



**HOWELL INSTRUMENTS, INC.**

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## HOWELL INSTRUMENTS, INC.

### GENERAL TERMS AND CONDITIONS FOR COMMERCIAL AND NON-COMMERCIAL ORDERS

#### GENERAL/ADMINISTRATIVE PROVISIONS

#### I. DEFINITIONS

Terms used throughout shall have the following meanings.

“Buyer” means authorized person by HOWELL INSTRUMENTS’ cognizant procurement organization to administer and/or execute this Purchase Order.

“Order” and “PO” means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are affixed.

“Seller” means the person, firm or corporation executing the Order with the Buyer and who will furnish the supplies or services provided herein.

“Works,” “supplies,” “articles,” “products,” or “items” including “services,” constitutes the required deliverables.

“FAR” means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.

#### II. FEDERAL ACQUISITION REGULATION (FAR) & DEFENSE FEDERAL ACQUISITION REGULATION SYSTEM (DFARS)

If this order contains a U.S. Government Prime Contract Number or if any of the items to be supplied under this order are to be used on a U.S. Government contract, the FAR and/or DFARS clauses listed on Howell Instrument’s website under FAR and DFARS Flow Downs are incorporated herein by reference and made part of these terms and conditions. Unless specified otherwise, the term "Contractor" will mean "Seller," the term "Contract" will mean "Order," and the term "subcontractor" will mean Seller's subcontractors. Seller agrees to negotiate with Buyer to incorporate additional provisions beyond those identified in the Flow-Downs or to change provisions as Buyer reasonably deems necessary to comply with the applicable government contract. Supplemental terms and conditions required to be flowed down from Howell Instruments shall be provided as a note on the face of this PO or as Special or Additional Provisions to the PO.

#### III. INDEPENDENT CONTRACTOR

Seller is, and shall be deemed to be, an independent contractor and not an agent or employee of the Buyer either expressly or impliedly. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order

shall grant to either party the right to make commitments of any kind for, or on behalf of, the other party.

#### IV. ACCEPTANCE

Any one of the following methods will constitute acceptance of the Order by the Seller:

- a) acknowledgment in writing;
- b) commencement of performance by Seller; or
- c) delivery in whole or in part of the items or services called for under the Order. Seller’s acceptance of the Order creates a binding contract between the Buyer and Seller, which shall be governed by the provisions of the Order. No condition stated by the Seller in its acknowledgment of the Order, quotation or any other document provided by Seller shall be binding upon the Buyer if in conflict or inconsistent with, or in addition to the terms and conditions of the Order, unless expressly accepted in writing by the Buyer. The rights and obligations described in the Order shall survive completion of and final payment of the Order.

#### V. PRECEDENCE

If any of the provisions of the Order are in conflict, the following will be the order of precedence:

- a) typed provisions on the face of the Order,
- b) Buyer’s Order attachments, including these terms and conditions,
- c) other specifications or documents incorporated by reference,
- d) Seller’s proposal or other documents only when specifically referenced on the Order. In the event of any conflicting provisions, the Seller shall promptly notify Buyer thereof.

#### VI. CHANGES

- a) The Buyer or an authorized representative from the Buyer’s Purchasing Department may at any time without notice to the sureties, if any, issue written directions to the Seller requiring additional work within the general scope of the Order, or directing the omission of or variation in work covered by the Order or any amendment thereto. If any such direction results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this clause 5 must be asserted in writing within fif-

teen (15) days from the date of receipt by Seller of the notification of change.

- b) Whether made pursuant to this clause 5 or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing by the Buyer or an authorized representative from the Buyer's Purchasing Department. Howell Instruments program, operations, engineering, technical or other personnel may from time to time render assistance, give technical advice, discuss or exchange information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause 5 and shall not be the basis for equitable adjustment. If Seller believes the foregoing creates an actual or constructive change, Seller shall notify the Buyer and shall not accept such direction or perform said action unless confirmed and authorized by the Buyer in writing accordingly. Howell Instruments personnel, with exception of the Purchasing Department, have no authority to modify or otherwise to direct or authorize changes to any PO.
- c) Seller shall proceed with prosecution of the work in accordance with any written direction issued under the Order.

#### **VII. WRITINGS REQUIRED**

- a) No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.
- b) No oral statement of any person whatsoever shall in any manner or degree, modify or otherwise affect the terms of the Order.
- c) No extra charge of any kind, or change in the price or schedule or terms and conditions of the Order will be allowed unless specifically agreed to in writing by the Buyer or an authorized representative of the Buyer's Purchasing Department.

#### **VIII. MAINTENANCE OF RECORDS**

Seller agrees that its manufacturing plant, or such part of any manufacturing plant as may be engaged in the performance of the Order, and Records related to this Order, which includes, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records, shall at all reasonable times be subject to examination and audit by any person designated by Buyer.

Such books and records shall be maintained by Seller for a period of five (5) years after final payment is made under the Order.

Howell Instruments and its customer shall have access to such records, and any other records Seller is required to maintain under this Order, for the purpose of audit during normal business hours, upon reasonable notice for as long

as such records are required to be retained. Audit rights shall be available to Howell Instruments on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through the responsible Defense Contract Audit Agency (DCAA) representative, or a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

#### **IX. ASSIGNMENT**

Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer a copy of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

#### **X. ENTIRE AGREEMENT**

These terms and conditions and those on the face of the Order to which this form is attached including other specifications, attachments or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral between the parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by the Buyer or an authorized representative of Buyer's Purchasing Department.

#### **XI. PAYMENT AND TAXES**

Payment date and cash discount period shall be calculated from either the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever occurs last. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer (or any of its affiliated Entities) against any amount payable by Buyer (or any of its affiliated entities) to Seller.

Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which will be listed separately on the invoice.

#### **XII. CREDIT**

The Seller shall credit to the Buyer, either as a cost reduction or by cash refund, the applicable portion of any income, rebate, allowance, or other credit related to cost for which the Seller has been reimbursed by the Buyer.

## APPLICABLE LAWS AND REGULATIONS

### I. APPLICABLE LAW

The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of Texas, excluding Texas' choice of law provisions, which shall not apply, and except that any provision in this PO that is:

- a) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); and/or
- b) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR;
- c) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the US federal common law of government contracts as enunciated and applied by US federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the US Federal Government. The 1980 U.N. Convention on Contracts for the International Sales of Goods shall not apply to any sales transactions governed by these terms and conditions.

All goods delivered or services provided pursuant to this Purchase Order will conform to standards established for such goods and services by all Applicable Laws such as those standards promulgated by the Federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code* ("**Texas Hazard Communication Act**") where applicable.

### II. ATTORNEY FEES

If it is necessary for either party to obtain legal representation to enforce any part of the Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

### III. COMPLIANCE WITH LAWS

Seller understands and acknowledges that Buyer is committed to compliance with all domestic and foreign laws affecting its business and operations. Seller agrees that in performing its duties under the Order, Seller will conduct itself in strict adherence to all applicable laws, rules, and regulations.

### IV. PRIORITY RATING

- a) If so identified, this PO is a "rated order" certified for national defense use or emergency preparedness and the Seller shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).
- b) Levels of priority: There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX." All DX rated orders take preference over DO rated orders and unrated orders.

Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of C.F.R 15 Part 700 Subpart D, Section 700.13, in writing (hard copy) or electronic format.

### V. EXPORT CONTROL

Information exchanged pursuant to the Order may include the use of, or access to, Technical Data (as defined in the Export Regulations defined herein) that is subject to export controls under 22 Code of Federal Regulations 120-130 ITAR (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Regulations"). U.S. Law prohibits the transfer or export of Technical Data without an export license to any employee or other person who is not a United States Citizen or Permanent Resident Alien, as well as to corporations or to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States. Seller acknowledges that it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided access to Technical Data provided under the Order. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately notify the Buyer or the Buyer's authorized Purchasing Department representative.

### VI. SAFETY DATA SHEETS

Seller shall provide to Howell Instruments with each delivery any Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheets or MSDSs) (29 C.F.R. 1910.1200)\_ 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 thereunder, or its state-approved counterpart.

### VII. CONFLICT MINERALS

Products delivered to Buyer shall be free of any known Conflict Minerals which are: tantalum, tin, tungsten, and gold, which are used to finance conflict in the Democratic Republic of Congo or designated surrounding countries.

### VIII. EXECUTIVE ORDERS

Seller shall comply with:

- a) Executive Order 11246, Equal Employment Opportunity; Vietnam Era Veteran Readjustment Assistance Act of 1974; Section 503 of the Vocational Rehabilitation Act of 1973 and

- b) Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, 29 CFR Part 471, Appendix A to Subpart A.

## **QUALITY/PRODUCT CONTROL PROVISIONS**

### **I. DELIVERY**

If Seller fails to adhere to the delivery schedule set forth in the Order, and Buyer must, therefore, demand a more expeditious means of transportation than specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way affects any other rights and remedies available to Buyer related to such delivery.

Unless otherwise noted on the Order, the date of delivery shall mean the date the item is to be delivered at Buyer's facility, or if the Order is for services, the date the services are to be completed.

### **II. TITLE AND RISK OF LOSS**

Title shall pass to Buyer at the specified destination. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item.

Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereby until delivered at the specified destination.

Seller shall bear all risks as to rejected items after notice of rejection.

### **III. INSPECTION AND ACCEPTANCE**

Buyer shall be permitted to inspect Seller's manufacture, fabrication, and testing. For these purposes, and upon reasonable advance notice, Seller shall provide access to Seller's facilities to enable Buyer and its representatives to perform inspections and to determine Seller's orderly, timely and satisfactory compliance with the requirements of the Order.

- a) Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of the Order.
- b) If Seller delivers non-conforming Work, Howell Instruments may reject any item which fails to meet the Order requirements. If delivered to Buyer's destination, rejected work or items shall be returned promptly by Buyer at Seller's expense.
- c) Items, where a Certificate of Conformance is required and requested on the PO and not provided, will be rejected and returned to Seller at Seller's expense.

### **IV. WARRANTY**

Notwithstanding inspection and acceptance by the Buyer of supplies furnished under the Order, all supplies furnished under the Order will be free from defects in mate-

rial or workmanship and will conform to all requirements of the Order. Seller warrants that supplies ordered to specifications hereunder will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with the Order. If supplies are not ordered to such specifications, Seller warrants that they will be fit for the purpose intended. All articles purchased hereunder are warranted to be merchantable, to be of good material and workmanship, and to be free from defect for a period of one year after delivery and acceptance by Buyer. All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers.

Seller further warrants that all work and services called for herein shall comply with the requirements of the Order and shall conform to the highest standards applicable to them.

### **V. SPECIAL TOOLS**

If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling the Order (each a "Special Tool"), such Special Tools shall be properly identified by Seller as such. Ownership shall pass to Buyer upon payment for the Special Tool. If a Special Tool is needed for the manufacture by Seller of the Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, and hand over to Buyer, as applicable, at the completion of the Order unless Buyer directs Seller in writing to house Special Tool for future Orders or dispose of such Special Tool.

### **VI. COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION**

(Note: If DFARS 252.246-7007 is applicable to this procurement, it shall take precedence for any differing terms and conditions for Electronic Parts within this specific provision with the exception of subsections: a) i., b), d), and f)).

- a) Definitions for purposes of this PO:
  - i. "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "Suspect Counterfeit Electronic Part" if visual inspec-

tion, testing, or other information provides reason to believe that the part may be a counterfeit part.

- ii. “Counterfeit Electronic Part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized after-market manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
  - iii. As used herein, “authentic” shall mean (A) from the legitimate source claimed or implied by the marking and design of the product offered; and (B) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
  - iv. “Original Component Manufacturer” (OCM) is an organization that designs and/or engineers a part and is pursuing or has obtained the intellectual property rights to that part.
  - v. “Original Equipment Manufacturer” (OEM) is an organization that designs, manufactures and/or engineers an end product comprised of various parts and is pursuing or has obtained the intellectual property rights to that end product.
  - vi. “Independent Distributors” are persons and businesses that are not part of an OCM’s authorized distribution chain. These also may be referred to as non-franchised distributors, unauthorized distributors or brokers.
  - vii. “Electronic Part” means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81). The term “Electronic Part” includes any embedded software or firmware.
  - viii. “Suspect Counterfeit Electronic Part” means an Electronic Part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is authentic.
- b) Seller represents and warrants that only new and authentic materials are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the Buyer’s Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/
- components directly from the OEMs/OCMs or through the OEM’s/OCM’s authorized distribution chain. Seller must make available to Buyer, at Buyer’s request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by the Howell Instruments’ Buyer. Seller must present complete and compelling support for its request and include in its request all actions needed to ensure that the parts/components thus procured are legitimate parts. Buyer may additionally need to get its customer’s approval of Seller’s request. Awaiting the processing of such requests shall not constitute a basis for excusable delay on part of the Seller. Buyer’s approval of Seller request(s) does not relieve Seller’s responsibility to comply with all PO requirements, including the representations and warranties in this provision.
- c) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the Buyer and his/her written approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM’s/OCM’s authorized distribution chain. Seller shall provide copies of such documentation for its system for Buyer’s inspection upon Buyer’s request. Seller’s system shall be consistent with applicable industry standards, AS5553 as minimum, for the detection and avoidance of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and taking corrective action.
- d) If the Seller is providing electronic components/devices only, the following certification applies:
- Certification of Origin of Product:  
*Acceptance of this Purchase Order (PO) constitutes confirmation by the Seller that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If the Seller is not the OEM/OCM or a franchised or authorized distributor, the Seller confirms by acceptance of this PO that it has been authorized in writing by Buyer to*

*act on Buyer's behalf to procure from the OCM or a franchised or authorized distributor of the OEM/OCM. The Seller further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon Buyer's request and is retained as a quality record in accordance with the "Maintenance of Records" provision contained herein.*

- e) Seller shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this PO.
- f) Notifications: Should Seller become aware of a Counterfeit Part or Suspect Counterfeit Part that, by any means, has been delivered to Buyer, or acquired for this PO whether or not delivered to Buyer. Seller shall notify Buyer as soon as possible but no later than 7 days of discovery. Seller will verify receipt of this notification by Buyer. This requirement will survive this PO.
- g) Seller shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

- h) Seller shall quarantine Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and make them available for investigation by appropriate government authorities. Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts shall not be returned to the supply chain unless and until such time that the parts are determined to be authentic.

#### **VII. PARTS OBSOLESCENCE**

"Obsolete Electronic Part" means an Electronic Part that is no longer in production by the original manufacturer or an after-market manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

Seller shall take appropriate actions to mitigate Electronic Parts obsolescence in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life-cycle.

Buyer may desire to place additional orders for items purchased hereunder. If Seller is aware of discontinuation of item, seller shall provide Buyer with a "Last Time Buy Notice" at least six (6) months prior to any action to discontinue item purchased under this PO.

### **LIABILITY AND INDEMNIFICATION**

#### **I. INDEMNITY**

Seller agrees to indemnify Buyer against any liability, including costs and expenses, for:

- a) any asserted trademark, copyright, or patent infringement arising from the manufacture, use, or sale of any articles furnished to Buyer under the Order, except where such articles are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention,
- b) any breach of any warranty of Seller hereunder, and
- c) any damages incurred by Buyer or any third party as a result of or arising out of the manufacture, use or sale of articles furnished by Seller under the Order.

#### **II. PRECAUTIONS, INDEMNITY, AND INSURANCE**

In addition to Seller's obligations set forth in clause 28, Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance of the Order, or that of its officers, directors, employees or agents.

FAR/DFARS flow down clauses pursuant to insurance and indemnification may be applicable under 252.217-7012 for this Order.

#### **III. PROPERTY INSURANCE**

Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all property in which Buyer has an interest hereunder. Coverage will be

provided on an all risk basis and value will be at replacement cost.

#### **IV. BUYER-FURNISHED PROPERTY AND MATERIAL**

Property and material furnished by Buyer to Seller for use in performance of the Order are to be held by Seller for mutual benefit and if the materials are damaged or not satisfactorily accounted for, Seller will pay for all such property and materials.

Seller shall properly mark and account for all Buyer property

#### **V. PROPRIETARY INFORMATION**

- a) Seller shall not, during the term of the Order, and for a period of five (5) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of the business, or any other confidential or proprietary information, of Buyer or its affiliates, suppliers, or customers which Seller shall have obtained because of the Order.

Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All propri-

etary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with the Order.

- b) Notwithstanding the foregoing sub-clause 32(a), Seller shall have no obligation with respect to any confidential or proprietary information which the Seller can demonstrate:
- i. was in Seller's rightful possession free of any obligation of confidence prior to its first receipt from Buyer,
  - ii. is publicly known through no fault of the Seller,
  - iii. is obtained from a third person who had a right to disclose it, or
  - iv. was independently developed without access to any confidential or proprietary information of Buyer.
- c) No private data, proprietary designs, ideas, or information of Seller is to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both parties to the Order, all information which passes from Seller to Buyer shall be treated as non-confidential, including material provided in written form and marked by the originator as being confidential or private.

## VI. DATA

If the Order is for research, development, or experimental work, all data, notes, drawings, designs, sketches, specifications, records, and memoranda of every description in any physical or electronic form relating to the work hereunder or any part thereof as Seller shall produce, and all copies of the foregoing, shall be the property of Buyer and subject to inspection by Buyer at all reasonable times and shall be delivered to Buyer or otherwise disposed of by Seller as Buyer may direct from time to time.

## VII. PATENT RIGHTS

If the Order is for, or includes, experimental, development, or research work, to be performed in accordance with special requirements of Buyer, Seller agrees to disclose and on request to assign to Buyer inventions conceived or first actually reduced to practice in the course of or under the Order.

## VIII. TERMINATION FOR CONVENIENCE

- a) Buyer may, at its option, terminate the Order, in whole or in part, for Buyer's convenience, by written notice, including email notice to Seller, effective at date of sending. Upon termination hereunder, Seller shall:
- i. immediately stop work under the Order on the terminated portion thereof and place no further orders or lower-tier subcontracts hereunder,
  - ii. terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and
  - iii. take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same. Within three (3) months after receipt of such notice of termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:
    1. The Order price for articles which have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable adjustment will be made to the Order price for such articles.
    2. The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose price is paid under sub-clause 35a), except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this sub-clause 35(a)(iii)(2), if the Order provides for fixed hourly rates, Buyer shall pay Seller with-



out duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of the Order.

#### **IX. TERMINATION FOR DEFAULT**

- a) Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof including warranties or fails to make progress as to endanger performance of the Order in accordance with its terms. Termination hereunder shall be effected by written notice to Seller.
- b) In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under the provisions of this clause 36.
- c) Except with respect to defaults of subcontractors at any tier, Seller shall not be liable for excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.
- d) If the Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of:
  - i. any completed items, and
  - ii. such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called *manufacturing materials*) as Seller has specifically produced or acquired for the performance of such part of the Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed items delivered and accepted by Buyer shall be at the Order price. Payment for manufacturing materials delivered

to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

- e) If, after notice of termination of the Order under the provisions of this clause 36 it is determined for any reason that Seller was not in default under the provisions of this clause 36, or that the default was excusable under the provisions of clause 36(c), the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause 35 and the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly.
- f) The rights and remedies of Buyer provided in this clause 36 shall not be exclusive and are in addition to any others provided by law or the Order.

#### **X. ADVERTISING, USE OF NAME**

Seller shall not, without first obtaining written consent and authorization from Howell Instruments, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles or services provided for in the Order. Seller agrees that it shall not use the Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer's prior written consent in each instance.

#### **XI. SUBCONTRACTING**

Seller will obtain Buyer's written approval before subcontracting the Order or any substantial portion thereof. The purchase of raw materials or standard commercial articles is not a subcontract within the meaning of this article.

#### **XII. FORCE MAJEURE**

Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (a) acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, epidemics, or unusually severe weather affecting either party; or (b) similar causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors.