



# Standard Terms & Conditions of Purchase

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Effective May 15, 2023



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**CARRIER CORPORATION (“Buyer”)<sup>1</sup>**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE**

These STANDARD TERMS & CONDITIONS OF PURCHASE (“**Terms**”) apply when referenced by Buyer’s ordering document(s) which may include transaction documents, purchase orders, releases, statements of work, electronically transmitted (“**EDI**”) orders or other documentation (individually and collectively an “**Order**”) and, where no Order exists, when goods or services are received by Buyer and paid for through the Buyer’s electronic payment system. Buyer may change these Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on <https://www.corporate.carrier.com/suppliers/> but shall only apply to Orders submitted to Seller after posting. “**Seller**” or “**Supplier**” of the goods or services subject to an Order is responsible for periodically visiting this site to review any changes to the Terms. By furnishing any goods or partially performing services subject to an Order to Buyer, Seller acknowledges and agrees to be bound by these Terms and any future changes to them.

**1. CONTRACT OF PURCHASE**

Seller agrees it shall sell, and Buyer agrees to purchase from Seller, the goods and/or services described in the Order. Seller shall acknowledge receipt and acceptance of each Order; however, if for any reason Seller shall fail to accept or acknowledge an Order within two (2) business days of issuance by Buyer the Order shall be deemed accepted. Additionally, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of the Order including taking any action to fulfill the Order shall constitute unqualified acceptance by Seller of the Order and all its terms and conditions, including these Terms. Seller shall not submit additional or different terms and conditions, and Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time. If the Seller and Buyer have executed a prior written agreement and such prior agreement (i) has not expired or been terminated and (ii) does not expressly state that these Terms shall not apply, all the provisions of such prior agreement will remain in full force and effect and to the extent the provisions of such prior agreement are not in conflict the Terms, the Terms shall supplement the prior agreement and together shall constitute the Supply Agreement (“**Supply Agreement**”). If there is no prior agreement, or such prior agreement has expired or has been terminated, the terms of the Order, including these Terms, shall constitute the complete and exclusive statement of the terms and conditions of the contract between Buyer and Seller and may be modified only by a written agreement executed by the authorized representatives of both parties (“**Order Agreement**”). The term “**Agreement**” shall refer to either the existence of a Supply Agreement or Order Agreement as applicable. Seller will be deemed to acknowledge and agree to the foregoing, unless Seller notifies Buyer otherwise in writing within seven (7) calendar days of the receipt of the Order. Any reference by Buyer to Seller’s proposal is solely for the purpose of incorporating the description and specifications of the goods or services contained therein, to the extent that such description and specifications do not conflict with the description and specifications on the cover page of the Order.

**2. PRICE**

The price for the goods and/or services shall be the price as shown on the Order or as set forth in the Supply Agreement (the “**Price**”) which shall not be increased unless expressly permitted by the Agreement. The Price includes: (a) all costs of packaging and delivery to the delivery point including all freight, duties, tariffs and

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<sup>1</sup> Each of Carrier Corporation and any of its parent companies, affiliates or subsidiaries shall be entitled to exercise all rights and/or benefits afforded to the “Buyer” pursuant to these Standard Terms and Conditions of Purchase. In Mexico Carrier Corporation Companies shall mean: Carrier México, S.A. de C.V.; UTEC Controls S. de R.L. de C.V.; F&S México, S. De R.L. de C.V.; Kidde Matamoros, S. De R.L. de C.V.; Hasta-Mex, S.A. de C.V.; Carrier Transicold de México, S. de R.L. de C.V. y Onity Industrial, S.A. de C.V.



taxes (including sales, excise and withholding taxes) consistent with the applicable Incoterms (b) any commissions to selling agents; and (c) other incidental charges, whether or not such charges are itemized separately on invoices to Buyer. The Price excludes any governmentally imposed value added tax (“VAT”) which must be shown separately on Seller’s invoice for each shipment. To the extent goods or services are identified as exempt from sales taxes, the tax identification number and/or other exemption information shall be provided by Seller. The Seller warrants that the Price is not less favorable than that currently extended to any other buyer for the same or like goods or services in equal or lesser quantities. No extra charges or surcharges of any kind will be allowed unless specifically agreed by Buyer in writing.

### 3. PAYMENT

Unless otherwise agreed in writing or required by law, invoices will be processed ninety (90) days from the invoice posting date on the next scheduled payment run if the invoice is accurate and all subject goods and/or services have been received. Payment runs occur at least once per month. Seller shall issue invoices in accordance with the Buyer’s instructions, which may include designated system, format, and process. Seller is responsible for any costs associated with using the designated system. Where Buyer requires use of a designated system, no invoices will be paid or deemed received until submitted in the designated system. All invoices must contain the following information: purchase order number, item number, description of items or services, sizes, quantities, unit prices. Payments of invoices shall be subject to adjustment for shortages, defects, non-conformities, credits and other failures of Seller to meet the requirements of the order or prior orders. Buyer may make payment electronically or by check, provided such check is honored upon presentment by the “Payor Bank.” In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and/or Seller’s Affiliates to Buyer and/or Buyer’s Affiliates. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or Buyer’s Affiliates from Seller or Seller’s Affiliates. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer. Buyer shall also be entitled to invoice Seller for any amounts owed Buyer hereunder (e.g. reimbursement) and such invoices shall be paid by Seller within thirty (30) days of receipt. Buyer shall not be obligated to pay for any goods or services if the invoice for such goods or services is received more than twelve (12) months after the receipt of the goods or performance of the services.

### 4. PACKAGING & DELIVERY

Seller will properly pack, mark, and ship all goods according to the requirements of Buyer, the involved carriers, and the country of destination. If there are no instructions, goods will be packaged and shipped in a manner sufficient to ensure that the goods are delivered in undamaged condition. The goods shall be delivered assembled and ready for use to the address or location specified in the Order (“**Carrier Location**”). Unless otherwise specified in the Order or Agreement, Incoterms© 2020 DPU to Buyer sites will apply to all shipments. If Buyer has agreed to pay for transportation in the Agreement the Seller, when directed by Carrier, shall utilize Carrier’s Transportation Management System (“**TMS**”) for all domestic and international shipments. If the TMS is not utilized Seller shall pay Buyer the difference in shipping cost between the applicable TMS’ shipping rates and Seller’s rates. If the Seller is paying for transportation the Seller shall have their own TMS in place to assure the most efficient modes of transportation are utilized and to provide Carrier with end-to-end visibility. Delivery of goods or performance of any required services is not complete until goods or services have been actually received and accepted by Buyer. The obligation by Seller to meet the delivery or performance date is material and TIME IS OF THE ESSENCE with respect to Seller’s obligation to deliver goods and performance of the services. Buyer’s acceptance of goods or services not timely delivered or performed is not a waiver of its right to damages. Seller bears the risk to ensure it possesses the required raw materials and components necessary to meet its delivery obligations. If an expedited shipping method is required to meet the delivery dates in the Order (or such earlier or later delivery dates otherwise agreed to by Seller and Buyer), Seller shall utilize such method and pay all premium freight costs. If Seller’s failure to timely deliver conforming goods or services disrupts Buyer’s production schedule, Seller shall be liable for all damages, including: (i) premium paid to secure alternate goods or services from another supplier (if feasible); (ii) all premium or expedited freight costs; and (iii) any additional costs or lost profits resulting from production down time or project delays.



## 5. FORCE MAJEURE

Neither party shall be deemed to be in breach of this Agreement to the extent any failure or delay in performance results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of such party's control and not occasioned by such party's fault or negligence (each an "FM Event"); provided that upon the occurrence of each FM Event, the affected party shall give notice thereof to the other as soon as possible specifying each occurrence of an FM Event, the period of delay it reasonably expects to incur, and the steps it is/ it anticipates taking to mitigate each FM Event. If a failure or delay in performance is caused by an event affecting any of Seller's suppliers, such failure or delay shall not be excused by application of this section unless such event is an "FM Event" as defined above and the good or service to be provided by such supplier is not obtainable by Seller from other sources in a timely manner. For the avoidance of doubt, (i) change in cost or availability of materials or components based on market conditions or Seller's actions, (ii) financial difficulties or the inability of either party to make a profit or avoid a financial loss, (iii) changes in prices or market conditions, including the general lack of availability of materials, premiums, labor, or energy, or (iv) the financial inability of a party to meet its obligations hereunder shall not constitute an FM Event. During the delay or failure to perform by Seller, Buyer shall not be prevented by any clause set forth in this Agreement from taking any steps necessary to mitigate its damages and avoid manufacturing disruption including, but not limited to (a) purchasing goods from other sources and reducing its schedules to Seller by such quantities, without liability to Buyer; (b) requiring Seller to deliver to Buyer at Seller's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; or (c) having Seller provide Products from other sources in quantities and at a time requested by Buyer and at the Price set forth in the Order. If an FM Event results in a delay of more than ten (10) days, Buyer shall have the option to terminate all Releases to the extent affected by the Event(s). Such termination shall discharge all obligations and liabilities of the parties under such Releases with respect to the purchase and sale of the affected good(s) and or services.

## 6. WARRANTY

Based upon what is purchased from Seller by Buyer, one or more of the following warranties shall apply:

**Goods.** Seller warrants to Buyer and its affiliates, successors, assigns, customers and users of the goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new upon receipt by Buyer; (iii) free from defects in material and workmanship; (iv) free from defects in design, except to the extent the goods are designed by Buyer; (v) in compliance with all applicable specifications, samples, standards, drawings, and performance requirements; (vi) to the extent that Buyer relies on Seller to specify the goods or services, fit for their intended purposes; (vii) free from liens and encumbrances on title; and (viii) free from infringement of third party intellectual property ("**Goods Warranty**"). Delivery, inspection, test, acceptance or use of, or payment for, the goods furnished hereunder shall not affect Seller's obligation under this Goods Warranty, and such Goods Warranty shall survive delivery, inspection, test, acceptance, payment, and use for a period of sixty (60) months beginning on the later of the date of installation of Buyer's product containing the goods, or the date goods are delivered as a warranty repair or replacement. If nonconformities are identified, Seller agrees, at Buyer's option, to either (a) reimburse Buyer for the full cost of all nonconforming or defective items and any cost incurred by Buyer in correcting or replacing such items or (b) to make the repair or provide the replacement. In the event Buyer elects (b), Seller agrees, at Seller's sole cost and expense, to correct defects in or replace any goods not conforming to the foregoing warranty Immediately, but in no event, will such repair or replacement be completed more than ten (10) days from notice of such nonconformity by Buyer. In the event that Seller fails to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Seller, shall then have the right to correct or replace such goods and charge Seller for the cost incurred by Buyer in doing so. If defects are identified after shipment to Buyer's customer, goods may be scrapped, retained, or held for Seller's disposition, at the discretion of Buyer or Buyer's customer. Seller shall promptly reimburse Buyer for all expenses and damages incurred by Buyer and/or Buyer's customer regardless of the nature of such expenses or damages as a result of or relating to Seller's failure to comply with (i)–(viii) above, including but not limited to repair, replacement, rework, removal and reinstallation costs, shipping costs, damages and/or accommodation payments, production delays, payment withholds, field service costs, recall costs, administrative costs and costs



of filing and complying with legal and regulatory requirements, including but not limited to those of agencies such as the Consumer Product Safety Commission.

**Software/Firmware.** To the extent the goods constitute hardware including compiled and embedded versions of software needed for the goods to function (individually or collectively, "**Firmware**") or goods constitute, include or incorporate software owned or licensed by Seller (individually or collectively, "**Software**"), Seller hereby authorizes Buyer to sell, resell and/or license the Software to Buyer's customers and/or their end users ("**End Users**"). Seller warrants to Buyer and to End Users that all Software and/or Firmware sold to Buyer either as a good or incorporated into a good or service shall perform in conformance with the specifications and other documentation provided by Seller describing the functionality of the respective Software (collectively, the "**Software Specifications**") for a period of sixty (60) months after installation by the End User (the "**Software Warranty**" and the "**Software Warranty Period**", respectively). If the Software has a defect or fails to conform to the Software Warranty during the Software Warranty Period, at Buyer's option, Seller shall promptly repair or replace the Software or provide a full refund of the license and other fees paid with respect to the Software. If Seller fails or is unable to promptly repair or replace the Software, Buyer or End User, as applicable, shall be entitled to a full refund of the license and other fees paid with respect to the Software. At Buyer's option, Seller will refund the Buyer and Buyer will assume any obligation to refund the End Users.

**Services.** Seller warrants to Buyer that all Services provided where applicable: (i) have been and will be performed in a professional and workmanlike manner and in accordance with current, sound and highest generally accepted industry standards and practices by appropriately licensed, trained, supervised and personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable specifications, performance requirements and other requirements contained in the Order (the "**Service Warranty**"). Seller agrees that should any of the services be defectively performed by Seller, Seller will re-perform or correct such defective services at no additional charge. In the event of failure by Seller to correct defects in or replace nonconforming services promptly, Buyer, after reasonable notice to Seller, may make such correction or replace such services and charge Seller for the cost incurred by Buyer thereby. Notwithstanding any other provision, in addition to the foregoing, Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from the services not conforming to the Services Warranty. Seller warrants to Buyer that all documentation and certifications by Seller or Seller's subcontractors or business partners related to the services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications. Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing national, state, provincial or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

To the extent Seller has any obligation to Buyer or any of its affiliates under any of the foregoing warranties, Buyer shall be entitled to deduct, set off or offset any such amount from any amounts owed to Seller by Buyer or any of its affiliates.

## 7. QUALITY & AUTHENTICITY OF GOODS

All orders for goods (and associated services) are subject to the requirements contained in the Carrier Quality Manual ("**SQM**"), which is incorporated herein by reference. The SQM is located on the Buyer's website at:

<http://www.corporate.carrier.com/>

or

<https://www.corporate.carrier.com/suppliers/>





Seller acknowledges receipt, review and acceptance of the SQM. Buyer reserves the right at its discretion to revise or amend the SQM at any time, and Seller agrees that any such revised or amended SQM, as posted on the Buyer's website or otherwise made available to Seller, shall be binding on the Seller with respect to all future Orders. All goods sold by Seller to Buyer shall conform to Buyer's quality standards and requirements set forth in the SQM and any specifications, drawings, samples or other document upon which the order is based. Buyer, without prejudice to any other rights or remedies, including the right to inspect goods after delivery, shall have the right at all times to inspect and test the goods during manufacture or processing or while stored under Seller's control. Seller shall not make any changes during the term of the Agreement in the quality, in the location of manufacture, or in Seller's processes related to the goods without prior notification to and written acceptance of such changes by the Buyer.

Seller further represents and warrants that only new and Authentic materials are used in the goods sold to Buyer and that the goods contain no Counterfeit Parts.

**"Authentic"** means (a) genuine, (b) from the legitimate source claimed or implied by the marking and design of the goods, and (c) manufactured by, or by a third party at the request and to the standards set by, the manufacturer that has lawfully applied its name and trademark to such goods.

**"Counterfeit Part(s)"** means a part, component, module, or assembly whose origin, material, source of manufacture, or branding are misrepresented. This term includes, but is not limited to, (a) parts that have been marked/remarked in such a way that disguise or falsely represent the identity of the manufacturer, and/or (b) previously used parts pulled or reclaimed and provided as "new".

**"Unauthorized Distributor"** means a person, business, or firm that is not authorized by the original equipment manufacturer (**"Manufacturer"**) to sell or distribute Manufacturer's goods but which purports to sell, broker, and/or distribute Manufacturer's goods. Purchase of parts/components from Unauthorized Distributors is not permitted unless first approved in writing by Buyer.

No other material, part, or component other than a new and Authentic part is to be used unless approved in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase Authentic parts/components directly from the Manufacturer or through the Manufacturer's authorized distribution chain. Seller must make available to Buyer, at Buyer's request, documentation that authenticates traceability of all parts/components to the applicable Manufacturer.

## 8. TECHNOLOGY GOODS, SOFTWARE OR SERVICES

8.1 Support. Seller further agrees to provide Buyer and End Users with reasonable support services for Software and Firmware at no additional charge which shall, at a minimum, include (a) correction of all failures of the Software/Firmware to perform in accordance with the applicable Software Specifications including programming, servicing and repairs required to maintain the Software/Firmware so that it operates properly and in accordance with the Software Specifications, (b) telephone support during regular business hours, (c) online access to technical support bulletins, (d) providing all updates, modifications, bug fixes and releases that Seller provides customers generally at no additional charge, and (e) responding to Critical Issues (as defined below) within thirty (30) minutes of Buyer's request and initiating corrective work within two (2) hours thereafter, regardless of day of week or time of day. **"Critical Issues"** are substantial failures of the Software/Firmware, or failure of any Software/Firmware critical to the End User's operations. Seller shall initiate work on all other support issues within four (4) hours from receipt of a service request. In the event Seller fails to achieve the foregoing response times for either responding to or initiating correction, Seller shall issue to Buyer a credit in the amount of \$250.00 for each additional hour.

8.2 Availability of Cloud-Based Software. To the extent Seller provides cloud-based Software and/or Software services via the Internet or other network connectivity (**"Cloud Software"**), Seller will make the Cloud Software Available, as measured over the course of each calendar month, 99.5% of the time, as measured on a 24-hour-a-day basis, excluding unavailability as a result of the Exceptions described below (the **"Availability**



**Percentage**). **“Available”** means the Cloud Software is available for access and use by Buyer or End User, as applicable (the **“End User”**) over the Internet and operating in material accordance with the Software Specifications. In the event the Cloud Software is available between 98% and 99.5% of the time, Buyer or End User as applicable, shall be entitled to a credit in the amount of ten percent (10%) of the monthly fee for the Cloud Software due in the month the failure occurred. If the Cloud Software is not available at least 98% of the time, Buyer or End User as applicable, shall be entitled to a credit in the amount of forty percent (40%) of the monthly fee for the Cloud Software due in the month the failure occurred. In the event the Cloud Software is not available at least 70% of the time, Buyer or End User as applicable, shall be entitled to a credit in the amount of seventy percent (70%) of the monthly fee for the Cloud Software due in the month the failure occurred. For purposes of calculating the Availability Percentage, the following are **“Exceptions”** to the service level requirement, and the Cloud Software shall not be considered unavailable if any such inaccessibility is due to: (i) the acts or omissions by Buyer or End User, as applicable; (ii) Buyer or End User’s Internet connectivity; (iii) Internet traffic problems not under Seller’s reasonable control; (iv) Buyer or End User’s failure to meet minimum hardware and/or software requirements, if any; (v) Buyer or End User’s hardware, software, or other equipment; (vi) any hardware, software, service, or other equipment not provided by Seller and used by a Buyer or End User to access the Cloud Software or (vii) regularly scheduled maintenance for which Seller provides at least five (5) business days advance written notice.

8.3 **Security by Design.** Seller represents and warrants it has made commercially reasonable efforts consistent with industry standards to ensure that all Software and Firmware is designed free from material vulnerabilities (whether in proprietary software code or third party software code, including the applicable operational support system (**“OSS”**)) and a reasonable commercial security by design program has been established and maintained for all Software and Firmware, including when used in, or incorporated the goods, or Software/Firmware used in the installation, maintenance, configuration, or support of the goods (the **“Security Protocol”**). The Security Protocol will include a testing regime designed to model threats and detect security and design bugs, defects, and flaws through: (a) penetration testing (ethical hacking); (b) OSS scanning; (c) static code analysis and (d) all other testing and verification necessary to ensure adherence to industry standard **“Security by Design”** principles (collectively, a **“Security by Design Program”**). Seller further represents and warrants that it will reasonably assist with and participate in any similar Security by Design Program established by Buyer, including providing Buyer documentation regarding Seller’s compliance with these requirements reasonably requested by Buyer

8.4 **Vulnerability Notice and Remediation.** During the usable life of the goods (i.e., until the formal end-of-life of any Good) in commercial use, Seller shall monitor and address all Software and Firmware material threats and vulnerabilities by: (a) issuing necessary patches or updates; (b) providing prompt notice to Buyer of said threats and vulnerabilities, prior to any public disclosure, except where such notice would be impracticable; and (c) developing fixes, workarounds, and/or compensating security controls and documentation (**“Remedial Actions”**) to address any unmitigated material threats and vulnerabilities while Seller undertakes the process of issuing patches or updates, and providing Buyer notice of Remedial Actions as soon as reasonably practicable. Seller shall flow these requirements to its contractors, subcontractors and suppliers at any tier for the performance of this Agreement. If Seller fails to fully and timely comply with this Section 8, Buyer shall be entitled to the following remedies which shall be in addition to all other remedies available to Buyer (a) Buyer may, in its sole and absolute discretion, revoke the acceptance, reject, abandon, return or hold such goods at Seller’s expense and risk (**“Refused Goods”**), and (b) Buyer may cancel in whole or in part, i) any Order, ii) any other agreement, iii) any other obligation Buyer may have to purchase any or all goods from Seller, or iv) any combination of (i), (ii) and (iii) (collectively, **“Canceled goods”**), and (c) at Seller’s sole cost (including the cost for expediting, quality validation, losses related to adverse effects on Buyer’s business), Buyer may source replacements for any Refused goods and/or Canceled goods.

8.5 **Security For Buyer Information Stored By Seller.** Seller agrees to comply with the terms of **Attachment A, Security For Carrier Information** where Seller stores Carrier Information.

## 9. ACCESS TO FACILITIES, SYSTEMS OR CARRIER INFORMATION





Seller agrees to comply with the terms of **Attachment B, Access to Facilities or Systems** whenever Seller personnel will be granted access to (i) Facilities and/or (ii) Systems.

## **10. INDEMNIFICATION; DEFENSE OF CLAIMS**

SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER, BUYER'S CUSTOMERS, AFFILIATES, INSURERS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES AND AGENTS (TOGETHER, THE "**BUYER INDEMNITEES**") FROM AND AGAINST ANY AND ALL CLAIMS, ALLEGATIONS, SUITS, DEMANDS, PROCEEDINGS, JUDGMENTS, AWARDS, LOSSES, LIABILITIES, DAMAGES, PENALTIES, FINES, ASSESSMENTS, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES) OF ANY KIND OR NATURE (COLLECTIVELY, "**DAMAGES**"), RELATING TO, ARISING OUT OF, OR CAUSED BY SELLER'S PERFORMANCE HEREUNDER INCLUDING, BUT NOT LIMITED TO, BREACH OF WARRANTY, BREACH OF CONTRACT, FRAUD, NEGLIGENCE, WILLFUL MISCONDUCT, **OR USE IN PRODUCTS OF PERFLUOROALKYL AND/OR POLYFLUOROALKYL SUBSTANCES ("PFAS") INCLUDING ANY SUBSTANCES OR COMBINATIONS OF SUBSTANCES WHICH CAN DEGRADE INTO PFAS.**

SELLER WILL FURTHER INDEMNIFY, DEFEND, AND HOLD HARMLESS THE BUYER INDEMNITEES AS WELL AS ANY SUBLICENSEES, SUBCONTRACTORS, AND EACH SUBSEQUENT BUYER OR USER FROM AND AGAINST ANY DAMAGES ARISING FROM ANY ALLEGED INFRINGEMENT OR VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS OR LICENSE, **INCLUDING BUT NOT LIMITED TO ANY CLAIM ARISING FROM USE OF OPEN SOURCE SOFTWARE AND/OR STANDARD ESSENTIAL PATENTS**, RELATED TO THE MANUFACTURE, USE, SALE, OFFER FOR SALE, IMPORT, OR OTHER EXPLOITATION OF ANY GOODS DELIVERED OR SERVICES PERFORMED IN CONNECTION WITH ANY ORDER. IF ANY GOODS OR SERVICES, IN WHOLE OR PART, CONSTITUTE OR MAY CONSTITUTE INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR IF BUYER'S OR BUYER'S AFFILIATES' USE THEREOF IS OR MAY BE ENJOINED, SELLER, IN ADDITION TO ITS INDEMNIFICATION OBLIGATIONS, WILL PROMPTLY: (I) SECURE THE RIGHTS TO CONTINUE USING THE INFRINGING GOODS, OR (II) RE-PERFORM THE SERVICES OR REPLACE THE GOODS WITH COMPARABLE NON-INFRINGING GOODS, OR (III) MODIFY THE GOODS SO THAT THEY BECOME NON-INFRINGING WITHOUT LOSS OF MATERIAL FUNCTIONALITY AND WITHIN A TIME ACCEPTABLE TO BUYER, OR (IV) AT BUYER'S OPTION, ACCEPT RETURN OF THE GOODS AND REFUND OF THE PURCHASE PRICE. SELLER SHALL REIMBURSE BUYER FOR BUYER'S COSTS INCURRED IN OBTAINING ALL INTERNAL, EXTERNAL AND BUYER'S CUSTOMER APPROVALS, QUALIFICATIONS, CERTIFICATIONS, AND THE LIKE, NECESSARY FOR MAKING, USING, PROVIDING AND SELLING ALTERNATE NON-INFRINGING GOODS. UNLESS THE INFRINGEMENT IS OTHERWISE SUCCESSFULLY MITIGATED IN ACCORDANCE WITH CLAUSES (I) – (IV) OF THIS SECTION, SELLER SHALL REFUND TO BUYER THE PURCHASE PRICE OF ANY SUCH GOODS THAT BUYER IS PROHIBITED FROM PROVIDING, USING, SELLING, OFFERING FOR SALE, IMPORTING, EXPORTING, OR OTHERWISE EXPLOITING. BUYER SHALL ALSO BE ENTITLED TO DEDUCT OR OFFSET SUCH REFUND AMOUNT AGAINST ANY AMOUNTS OWED SELLER.

If directed by Buyer, Seller shall take upon itself the defense and/or settlement of all such claims, suits, actions or legal proceedings for which Seller is obligated to provide indemnification in accordance with this Section above, and the defense of any suit, suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments entered in such suit, suits or legal proceedings, and all attorneys' fees and other expenses. Seller agrees that in any instance where such claims in any way affect Buyer's interest under the order or otherwise, Seller shall not consummate any settlement without Buyer's prior written consent. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination or expiration of the order.

## **11. INSPECTION AND ACCEPTANCE.**

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This Section shall not apply to purchase of services only. Buyer may inspect all goods at any time, including during manufacture at the Seller's facility. Such inspection may at Buyer's option include confirmation of Seller's compliance with all requirements of the order. At no additional cost to Buyer, Seller will permit Buyer and/or its designees access to Seller's facilities at reasonable times and will provide all access and assistance reasonably necessary for such inspection and/or confirmation. All goods are subject to final inspection and acceptance at any time within ninety (90) days after delivery to Buyer. All services are subject to acceptance by Buyer within thirty (30) days after delivery to Buyer. Buyer, without prejudice to any other rights or remedies, shall have the right to reject defective goods and/or services and, at Seller's risk (notwithstanding the terms of delivery) and expense, return the same to Seller or dispose of the same according to Seller's instructions. Payment or transfer of title shall not constitute acceptance. Buyer may return or reject as applicable any non-conforming goods or services to Seller for reimbursement, credit, replacement or correction as Buyer may direct, or Buyer may correct and/or replace such goods or services at Seller's expense. If Seller fails to correct or replace non-conforming goods or services, per Buyer's direction, in a timely manner, Buyer may cancel the order as to all such goods or services, and in addition, may cancel the then remaining balance of the order. Any goods rejected by Buyer will be held by Buyer temporarily at Seller's risk and expense. Seller will reimburse Buyer for any packaging, handling and transportation costs Buyer incurs with respect to rejected goods. Buyer may revoke its acceptance of goods at any time, whether or not a substantial modification to the goods has been made, if Buyer finds a previously undiscovered defect in the goods which materially affects form, fit or function or substantially impairs the value of the goods to Buyer.

## **12. BUYER'S CHANGES**

Buyer shall have the right at any time prior to the delivery date of the goods or services to direct changes to, or to cause Seller to make changes in, drawings, specifications, descriptions, packaging, time and place of delivery, inspection/testing, scope, nature and duration of services, and/or method of transportation. Seller is required to promptly implement such changes. Within ten (10) days after receipt of a change notice from Buyer, Seller shall notify Buyer of its proposed adjustment, if any, for the requested change including a cost breakdown and substantiation for the adjustment, whether by way of increase or decrease, and the parties shall negotiate an equitable adjustment. Any adjustment may only include reasonable, direct costs that will necessarily be incurred as a direct result of the requested change. Any Order terms that incorporate flexibility for variations or modifications shall not be considered changes within the meaning of this section and shall not be subject to adjustment unless specifically stated in the Supply Agreement. If Seller fails to provide a proposed adjustment within ten (10) days of receipt of Buyer's change notice, Seller's claim for adjustment shall be deemed waived. Notwithstanding the foregoing, Seller may not charge Buyer any additional fee, and shall not be entitled to an adjustment in Price, to the extent Buyer's requested changes are to the delivery date and such new delivery date is no more than ninety (90) days after the originally scheduled delivery date.

## **13. CANCELLATION/TERMINATION**

In addition to its other rights hereunder, Buyer reserves the right to cancel an Order or any part thereof without further cost or liability if Seller breaches any of the provisions of the Agreement or Order, or if Seller becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or the relief of debtors. Buyer further reserves the right to terminate any Order or any part thereof for the sole convenience of the Buyer. If such termination right is invoked, all reasonable non-cancellable direct costs actually incurred by Seller up to the date of termination of the Order will be reimbursed, provided Seller establishes an entitlement thereto. Buyer may terminate immediately if Seller or any of its directors, officers, or employees becomes for any reason persona non-grata in the jurisdiction where work is performed or to any government, government official, or Seller fails or refuses to cooperate with any Buyer audit or investigation; or, as applicable, fails to comply with laws or regulations applicable to U.S. federal government contracts. In such circumstance, Buyer shall be: (i) relieved of its obligation to make further payments to the Seller; and (ii) entitled to recover damages arising from such breach.

## **14. ASSIGNMENT/SUBCONTRACTING**



No right or interest in any order shall be assigned by Seller without the written permission of Buyer. Any attempted assignment or delegation without such permission shall be wholly void and totally ineffective for all purposes. Seller shall not retain any third party to perform work without Buyer's express written consent. The Seller shall remain liable for performance notwithstanding the approval of an assignment or subcontract. Any person or entity to which the order is assigned pursuant to the provisions of applicable bankruptcy or insolvency laws shall be deemed without further act or deed to have assumed all of the obligations arising under the order on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Buyer an instrument confirming such assumption. Any order may be assigned to any person by Buyer, and Seller hereby agrees to any such assignment without recourse to Buyer.

## 15. CHANGE IN CONTROL; ACQUISITION; DIVESTITURE

1. Change in Control. At least ninety (90) days prior to the proposed effective date of a change in control, Seller will notify Buyer in writing thereof and provide the identity of the potential new controlling party and information on such party and the transaction as Buyer may request, consistent with applicable law and confidentiality restrictions. To the extent permissible by applicable law, Buyer shall then have the right for a period not to exceed ninety (90) days from the effective date of such change in control to terminate this Agreement. A change in control of Seller is deemed to have occurred if there is either (a) a change in the beneficial ownership of Seller, either directly or indirectly, of 50% or more; provided, that, any change, of any amount, in the beneficial ownership of Seller, either directly or indirectly, which involves a direct or indirect competitor of Buyer shall be deemed a change in control; or (b) a change in Seller's current (as of the effective date of the order) corporate governance regime, whether direct or indirect, with respect to decision-making on financial and / or operational policies and/or actions of Seller.

2. Acquisition. If Buyer acquires ownership or control of a business entity (the "**Acquired Business**"), the Acquired Business shall have the option to (i) continue to purchase goods and/or services pursuant to any pre-existing agreement between Seller and the Acquired Business and/or (ii) cancel any pre-existing agreement and purchase goods and/or services at the same price, terms and conditions as set forth in the Agreement.

3. Divestiture. Should Buyer sell, transfer or otherwise divest itself (via spin-offs, restructurings or otherwise) of its equity ownership in, or all or substantially all of the assets in, any affiliate, business unit or division of Buyer (subsequently referred to as "**Divested Unit**"), Buyer shall have the right at any time before or up to six (6) months after such divestiture to require Seller by written notice to continue to fulfill current orders and accept new orders from Divested Unit at the same price, terms and conditions as set forth in the Agreement.

## 16. BUYER'S PROPERTY

All tools, equipment dies, gauges, models, drawings or other materials furnished by the Buyer to Seller or made by Seller for the purpose of the order or paid for by the Buyer, and all replacements thereof and materials fixed or attached thereto, shall be and remain the property of the Buyer. All Buyer's property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Seller as "Property of Carrier Corporation" (or as otherwise directed by Buyer), and will, at Seller's expense, be safely stored (separate and apart from Seller's property whenever practicable) and will be kept free of all liens, claims, encumbrances and interests of third parties. Seller will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in filling the orders of Buyer. Seller shall ensure all Buyer's property in Seller's possession remains in good working condition and shall be responsible for all related maintenance. Upon completion of the order, or upon the written request of Buyer at any time, Seller will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer shall have the right, at all reasonable times upon prior notice, to enter Seller's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any of Buyer's property. Seller shall



have such responsibility for Buyer's property as is chargeable to Seller by law by reason of its position as a bailee.

## 17. CODE OF CONDUCT

Seller shall comply in all aspects, and take commercially reasonable steps to ensure compliance by its subcontractors, with the principles set forth in the Supplier Code of Conduct located on Buyer's website, currently at:

[https://www.corporate.carrier.com/Images/Carrier\\_Supplier\\_Code\\_of\\_Conduct\\_FINAL\\_tcm558-76603.PDF](https://www.corporate.carrier.com/Images/Carrier_Supplier_Code_of_Conduct_FINAL_tcm558-76603.PDF)

Any breach of this provision shall constitute a breach of the Agreement and/or Order. As it concerns the use of child or forced labor, Seller shall ensure compliance by its subcontractors with the terms of the Seller Code of Conduct, and any breach of this provision by Seller or its subcontractors shall constitute a breach of an order and this Agreement.

## 18. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

"Confidential Information" and/or "Proprietary Information" (hereinafter referred to collectively as "**Proprietary Information**") shall, for the purpose of the order, mean: (i) information, knowledge or data disclosed by Buyer to Seller, regardless of whether disclosed in written, tangible, oral, visual or other form and (ii) information, knowledge or data which was obtained from facility visits. In the event Buyer furnishes sample goods, equipment, or other objects or material, including software, to Seller, the items so received and any information contained therein shall be treated as Proprietary Information disclosed to Seller under the order. Furthermore, any and all information obtained or derived from said items, including results from testing, shall be treated as if they were Proprietary Information disclosed pursuant to the order. All Proprietary Information disclosed in any documentary or tangible form, whether in written or electronic form may be marked "Proprietary" or "Confidential" and if the Proprietary Information is not so identified, it will be considered proprietary if by its very nature or the circumstances under which it is disclosed one would reasonably consider it to be proprietary. Seller shall use Buyer's Proprietary Information solely for the purposes of supporting the current business relationship with Buyer and not for any other purpose. To the extent Seller and Buyer have executed a separate non-disclosure agreement (the "NDA"), the NDA shall govern the treatment of Proprietary Information until its expiration or termination. Following expiration or termination of the NDA, Seller agrees that it shall not disclose Buyer's Proprietary Information to any third party without Buyer's express written consent. Seller may disclose Buyer's Proprietary Information to contract workers, consultants and agents of Seller who have a need to know and who have executed agreements with Seller obligating them to treat such information in a manner consistent with the terms hereof. Seller shall not (a) sell parts or components incorporating or containing Buyer Proprietary Information to any third party including, without limitation, any goods having the same product numbering or other identification as any parts or components sold to Buyer), or (b) sell any goods or services to any third party which have been produced using Buyer Proprietary Information.

Notwithstanding the foregoing provisions, the order shall not restrict or affect Seller's rights to use or disclose information: (1) which is or may hereafter be in the public domain through no fault of Seller; or (2) which Seller can show, as reflected by its written documents, was known to it prior to the disclosure by Buyer; or (3) which is disclosed to Seller by a third party, without restrictions similar to those herein imposed, subsequent to disclosure by Buyer; or (4) which Seller can show, as reflected by its documents, was independently developed by Seller without the use of the Proprietary Information.

## 19. INTELLECTUAL PROPERTY

All inventions, patents, patent applications, copyrights, design rights, trade secrets, know-how or other industrial or intellectual property and related information and embodiments, associated with, or used in or for, the development, testing, manufacturing and maintenance of the goods shall be identified herein as "**Intellectual Property**". Such related information and embodiments include, without limitation, test results,



tooling, jigs and fixtures, samples, Software, Firmware, source code, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

All Intellectual Property owned by Seller prior to entering into this Agreement (“**Seller Background Property**”) shall remain owned by Seller. Seller hereby grants and promises to grant to Buyer a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, sub-licensable license to Seller Background Property to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made goods, services or the like for Buyer.

Seller will notify Buyer of any third party license terms or restrictions that limit Buyer’s use of the Seller Background Property or impose any obligations on Buyer and will provide Buyer with copies of the third party agreements and acquire additional licenses as needed by Buyer to practice its rights under the order.

“**Buyer Project Property**” shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the order. Buyer shall own all Buyer Project Property. Seller shall not have any rights in Buyer Project Property except as Buyer may grant for the purposes of manufacturing goods for Buyer. Seller shall execute assignments and other documents and take any other actions which, in the opinion of Buyer, are necessary to secure Buyer’s rights hereunder. Seller represents that it has taken no action to assist in the registration of the copyrights or patents on the Buyer Project Property and will do so only as and when requested by Buyer.

Seller will contractually bind its employees and other persons, or parties as may be used by Seller in the performance of the order to the obligations established under this Section 19.

Seller warrants that the goods and or services will be created originally by Seller or employees of Seller within the scope of their employment and with a written obligation to assign all right, title, and interest in the goods and or services and associated Intellectual Property to Seller, including the rights enumerated and assigned to Buyer herein, or by subcontractors with a written obligation to assign all right, title, and interest in the goods and or services and associated Intellectual Property to Seller or, to the extent that goods and or services include third party parts, components or software, that Seller has acquired the necessary rights for unencumbered use of the parts, components or software in the goods.

Seller warrants that in the event of a breach of obligations by an employee or other person or party as defined in this section, Seller will enforce the contractual provisions and, upon the written request of Buyer, permit Buyer to enforce the contractual provisions in Seller’s name.

Seller warrants that the goods and associated services will not contain Software or Firmware subject to a Restrictive Open-Source License without Buyer’s prior written approval and that to the extent any such use is approved by Buyer, Seller will take the appropriate steps to ensure the goods and associated services are free of all encumbrances. “**Restrictive Open-Source License**” means a license that requires as a condition of use, modification, or distribution of software subject to the license, that the software or other software combined or distributed with the software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

Seller warrants, to the extent applicable to the goods and or services, that they are free of viruses and other sources of network corruption.

Seller warrants that it is in compliance with all agreements (including license agreements) with third parties that relate to the Seller Background Property.

Seller shall not sell to any third party any parts, components, products, systems or processes produced using Buyer’s Proprietary Information, Buyer’s Intellectual Property or Buyer Project Property. Seller shall not label, advertise, market, or promote any parts, components, products, systems or processes in any way that indicates that they are a “replacement” or “substitute” for any parts, components, products, systems or





processes that Seller manufactures or has manufactured for and/or sold to Buyer including, without limitation, display or use by Seller of any product/part number assigned to such parts, components, products, systems or processes by Buyer or Seller. Except as expressly authorized herein, nothing in the order shall be construed as Buyer granting Seller a license in or any right to use any Buyer Project Property other than in the performance of work under the order.

## 20. COMPLIANCE WITH LAWS

Seller shall comply with all national, federal, provincial, state and local laws, rules, ordinances, orders (including court orders) and regulations made or issued by a governmental authority applicable to the performance of the Agreement, except to the extent inconsistent with U.S. antiboycott laws, including (i) the manufacture or provision of goods and the supply of services, (ii) the shipping of goods, and (iii) the configuration or content of goods and/or services for the use intended by Buyer (collectively "**Applicable Law**"). Seller agrees to cooperate with and support Buyer's efforts to comply with all Applicable Laws. Seller shall comply at all times with applicable laws regarding fair employment practices that prohibit discrimination based on age, color, sex, gender identity, sexual preference, physical or mental disability, race, national origin, religion, or creed. As well as with any applicable regulation established in International Treaties signed by Mexico, Federal, State or Municipal Laws, including, but not limited to, the Federal Labor Law and the Federal Law to Prevent and Eliminate Discrimination. A partial and non-exclusive list of Applicable Laws and related compliance obligations is incorporated as **Attachment C – Applicable Law/Compliance Obligations**. Breaches of Applicable Laws, as well as compliance obligations assigned to Seller in Attachment C, shall be considered breaches of an Order and this Agreement.

## 21. PERFORMANCE OF SERVICES

Seller agrees that any services it performs constitute work in its status as an independent contractor. Seller confirms that it exercises control over its employees, contractors, and agents, and that none is acting under the control of Buyer. Seller agrees to indemnify and hold Buyer Indemnitees harmless against any claim by its employees, contractors or agents that they are acting under Buyer's control and qualify in any way as Buyer's employees. In no event will the Buyer be responsible for civil, commercial, tax, labor, or any other liability concerning Seller's employees, and under no condition will the Buyer be considered a substitute beneficiary or employer. The Seller declares that it has sufficient economic elements and resources to comply with the obligations arising from relations with its employees per the legislation applicable to the rendering of specialized services or labor relations in general; consequently, the employed personnel for the fulfillment of this Order will be considered as Seller's employees. Seller agrees to indemnify and hold Buyer harmless from any claim or dispute arising out of its employees, contractors, or agents acting under Seller's control and qualifying in any way as Seller's employees.

## 22. REMEDIES

Buyer's remedies shall be cumulative, and remedies herein specified do not exclude any remedies allowed by law or equity. Anything set forth in this Agreement to the contrary notwithstanding, Seller will reimburse Buyer for any damages caused by Seller's breach or by providing defective or nonconforming goods and or services, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or End Users: (a) in inspecting, assessing, sorting, repairing or replacing the defective/nonconforming goods and or services; (b) resulting from production or supply interruptions; (c) conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the defective/nonconforming goods or services. In addition to, and not in lieu of, the foregoing remedies Seller agrees it shall pay to Buyer the following administrative fees to help offset the additional administrative burden placed on Buyer as a result of certain acts or omissions of Seller: \$250 for each late delivery; \$250 for each quality defect (per product) and \$250 for every receiving issue (e.g. damaged packages, incorrect quantity, missing or insufficient documentation, etc.)

## 23. TITLE



Title to all goods shall vest in Buyer upon full payment for or delivery of the goods to the Carrier Location, whichever occurs first. However, to the extent goods need to be imported by Buyer, the title vests in Buyer before importation. Unless otherwise indicated in the Agreement, Seller bears all risk of loss or damage to the goods until delivery to the Carrier Location

## **24. INSURANCE**

24.1 During the Term of this Agreement, Seller shall maintain the following types and minimum amounts of insurance coverage issued by companies authorized to do business under the laws of the State or jurisdiction in which all or part of the Services are to be performed, and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.

24.2 Workers' Compensation Insurance, in an amount as required by law and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence. If such work involves Temporary or Leased employees, or employees of others working under direction of Carrier such coverage shall be inclusive of an alternate employer endorsement.

24.3 Commercial General Liability Insurance and Umbrella Liability insurance including premises liability and contractual liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence;

24.4 If Seller vehicles are used on Buyer's premises and/or used to accomplish work under the order or otherwise on behalf of Buyer, Automobile Liability Insurance and Umbrella Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$2,000,000 for any one accident;

24.5 If Seller or its subcontractors have Buyer's materials or equipment in its care, custody or control, Seller shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the replacement value of such materials or equipment;

24.6 If Seller is performing professional services on behalf of Buyer, Seller shall maintain Professional Liability Insurance with a limit of no less than \$5,000,000 per claim;

24.7 If Seller has access to Buyer's or Buyer's customer's computer systems and data bases, processes, store, or will hold any Buyer information, is rendering computer, coding or information technology services and/or technology goods on behalf of Buyer, Technology Errors and Omissions Liability Insurance with a limit of not less than \$10,000,000 per claim, which insurance shall include, at a minimum, coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render such services and goods,; privacy breach, system breach, denial or loss of service, introduction, implantation, or spread of malicious software code, and unauthorized access to or use of computer systems and

24.8 All insurance including self-insured retention or self-insurance will be primary and non-contributory in the event of loss arising out of Seller's performance of work. All such policies except the Professional Liability/Errors & Omissions Liability and Workers compensation shall include endorsement naming Buyer as an additional insured, or in the case of All-Risk Property insurance include the Buyer as a loss payee. To the extent permitted by law, Seller and its insurer(s) agree that subrogation rights against Buyer and its parent are hereby waived. Seller shall furnish a certificate of insurance and any such endorsements reflecting such coverage to Buyer upon request. Buyer's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of these insurance requirements does not modify or waive Seller's obligations under the terms of these insurance requirements in any way. Policies shall contain a provision prohibiting cancellation, non-renewal or material change except upon at least 30 days' notice and Seller shall provide written notice to Buyer within at least 10 days of such notice from insurers.

## **25. AUDIT RIGHTS**



Upon reasonable notice, Buyer or its duly authorized representative shall have the right to audit Seller's compliance with any of the provisions herein at Seller's facility. Seller shall timely reply with request during such audit and shall provide reasonable support to Buyer and its duly authorized representative to complete the audit within Buyer's established timeline. Where Buyer discovers material noncompliance with the terms of the Agreement, or where Seller delays increase the cost of the audit, Seller shall reimburse Buyer for costs of the audit.

## **26. GOVERNING LAW / DISPUTE RESOLUTION**

The Agreement shall be construed and enforced according to the laws of the State of New York, excluding its "choice of law" or "conflict of law" rules. If any dispute occurs between the Seller and Buyer arising from, relating to, or in connection with the Agreement, an order, the services performed or the goods purchased from Seller each of the parties shall promptly attempt in good faith to resolve same by negotiation through the parties' authorized representatives. If the parties are unable to resolve such dispute despite such good faith efforts, the parties shall submit such dispute to their respective executive leadership. At any time, at Buyer's election, the parties shall participate in mediation to assist in resolving the dispute. The mediator shall be selected as follows: (a) Each party shall propose a slate of three mediators to the other party in rank order (1 being the highest ranking/most preferred and 3 being the lowest ranking/least preferred); (b) if a mediator or mediators appears on both parties' slates, the mediator ranked most highly on average by both parties shall be selected; (c) if no mediator appears on both parties' slates, each party shall strike two of the other party's proposed mediators and the mediator shall be selected through an agreed-upon random process. The mediation shall be in-person in Palm Beach County, FL, unless both parties agree in writing to a different location. The costs of the mediation shall be borne equally by the parties. The parties agree that any claim or dispute arising from, relating to, or in connection with the Agreement, or the services performed or the goods purchased from Seller (whether or not such claim is based upon breach of contract or tort or any other legal theory), that is not settled by negotiation or mediation after a reasonable period of time (which shall not exceed 90 days) shall be subject to the exclusive venue and jurisdiction of the federal court located in Manhattan, New York, USA or in the event that such federal court does not have jurisdiction, in the commercial division or complex commercial litigation division of the state court in Manhattan, New York, USA. Or competent courts of Monterrey, Nuevo León, Mexico. Each party hereby irrevocably waives any objection to jurisdiction or venue of any action instituted in accordance with the jurisdiction and venue terms hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon the doctrine of *forum non conveniens* and hereby appoints the Secretary of State of New York or other applicable governmental authority for receiving service of process as agent for service of process. This choice of venue is intended to be mandatory and not permissive, thereby precluding litigation between the parties concerning any claim or dispute arising from, relating to, or in connection with the Agreement, or the services performed or the goods purchased from Seller (whether or not such claim is based upon breach of contract or tort or any other legal theory) in any jurisdiction other than in Manhattan, New York, USA. Each of the parties hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any such litigation. In any such litigation, the prevailing party shall be entitled to recover from the other party all of its reasonable costs and expenses incurred in such suit or legal proceeding, including reasonable attorneys' and experts' fees.

## **27. SEVERABILITY / NO WAIVER**

If any provision herein shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions shall remain in full force and effect. The failure of a party to enforce any provision hereof promptly shall not be construed as a waiver of such provision or of the right of such party to enforce such provision at a later time. Acceptance of any goods or services or payment thereof shall not waive any breach.

## **28. EXCLUSION OF U.N. CONVENTION ON INTERNATIONAL SALES**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any transactions subject to these Terms or the applicable Agreement.



## 29. SUSTAINABILITY

Buyer and Seller hereby recognize the value in supporting initiatives which strive to achieve excellence in environmental and social performance. Seller acknowledges having read Carrier's 2030 ESG Goals as set forth at <https://www.corporate.carrier.com/corporate-responsibility/our-sustainability-goals/> as may be amended from time to time ("**Sustainability Goals**") and agrees to take reasonable and timely action to support Buyer's achievement of the Sustainability Goals including, without limitation, collecting information throughout Seller's supply chain on the origin and use of specific materials in the goods sold to Buyer, participating in assessments and responding to Buyer's requests for information. Seller further agrees to comply with all Buyer's published policies on sustainability as they exist from time to time and all current and subsequently enacted laws and regulations regarding sustainability applicable to Buyer, Buyer's customers or the goods or services. Carrier's current ESG Report can be found online at <https://www.corporate.carrier.com/corporate-responsibility/esg-report/>

## 30. DUTY TO PROCEED

Notwithstanding the existence of any claim(s), disagreement(s), dispute(s) or dispute resolution proceedings (including, without limitation, litigation) (collectively, "Disputes") between the parties, Seller shall proceed diligently with performance of the Agreement including, without limitation, acceptance of Purchase Orders/Releases, timely delivery of all Products and/or timely completion of all services. Disputes will be resolved solely in accordance with the terms of this Agreement. Seller acknowledges that due to the qualification and lead-time requirements for acquiring the Products from another source, any failure to comply with this duty to proceed obligation that involves a failure or a refusal to ship Products or otherwise perform, shall cause Carrier immediate damages that are not readily ascertainable and for which obtaining an adequate remedy is inconvenient or infeasible. Therefore, in the event of such non-compliance with Seller's duty to proceed, Seller: (i) agrees to pay to Carrier liquidated damages in the amount of FIFTY THOUSAND DOLLARS (\$50,000) per day for each calendar day Seller does not comply with its duty to proceed ("Manufacturing Disruption Damages"); and (ii) agrees that Purchaser has the right to set off Manufacturing Disruption Damages, in whole or in part, against any amount Purchaser owes Seller or any of Seller's affiliates. Seller acknowledges and agrees that that Manufacturing Disruption Damages are not a penalty but a fair and reasonable estimate of the actual damages Purchaser will sustain in the event of Seller's breach of its duty to proceed.

## 31. PRODUCT SAFETY

Seller warrants that the goods meet or exceed all applicable legal and regulatory requirements and industry standards. Seller further warrants that the goods meet or exceed all applicable Buyer standards governing safety-critical characteristics and/or components as set forth in Buyer specifications. To the extent that Seller becomes aware of a condition that may affect the safety of the goods, Seller agrees to (i) notify Buyer of such as soon as possible and to take all reasonable steps to prevent the potentially unsafe goods from entering the marketplace, and (ii) cooperate with Buyer in any investigation, safety review, assessment, analysis, etc. to determine the root cause of the potentially unsafe condition. To the extent that potentially unsafe goods entered the marketplace and the root cause of the unsafe condition was caused, in whole or in part, by Seller, Seller agrees to assist Buyer in any activities (including but not limited to product recall, field retrofit, inspection etc.) designed to minimize safety risk related to the affected goods, including reimbursement for costs incurred by Buyer in undertaking or participating in such activities. Failure to comply with the requirements set forth in this section shall constitute a material breach of the order.

## 32. EQUAL OPPORTUNITY OBLIGATION

Buyer and Seller as a contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and



subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Seller with operations and employees in Mexico must additionally comply at all times with the applicable legislation regarding fair employment practices that prohibit discrimination based on age, color, sex, gender identity, sexual preference, physical or mental disability, race, nationality, religion or creed. as well as with any applicable regulation established in international Treaties signed by Mexico, Federal, State or Municipal Laws, including, but not limited to, the Federal Labor Law and the Federal Law to Prevent and Eliminate Discrimination.

### 33. ENTIRE AGREEMENT / MODIFICATION

The Agreement, whether a Supply Agreement or Order Agreement, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the respective Agreement. No shrink-wrap, click-wrap, or other terms and conditions, policies, or agreements (“**Additional Terms**”) provided with any goods, services, documentation or software, including any maintenance and support updates thereto, hereunder shall be binding on Buyer, even if use of such items requires an affirmative “acceptance” of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by Buyer in their entirety. The Agreement may only be modified by a written instrument executed by each Party. Buyer may modify these Terms with respect to future Orders at any time by posting revised Terms to its web site at <https://www.corporate.carrier.com/suppliers/terms-conditions/> and such revised Terms will apply to all Orders issued thereafter. By furnishing goods to Buyer, Seller acknowledges and agrees to be bound by these Terms and any future changes in them. These Terms and Conditions are made available to Seller in English and Spanish; both versions will have equal validity in terms of their commercial interpretation as established in the laws of Mexico. However, in case of exercise before any authority, court, or jurisdictional tribunal for any reason, The Seller accepts that the Spanish version will prevail.

### ATTACHMENTS

A copy of the most recent versions of each of Carrier’s Attachments A, B and C which are incorporated by this reference into the Terms may be found at <https://www.corporate.carrier.com/suppliers/terms-conditions/>

- A. [ATTACHMENT A](#) – SECURITY FOR CARRIER INFORMATION
- B. [ATTACHMENT B](#) – ACCESS TO FACILITIES OR SYSTEMS
- C. [ATTACHMENT C](#) – APPLICABLE LAW/COMPLIANCE OBLIGATIONS