

## TERMS AND CONDITIONS OF PURCHASE – COMMERCIAL ITEMS

### 1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order, or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "Smiths" means Smiths Kaelus, Inc., formerly Summitek Instruments, Inc., acting through its companies, or business units, as identified on the face of the Contract. If a subsidiary or affiliate of Smiths is identified on the face of the Contract than "Smiths" means that subsidiary, or affiliate.
- (c) "Smiths Procurement Representative" means a person authorized by Smiths' procurement organization to administer and/or execute this Contract.
- (d) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (e) "Seller" means the Party identified on the face of the Contract with whom Smiths is contracting.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

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

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract.
- (c) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby objected to by Smiths and have no effect unless expressly accepted in writing by Smiths.
- (d) Seller agrees to indemnify, save harmless and defend Smiths and its directors, officers, employees, agents, successors, and assigns from and against any and all liabilities, claims, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it or they may hereafter incur, become responsible for, or pay out as a result of, or arising out of, Seller's breach of any of its duties addressed in this clause. Seller shall include this clause in all subcontracts at any tier, involving the performance of this Contract.

### 3. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the law of the State in which the Smiths business is located from which this Contract is issued, excluding its choice of law rules. The United Nations

Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

- (b) Seller shall provide to Smiths with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its State approved counterpart.

### 4. COMPLIANCE WITH LAWS

- (a) Seller agrees to comply with all applicable laws, orders, rules, regulations and ordinances.
- (b) Seller represents that it is selling Commercial Items as that term is defined in FAR 2.101.
- (c) The parties recognize that some or all of the Work that is the subject of this Contract may be used to satisfy requirements in furtherance of Smiths' performance under a U.S. Federal Government prime or sub - contract. Accordingly, Seller agrees that in that instance, it shall be bound by the following Federal Acquisition Regulation ("FAR") clauses:
  - i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2)(3))(Agreements exceeding \$500,000, only);
  - ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246);
  - iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
  - iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793);
  - v) 52.244-6, Subcontracts for Commercial Items (APR 2003);
  - vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631);
  - vii) 29 CFR 470.2(a), Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union dues or Fees (Agreements exceeding \$100,000, only);
  - viii) 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (MAR 2000);
  - ix) 252.225-7014, Preference for Domestic Specialty Metals, Alternate I (Deviation 2008-00002) (JAN 2008);
  - x) 252.247-7023, Transportation of Supplies by Sea (10 U.S.C. 2631);
  - xi) 252.247-7024, Notification of Transportation of Supplies by Sea (10 U.S.C. 2631);

## TERMS AND CONDITIONS OF PURCHASE – COMMERCIAL ITEMS

xii) 252.225-7035, Buy American Act – Free Trade Agreements – Balance of Payments Program Certificate (JAN 2005);

xiii) Subpart 212.3 – Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items (Revised November 10, 2004);

xiv) 252.212-7000, Offeror Representations and Certifications – Commercial Items (NOV 1995);

xv) 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (JAN 2005);

xvi) 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country (SEP 2004); and

xvii) 252.211-7003, Item Identification and Valuation (JAN 2004).

(d) By submitting its written offer, or providing oral offers or quotations at Smiths' request, or accepting this Contract, including oral orders from Smiths, Seller certifies that to the best of its knowledge and belief, that Seller and/or any of its Principals (as defined in FAR 52.209-5) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any U.S. Federal Government Agency. Seller shall provide immediate written notice to Smiths if at any time it learns that its certification was erroneous or has become erroneous by reason of changed circumstances.

(e) Additional clauses specific to the performance of a given U.S. Government prime or sub -contract, if any, are provided as an Attachment to this Contract and deemed incorporated herein.

### 5. ASSIGNMENT

Any assignment of Seller's contract rights or delegation of duties shall be void, unless prior written consent is given by Smiths. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Smiths is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Smiths against Seller. Smiths shall have the right to make settlements and/or adjustments in price without notice to the assignee.

### 6. CHANGES

(a) The Smiths Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, performance, or point of delivery; (iv) delivery schedule; (v) description of services to be performed; and (vi) time of performance (i.e., hours of the day, days of

the week, etc.). Changes may only be made in writing by the Smiths Procurement Representative.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Smiths shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly.

(c) Any claim for an equitable adjustment by Seller must be submitted in writing to Smiths within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. Smiths may audit any of Seller's books and records in connection with any equitable adjustment proposal.

(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

### 7. CONTRACT DIRECTION

(a) Only the Smiths Procurement Representative has authority to change this Contract. Such changes must be in writing.

(b) Smiths engineering and technical personnel may from time to time render assistance or give technical advice or exchange information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Smiths Procurement Representative.

### 8. DEFAULT

(a) Smiths, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have five (5) days (or such longer period as Smiths may authorize in writing) to cure any such failure after receipt of notice from Smiths. Default involving delivery schedule delays shall not be subject to the cure provision.

(b) Smiths shall not be liable for any Work not accepted; however, Smiths may require Seller to deliver to Smiths any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. Smiths and Seller shall agree on the amount of payment for these other deliverables.

(c) In the event of termination, in whole or in part, Smiths may acquire, under terms Smiths considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to Smiths for any excess costs of those supplies or services, including any incidental costs Smiths incurs through procurement.

(d) Seller shall continue all Work not terminated.

## TERMS AND CONDITIONS OF PURCHASE – COMMERCIAL ITEMS

- (e) If after termination under paragraph (a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.
9. **DISPUTES**  
All disputes under this Contract which are not disposed of by mutual agreement may be settled at Smiths' sole discretion either by submitting the claim to (i) a court of competent jurisdiction or (ii) binding arbitration, before a single arbitrator, in the state and under the laws of the state from which this Contract is issued, in accordance with the Commercial Arbitration Rules of the American Arbitration Association; and judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Smiths.
10. **EXPORT/IMPORT CONTROL**  
(a) Seller agrees to comply with all applicable export and import control laws and regulations of Seller's country and of the United States, and with all applicable export or import authorizations and their provisos. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an Export License or applicable license exemption or exception.  
(b) Seller agrees to notify Smiths of the US Munitions List Classification or US Export Commodity Classification Number of each deliverable under this Contract.  
(c) Seller shall provide to Smiths all information necessary to support any export or import authorization requirements by Smiths for items ordered hereunder.  
(d) Seller shall immediately notify the Smiths Procurement Representative if Seller is listed in any Denied Parties List, has been convicted of violating any of the U.S. criminal statutes enumerated in 22 CFR §120.27, is ineligible to contract with, or to receive a license or other approval to export or import articles or services, from any agency of the U.S. Government, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U. S. Government entity or agency.  
(d) Seller shall indemnify Smiths for all liabilities, penalties, losses, damages, costs or expenses, including attorney fees, which may be imposed on or incurred by Smiths in connection with any violations of such law and regulations by Seller.  
(e) Seller acknowledges that if it engages in the United States in the business of either manufacturing or exporting defense articles or defense services, as defined in 22 CFR §§120.6, 120.9, then Seller is required to register with the U.S. Department of State, Office of Defense Trade Controls.
11. **EXTRAS**  
Work shall not be supplied in excess of quantities specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.
12. **PROPERTY**  
(a) Smiths may provide to Seller property owned by either Smiths or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.  
(b) Title to Furnished Property shall remain in Smiths or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.  
(c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Smiths of, any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.  
(d) At Smiths' request, and/or upon completion of this Contract the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Smiths.  
(e) Material made in accordance with Smiths' specifications and drawings shall not be furnished or quoted to any other person or concern without Smiths' written consent.  
(f) Any invention or similar intellectual property first made or conceived by Seller in the performance of this Contract or which is derived from or based on the use of confidential information supplied by Smiths shall be considered as being a "work made for hire" and shall be and become the property of Smiths; and Seller shall execute such documents necessary to perfect Smiths' title thereto.
13. **GRATUITIES/KICKBACKS**  
No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Smiths with a view toward securing favorable treatment as a supplier.
14. **INDEPENDENT CONTRACTOR RELATIONSHIP**  
(a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Smiths.  
(b) Seller shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.
15. **INFORMATION OF Smiths**  
Information, including but not limited to technical and business information, provided by Smiths to Seller remains the property of Smiths. Seller agrees to comply with the terms of any Proprietary Information Agreement with Smiths and to comply with all Proprietary Information markings and Restrictive Legends applied by Smiths to anything provided hereunder to Seller. **Seller agrees not to use any Smiths provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Smiths.**

## TERMS AND CONDITIONS OF PURCHASE – COMMERCIAL ITEMS

16. **INFORMATION OF Seller**  
Seller shall not provide any proprietary information to Smiths without prior execution by Smiths of a Proprietary Information Agreement or amendment to this Contract providing for the same.
17. **INSPECTION AND ACCEPTANCE**
- (a) Notwithstanding (i) payment; (ii) passage of title; (iii) prior inspection or test, or (iv) execution of an acceptance document, Smiths and its customer may inspect all Work prior to acceptance or rejection at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
  - (b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. Smiths' final inspection and acceptance shall be at destination unless otherwise designated by Smiths.
  - (c) Seller shall provide and maintain a test and inspection system acceptable to Smiths and its customers, if required.
  - (d) If Seller delivers non-conforming Work, Smiths may; (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements. Seller shall be liable to Smiths for any cost Smiths incurred to ensure such compliance.
  - (e) Seller shall not re-tender rejected Work without disclosing the corrective action taken.
18. **INSURANCE/INDEMNIFICATION**
- (a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Smiths or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as Smiths may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall indemnify and hold harmless Smiths, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors. Seller shall provide Smiths thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name Smiths as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Smiths and is not contributory with any insurance which Smiths may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier.
  - (b) Seller shall without limitation as to time indemnify and save Smiths harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's compensation or Occupational Disease laws and from all claims from injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Smiths negligence.
  - (c) Seller does hereby irrevocably indemnify and agree to defend any claim or litigation, or to pay or reimburse any judgment and all loss and expense costs (including reasonable attorney fees) incurred in connection with any claim or litigation which asserts or is based upon any alleged design or manufacturing defect, negligence, failure to warn, or breach of warranty related to Seller's product(s) (including parts and components thereof purchased by Seller from its suppliers), delivered to Smiths, or breach of, or non-compliance with, any provision of this Contract.
  - (d) Seller warrants materials furnished pursuant to this Contract shall be free from asbestos containing materials.
19. **INTELLECTUAL PROPERTY**  
Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.
- (a) Seller agrees that Smiths shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Smiths, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Smiths' request and expense, all documentation necessary to perfect title therein in Smiths. Seller agrees that it will maintain and disclose to Smiths written records of, and otherwise provide Smiths with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Smiths and subject to the protection provisions of the clause entitled "Information of Smiths". Seller agrees to assist Smiths, at Smiths' request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.
  - (b) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless Smiths and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

## TERMS AND CONDITIONS OF PURCHASE – COMMERCIAL ITEMS

20. **NEW MATERIALS**  
The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.
21. **OFFSET CREDIT/COOPERATION**  
All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of Smiths. Seller agrees to cooperate with Smiths in the fulfillment of any foreign offset/countertrade obligations.
22. **PACKING AND SHIPMENT**  
(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.  
(b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Smiths Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.  
(c) Unless otherwise specified, delivery shall be Kaelus, Inc 12503 E Euclid Drive Suite 7, Centennial, CO 80111
23. **PAYMENTS, TAXES, AND DUTIES**  
(a) Unless otherwise provided, terms of payment shall be net forty-five (45) days from the latest of the following: (i) Smiths' receipt of the Seller's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. Smiths shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.  
(b) Payment shall be deemed to have been made as of the date of mailing Smiths' payment or electronic funds transfer.  
(c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
24. **PRECEDENCE**  
Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special terms and conditions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these General Provisions; and (4) Statement of Work.
25. **QUALITY CONTROL SYSTEM**  
(a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.  
(b) Records of all quality control inspection work by Seller shall be kept complete and available to Smiths and its customers.
26. **RELEASE OF INFORMATION**  
Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of Smiths.
27. **SEVERABILITY**  
Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.
28. **STOP WORK ORDER**  
(a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Smiths, or for such longer period of time as the Parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.  
(b) Within such period, Smiths shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause, shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.
29. **SURVIVABILITY**  
If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:  
  
Applicable Laws  
Export/Import Control  
Independent Contractor Relationship  
Information of Smiths  
Insurance/Indemnification  
Intellectual Property  
Release of Information  
Warranty
30. **TERMINATION FOR CONVENIENCE**  
(a) For specially performed Work: Smiths may terminate part or all of this Contract for its convenience by giving written notice to Seller. Smiths' only obligation shall be to pay Seller a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Smiths, using generally accepted accounting principles, have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided. Smiths may audit any of Seller's books and records in connection with any termination claim.  
(b) In no event shall Smiths be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.  
(c) For other than specially performed Work: Smiths may terminate part or all of this Contract for its convenience by

## TERMS AND CONDITIONS OF PURCHASE – COMMERCIAL ITEMS

giving written notice to Seller and Smiths's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge.

- (d) In either case, Seller shall continue all Work not terminated.

If repair or replacement or reperformance of Work is not timely, Smiths may elect to return the non-conforming Work or repair or replace Work or repro cure the Work at Seller's expense. All warranties shall run to Smiths and its customers. At all times during the performance of this Contract, Smiths shall have the right to inspect Work performed by Seller.

### 31. **TIMELY PERFORMANCE**

- (a) Seller's timely performance is a critical element of this Contract. Time is of the essence.
- (b) Unless advance shipment has been authorized in writing by Smiths, Smiths may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify Smiths, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Smiths.

### 32. **WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by Smiths to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of Smiths thereafter to enforce each and every such provision(s).
- (b) Smiths' approval of documents shall not relieve Seller from complying with any requirements of this Contract.
- (c) The rights and remedies of Smiths in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

### 33. **LIMITATION OF LIABILITY**

Smiths shall not be liable for any indirect damages including incidental, consequential, punitive, or exemplary damages, or lost profits.

### 34. **WARRANTY**

Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. Seller further warrants and implies that the Work performed hereunder is merchantable and fit for use for the particular purpose described in this Contract. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or one (1) year whichever is longer, if Seller is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer if the Seller is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, Seller, at Smiths' option, shall promptly repair, replace, or reperform the Work and hold Smiths harmless from any loss, damage or expense that Smiths may suffer from the breach of this warranty. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Seller's expense.