

## TERMS AND CONDITIONS

### SALE FOR COMPUTING MODULES AND SERVICES

**NOTICE:** Sale of any Computing Modules (“Products”) or Services is expressly conditioned on Buyer’s assent to these Terms and Conditions. Any acceptance of Diamond Technologies Inc (“Diamond”) offer is expressly limited to acceptance of these Terms and Conditions and Diamond expressly objects to any additional or different terms proposed by Buyer. No Buyer form shall modify these Terms and Conditions, nor shall any course of performance, course of dealing, or usage of trade operate as a modification or waiver of these Terms and Conditions. Any order to purchase products or receive services shall constitute Buyer’s assent to these Terms and Conditions. Unless otherwise specified in the quotation, Diamond’s quotation shall expire thirty (30) days from its date and may be modified or withdrawn by Diamond before receipt of Buyer’s conforming acceptance.

#### 1. Products and Services

- a) **Specifications.** This Agreement shall apply to the manufacture of certain Products as specified and agreed upon between Buyer and Diamond. Any changes in the Specifications will be communicated in writing by Buyer to Diamond. In addition, Buyer shall provide Diamond with all tooling, stencils, pallets, drawings, documentation, data, software and other information reasonably necessary for Diamond to manufacture the Products. Buyer may change the Specifications subject to Diamond’s prior written acceptance of such changes; provided, however, that in the case of a change to the Specifications, the price to Buyer for Products manufactured by Diamond under this Agreement shall be appropriately adjusted by Diamond to account for any increase or decrease in cost or margins to Diamond resulting from any such Specification changes.
- b) **Estimated Project Fees (NRE).** The estimated fees for a project are based on Diamond’s current understanding of the scope and assumptions listed in the Statement of Work. The estimates represent Diamond’s best effort at predicting the expense for the project and may change during the project. Buyer agrees to pay Diamond for all services provided to or on behalf of Buyer in the manner identified on an accepted Proposal/SOW/Project Authorization (“Services”) at the hourly rates, completed milestones, or fixed fee identified in the Proposal/SOW/Project Authorization and to reimburse Diamond for any variable materials purchased during the project, at the materials acquisition total cost as stated below. Additional definitions of the milestones are typically provided in the Proposal/SOW/Project Authorization.

#### 2. Delivery and Acceptance

- a) **Delivery.** Diamond will make a commercially reasonable attempt to meet Buyer’s delivery requirements. Diamond will not be liable for any costs or expenses incurred by the Buyer because of a transportation delay in the delivery of Product. All Products shall be transported by those common carriers designated by Buyer and shall be shipped to the locations identified by Buyer. Products will be packaged per Buyer’s requirements as agreed. The Products shall be shipped F.C.A., Diamond’s manufacturing facility. Title and all risk of loss or damage to the Products shall remain with Diamond until tendered to the common carrier and shall then transfer to Buyer. Buyer shall carry sufficient insurance on the value of Products shipped until payment for Products is received by Diamond.

Diamond shall not be liable for any delay or failure in delivery caused by tariffs, customs inspections, or related regulatory actions. In such cases, delivery schedules may be adjusted as reasonably necessary, and Buyer shall remain responsible for any resulting pass-through costs.

- b) **Acceptance.** Buyer shall bear all costs associated with delivery of the Products. Upon shipment, Buyer will be deemed to have accepted the Products or when the Products are placed in consignment at Diamond in-lieu of shipment.

### 3. Prices and Payment

- a) **Prices.** Pricing for Products and related services provided by Diamond shall be as set forth in the accepted Quote, published Price List, or agreed to by Diamond and Buyer in writing from time to time.
- b) **Material Price Adjustments.** Independent of any volume threshold adjustments to unit prices set forth in the accepted Manufacturing Quote, Diamond shall be entitled to pass on to Buyer, through unit price adjustments, unanticipated component cost increase.
- c) **Tariffs.** Diamond's Tariff Recovery Charge relates to tariffs imposed under Section 301 of the Trade Act 1974 and is an approximation based on tariffs paid by Diamond, either directly to the U.S. Government when Diamond is the Importer of Record (IOR), or to our supplier when it is the IOR. The final charge will be included on the invoice and will be based on the actual Country of Origin information and tariff rate incurred at the time of importation. Even if no Tariff Recovery Charge is included in a quote, Diamond reserves the right to impose this charge whenever a tariff is incurred, including but not limited to circumstances in which changes to the tariff regulations have occurred or as additional Country of Origin information becomes known. The prices quoted are exclusive of any tariffs, duties, or import/export taxes. In the event of any new or increased tariffs, duties, or regulatory fees imposed by any governmental authority after the effective date of this agreement, Diamond reserves the right to adjust prices accordingly and pass through such costs to the Buyer as additional charges.

While Diamond dedicates significant resources to staying on top of the market conditions and stringent import/export laws that impact our supply chain, in most cases we are not able to avoid impacts from such tariffs. As such, any tariff-related costs from suppliers incurred by Diamond will be passed along to our customers based on products shipped and costs incurred per shipment. Customers should expect regular invoices to be issued to cover these additional costs.

- d) **Payment.** Buyer will be solely responsible for and will pay all taxes, including value-added taxes, duties or other governmental or regulatory charges, except for any income-related taxes for which Diamond is directly liable unless evidence of exempted status is provided. Unless otherwise stated, all prices refer to U.S. dollars. Payment is due, without any set-off or deduction, thirty (30) days from date of invoice. If Buyer fails to make any payment by the due date Diamond may, in addition to its other rights and remedies, elect not to perform any further obligations until payment is received. Furthermore, any payment or part of a payment that is not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or at the highest contract rate allowable by law, whichever is less, from its due date until paid. These payment terms supersede any conflicting net payment terms stated in Buyer's purchase order.
- ### 4. Purchase Orders
- a) Buyer shall order Products by delivering a written purchase order (Purchase Order) to Diamond.
  - b) Buyer Purchase Orders will identify the Products to be purchased, Buyer's part number for the Products to be purchased, the quantity to be purchased, packaging, labeling and shipping instructions and other relevant information.
  - c) Buyer acknowledges and specifically authorizes Diamond to schedule production, purchase materials, including long lead-time and unique components, to fulfill Purchase Orders, based on material lead times, supplier minimum requirements and economic order quantities.
  - d) Diamond shall be under no obligations to accept a Purchase Order. Purchase Orders shall be binding upon Buyer unless Diamond rejects within five (5) business days from the receipt of the Purchase order.

- e) The Buyer cannot cancel any prototype, pre-production pilot or one-time Purchase Orders.
- f) Buyer cannot cancel any accepted Purchase Order.
- g) Any agreed to reduction in an accepted Purchase Order will be treated as partial cancellation and is not allowed.
- h) The Buyers refusal to accept delivery of a Purchase Order will be treated as a cancellation by Diamond and Buyer will pay Diamond: a) the full product price, b) for any costs associated with excess materials on hand or on order, and c) for any costs incurred by Diamond specifically in relation to the manufacturing of Buyer's Product and which has not been recovered from Buyer through amortization or other means.

#### 5. Order Flexibility/Order Changes

- a) **Material Liability.** The Buyer will be liable for material purchased to meet purchase orders when they meet any of the following criteria:
  - i) Within supply chain lead time + thirty (30) days of manufacturing lead time.
  - ii) Purchased as a Minimum Order Quantity (MOQ) more than the demand (regardless of lead time)
  - iii) Non-Cancellable Non-Returnable (NCNR) purchased to achieve pricing targets/quotes based on a quarterly demand quantity. (Examples are custom items include Printed Wiring Boards, Plastic Parts, Metal Fabricated Parts, etc.)
- b) The Buyer may delay or reschedule the delivery of Standard Products from an accepted Purchase Order in advance of agreed to delivery dates as follows:

Number of Days' Notice	Maximum Percentage of Purchase Order Quantities Deferrable
0-30	0%
31-60	15%
61-90	25%

- c) An accepted Purchase Order may be rescheduled once from its originally scheduled ship date but for no more than thirty (30) days from the original ship date. No accepted Purchase Order may be rescheduled within the thirty (30) day period immediately preceding its scheduled ship date unless otherwise agreed to by the parties. For blanket Purchase Orders, rescheduling applies to each date designated on the Purchase Order. The Buyer agrees to pay carrying charges of 2% per month on the total value of the reschedule Purchase Order and for Diamond costs associated with rescheduling production.
- d) Diamond will take commercially reasonable steps to mitigate the costs of Excess or Obsolete Material caused by any such delay or rescheduling. Any Excess or Obsolete Material created because of such delay or rescheduling will be dealt with in accordance with Section 6.
- e) For engineering change orders (ECO) initiated by the Buyer, Diamond will determine the cost and impact on the Product price, Excess and/or Obsolete Material and delivery schedule prior to implementing the ECO. For non-COTS products, Buyer will approve in writing all ECO's prior to production and fulfilment of accepted Purchase Orders affected by an ECO.

## 6. Obsolete and/or Excess Material and Inventory

- a) **Definitions.** The following terms used in this Agreement will have the following respective meanings:
- i) “Excess Materials” means the quantity of material that Diamond has on hand, which has been ordered, manufactured, or acquired by Diamond that is greater than the sum of the quantity of material to be consumed by Diamond in the manufacture of the Products for Buyer under this Agreement in the subsequent sixty (60) days.
  - ii) “Obsolete Materials” means any material which Diamond has purchased or for which Diamond has issued a purchase order to the material vendor that is, no longer being required by Diamond to manufacture Products (or being otherwise unsuitable for use in the manufacture of Products due to the passage of time) within the subsequent six (6) months, based on the most recent Purchase Orders.
- b) **Purchase Obligations.** In the event of: (i) the termination or expiration of all or any part of this Agreement, or (ii) any other event, including a change in Specifications or an engineering change order (ECO) then Diamond will provide Buyer with notification of the potential cost of such Excess Materials or Obsolete Materials and make reasonable efforts for a period of up to two (2) weeks, to mitigate the cost of such materials. After such two (2) week period, Buyer shall issue a Purchase Order and Diamond shall be entitled to deliver all remaining Excess Materials or Obsolete Materials to Buyer and invoice the Buyer for the full costs thereof, along with the costs of any and all other materials for which Diamond remains liable, as well as applicable material mark-ups, reasonable handling and mitigation charges. Such invoice shall be paid by Buyer, without set-off or deduction, within seven (7) days from the date of the invoice. As soon as materials are classified as Excess Materials or Obsolete Materials, Buyer shall be required to pay an inventory carrying charge of two percent (2%) per month on the average value of inventory until such time as such inventory is ordered or scrapped by the Buyer.
- c) **Consigned Inventory.** Material owned by the Buyer stored at a Diamond controlled location is defined as “Consigned Material”. Consigned Materials that are either Excess Materials or Obsolete Materials (as defined in this Section 6) shall be removed to a Buyer designated location within sixty (60) days of Diamond notification to the Buyer of this status at Buyer’s costs.

## 7. Intellectual Property

- a) All existing intellectual property rights, including but not limited to inventions, technology, developments, innovations, concepts, trade secrets and know-how, whether or not patentable (collectively, “Intellectual Property”) owned by or licensed to Buyer will continue to be owned by Buyer and, accordingly, Diamond is licensed to use such of Intellectual Property as may be necessary for Diamond to perform its obligations pursuant to the terms of this Agreement. With respect to any Intellectual Property licensed to Buyer, Buyer warrants that such license is in good standing and includes all necessary rights of sub-licensing. All existing Intellectual Property of Diamond will continue to be owned by Diamond and all Intellectual Property created, developed or conceived during Diamond’s manufacturing of the Products or performance of the services will be owned by Diamond, unless otherwise specifically agreed in writing. Payment of quoted prices for Products or services does not confer any rights in or title to the subject matter of the service, which shall remain the absolute property of Diamond. Nothing contained herein will be deemed to grant to Buyer either directly or by implication, estoppel or otherwise, any license or other right under any patents, patent applications, or other intellectual property rights owned by or licensed to Diamond or its affiliates.

## 8. Warranty

- a) **Computing Module Warranty.** The Computing Module shall be covered by the Limited Product Warranty

and Disclaimer, currently PN 1033162A posted on our Website.

- b) **Warranty.** For a period of ninety (90) days following the date of shipment of the Products, Diamond warrants that such Products shall be manufactured in compliance with the Specifications (the “Warranty”). THE WARRANTY IS THE ONLY WARRANTY DIAMOND MAKES FOR THE PRODUCTS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, DIAMOND MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- c) **Third Party Warranties.** Diamond agrees to pass through to the Buyer all third-party warranties applicable to articles purchased hereunder and will provide commercially reasonable efforts to support the Buyer in exercising these warranties if necessary.
- d) **Prototypes.** Except for a thirty (30) day warranty on workmanship and quality, prototypes and pre-production/pilot versions of the Products are provided by Diamond to Buyer on an “AS IS” basis without warranty of any kind.
- e) **No Defect Found Charge.** Diamond reserves the right to apply a No Defect Found (NDF) charge equal to five percent (5%) of the amount invoiced for the Products in question, including return freight charges, for Products returned and found to be in conformance with the specifications in place at time of original manufacture.
- f) **Misuse.** The Warranty will have no legal effect if the Product is misused, damaged, modified, placed in an unsuitable physical or operating environment, maintained improperly, or caused to fail by a product or service not provided by Diamond, or if the Product has been subjected to any repair not authorized in writing by Diamond.
- g) **Exclusions.** The Warranty does not include defects because of, but not limited to, any Buyer supplied (or owned) design, documentation, test data, test systems/methods and diagnostics, or defects which are attributed to lack of design margin, Buyer’s specifications or bills of material. The Warranty also does not apply to any Products on which Diamond has not performed the normal manufacturing/testing/inspection process, at Buyer’s direction. Diamond will have no liability for defects in Products where failure to identify or isolate such defects is attributable to Buyer-supplied hardware, software or procedures.
- h) **Return Authorization.** Should Buyer wish to return Products as not complying with the Warranty set forth herein, Buyer shall notify Diamond in writing within ten (10) days of original Product delivery and request a return material authorization (RMA). Once an RMA is issued, Buyer shall have ten (10) days to return rejected Products to Diamond, at Buyer’s risk and expense. Subject to the provisions of Section 8 (a) through (e) above, Diamond will at its election and cost, repair, replace or credit Buyer account for the returned Product. In the event Diamond replaces the returned Product, title to rejected Product shall pass to Diamond upon shipment of the replacement Product to the Buyer.
- i) **Bio Contamination Free.** Buyer shall take appropriate measures to ensure that any product returned to Diamond is free of bio contamination and safe for Diamond employees to handle.

- i) **No Third-Party Infringement.** Each Party warrants to the other Party that the Specifications provided for manufacturing and repair services do not violate, infringe, or misappropriate any third party's patent, copyright, trademark, trade secret, or other intellectual property right(s) or proprietary rights.
- j) **Remedy** THE SOLE REMEDY UNDER THIS WARRANTY SHALL BE THE REPAIR, OR REPLACEMENT PRODUCT AS STATED ABOVE AND IN NO EVENT SHALL DIAMOND'S LIABILITY FOR WARRANTY OR NON-WARRANTY CLAIMS EXCEED THE PURCHASE PRICE FOR THE PRODUCTS FOR WHICH A CLAIM IS MADE.

#### 9. Limitation of Liability

- a) **Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary, Diamond shall under no circumstances be liable for special, incidental, consequential or exemplary damages of any nature whatsoever, however occasioned (whether by negligence or otherwise), including, but not limited to, commercial loss from any cause, business interruption of any nature or loss of profits, even if Diamond shall have been advised of the possibility of such damages. Furthermore, under no circumstances will either party have any liability to the other, whether in contract or for negligence or otherwise, and except for any obligation to pay amounts which are properly due and payable hereunder, and whether related to any single event or series of connected events, for any of the following:
  - i) any liability more than (A) in the case of damage to or loss of tangible property, the replacement value of such property; and (B) in any event, regarding any other liability, the total price paid for the affected Product(s) or services giving rise to such liability or five hundred thousand dollars (\$500,000) (whichever is less); and
  - ii) any third-party claims, other than claims arising under Section 10, against the other party for any loss, damage, costs or expenses.
- b) **Claim Limitation.** Neither Buyer nor Diamond may bring an action against the other arising out of or relating to this Agreement and the Product contemplated hereby more than two (2) years after the cause of action arose.
- c) **Costs and Attorneys' Fees.** The prevailing party in a legal action (if reasonably ascertainable) will be reimbursed by the other party for its expenses, including reasonable legal fees.

#### 10. Indemnification

- a) **Indemnification by Diamond.** Buyer, its affiliates and their respective officers, directors, employees, agents, successors and assigns shall be indemnified and held harmless by Diamond against any and all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties, including, without limitation, related attorney and consultant fees and expenses (hereinafter collectively a "Loss"), actually suffered or incurred by them, arising out of, relating to or resulting from the breach by Diamond of the Warranty obligations.
- b) **Indemnification by Buyer.** Diamond, its affiliates, and their respective officers, directors, employees, agents, successors and assigns shall be indemnified and held harmless by Buyer against any and all Losses actually suffered or incurred by them arising out of or resulting from (i) the design of or the Specifications for the Products including, without limitation, any claims relating to Product labels, inserts or packaging or (ii) any third party claim for personal injury, damage, economic loss or other damage, caused by or arising out of the use or performance of the Products including, without limitation, all product liability claims, or (iii) any breach of this Agreement by Buyer; provided, Buyer's indemnity obligations shall be

reduced to the extent that the claim results from Diamond's failure to manufacture the Products in accordance with the Specifications.

- c) **Notice and Opportunity to Defend.** For purposes of this Section 11, a party seeking indemnification shall be considered the "Indemnified Party" and the party from whom indemnification is sought shall be considered the "Indemnifying Party." Each party shall promptly, and in all events within ninety (90) days of obtaining actual knowledge thereof, notify the Indemnifying Party of the existence of any claim, demand or other matter requiring a defense to which the Indemnifying Party's obligations under this Section would apply. The Indemnified Party shall give the Indemnifying Party a reasonable opportunity to defend the claim, demand or matter at the Indemnifying Party's own expense and with counsel selected by the Indemnifying Party and satisfactory to the Indemnified Party; if the Indemnified Party shall always also have the right to fully participate in the defense at its own expense Any such claim, demand or other matter shall not be settled or compromised without the consent of the Indemnified Party; provided, however, if the Indemnified Party does not consent to such settlement or compromise, such claim, demand or other matter shall not be settled or compromised, but the Indemnifying Party's obligation to indemnify with respect hereto shall be limited to the amount for which such claim, demand or other matter could have been settled or compromised. If the Indemnifying Party shall, within a reasonable time after receipt of notice, fail to defend, the Indemnified Party shall make available, or cause to be made available, all information and assistance that the Indemnifying Party may reasonably request.

## 11. Termination

- a) **Termination.** This Agreement may be terminated prior to the expiration of its term pursuant to any of the following provisions:
- i) **Breach of Agreement.** Either party may terminate this Agreement by delivery of written notice to the other party if the other party breaches any of the terms and conditions of this Agreement; provided, however, if the breach is curable such notice shall not be effective unless and until such breach remains uncured for a period of thirty (30) days after delivery of such notice.
  - ii) **Insolvency.** Either party may terminate this Agreement effective immediately upon delivery of written notice to the other party, if the other party (A) ceases to actively conduct its business, (B) files a voluntary petition for bankruptcy or has filed against it an involuntary petition for bankruptcy, (C) makes a general assignment for the benefit of its creditors or (D) applies for the appointment of a receiver or trustee for substantially all of its property or assets or permits the appointment of any such receiver or trustee who is not discharged within thirty (30) days of such appointment.
  - iii) **For Convenience.** Either party may terminate this Agreement for convenience upon one hundred eighty (180) days prior written notice to the other.
- b) **Effect of Termination.** Following expiration or termination of this Agreement for any reason, the following provisions shall apply:
- i) **Unshipped Orders.** Any unshipped orders for Products not yet manufactured by Diamond or for which Diamond has not yet ordered the components or ingredients shall become immediately payable to Diamond at full price.
  - ii) **Continuing Obligations.** The parties' respective obligations which by their nature continue after the

termination or expiration of this Agreement shall remain in effect until they are completed. In addition, Section 10 (Indemnification) herein shall survive the expiration and termination of this Agreement and shall continue in full force and effect.

## 12. Miscellaneous

- a) **Notices.** All notices hereunder shall be in writing and mailed to the following address:

Diamond Technologies Inc  
43 Broad Street, Unit C103  
Hudson, MA. 01749  
Attention: Contracts Administrator

Such notice shall be mailed postage prepaid, registered or certified mail, return receipt requested. Notices shall be deemed delivered five (5) business days after being deposited in the United States mail, postage prepaid.

- b) **Buyer Property.** Diamond covenants that for so long as this Agreement is in effect, all items owned by Buyer and provided by Buyer to Diamond in connection with the manufacture and testing of the Product: (i) will be clearly marked the property of Buyer, (ii) will be kept free of liens and encumbrances, (iii) will be properly maintained and kept in good working condition, (iv) will be used exclusively for the purpose of manufacturing and testing of Buyer's Product, and (v) will be returned to Buyer within thirty (30) days of the date of expiration or termination of this Agreement for any reason (with payment in full of all money's owed by Buyer) or upon Buyer's request.
- i) Buyer is responsible for costs associated with the repair and maintenance of Buyer owned equipment except as the direct result of Diamond's negligence.
- ii) Buyer is responsible to provide annual valuation of all Buyer owned property to ensure Diamond can maintain appropriate property insurance.
- c) **Severability.** If any provision contained in this Agreement is, for any reason, held to be invalid or unenforceable in any respect under the laws of any jurisdiction where enforcement is sought, such invalidity or unenforceability will not affect any other provision of this Agreement and this Agreement will be construed as if such invalid or unenforceable provision were not present.
- d) **Relationship of the Parties.** The relationship of Diamond and Buyer as established under this Agreement will be and always remain one of independent contractors, and neither party will in any way represent itself as having authority to assume or create obligations or otherwise act in any manner on behalf of the other party.
- e) **Force Majeure.** Diamond shall not be liable to Buyer for any delay or failure of delivery or other performance caused in whole or in part by any contingency beyond Diamond's reasonable control, including without limitation, acts of God, acts of any government or any agency or subdivision thereof or shortage or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices from regular sources.
- f) **Laws and Regulations.** Buyer agrees to comply with all applicable import and export control laws and regulations and hereby represents and warrants to Diamond that the Products are not intended to be shipped directly or indirectly to prohibited countries. Buyer shall obtain all necessary licenses, consents, government documents and approvals prior to resale, import or any export of any of the Products under



the laws and regulations of any relevant jurisdiction. Should any of the Products provided to Buyer by Diamond be for any government or government authority, Buyer shall be solely and exclusively responsible for compliance with all statutes and regulations governing sales to such government or governmental authority.

- g) **Financial Obligations.** Buyer acknowledges and agrees that Diamond, in the performance of its obligations under this Agreement, will incur financial obligations on behalf of Buyer. The parties agree that Diamond will, before it incurs financial obligations on behalf of Buyer, and from time to time, establish, and advise Buyer in writing, of Buyer's credit limit with Diamond. The credit limit will be established after consultation between Buyer and Diamond. Buyer agrees to operate within its credit limit. If Buyer's financial liability to Diamond exceeds the amount of the credit limit, Diamond will give Buyer notice of its default of this condition and, if not remedied within seven (7) business days, Diamond has the right to take appropriate action to reduce its financial obligations incurred on behalf of Buyer.
- h) **Non-Exclusive.** This Agreement will not prevent Diamond or its affiliates from marketing, acquiring or developing materials, Products, or services that are like or competitive to those of Buyer. Diamond may pursue activities independently with any third party, even if like the activities pursued with Buyer.
- i) **Waiver.** No provision of this Agreement will be deemed waived and no breach or default excused unless the waiver or excuse is in writing and signed by the party issuing it. A waiver of any provision or breach shall not constitute a waiver of any other provision or subsequent breach.
- j) **Headings.** The descriptive headings for the several sections of this Agreement are inserted for convenience only and shall not define or limit any of the terms or provisions of this Agreement.
- k) **Assignment.** Neither party may assign this Agreement in whole or in part without the prior written consent of the other party, except that Diamond may assign this Agreement and/or any purchase order or any part(s) of this Agreement to any person or entity which is (whether directly or indirectly) controlling, controlled by or under common control with Diamond or to any person or entity who acquires the whole or any part of Diamond's business.
- l) **Governing Law and Jurisdiction.** The laws of State of Massachusetts govern this Agreement and all transactions hereunder exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to principles of conflicts of law. The parties hereto agree that they shall commence any action with respect to any claims or disputes pertaining to this Agreement or to any matter arising out of or related to this Agreement in the United States District Court for the District of Massachusetts, so long as the action falls within the subject matter jurisdiction of such Court; in the event any such action shall be determined to be outside its subject matter jurisdiction, then the parties agree to commence any such action in the Massachusetts State Courts located within Middlesex County, Massachusetts. The parties expressly submit and consent in advance to such jurisdiction in any action or suit commenced in any such Court and hereby waives any objection based upon lack of personal jurisdiction, improper venue or forum *non-convenient*. The parties hereto expressly waive any right they may have to a jury trial and agree that any proceedings under this Agreement shall be tried by a judge without a jury. Any Judgment issued in Massachusetts will be treated as a judgment issued in the other party's home jurisdiction. The foregoing shall be the sole and exclusive remedy for all disputes, claims or litigation arising under, relating to and/or concerning this agreement. All related parties shall not violate any U.S. or U.N. laws/regulations prohibiting "Human Trafficking Forced Labor, Child Labor, Smuggling, Indentured Servants, or Slavery Policy."
- m) **Export Restriction.** Confidential Information provided pursuant to this Agreement may be subject to U.S.

government laws, regulations, orders, embargoes or other restrictions regarding export, reexport, disclosure, or release of technical data, technology, software or other items, or derivatives of such items, including the Arms Export Control Act, International Traffic in Arms Regulations, Export Administration Act and Export Administration Regulations. Each Party agrees to comply with all such laws or restrictions in relation to the Confidential Information. Each Party will reasonably cooperate with the other Party to assure compliance with this Section. U.S. Treasury-Office of Foreign Assets Controls; denied parties and specially designated Nationals are prohibited from transactions with U.S. Persons. Furthermore, the parties shall follow the Export Control Reform Act of 2018 August 13, 2018, which was signed into law as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the (ECRA) (Title XVII, Subtitle B of Pub. L.115–232), which provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

- n) **Anti-Bribery.** (i) The Buyer shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including the Foreign Corrupt Practices Act of 1977 and Bribery Act 2010, and shall ensure that it has in place adequate procedures to ensure compliance with the such bribery laws to prevent bribery, and shall use all reasonable endeavors to ensure that all of its personnel, all others associated with it, and all of its subcontractors involved with this Agreement so comply. (ii) The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it. (iii) Without limitation to the above, the Buyer shall not make or receive any bribe (as defined in the FCPA or the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- o) **EAR-For United States located Buyers with U.S. Person status.** Deliverables of *commercial (dual-use) "product", "technology", and related "software"* are subject to Title 15 U.S.C. of Federal Regulations (Export Administration Regulations-EAR, Parts 730-774, all supplements, and Executive Orders) per the U.S. Department of Commerce-DOC and its Bureau of Industry Security-BIS. The Buyer is responsible for adhering to these F.R. conditions and determining the ECCN-Export Control Classification Number for their items prior to exporting under the export control provisions.
- EAR-For internationally located Buyers with non-U.S. Person status.** It is Diamond's responsibility as U.S.PPI (United States Principal Party in Interest)/ EOR-exporter of record; to comply with all U.S.C. Federal Regulations (EAR, ITAR, OFAC), RPS-Restricted Party Screening, classifications, and export licenses under the export control provisions. U.S. Treasury-Office of Foreign Assets Controls; denied parties and specially designated Nationals are prohibited from transactions with U.S. Persons. Furthermore, the parties shall follow the Export Control Reform Act of 2018 August 13, 2018, which was signed into law as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the (ECRA) (Title XVII, Subtitle B of Pub. L.115–232), which provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.
- p) **ITAR-For United States located Buyers with U.S. Person status.** Deliverables of *defense (military-use) "product", "technology", and related "software"* are subject to 22 U.S.C. 2778 of the Arms Export Control Act ("AECA") and Executive Order 13637. The International Traffic in Arms Regulations ("ITAR," 22 CFR Parts 120-130) per the U.S. Department of State- DOS and its Directorate of Defense Trade Control-DDTC. The Buyer is responsible for adhering to these F.R. conditions and determining the ITAR-USML Category Number for their items prior to exporting under the export control provisions.
- Factory Visits.** Diamond's manufacturing facilities operate in compliance with International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). All visitors to the manufacturing locations are required to be US Persons as defined by 22 C.F.R.§ 120.15.

- q) **Defend Trade Secrets Act.** Pursuant to the Defend Trade Secrets Act of 2016, if a Party is an individual, a Party acknowledges that he/she shall not have criminal or civil liability under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if a Party files a lawsuit for retaliation by the Company for reporting a suspected violation of law, a Party may disclose the trade secret to Other Party's attorney and may use the trade secret information in the court proceeding, if a Party (X) files any document containing the trade secret under seal and (Y) does not disclose the trade secret, except pursuant to court order.
- r) **Personal Data Protection.** The scope of this Agreement is limited to Authorized Purposes which does not require the disclosure, transfer or processing of any Personal Data or Sensitive Data. The Parties agree that neither this Agreement nor any memorandum, Letter of Intent or Letter of Engagement issued pursuant to or referencing this Agreement will be used in any transaction in which Personal Data or Sensitive Data is accessed, collected, recorded, stored, altered, exchanged, used, disclosed (including the granting of remote access), transmitted, deleted or otherwise processed. For purposes of this Agreement, the term Personal Data means any information relating to (i) an identified or identifiable person where the person is associated with a Buyer, supplier or business partner of either Party or (ii) an employee, former employee or job applicant of either Party, excluding the name, title, business email address, business phone number and business physical address of the persons involved in the Authorized Purpose. For the purposes of this Agreement, Sensitive Data means any Personal Data related to any special categories of data subjects, including but not limited to minors or those with criminal backgrounds, and/or any special categories of Personal Data, including but not limited to (i) Data concerning health, Biometric Data, or Genetic Data (as defined by the ***EU General Data Protection Regulation/ Regulation (EU) 2016/6791***), or (ii) Protected Health Information or electronic Protected Health Information (as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 and regulations promulgated under it). The Parties agree to immediately, but in no event later than forty-eight (48) hours after discovery, to notify and return to the disclosing party if any Confidential Information disclosed in the connection to this Agreement contains any Personal or Sensitive Data. The receiving party agrees to immediately destroy any and all copies not returned to the disclosing party, even back-up copies, within twenty-four (24) hours of such notification.
- s) **Technical Requirements.** It is the responsibility of Buyer to maintain and submit to Diamond up-to-date Specifications as needed. Specifications are listed in the Product Development Plan and may be modified by a written agreement signed by both parties (a "Change Notice"). During the Testing Period, Diamond shall deliver design-for-manufacture and design-for-test proposals and reports containing the results of application of the Testing Procedures to the Prototypes to Buyer together with the Prototypes produced. Buyer will work closely with Diamond to ascertain and remedy any potential manufacturing or testing problems as early as possible. If Diamond encounters manufacturing problems related to the Specifications, Diamond will notify Buyer within five (5) days. Buyer will review the problems with Diamond and Buyer will be responsible for the costs incurred by Diamond to correct Specification design problems. The price will be appropriately adjusted in the applicable Change Notice to account for any increases or decreases in costs to Diamond resulting from any such Specifications changes.
- t) **Project Variations.** The scope, structure, and fees are based on Diamond's understanding of the project requirements at the point an SOW is signed. If project requirements or assumptions change during project execution, Diamond will submit to Buyer a written recommendation for project changes and associated cost changes in the form of a variation order request (a "Variation Order Request"). Diamond will not proceed with a Variation Order Request before receiving the Buyer's written approval of such Variation Order Request. Buyer acknowledges and agrees that Diamond is not liable for any damages to

Buyer caused by Buyer's failure to timely consent to a Variation Order Request.

- u) **Entire Agreement.** The parties agree that this Agreement, together with the terms in Diamond's quotation, constitutes the entire agreement between them and that any additional or different terms in any purchase order or other written communication will have no legal effect unless specifically agreed to in writing by both parties. Any additional or different terms and any pre- printed terms in any Buyer purchase order or other written communication will have no legal effect unless specifically agreed and accepted in writing by Diamond. In the event of any inconsistencies between Diamond's quotation and this Agreement, this Agreement shall prevail.