



APACHE PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS.

- a) "Agreement" means this Purchase Order Terms and Conditions;
- b) "Apache" means Apache Corporation, and its parent, subsidiary and affiliated companies;
- c) "Apache Group" means Apache, and its parent, subsidiary and affiliated companies, and each and all of their respective officers, directors, employees, agents, representatives, invitees, co-lessees, co-owners, partners, joint venturers, suppliers, consultants, contractors (other than Supplier) and their subcontractors of any tier, and the successors, spouses, relatives, dependents, heirs and estates of any of the foregoing;
- d) "Claims" means any claims, demands, complaints, losses, liens, fines, penalties, citations, damages, cause of action, suits, judgments, orders, expenses, or costs, of whatsoever nature, including, without limitation, court costs, reasonable attorneys' fees, and expert witness fees;
- e) "Delivery Date" means the date stated in the Order on which the Goods are to be delivered;
- f) "Delivery Site" means the point described in the Order at which delivery of the Goods is to be made;
- g) "Force Majeure Event" means an event or occurrence, or the continuation or consequences of such event or occurrence, that is beyond the control of the Party affected, or another member of its Group, that reasonably precludes performance of such Party's obligations under this Contract, and that such Party or members of its Group could not reasonably have been prevented, anticipated, or provided against; provided that, only one or more of the following categories of events shall be considered a Force Majeure Event: (a) acts of God (excluding bad weather events, unless otherwise included in this definition of "Force Majeure Event," (b) compliance with any oral or written order, directive, decree, or moratorium of any government, governmental agency, or instrumentality with competent power and jurisdiction, (c) an act or inaction by any government, governmental agency, or instrumentality with competent power and jurisdiction, (d) explosion, earthquake, fire, flood, effects of a named storm, rogue wave, or other natural physical disaster, or shipping, aviation, or other manmade disasters, (e) acts of war or a public enemy (whether war is formally declared or not), piracy, seizure of a vessel, or kidnapping.
- h) "Goods" means the goods, equipment, or services described in the Order to be delivered to Apache by Supplier;
- i) "Laws" means all laws, codes, rules, ordinances, statutes, regulations, permits, licenses, orders and directions of any governmental, regulatory or administrative body (whether federal, state, municipal, foreign or otherwise) which are now or may, in the future, become applicable to Supplier or the Work;



- j) "MSC" means a Master Services Contract executed by and between Apache and Supplier;
- k) "Order" means an agreement, purchase order or other request from Apache to Supplier to perform Work, setting forth the descriptions, quantities, prices, Specifications, Delivery Sites and other similar terms specific to a particular request for Work and includes this Agreement and all appendices and attachments thereto;
- l) "Party" or "Parties" means, individually, Apache or Supplier, or, collectively, Apache and Supplier;
- m) "Specifications" means specifications and arrangements set forth in an Order; or in a Request for Quotation document issued by Apache; or in a proposal or quotation submitted by the Supplier to Apache and agreed to by Apache;
- n) "Supplier" means the Party identified on the first page of any subsequent Order as the Party charged with providing the Goods to Apache;
- o) "Supplier Group" means Supplier, and its parent, subsidiary and affiliated companies, and each and all of their respective officers, directors, employees, agents, representatives, invitees, co-lessees, co-owners, partners, joint venturers, suppliers, consultants, contractors and their subcontractors of any tier, and the successors, spouses, relatives, dependents, heirs and estates of any of the foregoing; and
- p) "Work" means the provision of Goods and the performance of related services.

2. APPLICATION. This Agreement applies only to Goods and all related services to be performed by Supplier at any location other than on Apache's premises. All other services not included as Goods provided by Supplier, and all services to be performed on Apache's premises, shall be governed by the MSC between Apache and Supplier.

3. ENTIRETY AND ACCEPTANCE OF ORDER:

- a) Unless specifically otherwise agreed by Apache and Supplier in writing, this Agreement and any Order issued thereunder, when accepted by Supplier, shall form the entire agreement between the Parties and shall supersede all prior agreements, understandings and negotiations with respect to the Work covered by such Order. No other terms shall apply unless agreed to in writing by Apache. Supplier may accept this Agreement and any Order issued thereunder in writing, and Supplier also accepts such Order by the commencement of the Work or shipment of any part of the Goods under such Order. Acceptance of any Order is limited to acceptance of the express terms contained in this Agreement, in the applicable Order, or incorporated by reference herein. To the extent that Supplier attempts to modify the agreement between the Parties by changing this Agreement or any Order or by sending any documents which purport to modify this Agreement or add additional or different terms or conditions, Apache objects to the inclusion of additional or different terms or any attempt by Supplier to vary in any degree the terms of such Order in Supplier's acceptance, and all such proposed modifications, additional or



different terms shall be deemed rejected. No amendments, changes or modifications to this Agreement or any to any Order shall be valid unless reduced to writing and signed by both Parties.

- b) In the event of a conflict between or among this Agreement and any other documents referenced in any Order, the conflict shall be resolved by assigning precedence to this Agreement and then to any referenced documents.
- c) Notwithstanding Paragraph 3(b) above, however, this Agreement or any Order may be issued to a Supplier that has executed a MSC with Apache, and in the event of any conflict between or among this Agreement and any such MSC, the conflict shall be resolved by assigning precedence to the MSC and then to this Agreement.

4. SPECIFICATIONS. Each article or class of Goods to be supplied under any Order shall be in strict accordance with all Specifications. Payment for any Goods under any Order shall not constitute acceptance or approval of such Goods by Apache. If Apache judges that the quality of the Goods is deficient, Apache may cancel the Order by returning the Goods at the Supplier's expense and debiting the Supplier's account with original purchase cost(s).

5. DELIVERY OF GOODS.

- a) Supplier shall deliver the Goods to the Delivery Site, on the Delivery Date or in accordance with a schedule of other delivery dates or lead times as Supplier and Apache may have otherwise expressly agreed in writing.
- b) Where a Delivery Date is stated on the Order, delivery by such date is regarded as of the essence of the contract. Failure on the part of Supplier to complete the Order by the Delivery Date will entitle Apache, without liability and in addition to any other rights and remedies provided by law, to any one or combination of the following remedies: i) terminate the Order by notice effective when received by Supplier; ii) reassign the Order to a new supplier and charge the Supplier with all incremental costs involved; and/or iii) assessment of liquidated damages in accordance with the terms of Section 17 hereunder.
- c) Goods delivered in error, Goods delivered contrary to the delivery schedule, rejected Goods or overages in excess of trade practice will be returned at Supplier's sole expense and risk. Supplier will be requested in advance to provide instructions for the return shipment, but if Supplier does not so provide instructions within a reasonable time after being requested, Apache will dispose of the Goods as it deems appropriate. In no event shall Apache be liable for any restocking or other charges for Goods returned to the Supplier.

6. PACKAGING. The Goods shall be packed to ensure safe and proper shipment of the Goods to Apache in an undamaged condition and Supplier shall be responsible for any loss or damage to the Goods which may arise from inadequate or inappropriate packaging. The Goods shall also be marked and packaged by Supplier in accordance with applicable Laws and/or industry standards and



Apache's labeling/marketing instructions and packaging Specifications. Supplier shall ensure that all Goods are shipped in accordance with all applicable Laws, including those relating to dangerous and hazardous goods and shall include all documentation required by law in this regard. All packing cases, bales and cartons, etc. in which Goods are shipped shall become without charge Apache's property on receipt unless otherwise stipulated.

7. TITLE AND RISK OF LOSS TO GOODS. Title and risk of loss or damage to the Goods shall pass to Apache upon satisfactory delivery and acceptance of the Goods at the Delivery Site.

8. PRICING.

- a) The prices payable by Apache for the Work shall be the prices stated in the Order. All dollar amounts referred to therein are in United States funds unless otherwise expressly stated. The prices stated in the Order shall be firm, not subject to increase, complete and shall include the following: i) packing, crating, labeling, storage and insurance of the Goods; ii) freight and delivery of the Goods to the Delivery Site, freight prepaid by Supplier; and iii) customs duties or tariffs and excise and sales taxes, where applicable.
- b) If the Supplier offers any discounts or sells goods or services of like kind and quantity during the term of the Order to any other customers at a lower price for the same or a lesser quantity than the purchase price in the Order, the purchase price under the Order shall be reduced to such lower price while such lower price remains in effect.
- c) If payment for Goods supplied hereunder is to be made on a basis that in any manner is related to Supplier's costs, Apache shall have the right, at all reasonable times during the audit period specified in Section 9.e, to audit Supplier's records. Supplier shall, during the term of said audit period, maintain all records related to the supply of such Goods to Apache and fully cooperate with Apache during the course of Apache's audit.

9. INVOICING, PAYMENT, AND AUDIT RIGHTS.

- a) Supplier will submit invoices for Goods delivered pursuant to this Agreement to the address specified in the Order.
- b) Invoices (single copy) shall be rendered to Apache for (i) Goods delivered under this Agreement; during the previous month. Each invoice shall fully describe the Goods delivered and shall state whether the billing is "Partial" or Final."
- c) The Order number shall appear on all invoices, packing lists and delivery tickets.
- d) All sales tax, custom duties and shipping charges, if applicable, shall be shown separately on each invoice.
- e) Apache shall pay Supplier within thirty (30) days after receipt of Supplier's invoice. If Supplier's invoice does not agree with the terms of the Order, Apache may change the invoice to conform to the Order and make payment accordingly. Supplier shall retain all pertinent books, payrolls,



and records relating to Work performed or Goods provided pursuant to this Agreement for a period of at least twenty (24) months after the end of the year in which an invoice for Work performed or Goods provided by Supplier was submitted to Apache for payment. Apache's representatives shall at all times during regular business hours have access to and the right to audit the books, payroll, and records maintained by Supplier relating to any of such Work or Goods. Upon Apache's request, Supplier shall also provide Apache's representatives with the expense reports and/or entertainment and gratuity logs related to Supplier's employees and representatives who deal or interface with Apache's employees and representatives. Supplier shall ensure that such records are maintained for a period of at least twenty (24) months following any such interaction between Supplier's employees and representatives and Apache's employees and representatives. Following the conclusion of any audit conducted hereunder, Apache may notify Supplier of Apache's exceptions and claims of discrepancies with regard to any matter discovered by such audit. If Supplier should fail to contest in writing any such exceptions and claims of discrepancies by Apache within ninety (90) days of Supplier's receipt thereof, such exceptions and claims shall be deemed to be correct and accepted by Supplier; and Supplier shall promptly remedy such exceptions and claims in the manner required.

- f) Due performance by Supplier of all of Supplier's obligations under the Order shall be a condition precedent to all payments by Apache under the Order.
- g) All claims for monies due or to become due from Apache to Supplier shall be subject to deduction or set-off by Apache by reason of any claim or counterclaim arising out of the Order or any other purchase order or transaction with Supplier.
- h) Neither payments made to Supplier, nor partial or complete use of the Goods by Apache shall constitute acceptance of any Work not in accordance with the Order.
- i) Apache shall be entitled to a discount for early payment if, and in the manner, so specified in the Order.
- j) Excluding obligations arising under audit rights, Apache shall have no obligation to pay, or otherwise compensate Supplier, for any invoice received from Supplier more than ninety (90) days after the completion of the delivery of the Goods.

10. TAXES AND CUSTOMS DUTIES. Subject to any federal, state or municipal taxing authority imposing on Apache the express duty to make payment of or withhold or deduct premiums, taxes, levies or charges, Supplier shall be responsible to pay when due any and all taxes, levies, charges, contributions and customs duties now or in the future levied or imposed in any way by any authority having jurisdiction to do so.

11. IMPORTS. For all Goods purchased directly from foreign countries for shipment into the United States, Supplier shall include four completed and signed copies of the applicable United States Customs and Border Patrol forms with the documentation accompanying the shipment. A copy of the relevant United States Customs and Border Patrol forms shall also be forwarded to Apache's Purchasing Department under separate cover. If Supplier manufactures or purchases any goods involved in an Order outside of the United States, it must ensure that it, its agent, or representative



is the "Importer of Record" for customs purposes. Apache shall not be liable for and Supplier shall indemnify Apache with respect to any special or dumping duties which may be levied by the United States Customs and Border Patrol or by the United States Treasury Department upon any imported goods acquired by Apache under an Order.

12. REPRESENTATIONS AND WARRANTIES.

a) Supplier represents and warrants that:

- i. all Goods provided under an Order: A) shall be new, unless otherwise designated; B) shall be free of defects in design, materials, or workmanship and will conform strictly and in all respects to the requirements of the Order, including, without limitation, the Specifications; C) shall conform to any statements made on the containers or labels or advertisements for such Goods; D) shall be adequately contained, packaged, marked and labeled; and E) shall be safe and appropriate for the purposes for which Goods of that kind are normally used;
- ii. if Supplier knows or has reason to know the particular purpose for which Apache intends to use the Goods, such Goods will be fit for such particular purpose;
- iii. Supplier is and shall be the legal and beneficial owner of the Goods at the time of delivery of the Goods to Apache and at the time title of the Goods passes to Apache;
- iv. the Goods shall be transferred to Apache free of all liens, security, interests, claims, charges, and encumbrances;
- v. the shipping and handling of designated products and/or hazardous materials (as defined by applicable Laws) will be made in accordance with the applicable governmental regulations in force at the time of shipment;
- vi. Supplier has the resources, skills and ability to manufacture and/or supply the Goods or perform the Work in accordance with an Order; and
- vii. Supplier will perform all Work in a good and workmanlike manner in accordance with the Order and industry standards.

b) Supplier agrees to replace or correct defects, including latent defects, of any Work not conforming to the foregoing warranty promptly, without expense to Apache, when notified of such nonconformity by Apache. In the event of failure of Supplier to correct defects in or replace nonconforming Work promptly to Apache's satisfaction, Apache, after reasonable notice to Supplier, may make such corrections or replace such Goods and charge Supplier for the cost incurred by Apache in doing so. This warranty shall be in effect for a period of eighteen (18) months, or such other time period as may be stipulated in the Order (the "Warranty Period"), after the Goods are placed in use or operation.



- c) The Warranty Period for the Goods shall be extended by a period equal to the sum of any periods during the Warranty Period during which the Goods cannot be used for the purpose for which they were intended by reason of a breach of the warranties above. Further, notwithstanding the expiration of any Warranty Period described in this Section, Supplier's warranty obligations shall extend to correcting any defects in Work of which Apache has given Supplier notice prior to the expiration of such Warranty Period and to latent defects discovered at any time thereafter.

13. INTELLECTUAL PROPERTY.

- a) Supplier hereby warrants that the Goods purchased hereunder and the sale, resale or use of them will not infringe any patent, copyright, trade-mark or any other intellectual property right of any person. Supplier shall pay the royalties and patent license fees required for the performance of the Order.
- b) SUPPLIER SHALL, AT ITS OWN EXPENSE, DEFEND ALL SUITS AND PROCEEDINGS INSTITUTED AGAINST ANY MEMBER OF THE APACHE GROUP AND INDEMNIFY ANY MEMBER OF THE APACHE GROUP AGAINST ANY AND ALL CLAIMS IF SUCH SUITS OR PROCEEDINGS ARE BASED ON ANY ALLEGATION, CLAIM, OR STATEMENT THAT ANY OF THE WORK, THE GOODS, OR RELATED DOCUMENTATION, PARTS, OR EQUIPMENT CONSTITUTE(S) AN INFRINGEMENT, WHETHER ACTUAL OR ALLEGED, OF ANY INTELLECTUAL PROPERTY RIGHT (INCLUDING PATENT, TRADEMARK, COPYRIGHT, OR INDUSTRIAL DESIGN) BY SUPPLIER OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE.
- c) If any of the Work or related documentation, parts, and/or equipment constitute an infringement of such intellectual property right and its use is enjoined, the Supplier shall, at its own expense, procure for Apache the right to continue using same, replace or modify same, so it becomes non-infringing and meets Apache's requirements, or pay Apache for loss of use of same, including any consequential damages or losses, which occur as a result of the alleged infringement of such intellectual property right by Supplier or anyone for whose acts it may be liable.

14. COMPLIANCE WITH LAWS, PERMITS AND LICENSES. Supplier shall be responsible for obtaining all necessary licenses, registrations and permits and for complying with all applicable Laws in performing the Work. Supplier shall, when requested, provide Apache with adequate evidence of compliance with this Section.

15. LIABILITY AND INDEMNITY.

- a) IN CONSIDERATION OF THIS AGREEMENT AND ANY SUBSEQUENT ORDER, SUPPLIER AGREES THAT, AS A CONDITION HEREOF, IT WILL RELEASE, INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS APACHE GROUP FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN ANY RELATED TO THIS AGREEMENT, ANY ORDER, OR THE GOODS FOR (i) THE INJURY, ILLNESS, OR DEATH OF ANY MEMBER OF THE SUPPLIER GROUP; (ii) THE LOSS, DAMAGE, OR DESTRUCTION



OF ANY PROPERTY, BOTH REAL AND PERSONAL, BELONGING TO ANY MEMBER OF THE SUPPLIER GROUP OR THE APACHE GROUP; (iii) THE BREACH BY ANY MEMBER OF THE SUPPLIER GROUP OF ANY REPRESENTATION OR WARRANTY; OR (iv) THE BREACH OF ANY MEMBER OF THE SUPPLIER GROUP TO COMPLY WITH THE CONFIDENTIALITY PROVISIONS CONTAINED IN THIS AGREEMENT OR IN ANY ORDER; ALL WITHOUT REGARD TO WHETHER ANY SUCH CLAIM IS CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT; ACTIVE OR PASSIVE), STRICT LIABILITY, STATUTORY LIABILITY, CONTRACTUAL LIABILITY, THE UNSEAWORTHINESS OF ANY VESSEL, OR OTHER FAULT (EXCLUDING ONLY THE GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT) OF ANY MEMBER OF THE APACHE GROUP OR BY ANY DEFECT OR PRE-EXISTING CONDITION (WHETHER KNOWN OR UNKNOWN; PATENT, LATENT, OR OTHERWISE).

- b) Except for indemnity and defense obligations owed under Section 13 , neither Party shall be liable in an action initiated by one against the other for special, indirect, consequential, exemplary or punitive damages resulting from or arising out of this Agreement or any Order, including, without limitation, loss of profit or business interruptions, however same may be caused. The waiver of damages contained in this paragraph shall survive any termination of this Agreement or any Order.

16. INSURANCE.

- a) In the event that all or any portion of the Work covered by any Order will be performed or delivered on Apache's premises, Supplier shall carry, at all times during the term of any such Order and at its own expense and with deductibles for its own account, with insurance providers reasonably satisfactory to Apache and authorized to do business in the state or states or offshore areas in which any Work is to be performed or rendered under such Order, the following minimum insurance coverages:
 - i. To the extent that any Work is to be performed or delivered exclusively onshore:
 - A. Workers' Compensation and Employers' Liability Insurance, in accordance with all applicable state and Federal laws and endorsed specifically to include coverage for Employers' Liability, including Occupational Disease, subject to a limit of liability of not less than \$1,000,000 any one accident;
 - B. Commercial General Liability Insurance with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 any occurrence. Such insurance shall include coverage for (1) Blanket Contractual Liability, insuring the indemnity agreements contained in this Agreement; (2) Products/Completed Operations Liability; and (3) Sudden and accidental pollution liability;
 - C. Automobile Liability Insurance with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 any one occurrence. Such coverage shall include owned, hired and non-owned vehicles.



- ii. To the extent that any Work is to be performed or delivered offshore, or if any member of the Supplier Group uses or expects to use any waterborne vessel in connection with the performance or delivery of the Work or any part thereof:
 - A. Workers' Compensation and Employers' Liability Insurance, in accordance with all applicable state, Federal, and Maritime laws endorsed specifically to include the following:
 - (1) Coverage for the Longshoremen's and Harbor Worker's Act, and including its extension by the Outer Continental Shelf Lands Act, the Jones Act and the Death on the High Seas Act;
 - (2) Coverage for Masters and members of the crews of vessels (on a Voluntary Compensation Basis) with limits of liability not less than \$1,000,000 for injury to or death of any one employee and not less than \$5,000,000 for injury to or death of more than one employee resulting from any one accident. Coverage shall also include transportation, wages, maintenance, and cure;
 - (3) Territorial extension to include, at a minimum, the area of the Gulf of Mexico or other navigable waterways where the Work is to be performed;
 - (4) "In rem" endorsement, stating that an action "in rem" shall be treated as a claim against the insured "in personam";
 - (5) "Borrowed Servant" endorsement, stating that a claim brought against the Apache Group for compensation as a "borrowed servant" by an employee of Supplier or any other member of Supplier Group will be treated as a claim against Supplier.
 - B. Commercial General Liability Insurance with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 any occurrence. Such insurance shall include the following: (1) Blanket Contractual Liability coverage insuring the indemnity agreements contained in this Agreement or in any Order; (2) Products/Completed Operations Liability coverage; (3) Sudden and accidental pollution liability; (4) Territorial extension to include, at a minimum, the area of the Gulf of Mexico or other navigable waterways where the Work is to be performed; (5) "In rem" endorsement stating that an action "in rem" shall be treated as a claim against the insured "in personam"; and (7) Removal of the "Watercraft" exclusion.
 - C. Hull and Machinery Insurance, covering each vessel owned or bareboat chartered by Supplier in connection with its performance under this Agreement or any Order, to the actual value of each vessel and its equipment.
 - D. Standard Protection and Indemnity Insurance, at least equal to the value of each vessel owned or chartered (including Towers Liability, where applicable), with a limit of liability not less than \$5,000,000 per occurrence. Such coverage shall include coverage for the crews.



- E. Excess Liability Insurance providing limits in addition to and in excess of the liability coverages required in Paragraphs 16(a)(ii)(A) through (D) above, with a combined single limit of liability for bodily injury and property damage of not less than \$5,000,000 any one occurrence.
 - F. Aircraft Liability Insurance for any operation requiring the use of aircraft, including helicopters, with a combined single limit of liability for bodily injury (including passengers) and property damage in an amount not less than \$10,000,000 any occurrence. This insurance shall cover all owned and non-owned aircraft, including helicopters, used by Supplier in connection with the performance of the Work under this Agreement or any Order and shall not have a provision limiting coverage limits on a "per seat" or "per passenger" basis.
- b) It is expressly understood and agreed that the coverages required herein represent Supplier's minimum requirements and are not to be construed to fund or limit any indemnity obligations of Supplier that are undertaken by Supplier in this Agreement or in any Order. Supplier's insurance policies shall be primary to and shall receive no contribution from any insurance policies maintained by Apache Group.
 - c) All insurance policies of Supplier, including without limitation those required herein, shall expressly waive subrogation as to Apache Group. Each such policy, other than workers' compensation policies, shall include Apache Group as additional insureds for obligations undertaken and liabilities assumed by Supplier under this Agreement or in any Order. A portion of the payment made by Apache to Supplier for the Work is deemed to include compensation to Supplier for any costs Supplier may incur as a result of so including Apache Group as additional insureds.

17. LIQUIDATED DAMAGES. If Supplier fails to fulfill its obligations under an Order, Supplier may be liable to pay Apache liquidated damages if, and in the manner, so stipulated in the Order, which liquidated damages shall not be a penalty. Apache may, without prejudice to any other method of recovery, deduct the amount of such damages from any amounts due to Supplier. Payment or deduction of liquidated damages shall not relieve Supplier from its obligations to deliver the Goods or from any of its other obligations and liabilities under this Agreement and the Order.

18. TERMINATION AND SUSPENSION.

- a) Termination for cause: Supplier's failure to comply with any of this Agreement or any Order or failure to complete an Order with promptness and diligence, or failure to deliver the Goods within the time specified (or any extension thereof), or Supplier's being involved in any bankruptcy or insolvency proceedings shall constitute default on the part of Supplier. If Supplier is in default, Apache may issue a notice of termination to Supplier stating that the Order will be terminated in whole or in part upon expiration of a five (5) day period from the date of issuance of the notice. If Supplier fails to remedy such default within such five (5) day period, the Order shall terminate on the date and to the extent set forth in the notice. In such event, Apache may procure the Goods from other sources and Supplier shall be liable to Apache for any excess costs



or losses occasioned thereby, and Apache shall be entitled to assert all other remedies against Supplier that it has under the Order (including liquidated damages, if applicable) or at law.

- b) Termination for convenience. Apache may terminate an Order, in whole or in part, at any time without cause prior to its completion by sending Supplier written notice of such termination. Supplier shall, unless otherwise directed, immediately discontinue all Work in progress and immediately cancel all orders or subcontracts given or made pursuant to the Order. Exercise by Apache of the rights of cancellation reserved in this paragraph shall not give rise to liability on the part of Apache except as specified in this paragraph and shall not have the effect of waiving damages Apache may otherwise be entitled to. Apache shall pay Supplier's reasonable costs actually incurred as a direct result of such termination, provided that these costs do not exceed the limits for cancellation costs, if any, stipulated in the Order and provided further that Supplier shall have an obligation to take reasonable steps to mitigate any losses incurred as a result of such termination. Apache shall not be liable to any member of Supplier Group for anticipated profits based upon Work not yet performed.
- c) Suspension. Apache may suspend performance of an Order, in whole or in part, at any time by written notice to Supplier. Upon further notice by Apache to Supplier as to cessation of the suspension, Supplier shall promptly resume performance of the Order to the extent requested by Apache. The Delivery Date shall be extended by a period equal to the period of suspension.
- d) Effect of Termination. Termination of an Order shall not relieve any party of its liability arising from or incident to Work performed under the Order, or breach of any of the terms hereof, prior to the effective date of the termination of the Order.
- e) Provisions surviving termination: The provisions of Sections 12, 13, 15, 17, 19, and 24 shall survive any termination of this Agreement or any Order.

19. CONFIDENTIAL INFORMATION

- a) Supplier and Supplier Group shall consider all information furnished by Apache, or prepared for Apache under any Order, in any form whatsoever, to be confidential and shall not disclose any such information to any person, or use such information itself for any purpose other than performing the Work. Upon termination this Agreement or any Order, the Supplier will, upon request, destroy or deliver to Apache all confidential information and other reports, summaries or information obtained, developed or derived from the confidential information as a result of such Order.
- b) Supplier shall not advertise or publish the fact that Apache has contracted for Work from Supplier, nor shall any information relating to this Agreement or any Order be disclosed without Apache's prior written consent.

20. ELECTRONIC TRANSMISSIONS. Apache, at its discretion, may initiate any Order with Supplier by electronic transmission(s). Upon receipt of such electronic transmission from Apache, Supplier shall



furnish or cause to be furnished (i) an acknowledgement of receipt, indicating and conclusively demonstrating that the Order transmission and requisite data necessary to complete the Order have been received, or (ii) a rejection if the Order transmission, but not the requisite data necessary to complete the Order, has been received. Supplier's acknowledgement of receipt does not, by itself, mean acceptance of the Order; however, Supplier shall indicate acceptance of the electronically transmitted Order by transmitting to Apache affirmative acceptance of the Order. Any and all such electronic transmissions shall be deemed by the Parties to be the same as signed, written communications for all purposes of (a) this Agreement; (b) any Order; (c) any contract applicable to this Agreement or any Order; and (d) all applications of law, including but not limited to any applicable Statute of Frauds. The Parties agree not to raise or assert any applicable Statute of Frauds defense to the validity or enforceability of electronic transmissions properly made pursuant to this Agreement.

- 21. FORCE MAJEURE.** Neither Party shall be responsible for any failure to comply with any of the terms of this Agreement or any Order for so long as a Force Majeure Event occurs and is continuing for greater than fifteen (15) days. In such event, the claiming Party must provide written notice to the other Party. If the Force Majeure Event continues for more than fifteen (15) days after such written notice is sent, the other Party may terminate this Contract. If Supplier claims the occurrence of a Force Majeure Event hereunder, Apache, at its sole option, shall either terminate the Order or authorize Supplier to deliver the Goods with such adjustments as are required by the existence of the Force Majeure Event and are agreed upon by both Parties. A Party experiencing a Force Majeure Event shall take all reasonable measures to remedy the event with reasonable dispatch and to mitigate the effects of such event upon its timely performance of its obligations under any applicable Order; provided, however, that the settlement of strikes, lockouts or other labor disturbances shall be wholly within the discretion of the Party involved.
- 22. ASSIGNMENT.** Supplier shall not assign this Agreement or any Order in whole or in part or otherwise delegate any performance of this Agreement or any Order (collectively, "Assignment") without Apache's prior written consent and Apache's approval of the assignee, which may be withheld in Apache's sole discretion. Neither the assignment by Supplier, nor the granting by Apache of any approval or consent to any Assignment shall relieve Supplier of any of its liabilities or obligations under this Agreement or any Order.
- 23. NOTICES.** The address of notice for the Parties hereto shall be as provided for on the first page of the Order. A party may change its address for notice by ten (10) days' advance written notice to the other Party of its new address. All notices served hereunder shall be in writing, delivered by hand, fax or mailed by registered or certified first class mail. The notice shall be deemed to have been given and received: (i) if delivered, on the day it was delivered, excluding Saturdays, Sundays and statutory holidays; (ii) if faxed, on the date it was transmitted; or (iii) if mailed, on the day received.
- 24. GOVERNING LAW AND JURISDICTION.** The Parties recognize that Work performed under any Order may be performed in multiple and various jurisdictions. However, the Parties generally prefer and agree that, to the extent possible, this Contract shall be construed and enforced consistently in



accordance with its express terms and that the Parties' first preference of the law to be applied shall be given effect if at all possible.

- a) This Agreement and any Order shall be construed and enforced in accordance with the general maritime law of the United States of America whenever any performance is contemplated in, on or above navigable waters, whether onshore or offshore.
- b) In the event that general maritime law as specified in subparagraph 24(a) above is held inapplicable, the laws of the State of Texas shall apply, without regard to any conflicts of law provisions which could otherwise require the application of the laws of any other jurisdiction.
- c) If it should be judicially determined that neither general maritime law nor the laws of the State of Texas may be legally applied to the interpretation or enforcement of this Agreement or to any Order or to any Work performed thereunder, then the laws of the jurisdiction in which the Work was performed shall apply.
- d) Each Party hereby agrees that venue for any suit or causes of action brought under this Agreement or any Order shall be in Harris County, Texas, and each Party hereby submits to the jurisdiction of the state and federal courts located in Harris County, Texas for such purposes.
- e) Notwithstanding any jurisdiction's law which may apply pursuant to this Paragraph 24, no law, theory or public policy shall be given effect which would undermine, diminish or reduce the effectiveness of the limitation and waiver of consequential and other damages set forth in Paragraph 15(b) above, it being the express intent, understanding and agreement of the Parties that such limitation and waiver is to be given its fullest effect, notwithstanding the negligence (whether sole, joint or concurrent; active or passive), gross negligence, willful misconduct, strict liability, statutory liability, contractual liability or other legal fault of any party or the existence of any pre-existing condition or defect (whether patent, latent or otherwise).

25. WAIVER. Apache's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege, or Apache's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

26. INDEPENDENT CONTRACTOR. Apache shall have no power or authority to direct, supervise, or control employees of Supplier by virtue of this Agreement or any Order, but Supplier shall, in the exercise of its independent employment and judgment, select the means and methods of performance of such Work, being responsible to Apache for the results obtained.

27. SEVERABILITY. If any term of this Agreement or in any Order is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement or such Order.

28. PUBLICITY. Without the prior express written consent of Apache, Supplier and Supplier Group shall not:

- a. issue any press release or other public announcement (whether written or oral) related to this Agreement or any Order; or



- b. use Apache's name, logos, trademarks or any other identifying information of Apache on or in any Supplier or Supplier Group websites, advertising or promotional materials, or any other means of communication with the public or any of Supplier's other customers or potential customers; or
- c. take any photographs, video or other recordings of Apache property or Apache operations.

All requests by Supplier for Apache's consent, as required by this Section 28, must be directed to Apache's Corporate Supply organization.

--- End of Purchase Order Terms and Conditions ---