Front Panel Express – Terms and Conditions

1.) Definitions: Defined terms have the following meanings: (a) “Products/Work” means, as applicable, the goods, items, services and other deliverables to be supplied to Purchaser by Supplier under this Purchase Order; (b) “Purchase Order” means this written or electronic order for Product(s), including all applicable specifications and requirements documents; (c) “Purchaser” means Front Panel Express as listed on the face of the Purchase Order; (d) “Specified” means as specified on the first page of this Purchase Order; and (e) “Supplier” means the individual or entity specified as recipient of this Purchase Order.

2.) Acceptance: Supplier will be deemed to have accepted all provisions of this Purchase Order upon the first of the following to occur: (a) Supplier’s signing and returning a copy of this Purchase Order to Purchaser; (b) Supplier beginning to perform the work called for by this Purchase Order (including shipping of the Products to Purchaser); or (c) Supplier’s acknowledgment of this Purchase Order by electronic means or otherwise.

3.) Supplier Forms: Either party may use its standard business forms to administer Purchase Orders but use of such forms is for the parties’ convenience only and does not alter the provisions of this Purchase Order. The terms set forth in this Purchase Order take precedence over any alternative terms in any other document connected with this transaction, unless such alternative terms are part of a written agreement mutually negotiated and executed by the parties and that agreement expressly states that its terms will take precedence over these terms in the event of a conflict. PURCHASER WILL NOT BE BOUND BY, AND SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THE PROVISIONS OF THIS PURCHASE ORDER (WHETHER PROFFERED BY SUPPLIER VERBALLY OR IN ANY QUOTATION, INVOICE, SHIPPING DOCUMENT, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY PURCHASER

4.) Price and Payment: Prices are firm and are not subject to increases or additional charges for any reason. Supplier will separately invoice Purchaser for all amounts payable. Unless otherwise agreed to in writing, Purchaser will make payment within thirty (30) days after the later of: (a) Purchaser’s receipt of Supplier’s correct invoice at the Specified remit to address; or (b) Purchaser’s acceptance of the Products. Supplier consents to Purchaser’s use of a third-party payment agent (if applicable, as listed on this Purchase Order) to make payments to Supplier on behalf of Purchaser under this Purchase Order. Supplier agrees that Purchaser’s use of a payment agent does not constitute an assignment or assumption of any Purchaser obligation, responsibility, or liability under this Purchase Order, nor does it create any contractual relationship between Purchaser’s payment agent and Supplier. Supplier will direct all invoices related to this Purchase Order to Purchaser (not the payment agent).

5.) Inspection: Purchaser may inspect the Products at any time and Supplier will provide reasonable access and facilities for such inspection prior to shipment. If Supplier’s facilities or manufacture of the Products do not strictly comply with the requirements of this Purchase Order, Purchaser may reject the Products within ninety (90) days after delivery. No Products will be deemed accepted before final inspection by Purchaser at the Specified destination. Purchaser's inspection, failure to inspect, or failure to discover any defect will not relieve Supplier of any obligation hereunder or impair Purchaser's rights or remedies at law or in equity.

6.) Representations and Warranties: Supplier represents and warrants that the Products, whether provided by Supplier or a direct or indirect source of Supplier: (a) will be free from defects in design, materials, workmanship and title; (b) will be of good and suitable quality, that all materials and other items incorporated in the goods will be new (not refurbished or reconditioned) and fit for the particular purpose for which they are intended; (c) will be free of any rightful claim of any third party for infringement of any patent, trademark, trade dress, copyright, or other right; (d) will strictly conform to the specifications, drawings, designs, and other requirements of this Purchase Order; (e) will be of comparable quality as all samples delivered to Purchaser; and (f) will comply with all applicable laws, regulations, and other requirements of governmental authorities having jurisdiction. The warranties shall apply to Purchaser, its successors, assigns, and the users of the Products covered by this Purchase Order. Without limiting the generality of the preceding clause (f), Supplier will not export any of Purchaser's technical data or materials from the United States without first complying with all requirements of the International Traffic in Arms regulations and the Export Administration Act and regulations issued thereunder. The warranties set forth above in a, b, d, and, e only, shall apply for the period set forth on the face of the Purchase Order or in the specifications. If no period is otherwise specified, those warranties shall apply for a period of forty-eight (48) months, plus delays (such as those due to non-conforming goods and services), from the date of Supplier's delivery of all goods to the Specified destination or performance of the services. If the Products are found to be defective or otherwise do not conform with the warranties set forth herein, then Purchaser, in addition to all other rights and remedies it may have at law, contract, or at equity, may, at its option and sole discretion and at Supplier's expense:(a)require Supplier to promptly inspect, remove, reinstall, ship, and repair or replace/re-perform such non-conforming Products at Supplier's expense; and/or (b) take such actions as may be required to cure all defects and/or bring the Products into conformity with all requirements of this Purchase Order. Transportation of replacement Products and return of non-conforming Products will be at Supplier's expense. If repair or replacement of the Products is not timely, in Purchaser's reasonable opinion, Purchaser may elect to return, repair, or replace the non-conforming Products at Supplier's expense.

7.) Quality: (a). Notification Practices. Supplier will notify Purchaser in writing three (3) months prior to relocation of any production, manufacturing, or processing facilities that affect the supply of the Products. Purchaser will have the opportunity to qualify the purchased or produced Products in the new location or qualify the source of the new Products. (b). Change in Approved Processes, Material, or Procedures. If process, material, or procedure was subject to approval by Purchaser or used to qualify the Products, Supplier will not change any process, material, or procedure without prior notification and written approval by Purchaser. (c). Resubmittal of Product. Any Product rejected by Purchaser, or any other entity, and subsequently submitted to Purchaser will be clearly identified as a resubmitted Product. Supplier's shipping document will contain a statement that the Products contain replacement or reworked Products or materials and will also refer to the applicable rejection document. (d). Access to Facilities and Records. With reasonable advance notice and at no additional charge, Supplier will grant right of access to Purchaser, Purchaser's customers, and any regulatory authorities, to all applicable areas of facilities and subcontractor locations that are involved in manufacturing or production of Products. The rights herein also include the right to conduct a survey, audit, or assessment of the facilities, quality systems, and manufacturing records. Supplier shall flow this right of access requirement to subcontractor locations. (e). Documentation. Purchaser may refuse to accept Product not supplemented by required documentation. (f). Quality Records. Supplier will retain all records that provide evidence of conformance to specified requirements and the effective operation of the quality system for a period not less than ten (10) years after final payment, or as otherwise specified in flow down requirements from Purchaser's customer contracts. If Supplier is not the original fabricator, processor, or assembly source of the Product, Supplier will obtain and maintain subcontractor documentation on file for the same retention period. Supplier will contact Purchaser prior to destruction of any records. (g). Control of Non-Conforming Product. Supplier will provide prompt, written notification to Purchaser upon discovery of a non-conforming Product. Supplier will not ship non-conforming Product unless Purchaser provides express written authorization. Upon authorization to ship, the non-conforming Product will be clearly identified, and all documentation related to non-conforming Product shall accompany shipment. Failure to identify and provide all documentation with the shipment of the Product will result in the issuance of a corrective action request. Purchaser's authorization to ship a non-conformance does not constitute acceptance of the non-conforming shipment, nor does it relieve Supplier of the responsibility of providing acceptable Product. (h). Configuration Management. Supplier will maintain the configuration, including revision levels and serial numbers, of all Products and all associated data or drawings throughout all manufacturing, programming, testing, and all processing steps. Changes to any configuration of the Products will be approved by Purchaser prior to implementation. (i). Corrective Action/Preventive Action. Supplier will investigate non-conformities to determine root cause(s) of failures and take action(s) as appropriate to correct the Products and prevent future failures. Unless otherwise requested by Purchaser, such corrective action(s) may be documented in the Supplier's format. Supplier will acknowledge receipt of Purchaser corrective action requests and notifications and respond within the time frame set forth in such notifications.

8.) Rejections and Remedies: If the Products do not strictly comply with the requirements of this Purchase Order, Purchaser may reject them within a reasonable period of time after delivery without regard to whether payment has been made. In such case, Purchaser may: (a) retain any or all of such Products for correction or replacement by Purchaser or others, which correction or replacement will be at Supplier's expense; (b) retain any or all of such Products for use as delivered; (c) return any or all of such Products with or without instruction for correction; or (d) return any or all of such Products for refund. Supplier will promptly comply with any instruction for correction. If Purchaser requests Supplier to make any correction and Supplier thereafter fails or indicates its inability or unwillingness to do so, Purchaser may have the correction made. Purchaser will be entitled to recover from Supplier (by credit, offset, invoice, or otherwise) an equitable amount for the diminished value of any uncorrected Products and all costs reasonably incurred by Purchaser in connection with rejected Products (including, but not limited to, all costs of correction by Purchaser and all costs to return Products to Supplier).

9.) Defense and Indemnity: Supplier will defend, indemnify and hold harmless Purchaser, its officers, directors, affiliates, subsidiaries, employees, agents, customers and assigns from and against any allegation, claim, suit action, proceeding, damages, losses, settlement, cost, expense, and any other liability (including, but not limited to, reasonable attorney fees) arising out of, related to, or resulting from: (a) actual or alleged infringement of any patent or copyright, or misappropriation of trade secret from the design, manufacture, possession, ownership, use, sale, or transfer of the Products; (b) an actual or alleged breach of any of Supplier's representations, warranties, or other obligations under this Purchase Order; or (c) any act or omission of Supplier or its employees, agents, affiliates, contractors, or subcontractors, except to the extent caused by the gross negligence or willful misconduct of Purchaser as determined by a final, non-appealable order of a court having jurisdiction. Supplier's duty to defend is independent of its duty to indemnify. Supplier's obligations under this Section 10 are independent of any other obligation of Purchaser under this Purchase Order. Supplier's obligations under this Section 10 will survive Purchaser's acceptance of and payment for the Products. If an alleged claim of infringement or misappropriation is made, Supplier shall procure for Purchaser, and Purchaser's customers, the rights to continue using the Products, modify them in a manner acceptable to Purchaser to remove the claim, or with the written approval of Purchaser, replace the Products with a non-infringing one or remove the Products and refund the purchase price.

10.) Insurance: (a) Supplier shall obtain and maintain for the greater duration of: (i)this Purchase Order; (ii) the warranties contained herein; or(iii)for the full period of repose under applicable law at its sole expense the following types of insurance policies with the minimum limits identified in the following table: (b). Commercial general liability insurance, including contractual liability, cross liability, products and completed operations, and personal and advertising injury, with limits not less than two million dollars ($2,000,000) per occurrence combined single limit insuring against claims for bodily injury and property damage Supplier assumes under this Purchase Order; (c). Business auto liability insurance with limits not less than one million dollars ($1,000,000) per accident covering owned, hired, or non-owned vehicles; (d). Workers' compensation insurance with statutory limits as required by law under the jurisdiction where the work under this Purchase Order is performed; and (e). Employers' liability insurance with limits not less than one million dollars ($1,000,000) covering injury, illness or death. Such insurance shall be primary to any insurance that may be carried by Purchaser, ensure that Supplier's insurers waive their rights of subrogation in favor of Purchaser, and name Purchaser, its affiliates, officers, directors, employees, and contractors of any tier (other than Supplier) as additional insureds. (f) Insurance required herein shall not be canceled or materially altered without prior notification to Purchaser, as per each policy's notification provisions. (g) Upon acceptance of this Purchase Order, Supplier will provide Purchaser with certificate(s) of insurance, identifying additional insureds as specified above, and other supporting documentation as Purchaser reasonably may request to evidence Supplier's continuing compliance with the preceding sentence. Purchaser's acceptance of any of Supplier's insurance will not relieve Supplier of any obligations in this Purchase Order, including but not limited to its defense and indemnity, even for claims over Supplier's policy limits.

11.) Confidential Information: (a) "Confidential Information" means:(i) oral information (whether or not reduced to writing and marked with a restrictive legend), information that is marked or identified as "Confidential", "Restricted", "Proprietary", or with a similar designation, or if not so designated, that the Supplier should reasonably expect to be confidential due to its nature; (ii) technical, process, proprietary, or economic information derived from drawings or 3D or other models owned or provided by Purchaser; (iii) the terms and existence of this Purchase Order; and (iv) other tangible or intangible property furnished by Purchaser in connection with this Purchase Order, including any drawings, specifications, data, goods and/or information. (b) Supplier and its employees, representatives, and subcontractors will:

(i) keep confidential all Confidential Information and protect the Confidential Information against unauthorized use or disclosure using at least those measures that it takes to protect its own Confidential Information of a similar nature, but in no case, less than reasonable care; and (ii) use such information only for the purposes of performing its obligations under this Purchase Order. All Confidential Information is Purchaser's exclusive property. Any knowledge or information that Supplier has disclosed or may hereafter disclose to Purchaser in connection with this Purchase Order shall not be deemed to be confidential or proprietary and shall be acquired by Purchaser free from any restrictions (other than a claim for infringement) as part of the consideration for this Purchase Order, and notwithstanding any copyright or other notice thereon, Purchaser shall have the right to use, copy, modify, and disclose the same as it sees fit.

12.) Intellectual Property: (a)."Intellectual Property" means all:(i) compositions, works of authorship, computer programs, products, devices, techniques, know-how, algorithms, methods, processes, inventions, discoveries, and improvements, whether or not patentable or copyrightable and whether or not reduced to practice; (ii) compositions, works of authorship and documented information in whatever form such as information embodied in drawings, test data, specifications, process documents, technical reports; and (iii) domestic and foreign legal and statutory rights to the foregoing, including but not limited to, patents, trademarks, trade secrets, copyrights, mask work registrations, and the like, whether registered or unregistered and including applications for the grant of any such rights and any and all forms of protection having equivalent or similar effect anywhere in the world and any rights under licenses in relation to such rights. (b). Ownership. Any Intellectual Property owned by a party prior to the issuance of a Purchase Order will remain owned by that party. To the extent that Purchaser is paying Supplier to develop new Intellectual Property as part of a Purchase Order, Purchaser will own all right, title, and interest in that Intellectual Property.

13.) Termination, Cancellation, and Modifications: (a) Termination for Convenience. At any time prior to Supplier's acceptance of this Purchase Order (as specified in Section 2 above), Purchaser may cancel or modify all or any portion of this Purchase Order by written notice to Supplier without liability or obligation to Supplier. After Supplier's acceptance of this Purchase Order, Purchaser may terminate, cancel, or modify all or any portion of this Purchase Order by written notice to Supplier of such termination, cancellation or modification. Upon Purchaser's termination of the Purchase Order under the preceding sentence, Purchaser's responsibility and liability with respect to the terminated, canceled, or modified Products will be equitably adjusted by mutual agreement of the parties provided, however, that Purchaser's responsibility and liability shall not exceed:(i) the total price otherwise payable by Purchaser under this Purchase Order for the terminated, canceled or modified Products, less (ii) the sum of (1) the estimated costs that would have been incurred by Supplier to complete and deliver the canceled Products; and (2) the reasonable value of the canceled Products at the time of cancellation. (b). Termination for Cause. Purchaser, without liability, may by written notice of default, terminate the whole or any part of this Purchase Order if Supplier: (i) fails to perform within the time Specified or in any written extension granted by Purchaser; (ii) fails to make progress which, in Purchaser's reasonable judgment, endangers performance of this Purchase Order in accordance with its terms; or (iii) fails to comply with any of the terms of this Purchase Order. Such termination shall become effective if Supplier does not cure such failure within ten (10) days of receiving notice of default. Upon termination, Purchaser may procure at Supplier's expense and upon terms it deems appropriate, goods or services similar to those so terminated. Supplier shall continue performance of this Purchaser Order to the extent not terminated and shall be liable to Purchaser for any excess costs for such similar goods or services. Purchaser's rights and remedies in this clause are in addition to any other rights and remedies provided by law, equity or under this Purchaser Order. In the event Purchaser wrongfully terminates this Purchase Order under this paragraph, in whole or in part, such termination becomes a termination for convenience.

14.) Assignment: Successors and Assigns: Performance of this Purchase Order is specific to Supplier; therefore, Supplier may not assign this Purchase Order (in whole or part) without Purchaser's prior written consent. Any assignment without Purchaser's consent will be voidable at Purchaser's option. Purchaser may assign this Purchase Order or its rights hereunder to a successor or subsidiary of Purchaser, or to any of its affiliates, or pursuant to a statutory merger, consolidation or internal corporate reorganization, or to any purchaser of, or other successor in interest to Purchaser. Subject to the foregoing restrictions, this Purchase Order will be fully binding upon, inure to the benefit of and be enforceable by Supplier, Purchaser and their respective successors and assigns.

15.) Applicable Law: This Purchase Order will be interpreted and enforced in accordance with the laws of the state of Purchaser's address listed on the face of this Purchase Order. Supplier irrevocably consents to the jurisdiction of the courts of that state, with venue laid in the county of the Front Panel Express address listed on the face of this Purchase Order.

16.) No Waiver: Unless explicitly stated otherwise hereunder, a party does not waive any right under this Purchase Order by failing to insist on compliance with any of the terms of this Purchase Order or by failing to exercise any right hereunder.

17.) Cumulative Rights: The rights and remedies of the parties under this Purchase Order are cumulative, and either party may enforce any of its rights or remedies under this Purchase Order or other rights and remedies available to it at law or in equity.

18.) Packing/Shipping: Supplier shall be responsible for safe packing in conformity with the carrier's tariff. Supplier must number all packages within a shipment with the corresponding numbers shown on the invoice. Supplier shall include a packing list bearing the Order number, quantity, description of items shipped, and any other information called for in the Order. One copy of the packing list shall be forwarded to Purchaser, and one copy shall be included in Supplier's invoice. No extra charge for packing will be paid unless specifically authorized by the Purchaser. For goods purchased F.O.B. Destination, Supplier shall bear the expense of transport of, and risk of loss or damage to, the goods to the designated location.

19.) Schedule/Delay: Supplier shall strictly adhere to the shipment or delivery schedules specified in the Order. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Supplier shall: (i) promptly notify Purchaser in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Purchaser with a written recovery schedule; and (iii) if requested by Purchaser, ship via air or other expedited routing, at no additional cost to Purchaser, to avoid or minimize delay to the maximum extent possible

20.) Disputes: All disputes under this Purchase Order that are not disposed of by mutual agreement may be decided by an action in a court of law or equity.

21.) Counterfeit Work: The following definitions apply to this clause: (a). (i.) “Counterfeit Work” means product or material that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. (ii.) “Suspect Counterfeit Work” means product of material for which credible evidence (including but not limited to, visual inspections or testing) provides reasonable doubt that the work part is authentic. (b). Supplier shall not deliver counterfeit work or suspect counterfeit work under this order. (c). Supplier shall only purchase products to be delivered or incorporated as material to Purchaser directly from an Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distribution chain. Products or materials shall not be acquired from an independent distributor or broker unless Purchaser has provided prior written approval. (d). Supplier shall immediately notify Purchaser with the pertinent facts if the Supplier becomes aware or suspects that it has furnished counterfeit work or suspected counterfeit work. When requested by Purchaser, Supplier shall provide OCM/OEM documentation that authenticates traceability of products or materials to the applicable OCM/OEM. (e). This clause applies in addition to any quality provision, specification, statement of work, or other provision in this order addressing authenticity of work, to the extent that such provisions conflict with this clause, this clause shall prevail. (f). If counterfeit work or suspected counterfeit work is delivered under this order, Supplier shall at its own expense, promptly replace such counterfeit work or suspected counterfeit work with genuine work conforming to the requirements of this order. Notwithstanding any other provision in this order, Supplier shall be liable for all costs relating to the removal and replacement of counterfeit works or suspected counterfeit works including without limitation Purchaser’s costs of removing counterfeit work, of installing replacement products or materials, of any testing necessitated by the re-installation of products or materials after replacement, and any fines or penalties assessed to Purchaser as a result of the counterfeit work. (g). The Supplier shall participate in monitoring the Government Industry Data Exchange Program (GIDEP) and shall act upon GIDEP reports which affect product or material delivered to Purchaser. When suspect counterfeit work or counterfeit work associated with this order is discovered, the Supplier shall submit a GIDEP report and shall ensure counterfeit work and suspected counterfeit work are not delivered to Purchaser. (h). Supplier shall include this clause in all lower tier subcontracts for the delivery of items that will be included or furnished as product or material to Purchaser.

22.) Material Safety Data Sheets: Supplier shall furnish Material Safety Data Sheets (MSDS) applicable to any items on this purchase order if requested.