



# Quality Terms & Requirements

## **1. Definitions.**

"Materials" means the materials, tooling, services, subcontracted manufacturing processes, equipment, machinery, and/or other articles covered by a Purchase Order and all documents and exhibits attached thereto (an "Order") issued by Alert Tubing Fabricators Metals, Inc. dba Alert Tubing Fabricators Aerospace ("Alert Tubing Fabricators") to the supplier named in the Order ("Supplier").

## **2. Entire Agreement; Terms and Conditions of Contract.**

Whether construed as an offer, acceptance or confirmation, these terms and conditions of purchase (T&Cs) are included as part of the Order. These T&Cs and the Order shall constitute the final, complete and exclusive statement of the contract between Alert Tubing Fabricators and Supplier and may not be modified or rescinded except by a written change order issued by Alert Tubing Fabricators. If these T&Cs and the Order constitutes an offer by Alert Tubing Fabricators to purchase the goods and/or services specified upon the T&Cs and at the price(s) and with the delivery date(s) specified in the Order, Supplier may indicate its acceptance of the Order by verbal acceptance communicated to Alert Tubing Fabricators, by written acceptance on the face of the Order received by Alert Tubing Fabricators, by other written confirmation received by Alert Tubing Fabricators, by commencing work on the Order in any manner, expressly conditioned on notice of such commencement of work received by Alert Tubing Fabricators, or by the delivery of the goods or services within the time for such delivery as stated in the Order. Regardless of the manner or medium of acceptance, time is of the essence. As an offer, the Order and these T&Cs expressly limit acceptance to the Order and these T&Cs, and notification of objection to any different or additional terms in any response to these T&Cs from Supplier is hereby given. If the Order is construed as an acceptance of Supplier's offer, this acceptance is expressly conditioned on Supplier's assent to any additional or different terms contained in the Order and these T&Cs. If the Order and these T&Cs are construed as a confirmation of an existing contract, the parties agree that the Order and these T&Cs constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, written contract, the parties agree that the use of the Order and these T&Cs to place orders for goods or services pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that the terms and conditions of the Order and these T&Cs are not inconsistent with such written contract. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for goods or services pursuant to an earlier contract, this Order and these T&Cs incorporate by reference all terms of the Uniform Commercial Code providing any protection for Alert Tubing Fabricators, including, without limitation, all express and implied warranty protection and all of Alert Tubing Fabricators' remedies under the Uniform Commercial Code.

## **3. Price and Taxes.**

Orders will not be filled at prices higher than the prices specified on the Order. If price is omitted, the Materials will be billed at the price last quoted or paid or at the lowest competing quotation obtained by Alert Tubing Fabricators on or around the the same of the Order, whichever is lower. Unless otherwise provided in the Order, prices shown on the Order include all federal, provincial, state and local excise, sales, use, value added, gross receipts or other taxes, customs and import duties and other charges as well as all charges, duties, fees, costs and expenses of Supplier. Without limit on the foregoing, Supplier may not make any change to the price listed on an Order, or add any surcharge, or other tax, fee, charge, cost or expense, without first receiving Alert Tubing Fabricators' written agreement or written change to such Order.

## **4. Payment.**

a. Unless otherwise specified in an Order, payment is due within **sixty (60)** days after the date of invoice submitted by Supplier. Any payment made by Alert Tubing Fabricators for the Materials will not constitute acceptance of the Materials or act as a waiver of any rights that Alert Tubing Fabricators may have hereunder or pursuant to applicable law.

b. Alert Tubing Fabricators may withhold payment against future deliveries or setoff any amounts owed under an Order against any undisputed amounts due Alert Tubing Fabricators by Supplier (including any of Alert Tubing Fabricators' costs, expenses, legal or



professional fees) in the event of Supplier's actual or threatened breach or repudiation of the Order or the terms of any contract between the parties, or in the event of Supplier's filing of a petition for relief in bankruptcy.

c. Any advances, down payments, deposits or installments made by Alert Tubing Fabricators will be returned to Alert Tubing Fabricators immediately upon Alert Tubing Fabricators' demand in the event of Supplier's failure to timely deliver the Materials or Alert Tubing Fabricators' rejection or cancellation of delivery as permitted herein.

d. Supplier will pay each sub-supplier and subcontractor engaged in connection with obtaining or manufacturing the Materials within the terms established between Supplier and such sub-supplier or subcontractor, or if no terms are established, within a reasonable period of time not to exceed thirty (30) days. Supplier will defend, indemnify and hold Alert Tubing Fabricators harmless from and against any claims of sub-suppliers or subcontractors for payment.

e. In no event will payment be due unless the Order has been completed in accordance with the terms of the Order, including these T&Cs and all applicable warranties, specifications and requirements, unless Alert Tubing Fabricators expressly agrees to accept partial completion of the Order through written change on the Order. Further, Supplier will not be entitled to any payment: (i) with respect to any materials, labor or other charge arising out of any error, omission or failure to comply with the Order by Supplier or its subcontractors, or (ii) if any default of Supplier or any subcontractor has occurred and is continuing.

#### **5. Packing; Shipping; Delivery.**

a. Alert Tubing Fabricators is not responsible for any charge for packing, boxing, or storage. Supplier shall be responsible for all damage resulting from improper packing, boxing, or storage. To the extent Alert Tubing Fabricators has provided packing specifications to Supplier, Supplier will strictly comply with such specifications. Each package shall contain a memorandum showing the shipper's name, contents of package, quantities, material code number, and Alert Tubing Fabricators' Order number.

b. Each shipment of Materials under an Order shall contain: (i) Supplier's certification in compliance to Alert Tubing Fabricators Aerospace's Supplier Quality Assurance Flow Down Requirements that all Materials comply with the terms of the Order, which certification Alert Tubing Fabricators shall be entitled to rely upon without independent verification or investigation, (ii) up-to-date, legible and accurate material safety data sheets, and (iii) the bill of lading number, if applicable.

c. Supplier will comply with any customs or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Materials are Supplier's responsibility. Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to and will be immediately granted to Alert Tubing Fabricators.

d. Unless otherwise agreed to in writing, all Materials are shipped F.O.B. Alert Tubing Fabricators' location or specified destination on the Order. Time is of the essence with respect to production and delivery. If Supplier fails to make shipment or delivery when due, fails to make sufficient progress with respect to the manufacture or delivery of the Materials so that Alert Tubing Fabricators may reasonably determine whether timely shipment of delivery is in jeopardy, or if any shipment or delivery is made that is not in all respects in accord with the Order (including time of shipment or delivery), Alert Tubing Fabricators reserves the right to reject such delivery and, if Alert Tubing Fabricators so elects, Alert Tubing Fabricators may treat the Order as repudiated by Supplier and cancel it and/or any outstanding deliveries thereunder, without prejudice to Alert Tubing Fabricators' rights to claim damages or to enforce any other remedy provided by law. All expenses of transportation and storage, if any, resulting therefrom will be Supplier's responsibility. Any shipments made earlier than the scheduled time or in amounts above ordered quantities may be returned by Alert Tubing Fabricators at Supplier's expense. Supplier is solely responsible for keeping Alert Tubing Fabricators informed as to its progress in completing the Order and will submit to Alert Tubing Fabricators such progress schedules, reports, estimates, records and other data as may be requested concerning work performed or to be performed under the Order. Supplier is further solely responsible for informing Alert Tubing Fabricators immediately upon it becoming aware of any events or circumstances that may delay the timeline for completion or delivery.

e. Unless a carrier or route is specified on the Order, Supplier may select a carrier and route of its choice, but will use only reputable, reliable carriers at the lowest available cost and most direct route.



f. Unless otherwise specified on an Order, title to, and risk of loss of, each item of Material will pass to Alert Tubing Fabricators, and delivery will be deemed complete, upon delivery and unloading of the Material at Alert Tubing Fabricators' location or specified destination on the Order. Supplier will hold Alert Tubing Fabricators harmless against any claims asserted against Alert Tubing Fabricators on account of any personal injury or property damage caused by such Materials, or by the transportation or handling thereof, prior to the completion of unloading at Alert Tubing Fabricators' location.

g. Supplier shall handle, store, and ship product in a manner that will ensure that the product will not be damaged, compromised, or that material traceability will be lost, including but not limited to part to part damage, impact/drop damage, and corrosion damage. Machined parts will be inspected for burrs and sharp edges, which is subject for rejection.

h. Material will be used on a "first-in-first-out" basis and shelf life sensitive controls maintained.

## **6. Materials.**

a. Unless otherwise specified in the Order or agreed to in writing by Alert Tubing Fabricators, Supplier, at its sole cost and expense, will supply all personnel, material, equipment, tools and facilities required to perform the Order. Supplier will defend, indemnify and hold Alert Tubing Fabricators harmless against any and all claims asserted against Alert Tubing Fabricators on account of any personal injury or property damage caused by such personnel, materials, equipment, tools or facilities, or by the transportation or handling thereof, or any lien on or claim of right thereto.

b. All intellectual and other property (including designs, "know-how", drawings, software licenses, blueprints, tools, dies, gages, inspection equipment, patterns, printing plates or other materials or equipment) required to perform an Order, furnished by or paid for by Alert Tubing Fabricators, will be and remain the property of Alert Tubing Fabricators, and Supplier will return the same to Alert Tubing Fabricators upon its request or upon completion or cancellation of the Order, and they shall not be copied or used by Supplier (other than in filling Orders from Alert Tubing Fabricators) without Alert Tubing Fabricators' written consent. Supplier will use such property at its own risk and will be responsible for all loss or damage to the same while in Supplier's custody. Supplier will, at its cost, store and maintain all such property in good condition and adequately maintained. Alert Tubing Fabricators makes no warranties of any nature with respect to any such property, which is furnished "AS IS" and "WITH ALL FAULTS."

## **7. Changes.**

At any time prior to delivery of the Materials, Alert Tubing Fabricators may change the design (including drawings, blueprints, specifications and materials), quantities, processing, quality control procedures, method of packing and shipping, or the date or place of delivery of the Materials. Any changes will be made by delivery of a written change order to Supplier. If the change order increases or decreases Supplier's cost or timing, Supplier must notify Alert Tubing Fabricators within five (5) calendar days of receipt of the change order. Any change to the price payable by Alert Tubing Fabricators or the timing of delivery will be adjusted equitably by written agreement once reflected on the Order. Notwithstanding the foregoing, Alert Tubing Fabricators will not be responsible for any additional charges not agreed to in writing by Alert Tubing Fabricators. Failure to agree upon any additional charges will not relieve Supplier from its obligation to perform in accordance with the changes specified by Alert Tubing Fabricators. Under no circumstances may Supplier make any change in design, processing, method of manufacture, control plan, testing, inspection, certification, packing, quality control procedures or any part of an Order without first notifying Alert Tubing Fabricators and receiving Alert Tubing Fabricators' written approval.

## **8. Cancellation; Termination.**

a. Alert Tubing Fabricators may cancel all or any part of an Order at any time upon written notice to Supplier. Such cancellation shall be without liability or financial obligation on the part of Alert Tubing Fabricators to Supplier: (i) if such cancellation occurs at any time prior to the last to occur of the following: : the date for commencement of production, if any, specified in the Order, or the date Supplier actually incurs costs in connection therewith, (ii) in the event of the institution of proceedings relating to insolvency, bankruptcy, reorganization, arrangement of liquidation by or against Supplier, or if Supplier shall make an assignment for the benefit of creditors, (iii) if Supplier should so fail to make progress as to endanger the timely completion of the Order or any portion thereof, (iv) if Supplier breaches or otherwise violates any covenant, agreement, representation or warranty contained herein or in connection with the Order, or threatens to do so; or (v) in the event of an Excusable Delay as provided for in Section 13. If Alert Tubing Fabricators



cancels the Order under circumstances other than those specified above, Alert Tubing Fabricators and Supplier will negotiate in good faith an equitable adjustment for reasonable costs of labor and materials incurred by Supplier in connection with Supplier's production of Materials prior to the date that Supplier receives notice of cancellation. In no event will any of such costs exceed the purchase price specified in the Order.

b. Upon receipt of any notice of cancellation, Supplier shall (i) follow the instructions contained in such notice with respect to the completion of any portions of the Order and the disposal of any finished goods, work-in-process, raw material and scrap, (ii) not otherwise incur any costs after receipt of notice of cancellation, (iii) notify and cancel any orders or contracts with its suppliers and subcontractors, and (iv) cooperate with Alert Tubing Fabricators with regard to any resourcing or transfer of production under the Order.

c. Supplier may terminate an Order upon sixty (60) days' notice in the event of a material breach by Alert Tubing Fabricators after first notifying Alert Tubing Fabricators in writing of the specific provision of the Order that has been breached and giving Alert Tubing Fabricators a reasonable opportunity to cure such breach. Supplier's sole remedy for damages due to Alert Tubing Fabricators' breach of payment obligations shall be payment in full of all Materials produced and delivered to Alert Tubing Fabricators in accordance with the Order, subject to any applicable bankruptcy laws.

### **9. Inspection; Rejection.**

a. Alert Tubing Fabricators will have the right to inspect the Materials, at its option, either at Supplier's facility or following receipt of the Materials. Supplier will: (i) permit any inspector to perform any inspection, examination or test reasonably required by Alert Tubing Fabricators or its customers, (ii) perform any such inspection, examination or test at the direction of the inspector and at Supplier's sole cost and expense unless otherwise specified in the Order, (iii) cooperate fully with respect to any inspection, examination or test, (iv) furnish the inspector with all reasonably requested documentation, information and data, and (v) at Supplier's sole cost and expense, comply with the results of any such inspection, examination or test or any recommendations made by an inspector in connection therewith and promptly correct any work found to be unsatisfactory within reasonable time limits set by such inspector. The performance of any inspections, examinations or tests shall not relieve Supplier of its obligations under the Order, nor be construed as acceptance by Alert Tubing Fabricators.

b. Alert Tubing Fabricators may reject any Materials that do not conform to the requirements of the Order or, if not so specified, that do not conform to standard industry specifications regardless of when the non-conformity becomes apparent or evident.

c. Supplier will provide Root Cause, and Corrective Action for Materials that do not conform to the requirements of the order within 30 days of being made aware of the non-conformance. RCCA will be documented and sent to Alert Tubing Fabricators email address ([quality@alerttubing.com](mailto:quality@alerttubing.com))

### **10. Warranty.**

Supplier warrants that all Materials and their packaging will conform to:

a. the specifications provided by Alert Tubing Fabricators to Supplier and any customer specific requirements communicated in writing to Supplier, or if none were provided, to industry standard specifications and requirements which fully and adequately protect all Materials;

b. the description of the Materials provided by Supplier to Alert Tubing Fabricators, whether through any written or oral means, including and in addition to any description contained in the Order, any proposal or quotation submitted to Alert Tubing Fabricators, any catalog or brochure or any other communication from Supplier or its representatives to Alert Tubing Fabricators; and

c. any sample or model provided by Supplier to Alert Tubing Fabricators.

d. Supplier further warrants that the Materials will be in all respects suitable for the particular purpose or use for which they are purchased by Alert Tubing Fabricators if the Supplier knows or has reason to know the purpose or use and in compliance to all



specifications and requirements of the Order and all flow down requirements from Alert Tubing Fabricators, of a merchantable quality, free from any defects in material and workmanship, free from any defects in design to the extent that Supplier is responsible for the design, of good title free of any lien, claim, encumbrance, security interest, or other claim of right, new and not reconditioned (unless otherwise specified in the Order), in compliance with all applicable laws concerning the manufacture, inspection, testing, transportation, and delivery of the Materials (including all workplace, environmental and health and safety laws), sold at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported, and free of any claim for patent infringement or violation of the intellectual property rights of a third party.

e. All such warranties shall remain in place for the duration of the warranty provided to the end user of the products into which the Materials are ultimately incorporated. Such warranties will apply regardless of Alert Tubing Fabricators' acceptance of any Materials or the results of any inspection of the Materials. Supplier further warrants that it will maintain its current quality systems certification and comply with its internal quality control systems and procedures as well as any other quality assurance requirements communicated to Supplier or required by Alert Tubing Fabricators or Alert Tubing Fabricators' customers. Such warranty will apply as long as any Order is in effect between the parties.

### **11. Remedies.**

a. Upon Supplier's breach of any of the foregoing warranties, Supplier will: (i) at Alert Tubing Fabricators' option, repair or replace, without cost to Alert Tubing Fabricators, the non-conforming or defective Materials within the timeframe specified in a written notice from Alert Tubing Fabricators, and (ii) pay to Alert Tubing Fabricators within thirty (30) days of demand therefore all of Alert Tubing Fabricators' damages associated with such breach of warranty. If Supplier fails to so repair or replace such Materials within the time required by Alert Tubing Fabricators, Alert Tubing Fabricators will have the right (but not the obligation) to repair or replace such Materials at Supplier's sole cost and expense.

b. In the event that Supplier is unable or unwilling to perform an Order or to meet the delivery schedule specified in the Order after Supplier has accepted the Order, Alert Tubing Fabricators shall have the right (but not the obligation) to obtain the Materials from any other source and charge Supplier with all costs and expenses related thereto, including any difference in purchase price, costs of delay, expedited shipping, customer charges, labor and overtime charges, and any other costs or expenses incurred by Alert Tubing Fabricators.

c. Alert Tubing Fabricators' rights hereunder are cumulative. In addition to any remedies provided hereunder, Alert Tubing Fabricators reserves all rights it may have against Supplier, whether at law or in equity, under these T&Cs, or under any applicable theory of liability. The exercise of any one right or remedy shall not preclude the exercise of any other right or remedy. In order to enforce its rights hereunder, Alert Tubing Fabricators may bring a claim against Supplier, its parent company or affiliates at any time prior to the expiration of the applicable statute of limitations and such parent company and affiliates are hereby made a party to these T&Cs.

### **12. Indemnification.**

a. Supplier will indemnify, defend, and hold Alert Tubing Fabricators and its subsidiaries and affiliates, and each of its and their officers, directors, shareholders, members, employees, customers, representatives and agents ("Alert Tubing Fabricators Indemnified Parties") harmless from and against any and all claims, demands, liabilities, damages, losses, settlements, debits, costs, fines, penalties, taxes, and expenses (including but not limited to any costs or damages provided for in these T&Cs, the costs of exercising or enforcing any remedies provided for in these T&Cs or otherwise, reasonable legal and other professional fees and court costs, liens, costs of recall, root cause analysis, customer chargebacks or claims, production interruption charges, labor charges, transportation costs, costs for sorting or inspection, and any consequential, incidental, indirect or special damages including lost profits) ("Losses") brought, incurred or threatened against an Alert Tubing Fabricators Indemnified Party resulting from or connected with: (i) any breach of Supplier's warranty, these T&Cs, any contract between Supplier and Alert Tubing Fabricators, or any other term of an Order (a "Breach"), (ii) Supplier's negligence, fraud, failure to comply with Law, tort, or willful misconduct, (iii) any and all liens or claims filed or asserted for services performed or materials, equipment, tools, services, subcontracted manufacturing processes, machinery or other articles furnished by Supplier or any subcontractor or supplier or any employee of any of them and from any and all Losses arising out of, resulting from or connected with any such lien or claim, (iv) Alert Tubing Fabricators' inspection and rejection of any Materials under Section 9, and (v) any injury (including death) to person or damage to property as a result of any of the foregoing.



Notwithstanding the foregoing, Supplier will not be liable for any Losses of Alert Tubing Fabricators or any third party that are solely the result of the gross negligence or willful misconduct of Alert Tubing Fabricators. Until such time as Supplier takes up its duty to defend under this Section 12(a), Alert Tubing Fabricators shall be entitled to retain counsel in order to defend itself, with the fees for such counsel to be reimbursed by Supplier. Until such time as Supplier has indemnified Alert Tubing Fabricators in full, all Losses incurred by Alert Tubing Fabricators shall bear interest at the statutory rate of interest from the date that is sixty (60) days after Alert Tubing Fabricators first notifies Supplier that it has incurred such Losses.

b. At its own cost and expense, Supplier will cooperate with, and provide reasonable assistance to, Alert Tubing Fabricators with respect to any claim against Alert Tubing Fabricators, administration of any recall, root cause analysis or investigation, corrective action, or engineering change, involving the Materials and any Alert Tubing Fabricators or Alert Tubing Fabricators' customer products into which the Materials are incorporated, regardless of whether Supplier is obligated to indemnify Alert Tubing Fabricators under Section 12(a).

### **13. Excusable Delays.**

Neither party will be liable for any delay or failure of performance due solely to wars, acts of terrorism or other similar causes beyond its control and without its fault or negligence, provided that the party subject to such cause will have provided written notice thereof to the other as soon as the same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof. If any excusable delay continues for more than fifteen (15) days, Alert Tubing Fabricators may cancel any Order subject to the excusable delay without liability to Supplier.

### **14. Insurance.**

a. Unless otherwise agreed to by Alert Tubing Fabricators, Supplier will obtain and maintain, at its sole cost and expense (i) insurance in an amount adequate to cover the replacement cost of the Materials up until delivery to Alert Tubing Fabricators, (ii) Comprehensive General Liability insurance covering all operations under the Order, including operation premises liability, Supplier's protective liability and products/completed operations with minimum limits per occurrence of not less than Two Million Dollars (\$2,000,000) for bodily injury or death and One Million Dollars (\$1,000,000) for property damage, (iii) Workers' compensation and employers' liability insurance in compliance with applicable law covering all employees of Supplier or any subcontractor working on Supplier's premises, and (iv) Automotive liability insurance covering all motor vehicles used in connection with the performance of the Order, whether owned, non-owned or hired with minimum limits of not less than Two Million Dollars (\$2,000,000) for bodily injury or death and One Million Dollars (\$1,000,000) for property damage. If requested by Alert Tubing Fabricators, property damage coverage will also include coverage for explosion, collapse and underground property damage.

b. All insurance maintained by Supplier will be affected under enforceable policies issued by adequately rated insurers of recognized responsibility, licensed to do business in the state or province where the Supplier performs the work on an Order and reasonably satisfactory to Alert Tubing Fabricators. Such insurance policies will expressly provide: (i) that they may not be cancelled or altered except upon sixty (60) days written notice to Alert Tubing Fabricators, (ii) a waiver by the insurer of its right of subrogation against Alert Tubing Fabricators, and (iii) that Alert Tubing Fabricators is an additional insured and loss payee as its interest may appear. If Supplier fails to obtain or maintain such insurance, then Alert Tubing Fabricators will have the right (but not the obligation) to procure any such insurance on behalf of Supplier and be immediately reimbursed by Supplier for Alert Tubing Fabricators' costs (including premium expense) in procuring such insurance.

c. Supplier will immediately provide Alert Tubing Fabricators with a Certificate of Insurance certifying that all such policies of insurance are in full force and effect and evidencing compliance with the foregoing provisions, if requested by Alert Tubing Fabricators.

### **15. Labor.**

If an Order covers the performance of labor and/or supervision of installation on Alert Tubing Fabricators' premises, Supplier agrees to indemnify and hold Alert Tubing Fabricators harmless from and against all claims and liabilities for injury or damage to any person or property arising out of the performance of the Order. Supplier will furnish Alert Tubing Fabricators with a certificate or other satisfactory evidence of insurance to the effect that Supplier has and will maintain while on Alert Tubing Fabricators' premises adequate insurance coverage (including public liability and property damage, automobile liability and worker's compensation) in such amounts



and with such insurance companies as are satisfactory to Alert Tubing Fabricators. Supplier also agrees that it, its employees, agents, and subcontractors, will comply with all of Alert Tubing Fabricators' safety and other rules covering outside contractors while on Alert Tubing Fabricators' premises.

#### **16. Compliance with Law.**

- a. Supplier is fully informed of, and will comply with, all applicable rules, laws, regulations, ordinances, codes, requirements, restrictions, statutes, decrees, judgments and orders ("Laws") promulgated or issued by any court, agency, department, or other division of any local, state, provincial or federal government, whether foreign or domestic, having jurisdiction over the Materials, Alert Tubing Fabricators or the Supplier or its subcontractors or in any manner affecting the employees, work, material or services used in completing the Order.
- b. Without limitation on the foregoing, Supplier will comply with all local, state, provincial and federal Laws relating to: (i) the environment, including those Laws relating to the use, treatment, storage or disposal of any Hazardous Substances (as defined in applicable Laws), (ii) health and safety, including all state and federal OSHA Laws, and (iii) workers and workers' rights, including child labor laws. Supplier will be solely responsible, at its own cost and expense, for any and all remedial action required as a result of its non-compliance with any Law relating to the environment.
- c. Without limit on the foregoing, Suppliers in the United States or subject to the Laws of the United States additionally certify to Alert Tubing Fabricators that the Materials were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, including without limitation the requirements as to records. The Equal Employment Opportunity clause prescribed by Executive Order No. 11246 of September 24, 1965, as amended from time to time, the Affirmative Action for Handicapped Workers clause prescribed by the Rehabilitation Act of 1973, as amended, the International Traffic in Arms Regulations pursuant to the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Regulations pursuant to the Export Administration Act (50 U.S.C. 2401-2420), the Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era clause prescribed by the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, and the Foreign Corrupt Practices Act, are incorporated herein, unless this transaction is exempt, and Supplier agrees to submit reports, certificates and other documents required of subcontractors by such Executive Order, and the aforementioned Acts, and the rules, regulations and relevant orders issued under the authority of any of the foregoing. Supplier acknowledges its obligations to control access to technical data, technical assistance, equipment and services, which may also be collectively referred to as "Goods and/or Services", under United States export laws and regulations, and agrees to adhere to such laws and regulations and any authorization(s) issued thereunder with regard to any Materials supplied hereunder.

#### **17. Confidentiality.**

Any information relating to an Order disclosed by Alert Tubing Fabricators to Supplier, including information relating to customers of Alert Tubing Fabricators, shall be kept confidential by Supplier and shall not be used by Supplier for any purpose other than pursuant to or as required by the Order.

#### **18. Financial Information.**

In order that Alert Tubing Fabricators may make a reasonable determination as to the financial health of Supplier, upon Alert Tubing Fabricators' request at any time, Supplier shall provide such financial information as Alert Tubing Fabricators shall reasonably request, which information Alert Tubing Fabricators shall not disclose to any third party other than its advisors who need to see such information in order to advise Alert Tubing Fabricators as to Supplier's financial health.

#### **19. Waiver.**

Neither the failure nor any delay on the part of Alert Tubing Fabricators to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver thereof in any later instance, nor will any such failure or delay invalidate these T&Cs or any portion thereof. No waiver by Alert Tubing Fabricators will be effective unless it is in writing and is signed by an authorized officer of Alert Tubing Fabricators.



## **20. Governing Law; Arbitration.**

This contract and the sale of goods contemplated hereby has been made in, and will be construed and enforced in accordance with the laws of the State of Colorado without regard to its principles of conflicts of laws. Except for any action where the sole relief sought is an injunction, any controversy or claim arising out of or relating to these T&Cs, or the making, performance or interpretation thereof, including without limitation alleged fraudulent inducement thereof, shall be settled by binding arbitration in Denver, Colorado by one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any arbitration award may be entered in any court having jurisdiction thereof. For those actions where the sole relief sought is an injunction, Supplier and Alert Tubing Fabricators consent to the exclusive jurisdiction of the state and federal courts of Colorado for any such actions, suits or other proceeding. Supplier and Alert Tubing Fabricators agree not to commence any arbitration or action, suit or proceeding in any other location or court and hereby irrevocably and unconditionally waive any objection to the laying of venue in any such location or court. The United Nations Convention on the International Sale of Goods expressly does not apply to any Order.

## **21. Severability.**

In case any one or more of the provisions or parts of a provision contained herein are, for any reason, held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or part of a provision hereof or any other jurisdiction, but these T&Cs will be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part will be reformed so that it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

## **22. Independent Contractors.**

Supplier and Alert Tubing Fabricators are independent contracting parties, and nothing in the Order will make either party the employee, partner, joint venture, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

## **23. Construction.**

The section headings contained herein are inserted for convenience only and will not affect in any way the meaning or interpretation of these T&Cs. The word "including" will mean "including without limitation".

## **24. Record Retention.**

Supplier shall maintain record of purchase orders placed by Alert Tubing Fabricators, and all associated documents, for ten (10) years minimum. Supplier will notify ATF if records are to be scheduled for destruction.

## **25. Counterfeit Parts.**

Counterfeit parts shall be defined as: an unauthorized copy, imitation, substitute, or modified part (e.g., material, part, component), which is knowingly misrepresented as a specified genuine part of an original or authorize manufacturer. Note: Examples of a counterfeit part can include the false identification of marking or labeling, grade, serial number, date code, documentation, or performance characteristics.

## **26. Counterfeit Parts.**

Neither party shall recruit, solicit or otherwise attempt to hire, or hire directly or indirectly, the employees of the other during the term of this Purchase Order without the prior written permission of the other party. This restriction shall not apply to any individual employee who voluntarily seeks employment with the other party on their own initiative or in response to public employment advertisement.

## **27. Force Majeure.**



Alert Tubing Fabricators  
8019 Commercial Ave.  
Loves Park, IL. 61111  
Phone: 815-633-5065  
Fax: 815-633-5106  
CAGE Code: 7V026

Date: 04/02/2020 09:14



Neither party shall be responsible for delays or failure in performance resulting from acts beyond the reasonable control of such party. Such acts include, but are not limited to, acts of God, strikes, acts of war, epidemics, Government regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes, acts of terrorism, or other disasters.

**28. Language.**

The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only.

The Seller may not assign, or transfer its duties, interests, or obligations under this Purchase Order without obtaining the prior written approval of Buyer. Buyer reserves the right to assign or transfer part or all of its rights, powers, and privileges under this Purchase Order for any reason to: (1) any wholly-owned subsidiary of the Buyer; or (2) any successor in interest to Buyer by way of merger or consolidation or the acquisition of substantially all of its assets. Other than obtaining parts, material and services normally purchased by Seller required in fulfilling this Purchase Order, Seller may not subcontract for the goods or services required by this Purchase Order without Buyers prior written approval.