



## SUPPLIER TERMS AND CONDITIONS

### 1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- a. This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- b. SELLER'S acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER'S unqualified acceptance of this Contract.
- c. Unless expressly accepted in writing by FUTURAMIC, additional or differing terms or conditions proposed by SELLER or included in SELLER'S acknowledgment are objected to by FUTURAMIC and have no effect.
- d. The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.
- e. SELLER acknowledges that the FUTURAMIC Supplier Quality Procurement Requirements forms a part of this contract and SELLER will comply with the standard and additional SQPR's as described within the contract at the revision available on the FUTURAMIC supplier portal. You can find this document at <http://futuramic.com/suppliers/>.

### 2. APPLICABLE LAWS

- a. This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the State of Michigan from which this Contract is issued by FUTURAMIC, without regard to its conflicts of law's provisions. SELLER, in the performance of this Contract, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.
- b. SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to FUTURAMIC hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- c. SELLER shall provide to FUTURAMIC with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its State approved counterpart.
- d. SELLER will comply with the OSHA Hazard Communication standard, 29 CFR 1910.1200, if applicable. All Material Safety Data Sheets (MSDS) shall be provided to FUTURAMIC.
- e. SELLER must conduct its activities so that equipment, materials, supplies and work practices are safe for workers and the companies safety policy can be understood by all workers and others present at the work location. All items furnished and all work performed by the SELLER to satisfy this contract, shall comply with the most current applicable requirements of the U.S. Occupational Safety and Health Administration (OSHA), U.S. Environmental Protection Agency (EPA), federal, state and local EHS regulations and standards in the jurisdiction where the work is being performed.



## **SUPPLIER TERMS AND CONDITIONS**

### **3. DEFINITIONS**

- a. The following terms shall have the meanings set forth below:
- b. "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- c. "FUTURAMIC" means FUTURAMIC TOOL AND ENGINEERING COMPANY, acting through its companies or business units, as identified on the face of this Contract. If a subsidiary or affiliate of FUTURAMIC TOOL AND ENGINEERING COMPANY is identified on the face of this Contract, then "FUTURAMIC" means that subsidiary or affiliate.
- d. "FUTURAMIC Procurement Representative" means a person authorized by FUTURAMIC'S cognizant procurement organization to administer and/or execute this Contract.
- e. "SELLER" means the party identified on the face of this Contract with whom FUTURAMIC is contracting. Also means 'Supplier.'
- f. "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

### **4. ASSIGNMENT, DELEGATION AND SUBCONTRACTING**

- a. SELLER shall not assign (whether voluntary, involuntary, by merger, change of control, consolidation, dissolution, operation of law, transfer, or any other manner) any of its rights or interest in this Contract or subcontract for all or substantially all of its performance of this Contract without FUTURAMIC'S prior written consent. SELLER shall not delegate any of its duties or obligations under this Contract. SELLER may assign its right to monies due or to become due. Any attempt to assign or delegate in violation of this article is void. No assignment, delegation or subcontracting by SELLER, with or without FUTURAMIC'S consent, shall relieve SELLER of any of its obligations under this Contract or prejudice any of FUTURAMIC'S rights against SELLER whether arising before or after the date of any assignment. This article does not limit SELLER'S ability to purchase standard commercial supplies or raw materials.

### **5. CHANGES TO PRODUCT, PROCESSES, SUPPLIERS AND FACILITIES**

- a. FUTURAMIC'S Procurement Agent may from time to time in writing direct changes within the general scope of this Order in any one or more of the following: (i) technical requirements and descriptions, specifications, statements of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance, (iv) reasonable adjustments in quantities or delivery schedules or both; and (v) amount of FUTURAMIC - furnished property. SELLER shall comply immediately with such direction, and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, and equitable adjustment in the prices and schedules of this Order shall be made to reflect such increase or decrease and this Order shall be modified in writing accordingly. Unless otherwise



## SUPPLIER TERMS AND CONDITIONS

agreed in writing, any SELLER claim for adjustment must be delivered to FUTURAMIC in writing within five (5) calendar days after SELLER receipt of such direction. SELLER shall make available for FUTURAMIC examination, relevant books and records to verify SELLER's claim for adjustment. Failure of FUTURAMIC and SELLER to agree upon any adjustment shall not excuse SELLER from performing in accordance with such direction. If SELLER considers that the conduct of any of FUTURAMIC'S employees has constituted a change hereunder, SELLER shall notify FUTURAMIC immediately in writing as to the nature of such conduct and its effect upon SELLER's performance. Pending direction from FUTURAMIC'S Procurement Agent, SELLER shall take no action to implement any such change.

- b. FUTURAMIC may at any time, by written order to SELLER, require SELLER to stop all or any part of the work called for by any Order for up to one hundred twenty (120) days hereinafter referred to as a "Stop Work Order." issued pursuant to this contract. Upon receipt of a Stop-Work Order, SELLER shall promptly comply with its terms and take all reasonable steps to minimize the occurrence of costs arising from the work covered by the Stop-Work Order during the period of work stoppage. Within the period covered by the Stop-Work Order (including any extension thereof), FUTURAMIC shall either (i) cancel the Stop-Work Order or (ii) terminate or cancel the work covered by the Stop-Work Order in accordance with Sections 11 or 12 of this Flysheet.

### 6. **CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS**

(a)FUTURAMIC and SELLER shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this article that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement referencing this Contract, including FUTURAMIC'S contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). FUTURAMIC and SELLER shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract and/or any other agreement referencing this Contract, including FUTURAMIC'S contract with its customer, if any. However, despite any other obligations or restrictions imposed by this article, FUTURAMIC shall have the right to use, disclose and reproduce SELLER'S Proprietary Information and Materials, and make derivative works thereof, to fulfill FUTURAMIC'S obligations under contract and for the purposes of testing, certification, use, sale or support of any goods delivered under this Contract or any other agreement referencing this Contract, including FUTURAMIC'S contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by FUTURAMIC shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by SELLER shall apply to all materials derived by SELLER or others from FUTURAMIC'S Proprietary Information and Materials.

- a. Upon FUTURAMIC'S request at any time, and in any event upon the completion, termination or cancellation of this Contract, SELLER shall return to FUTURAMIC all of FUTURAMIC'S Proprietary Information and Materials and all materials derived there from, unless specifically directed otherwise in writing by FUTURAMIC. SELLER shall not, without



## SUPPLIER TERMS AND CONDITIONS

the prior written authorization of FUTURAMIC, sell or otherwise dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of FUTURAMIC. Prior to disposing of such goods, parts or other materials as scrap, SELLER shall render them unusable. FUTURAMIC shall have the right to audit SELLER'S compliance with this article.

- b. SELLER may disclose Proprietary Information and Materials of FUTURAMIC to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon SELLER under this article. SELLER shall be liable to FUTURAMIC for any breach of such obligation by such subcontractor.
- c. The provisions of this article are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this Contract.

### 7. COUNTERFEIT MATERIALS AND PARTS PREVENTION

- a. Due to the Government's approach to counterfeit materials/parts, FUTURAMIC is seeking the following from its SELLERS:
  - i. For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
- b. SELLER agrees and shall ensure that Counterfeit Work is not delivered to FUTURAMIC.
- c. SELLER shall only purchase products to be delivered or incorporated as Work to FUTURAMIC directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by FUTURAMIC or their Customers.
- d. SELLER shall immediately notify FUTURAMIC with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit Work. When requested by FUTURAMIC and or by FUTURAMICS' Customer(s), SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.
- e. In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation FUTURAMIC's costs of removing Counterfeit Work, of reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The



## SUPPLIER TERMS AND CONDITIONS

remedies contained in this paragraph are in addition to any remedies FUTURAMIC may have at law, equity or under other provisions of this Contract.

- f. This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- g. SELLER shall include paragraphs (a) through (d) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to FUTURAMIC.
- h. Certificate of Conformance: SELLER shall prepare a certificate of conformance (“CoC”) asserting that the Items contained with the shipment are in total compliance with all applicable requirements of this PO. SELLER shall annotate in the delivery package any exceptions, e.g. variances, Supplier Quality Assurance Report (“SQAR”), Advanced Engineering Authorization (“AEA”), etc. SELLER shall include a copy of the CoC inside the SELLER’s shipping container.
- i. Records: SELLER shall maintain complete records of all manufacturing, process capability (if applicable), tooling, inspection, and test, including copy of CoC, unless otherwise stated in this PO. Upon FUTURAMIC’s request, SELLER shall make records available to FUTURAMIC for at least ten (10) years after completion of this PO and for longer periods as may be specified elsewhere in this PO. SELLER shall maintain records of all process control tests performed by SELLER and inspection records of processed Items for at least ten (10) years after completion of this PO. Upon FUTURAMIC’s request, SELLER shall provide records of inspection tests of processed Items and process control tests to FUTURAMIC. Upon FUTURAMIC’s request, SELLER shall forward specific records to FUTURAMIC at no additional cost, price, or fee to FUTURAMIC.
- j. SELLER shall establish and maintain a Counterfeit Parts Prevention and Control Plan using Industry Standard AS6174 as guidance. The purpose of this document shall be to prevent the SELLERS eligible for utilization of the Government-Industry Data Exchange Program (“GIDEP”) shall utilize the GIDEP process to alert the industry of encountered counterfeit parts.
- k. Upon the request of FUTURAMIC or their Customers, SELLER should provide objective evidence of flow-down to sub-tier requirements for preventing counterfeit materials or components from being incorporated into products delivered to FUTURAMIC and or its Customers.

### 8. DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS

- a. If SELLER is providing electronic components or devices, SELLER makes the following certification:
- b. Certification of Origin of Product:
- c. Acceptance of this Agreement constitutes confirmation by SELLER that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If SELLER is not the OEM/OCM or a franchised or authorized distributor, SELLER confirms by acceptance of



## SUPPLIER TERMS AND CONDITIONS

this Agreement that it has been authorized in writing by Buyer to act on FUTURAMIC behalf to procure from the OCM or a franchised or authorized distributor of the OEM/OCM. SELLER further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon FUTURAMIC request.

- d. SELLER shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Agreement.
- e. Should SELLER become aware of a confirmed or suspect Counterfeit Part that, by any means, has been delivered to Buyer, or acquired for this Agreement whether or not delivered to Buyer, notification will be made as soon as possible but not later than 7 days of discovery to Buyer. SELLER will verify receipt of this notification by Buyer. Additionally, for confirmed Counterfeit Parts, SELLER shall deliver notice, not later than sixty (60) days after discovery of a confirmed or suspect Counterfeit Part, to the Government-Industry Data Exchange Program (GIDEP).
- f. SELLER shall be liable for cost of Counterfeit Parts and suspect Counterfeit Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.
- g. SELLER shall quarantine suspect Counterfeit Electronics Parts, and make them available for investigation by appropriate government authorities.
- h. SELLER shall establish and maintain a Counterfeit Electronics Parts Prevention and Control Plan using Industry Standard AS5553 as guidance. The purpose of this document shall be to prevent the SELLERs eligible for utilization of the Government-Industry Data Exchange Program ("GIDEP") shall utilize the GIDEP process to alert the industry of encountered counterfeit parts.
- i.

### 9. DEFAULT

- a. FUTURAMIC, by written notice, may terminate this Contract for default, in whole or in part, if SELLER (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as FUTURAMIC may authorize in writing) to cure any such failure after receipt of notice from FUTURAMIC. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.
- b. Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. FUTURAMIC may require SELLER to deliver to FUTURAMIC any partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that SELLER has specifically produced or acquired for the canceled portion of this Contract. Upon direction from FUTURAMIC, SELLER shall also protect and preserve property in its possession in which FUTURAMIC or its Customer has an interest. FUTURAMIC and SELLER shall agree on the amount of payment for these other deliverables.



## SUPPLIER TERMS AND CONDITIONS

- c. Upon the occurrence and during the continuation of a default, FUTURAMIC may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience. (d) SELLER shall continue all Work not terminated or cancelled.

### 10. DELAYS

- a. Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify FUTURAMIC in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

### 11. DISPUTES

- a. All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.
- b. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by FUTURAMIC.

### 12. ELECTRONIC CONTRACTING

- a. The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

### 13. FORCE MAJEURE

- a. SELLER shall not be liable for the excess re-procurement costs pursuant to the cancellation for "Default" article of this Contract incurred by FUTURAMIC because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of SELLER. Examples of these causes are: (a) acts of God or of the public enemy; (b) acts of the Government in either its sovereign or contractual capacity; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of SELLER.
- b. If the SELLER'S failure is caused by a the failure of a subcontractor of SELLER and if such failure arises out of causes beyond the reasonable control of both, and if such failure is without the fault or negligence of either, SELLER shall not be liable for excess re-procurement costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit SELLER to meet the required delivery schedules. SELLER shall notify FUTURAMIC in writing within ten (10) days after the beginning of any such cause(s). In all cases, SELLER shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the



## SUPPLIER TERMS AND CONDITIONS

Services from other sources; otherwise SELLER shall be liable for excess re-procurement costs.

### 14. FURNISHED PROPERTY

- a. FUTURAMIC may provide to SELLER property owned by either FUTURAMIC or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract. (b) Title to Furnished Property shall remain in FUTURAMIC or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- b. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify FUTURAMIC of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- c. At FUTURAMIC'S request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by FUTURAMIC.

### 15. INDEMNIFICATION

- a. Supplier shall indemnify and hold harmless FUTURAMIC, FUTURAMIC'S insurers, FUTURAMIC'S customers, and FUTURAMIC'S affiliates and their employees, agents, officers and directors for and from all suits, claims, judgments, awards, (including but not limited to awards based on intentional infringement of patents known to SELLER at the time of such infringement and those exceeding actual damages and/or including attorney's fees), losses, damages, liabilities, costs or expenses (including attorneys' fees) related to the actual or alleged infringement of any United States or foreign intellectual property right (including but not limited to any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale, or use of Goods by FUTURAMIC or Customers.
- b. FUTURAMIC and/or Customers shall duly notify SELLER of any such claim, suit, or action; and SELLER shall, at its own expense, fully defend such claim, suit, or action on behalf of FUTURAMIC and/or Customers. SELLER shall have no obligation under this Section with regard to any infringement arising from: (a) SELLER's compliance with formal specifications issued by FUTURAMIC where infringement could not have been avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those goods solely for the purpose for which they were designed or sold by SELLER. For purposes of this Section, the term FUTURAMIC shall include FUTURAMIC and all other FUTURAMIC subsidiaries and all officers, agents, and employees of FUTURAMIC or any FUTURAMIC subsidiary. Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.

### 16. INSPECTION AND ACCEPTANCE

- a. FUTURAMIC and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall





## SUPPLIER TERMS AND CONDITIONS

- provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- b. No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. FUTURAMIC'S final inspection and acceptance shall be at destination.
  - c. if SELLER delivers non-conforming Work, FUTURAMIC may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER'S cost, to make all repairs, modifications, or replacements at the direction of FUTURAMIC necessary to enable such Work to comply in all respects with Contract requirements.
  - d. SELLER shall not re-tender rejected Work without disclosing the corrective action taken.
  - e. Within thirty (30) days of Supplier's receipt of FUTURAMIC'S notification of a nonconformity, Supplier shall investigate the nonconformity, deliver to FUTURAMIC a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to FUTURAMIC.

### 17. INSURANCE

- a. Without limiting Supplier's duty to hold harmless and indemnify hereunder, Supplier agrees to secure and carry as a minimum the following insurance with respect to all work to be performed under the Order for the duration of the Order: (i) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; (ii) Commercial General Liability Insurance including Premises Liability and contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a Combined Single Limit of \$3,000,000 for any one occurrence; (iii) if Supplier vehicles are used on FUTURAMIC'S premises and/or used to accomplish work under the Order or otherwise on behalf of FUTURAMIC, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence; (iv) if Supplier or its subcontractors have FUTURAMIC'S materials or equipment in its care, custody or control, Supplier shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the value of such material; (v) if Supplier is performing Professional Services on behalf of FUTURAMIC, Supplier shall maintain
  - b. Professional Liability Insurance with a limit of no less than \$5,000,000;
  - c. The insurance coverages described above shall be in form satisfactory to FUTURAMIC, and shall contain a provision prohibiting cancellation or material change except upon at least ten (10) days' (seven (7) days in the case of War Risks Insurance) prior notice to FUTURAMIC. All such insurance policies will be primary in the event of a loss arising out of the Supplier's performance of work and shall provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carrier by FUTURAMIC.



## SUPPLIER TERMS AND CONDITIONS

- d. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by supplier, its employees, invitees or agents under the Order and that such insurance shall not be invalidated by any act or neglect of the supplier whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.
- e. Supplier shall require its subcontractors to maintain insurance in the amounts and types required by this provision.

### **18. NO WAIVER**

- a. No failure of any Party to exercise any right under, or to require compliance with, the Order, or knowledge of past performance at variance with the Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

### **19. OFFSET CREDITS**

- a. To the exclusion of all others, FUTURAMIC or its assignees shall be entitled to all industrial benefits or offset credits which might result from this Contract. SELLER shall provide documentation or information which FUTURAMIC or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.
- b. SELLER agrees to use reasonable efforts to identify the foreign content of goods or services which SELLER either produces itself and/or procures from subcontractors for work directly related to this Contract. Promptly after selection of a non-U.S. subcontractor for work under this Contract, SELLER shall notify FUTURAMIC of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.



## **SUPPLIER TERMS AND CONDITIONS**

### **20. ORDER OF PRECEDENCE**

- a. The order of precedence provision of an Agreement, if any, shall prevail over this Section. If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following descending order: (i) the face sheets of the Order including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to the Agreement and/or these Terms and Conditions that specifically reference the Section being modified; (ii) regarding product support obligations, the terms of any product support agreement entered into by the Parties; (iii) terms of any Agreement under which the Order is issued; and (iv) these Terms and Conditions.

### **21. PACKAGING AND SHIPMENT**

- a. Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- b. A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the FUTURAMIC Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c. Unless otherwise specified, delivery shall be 'FOB destination, freight prepaid.'

### **22. PAYMENTS, TAXES, AND DUTIES**

- a. Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of the following: (1) FUTURAMIC'S receipt of SELLER'S proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work.
- b. Each payment made shall be subject to reduction to the extent of amounts which are found by FUTURAMIC or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify FUTURAMIC of any such overpayments and remit the amount of the overpayment except as otherwise directed by FUTURAMIC.
- c. FUTURAMIC shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Contract or any other contract between the parties.
- d. Payment shall be deemed to have been made as of the date of mailing FUTURAMIC'S payment or electronic funds transfer.
- e. Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

### **23. QUALITY CONTROL SYSTEM**

- a. SELLER agrees to provide and maintain a quality control system for the Work that is acceptable to Buyer and the Government, but no less than an industry recognized quality standard. SELLER shall be in compliance with all quality control requirements identified in this Agreement. SELLER shall permit Buyer and Government representatives reasonable



## **SUPPLIER TERMS AND CONDITIONS**

- access to SELLER's facilities to review quality control system procedures, practices, processes, and related documents.
- b. SELLER shall have a continuing obligation to notify the FUTURAMIC Subcontract Manager of (i) all Work that does not comply with the quality standards and related requirements of the Agreement, and (ii) all previously delivered Work that cannot be reworked to compliance.
  - c. SELLER shall maintain complete records of all quality control inspection work, including records evidencing all inspections made under the system and the outcome, and make such records available to Buyer and the Government in accordance with Clause 15 (Maintenance of Records). SELLER agrees to include and to require subcontractors to include, the substance of this Clause 26 (Quality Control System), including this sentence, in each of its subcontracts under the Agreement.

### **24. QUALITY**

- a. SELLER must obtain Futuramic's approval for nonconforming product disposition.
- b. SELLER must notify Futuramic of changes in product and/or process, changes of suppliers, changes of manufacturing facility location, and where applicable obtain Futuramic approval.
- c. Futuramic, its customers and regulatory authorities have right of access to the applicable areas of all facilities at any level of the supply chain, involved in this order and to all applicable records.

### **25. RELEASE OF INFORMATION**

- a. Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of FUTURAMIC. SELLER shall not use "FUTURAMIC," "FUTURAMIC TOOL AND ENGINEERING COMPANY," or any other trademark or logo owned by FUTURAMIC, in whatever shape or form, without the prior written consent of FUTURAMIC.

### **26. RESPONSIBILITY FOR PERFORMANCE**

- a. FUTURAMIC issuance of this Order is based in part on FUTURAMIC reliance upon SELLER's ability, expertise and awareness of the intended use of the Goods, and SELLER's continuing compliance with all applicable laws and regulations during the performance of this Order. Further, SELLER shall not, by contract, operation of law, or otherwise, assign any of its rights or interest in this Order, including but not limited to any right to monies due or to become due, or delegate any of its duties or obligations under this Order, or subcontract all or substantially all of its performance of this Order to one or more third parties, without FUTURAMIC'S prior written consent. No assignment, delegation or subcontracting by SELLER with or without FUTURAMIC'S consent shall relieve SELLER of any of its obligations under this Order or prejudice any of FUTURAMIC'S rights against



## **SUPPLIER TERMS AND CONDITIONS**

SELLER whether arising before or after the date of the assignment, including but not limited to set off and recoupment.

- b. The review or approval by FUTURAMIC of any work or Goods hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve SELLER of any of SELLER's obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformities in any Goods furnished under this Order, nor change, modify or otherwise affect any of the provisions of this Order, including, but not limited to, the prices and delivery schedules contained herein.

### **27. RETENTION OF RECORDS**

- a. Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for ten (10) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the US Government and/or FUTURAMIC upon request.

### **28. SCHEDULE**

- a. SELLER shall strictly adhere to the schedules specified in this Contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, SELLER shall: (i) promptly notify FUTURAMIC in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide FUTURAMIC with a written recovery schedule; and (iii) if requested by FUTURAMIC, ship via air or expedited routing, at no additional cost to FUTURAMIC, to avoid or minimize delay to the maximum extent possible.

### **29. SELLER NOTICE OF DISCREPANCIES**

- a. SELLER shall immediately notify FUTURAMIC in writing when discrepancies in SELLER'S process or materials are discovered or suspected which may affect the Services delivered or to be delivered under this Contract.

### **30. SEVERABILITY**

- a. Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### **31. STOP WORK**

- a. SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from FUTURAMIC, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.



## **SUPPLIER TERMS AND CONDITIONS**

- b. Within such period, FUTURAMIC shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER, in the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

### **32. SURVIVABILITY**

- a. If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following clauses:
  - b. Applicable Laws
  - c. Disputes
  - d. Electronic Contracting
  - e. Independent Contractor Relationship
  - f. Release of Information
  - g. Retention of Records
  - h. Warranty

### **33. TERMINATION FOR CONVENIENCE**

- a. FUTURAMIC reserves the right to terminate this Contract, or any part hereof, for its convenience. In the event of such termination, FUTURAMIC shall terminate by delivering to SELLER a Notice of Termination specifying the extent of termination and the effective date. SELLER shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work.
- b. Subject to the terms of this Contract, SELLER shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of FUTURAMIC using its standard record keeping system have resulted from the termination, SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- c. In no event shall FUTURAMIC be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER'S termination claim shall be submitted within ninety (90) days from the effective date of the termination, (c) SELLER shall continue all Work not terminated.

### **34. TIMELY PERFORMANCE**

- a. SELLER'S timely performance is a critical element of this Contract.
- b. Unless advance shipment has been authorized in writing by FUTURAMIC, FUTURAMIC may store at SELLER'S expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.



## **SUPPLIER TERMS AND CONDITIONS**

- c. If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify FUTURAMIC, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- d. In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER'S normal flow time unless there has been prior written consent by FUTURAMIC.

### **35. WARRANTY**

- a. SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year or as required by FUTURAMIC'S customer and specified in the Purchase Order. If any nonconforming Work is identified within the warranty period, SELLER, at FUTURAMIC'S option, shall promptly repair, replace, or rework the Work. Transportation of replacement Work, return of nonconforming Work, and rework of Work shall be at SELLER'S expense. If repair, or replacement, or rework of Work is not timely, FUTURAMIC may elect to return, rework, repair, replace, or replace by procurement, the non-conforming Work at SELLER'S expense. All warranties shall run to FUTURAMIC and its customers.

### **36. GRATUITIES/KICKBACKS**

- a. Seller warrants and certifies that neither it nor any of its Seller personnel has offered or given any gratuities of any kind, nature or amount, to FUTURAMIC employees, agents, or representatives for the purposes of securing the Agreement or securing favorable treatment with respect thereto.
- b. By accepting the Agreement, Seller warrants and certifies that it has not and will not make or solicit kickbacks in violation of FAR 52.203-7, "Anti-Kickback Procedures", or the Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58), both of which are incorporated herein by reference if this Agreement exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

### **37. EXPORT CONTROL**

- a. Seller shall comply with all U.S. export laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, and the Export Administration Regulations (EAR), 15 CFR parts 730-799, in the performance of this contract. In the absence of available license exemptions/exceptions, the seller shall be responsible for obtaining the appropriate licenses or other approvals, if required, for the export of hardware, sensitive materials, technical data, and software, or for the provision of technical assistance.
- b. The seller shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract.
- c. The seller shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.



## SUPPLIER TERMS AND CONDITIONS

- d. The seller shall be responsible for ensuring that the provisions of this clause is flowed down to its subcontractors.

### 38. FEDERAL ACQUISITION REGULATIONS

- a. Futuramic document WI 7.2.2-03 Supplier Federal Acquisition Regulations Compliance Matrix may form part of this contract. You can find this document at <http://futuramic.com/suppliers/>.

### 39. SECURITY FOR INFORMATION SUPPLIED BY FUTURAMIC

- a. This section shall apply if seller receives and holds Futuramic supplied data and/or information on its information system. Futuramic wishes to ensure that seller has effective information security to ensure the secure storage and/or processing of Futuramic supplied information.
- b. Sellers agrees to install and implement security hardware, software, procedures and policies that will provide reasonable and effective information security. Seller agrees to update such hardware, software, procedures and policies as may be needed from time to time to utilize improved technology and to respond to more sophisticated security threats in order to maintain a level of security protection appropriate for the information involved and the current state of security solutions.
- c. Specifically, the seller shall apply at least the basic safeguarding requirements and procedures to protect its information systems as set forth in FAR 52.204-21 (Basic Safeguarding of Covered Contractor Information Systems).
- d. Seller also agrees to comply with the requirements set forth in DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting) as applicable.
- e. The foregoing provisions do not otherwise diminish or limit Sellers obligation regarding the receipt, use, protection and/or disclosure of Futuramic supplied information otherwise set forth hereunder.