10.3. Environmental Laws. Seller represents, warrants and covenants that its facilities and operations comply with all applicable Environmental Laws. The term "Environmental Laws" shall mean any and all Laws relating to the indoor or outdoor environment, or to the health or safety of natural persons affected by the environment, or to the release or threatened release of hazardous

materials into the indoor or outdoor environment, including, without limitation, ambient air, soil, surface water, groundwater, sea water, wetlands, land or subsurface strata, or otherwise relating to the generation, manufacture, processing, distribution, handling, use, treatment, recycling, storage or disposal of hazardous material or transportation to or from the property controlled by such person or entity of hazardous materials, whether now or hereafter in effect. Seller shall obtain and maintain all licenses, authorizations, certifications and approvals required under any applicable Environmental Laws. Seller shall not permit the release of any hazardous material into the environment and, in the event of any such release, shall promptly perform any investigation, study, sampling, testing, cleanup, removal and remedial or other action necessary to remove and clean up any such hazardous materials in accordance with the requirements of all applicable Environmental Laws.

10.4. Export Administration. Seller represents, warrants and covenants that it shall comply with all applicable export control Laws, including, but not limited to, the Arms Export Control Act, the International Traffic in Arms Regulations (ITAR) and other export controls of the United States of America as amended from time to time, and the Export Control Act 2002, the Export Control Order 2008, EU Regulation 428/2009 and the Customs and Excise Management Act 1979 and other export controls of the United Kingdom as amended from time to time, and the Strategic Trade Act 2010 and other export controls of Malaysia as amended from time to time (collectively, "Export Control Laws"). Seller covenants that it shall not transfer any export controlled item, data or services to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without first obtaining all required export licenses. Seller agrees to notify Herbert Systems if (i) any deliverable under this Agreement is restricted by Export Control Laws, (ii) Seller is or becomes listed in any Denied Parties List or (iii) Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S., U.K., and/or Malaysian government entity or agency. Seller agrees to provide Herbert Systems with the applicable Export Control Classification Number for each Product and hereby covenants that such classification shall be correct and accurate in all respects. Seller represents and warrants that its export privileges are not, and have not within the last five years been, denied, suspended, or revoked in whole or in part by any government, including any agency or department of the U.S., U.K., or Malaysian government. Seller further represents and warrants that its name (including any former name) and the name of any current or former director, officer or employee of Seller, do not appear, and have not within the last five years appeared, on any lists maintained by the U.S., U.K., or Malaysian government identifying parties who are subject to export denial orders or who are otherwise restricted or prohibited by such governments from engaging in export transactions.

10.5. Doing Business with the United States Government. Seller represents, warrants and covenants that (i) Seller, including its subcontractors, vendors, consultants and agents and its and their officers, directors and employees, is not presently, and has not within the past 10 years, been debarred, suspended or proposed for debarment by any agency or department of the United States Government or otherwise declared ineligible by any agency or department of the United States Government for award of contracts or subcontracts; (ii) Seller, including its subcontractors, vendors, consultants and agents and its and their officers, directors and employees, has not within the past 10 years, been convicted of or had a civil judgment rendered against it for the commission of a fraud or any criminal offense, including, but not limited to, the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or violation of any other tax Laws; (iii) Seller has filed all compliance reports required of it by the U.S.

Equal Employment Opportunity Commission; and (iv) Seller's representations to Herbert Systems about its U.S. Small Business Administration classification, including but not limited to, size standards, ownership, and control, are and in the future will be accurate and complete. Seller covenants that it shall provide Herbert Systems immediate written notice if Seller, including any of its subcontractors, vendors, consultants or agents or any of its or their officers, directors or employees hereafter become debarred, suspended or proposed for debarment by any agency or department of the United States Government or otherwise declared ineligible for award of contracts or subcontracts by agency or department of the United States Government.

10.6. Conflict Minerals. Seller represents, warrants and covenants that no Conflict Minerals originating from the Democratic Republic of Congo will be used in the production of any of the Products or performance of any Services. The term "Conflict Minerals" means (i) columbite-tantalite (coltan), cassiterite, gold, wolframite and their derivatives (which derivatives are currently limited to tantalum, tin and tungsten) and (ii) any other mineral or its derivatives, the exploitation and trade of which the U.S. Secretary of State has determined is being used to finance ongoing military conflicts in the Democratic Republic of Congo or any adjoining country. Seller covenants that it shall immediately notify Herbert Systems, in writing, if it learns or at any time has reason to believe that any breach of the foregoing commitments has occurred.

10.7. Other Rights. Seller represents, warrants and covenants that: (i) Seller has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; (ii) Seller's execution of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by Seller to any third party to keep any information or materials in confidence or in trust; (iii) the Work Product shall be the original work of Seller, and any persons involved in the development of Work Product have executed (or prior to any such involvement, shall execute) a written agreement with Seller in which such persons (a) assign to Seller all right, title and interest in and to the Work Product in order that Seller may fully grant the rights to Herbert Systems as provided herein and (b) agree to be bound by confidentiality and non-disclosure obligations no less restrictive than those set forth in this Agreement; (iv) Seller has the right to grant the rights and assignments granted herein, without the need for any assignments, releases, consents, approvals, immunities or other rights not yet obtained; and (v) the Products, Services, and Work Product (and the exercise of the rights granted herein with respect thereto) do not and shall not infringe, misappropriate, violate or conflict with, any patent, copyright, trademark, trade secret intellectual property, proprietary or other right of any third party ("Third Party Right").

10.8. No Conflict of Interest. Seller represents, warrants and covenants that it shall not accept work or enter into any agreement or accept any obligation that is inconsistent or incompatible with Seller's obligations under this Agreement or the scope of Services, if any, rendered for Herbert Systems.

10.9. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HERBERT SYSTEMS DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING.

11. Limitation of Liability. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER HERBERT SYSTEMS OR SELLER FOR DEATH OR PERSONAL INJURY ARISING FROM NEGLIGENCE, FRAUD OR FRAUDULENT MISREPRESENTATION, BREACH OF THE TERMS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979, BREACH OF SECTION 2 OF THE CONSUMER PROTECTION ACT 1987, ANY DELIBERATE DEFAULT OF WILFUL MISCONDUCT OF THEIR EMPLOYEES, AGENTS OR SUBCONTRACTORS OR THE INDEMNITY PROVIDED BY SELLER UNDER CLAUSE 14.1 OF THIS AGREEMENT. SUBJECT TO THE FOREGOING, HERBERT SYSTEMS'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE PRICE PAYABLE BY HERBERT SYSTEMS FOR THE UNITS OF PRODUCT, OR THE SPECIFIC SERVICES, THAT ARE THE SUBJECT OF THE DISPUTE. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 AND IN THE OTHER PROVISIONS OF THE AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH HERBERT SYSTEMS WOULD NOT HAVE ENTERED INTO THE AGREEMENT. THE PRICING CONTAINED IN THE AGREEMENT REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

12. No Indirect or Consequential Damages. HERBERT SYSTEMS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS OR SAVINGS, INCURRED BY SELLER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF HERBERT SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.

13. Reciprocal Waiver of Claims. As the Products and Services may be deployed in defense against or to assist in the detection of an Act of Terrorism (as such term is defined under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002) before it occurs, Herbert Systems and Seller each agree to waive all claims against the other (including those of or against their officers, directors, employees, subsidiaries, affiliates, agents, subcontractors or other representatives) for losses, including business operation losses, resulting from or related to such Act of Terrorism. Each of the parties agrees to make a good faith effort to include a Reciprocal Waiver of Claims provision that is substantially similar to the one set forth in the immediately preceding sentence in its written agreements with third parties that are involved in the manufacture, sale, service, use or operation of the Products and/or Services.

14. Indemnification.

14.1. Indemnity. Seller shall indemnify and hold harmless, and at Herbert Systems request defend, Herbert Systems, its subsidiaries and affiliates, and its and their officers, directors, employees, customers successors and assigns (all referred to in this Section 14 as "Herbert Systems") from and against any and all losses, liabilities, costs, damages, claims, fines, penalties and expenses (including, without limitation, costs of defense or settlement and attorneys', consultants' and experts' fees) that arise out of or relate to (i) the acts or omissions of Seller, including any of Seller's subcontractors, vendors, employees, consultants or agents; (ii) injuries or death to persons or damage to property (including loss of property), in any way arising out of or caused or alleged to have been caused by the work performed, or Products or Services provided, by Seller; (iii) assertions under workers' compensation or similar acts made by persons employed or furnished by Seller; (iv)

any breach (or claim or threat thereof that, if true, would constitute a breach of) this Agreement, including, without limitation, any breach of any representation or warranty set forth in this Agreement; (v) violation of any Law, including, without limitation, any Environmental Law, in any way arising out of or caused or alleged to have been caused by Seller's work or Services under this Agreement or by a Product; or (vi) any claim or threat thereof that the Products, Services or Work Product (or any part thereof) or the exercise of any rights granted herein with respect thereto) infringe, misappropriate, violate or conflict with any Third Party Right.

14.2. Notice; Cooperation; Settlement. Herbert Systems shall notify Seller of any claim or liability for which indemnification is sought ("Claim"), provided, however, that the failure to give such notice shall not relieve Seller of Seller's obligations hereunder except to the extent that Seller was actually and materially prejudiced by such failure. Herbert Systems may, at its option and Seller's expense, participate and appear on an equal footing with Seller in the defense of any Claim that is conducted by Seller as set forth herein. Seller may not settle any Claim without the prior written approval of Herbert Systems. From the date of written notice from Herbert Systems to Seller of any such Claim, Herbert Systems shall have the right to withhold from any payments due Seller under this Agreement the amount of any defense costs, plus additional reasonable amounts as security for Seller's obligations under this Agreement.

14.3. Additional Remedies. In the event of any claim or threat thereof that the Products, Services or Work Product (or any part thereof) or the exercise of any rights granted herein with respect thereto) infringe, misappropriate, violate or conflict with any Third Party Right, then, in addition to Seller's indemnification obligations set forth above and all other remedies that may be available to Herbert Systems under this Agreement, at law or in equity, Herbert Systems shall also have the right to demand, and Seller shall comply with such demand, that Seller, at Seller's expense, (i) modify the Product, Service or Work Product (as applicable) to be noninfringing, (ii) obtain a license (on terms satisfactory to Herbert Systems) to continue using the Product, Service or Work Product (as applicable) or (iii) refund to Herbert Systems the full purchase price.

15. Miscellaneous Provisions.

15.1. Independent Contractors. Each of Herbert Systems and Seller is an independent contractor and neither party's personnel are employees or agents of the other party. The Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

15.2. No Seller Press Release. Seller shall not, without Herbert Systemsexpress written consent, issue any press release or other public statement of any kind regarding its business relationship with Herbert Systems, including, but not limited to, any statement regarding the sale of the Products to or performance of the Services for Herbert Systems, or its entry into or the terms of this Agreement.

15.3. Notice. Any notice required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) two days

after deposit with a private industry express courier, for next day delivery, with written confirmation of delivery; or (iii) four days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All notices sent by Herbert Systems shall be sent to the address to which Herbert Systems regularly contacts Seller or, at Herbert Systems election, to Seller's address set forth in the Herbert Systems Purchase Document. All notices sent by Seller shall be sent to the Herbert Systems address set forth in the Herbert Systems Purchase Document, ATTN: Director of Operations , with a copy to Director of Finance at the same address, or to such other address or person as may be designated by Herbert Systems by giving written notice to Seller pursuant to this Section.

15.4. **Insurance.** Seller shall maintain in effect at all times the following insurance: (i) statutory Employer's Liability Insurance (or equivalent) for all employees of Seller in accordance with the Laws of the jurisdictions in which they are performing work for Seller; and (ii) Public Liability Insurance of not less than £1 million per claim, (iii) Product Liability Insurance of not less than £1 million for claims arising from any single event and not less than £5 million in the aggregate for all claims arising in a year. All insurance policies required by this Section 15.4 must remain in force for a period of at least six years from the date of this Agreement and Seller shall furnish, if requested by Herbert Systems, a Certificate of Insurance prior to the commencement of the work naming Herbert Systems (including its subsidiaries and affiliates) as an additional insured thereunder. Certificates of Insurance evidencing such coverage shall provide that Herbert Systems shall be given ten (10) days written notice before cancellation or reduction of any of the insurance coverage. The liability of Seller assumed under this Agreement shall not be limited to the amount of insurance which the Seller is required to provide.

15.5. **No Subcontracting or Assignment.** Seller shall not be permitted to subcontract or assign this Agreement, by operation of Law or otherwise, without the express written consent of Herbert Systems.

15.6. **No Solicitation; No Hire.** Following delivery of the Product(s) to be delivered to Herbert Systems hereunder and for one year thereafter, Seller agrees that it shall not, and will ensure that its agents and affiliates do not, directly or indirectly, hire or solicit or attempt to solicit for employment any persons employed by Herbert Systems or its affiliates.

15.7. **Remedies.** The remedies described in various sections of the Agreement shall not be deemed the exclusive remedies available to Herbert Systems and Herbert Systems shall, in addition to all such remedies, be entitled to all other remedies available to it under Law.

15.8. **U.S. Government Contract Flowdowns.** The Products and Services provided hereunder may be used by Herbert Systems in fulfilling a U.S. Government contract. Therefore, Seller is subject to, and covenants that it shall comply with, Herbert Systems "Purchase Terms and Conditions, Supplement 1 – U.S. Government Contract Flowdowns" ("Supplement 1"). Supplement 1 is available at www.herbertsystems.co.uk/termsandconditions and is incorporated into this Agreement by reference.

15.9. **Governing Law.** The Agreement shall be governed by the law of England and Wales, except that Supplement 1 shall be governed and interpreted in accordance with the federal common law of government contracts of the United States, as enunciated and applied by United States federal

judicial bodies, boards of contract appeal, and quasi-judicial agencies of the United States federal Government.

15.10. **Venue.** Except for matters of injunctive relief, for which either party may initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be London, England. If Seller is headquartered in the United Kingdom, the arbitration shall be administered by International Chamber of Commerce in accordance with its Rules of Arbitration. The Emergency Arbitrator Provisions shall not apply. . If Seller is headquartered outside of the United Kingdom, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction.

15.11. **Legal Fees.** If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all expenses, including all court costs, arbitration fees and attorneys' fees paid or incurred.

15.12. **Survival.** The following sections shall survive any cancellation, expiration or termination of this Agreement: 3.3, 3.4, 4, 5, 8.2, 9, 10, 11, 12, 13, 14, 15.

15.13. **Right of Setoff.** All claims for monies due or to become due from Herbert Systems shall be subject to deduction by Herbert Systems for any setoff or counterclaim arising out of any agreement or other arrangement between Seller and Herbert Systems, including any of Herbert Systems subsidiaries and affiliates.

15.14. **No Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

15.15. **Severability.** If for any reason a court or arbiter of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

15.16. **Construction.** The Agreement shall be interpreted fairly in accordance with its terms and without any construction in favour of or against either party.

End of Purchase Terms and Conditions