

**1. CONSTRUCTION AND PAYMENT.** Transactions incorporating these terms and conditions shall collectively form a single binding "Agreement" between the "Supplier" identified therein and "Coherent" (to include Coherent, Inc. and/or any of its global subsidiaries named in the Agreement), and shall consist solely of the following: (i) these terms and conditions ("Terms"); (ii) any document incorporated by reference into these Terms; (iii) Purchase Orders issued by Coherent to Supplier; (iv) any document incorporated by reference into such Purchase Orders; (v) any framework agreement duly executed by authorized representatives of Coherent and Supplier; and (vi) any document incorporated by reference into any such framework agreement. The "Effective Date" of this Agreement shall be the earlier of: (i) mutual execution of a written framework agreement or contract by and between Coherent and Supplier; (ii) Supplier's written acceptance of a Purchase Order tendered by Coherent to Supplier for the sale of goods and/or services ("Products"); or (iii) commencement of performance of such a Purchase Order. No change in, modification of, or revision to this Agreement shall be valid unless it is in writing and signed by Coherent's authorized representative. No change in, modification of, or revision to any of this Agreement shall be valid unless it is in writing and signed by Coherent's authorized representative. Any term or condition proposed by Supplier, which is inconsistent with or in addition to these Terms shall be considered objected to by Coherent without further notice and shall not be binding on Coherent. This includes, without limitation, any terms and conditions of Supplier regardless of whether such terms and conditions are referenced on any applicable quote, purchase order acknowledgement, email, or other document or correspondence transmitted to Coherent by Supplier. Supplier may invoice Coherent with respect to any accepted Purchase Order upon Coherent's acceptance of the Products covered thereby. Coherent shall pay all invoices properly rendered hereunder within sixty (60) days of Coherent's receipt thereof, provided that Coherent shall have the option to delay payment until Coherent has received from Supplier an executed copy of Coherent's "Certificate of Compliance with Coherent's Environmental Policy".

**2. DELIVERY SCHEDULE.** Unless otherwise agreed in writing, Supplier shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Coherent's delivery schedule as set forth on applicable Purchase Orders. It is Supplier's responsibility to comply with this schedule but not to anticipate Coherent's requirements. Products shipped to Coherent in advance of schedule may be returned to Supplier at Supplier's expense. In the event a blanket Purchase Order is initiated under this Agreement, Coherent reserves the right to schedule Product deliveries as determined in its sole discretion. The total blanket Purchase Order quantity represents Coherent's best estimated demand and is not a commitment to purchase. Unless otherwise agreed in writing, Supplier is not authorized to manufacture the total blanket Purchase Order quantity at once. Supplier is authorized to manufacture, and Coherent is obligated to purchase, only quantities released by Coherent via written release orders tendered in reference to the blanket Purchase Order. Such release orders may take the same form as a standard Purchase Order which enumerates a quantity authorized for delivery in partial fulfillment of any referenced blanket Purchase Order. Delivery dates and quantities enumerated on blanket Purchase Orders are based on forecast and may be subject to a change or cancellation by Coherent at any time. Coherent reserves the right to, in its sole discretion: (i) reschedule or cancel any open blanket Purchase Order at any time without liability or consequence; and/or (ii) reschedule any release order issued under a blanket Purchase Order by providing written notice to the Supplier thirty (30) days prior to the delivery date. If, due to no fault of Supplier, the quantities released in a blanket Purchase Order are not consumed by Coherent prior to the

expiration date enumerated on the face of the blanket Purchase Order, Coherent reserves the right to extend the duration of such blanket Purchase Order as needed to harmonize the delivery schedule with Coherent's demand for the Products. All shipments shall be made in accordance with Coherent's routing guide (the "Routing Guide"), available at Coherent's supplier portal at <http://www.coherent.com/supplierportal> (the "Supplier Portal"). In the event Supplier does not ship according to the Routing Guide, Supplier shall reimburse Coherent any cost difference or expenses incurred by Coherent in connection with such shipment.

**3. INSPECTION, ACCEPTANCE OR REJECTION; TITLE.** The right of final inspection and acceptance or rejection of the Products at Coherent's facility or at such other place of receipt as may be specified in this Agreement is reserved to Coherent. In connection with such right, Coherent may, but shall be under no duty to, inspect or test Products before their acceptance, processing, use, or resale, and acceptance or the processing, use, or resale shall not constitute a waiver of any claim. Complaints or notices of defects or nonconformities in the Products shall be deemed timely if made within a reasonable period after discovery by Coherent of such defects or nonconformities. Payment for any Products shall not be deemed an acceptance of the Products or a waiver of any rights of Coherent under this Agreement or otherwise existing at law or in equity. Products will be deemed accepted if Coherent fails to give notice to the Supplier of any alleged defect or nonconformity within thirty (30) days of receipt. In case any of the Products: (i) fail to conform to any of the warranties in Section 11; (ii) are found to be defective in material or workmanship; or (iii) are otherwise not in conformity with the specifications applicable to this Agreement, Coherent shall have the right to reject such Products, require that such Products be corrected or replaced promptly with conforming Products at Supplier's sole and exclusive expense (including transportation charges to and from Coherent's facility or such other place of receipt specified in the Agreement), or pursue such other remedies as may be provided by law or in equity. Notwithstanding the foregoing Coherent reserves the right to revoke acceptance for any Product where a defect or nonconformity impairs such Product's usefulness or value to Coherent, and such defect or nonconformity was not discovered or observed prior to acceptance for any reason, or was waived based on Supplier assurances that such defect or non-conformity would not impair or impact the usefulness or value of the Products or would otherwise be cured in a timely manner, and such assurances of Supplier proved incorrect in Coherent's sole and exclusive discretion. Title and risk of loss or damage to Products will pass to Coherent upon acceptance of the Products by Coherent as set forth above.

**4. PRICES.** As used in this Agreement, the term "Contract Price" means the lesser of the per unit prices quoted to or paid by Coherent. Supplier represents that the Contract Price shall not exceed current prices charged to any other customer of Supplier for items which are the same or substantially similar to the Products ordered by Coherent taking into account the quantity ordered, and Supplier shall forthwith refund any amounts paid by Coherent in excess of such price. Coherent shall be entitled at all times to set-off any amount owing at any time from Supplier to Coherent and any of its divisions or affiliated companies against any amount payable at any time to Supplier by Coherent and any of its divisions or affiliated companies. Contract Prices shall be firm fixed prices unless otherwise set forth in this Agreement. Payment for the Products shall be due in full net sixty (60) days after receipt of an invoice submitted to Coherent by Supplier

which accurately reflects the Contract Price for Product deliveries subject to this Agreement.

**5. NOTICE OF DELAYS.** Whenever an actual or potential cause of delay occurs or threatens to delay the performance of the work, Supplier shall immediately notify Coherent in writing. Supplier shall keep Coherent advised of all relevant information concerning such cause of delay, its effects on the schedule, and measures being taken to remove or avoid it. In the event the delay is within Supplier's control, Supplier shall ship parts overnight unless otherwise authorized in writing by Coherent. Overnight shipment costs shall be paid by Supplier. In the event Supplier is required to allocate limited supply of Products among its customer, Supplier shall treat Coherent as the first priority customer to the fullest extent permitted by law.

**6. CHANGES.** Coherent shall have the right to make changes in any Purchase Order at any time. If such changes affect the cost of or the time required for performance of a Purchase Order, Supplier shall notify Coherent immediately and provide an updated schedule reflecting the soonest possible date on which implicated Products (with changes included) can be delivered. Coherent will not pay any additional charges for such changes unless such additional charges have been approved in advance and in writing by Coherent. Supplier shall proceed with the work as changed without interruption or delay.

**7. OWNERSHIP OF INTELLECTUAL PROPERTY.**

(a) For the purposes of this Agreement, "Intellectual Property" shall mean all proprietary information, intellectual contributions, creative ideas, developments, discoveries, inventions, patents, copyrights, trade secrets, designs, engineering details, drawings, mask sets, design tapes, documentation, data, cells, processes, methods, and any other intellectual property rights recognized under any law in any jurisdiction worldwide. The definition of Intellectual Property includes derivative works and next generation works. For purposes of Sections 7, 8, and 9 of these Terms, the term "Supplier" shall be expanded to include Supplier and Supplier's officers, agents, employees, and/or contractors.

(b) The Intellectual Property of Coherent which preexisted this Agreement is and shall remain the sole and exclusive property of Coherent. The Intellectual Property of Supplier which preexisted this Agreement is and shall remain the sole and exclusive property of Supplier. Nothing in this Agreement shall constitute a transfer of ownership of any such preexisting Intellectual Property from one party to any other party, except that Supplier grants to Coherent an unlimited, perpetual, irrevocable, assignable, world-wide, fully paid up, royalty free, nonexclusive, and transferable license to any Intellectual Property of Supplier necessary for Coherent to use or sell the Products purchased under this Agreement. To the limited extent necessary for Supplier to perform its obligations under this Agreement, Coherent hereby grants to Supplier a revocable, non-transferrable, non-exclusive, and strictly limited license to use Coherent Intellectual Property for the sole and exclusive purpose of providing Products to Coherent in accordance with this Agreement. Supplier may not use Coherent Intellectual Property for any other purpose, and no other Intellectual Property rights of Coherent are transferred or granted to Supplier hereunder.

(c) Coherent is and shall be the sole and exclusive owner of the Intellectual Property which arises from the work done by Supplier in connection with the Products purchased under this Agreement. In connection with such ownership, Coherent has the right to use such Intellectual Property for other customers, or to license use of such Intellectual Property to others. The design, development, production, or provision of Products by Supplier under this Agreement shall be "work made for hire" or "commissioned work," and Coherent shall own, and Supplier hereby perpetually and irrevocably assigns to Coherent, all Intellectual Property generated and developmental work conducted by Supplier in connection with this Agreement.

Notwithstanding the foregoing, to the extent that: (i) any Intellectual Property is not considered a work made for hire or commissioned work; or (ii) assignment of any Intellectual Property is not legally permissible, Supplier hereby grants Coherent an exclusive, royalty-free, worldwide, perpetual, irrevocable, assignable, sub-licensable, and unrestricted license to such Intellectual Property to the fullest extent permitted by law. Supplier will execute any documents that Coherent reasonably determines are necessary to document Coherent's rights in such Intellectual Property or to secure or perfect any rights of Coherent relating to such Intellectual Property. Notwithstanding anything stated herein to the contrary, the provisions of this Section 7 shall survive the expiration or termination of this Agreement.

**8. INDEMNITY.** Supplier shall indemnify, defend and hold harmless Coherent and its successors, assigns, customers, and agents ("Indemnitees") from all claims, suits, demands, damages, liabilities, expenses (including legal costs and attorneys' fees), judgments, settlements, and penalties of every kind ("Claims") based on or related to: (i) personal injury, death, or property damage to the extent any of the foregoing is actually or proximately caused by either any Product provided by Supplier, any item, material, or process used by Supplier in the performance of this Agreement, or by any negligent, reckless, or willful act or omission of Supplier; (ii) strict liability in tort or products liability of any other kind in connection with any Products provided by Supplier; or (iii) a breach of any of the provisions of these Terms or other term or condition set forth anywhere in this Agreement. The foregoing indemnity shall not apply in the case of Claims which arise solely from the gross negligence or intentional misconduct of Coherent, or to claims covered in whole by Section 9. It shall apply, however, if a Claim is the result of joint negligence, joint misconduct, or joint fault of Coherent and Supplier, but in such case the amount of the Claim for which Coherent is entitled to indemnification will be limited to that portion of such Claim attributable to the negligence, misconduct or other fault of Supplier. Notwithstanding anything stated herein to the contrary, the provisions of this Section 8 shall survive the expiration or termination of this Agreement.

**9. INTELLECTUAL PROPERTY INDEMNITY.** Supplier shall indemnify, defend and hold harmless Indemnitees from and against Claims alleging that the manufacturing or supply of Products hereunder infringes upon, misappropriates, or violates any Intellectual Property rights throughout the world of any third party, due to materials, processes, or Products provided by Supplier (including all materials, processes, and information incorporated into, used in, or used for the manufacture of the Products), to the extent that such Claims arise from use or provision of the Supplier's materials, processes or Products. Supplier shall not enter into any settlement that affects Coherent's rights or interests without Coherent's prior written approval. Notwithstanding anything stated herein to the contrary, the provisions of this Section 9 shall survive the expiration or termination of this Agreement.

**10. INFORMATION.** Any knowledge, information or drawings which Supplier may have disclosed, or may hereafter disclose to Coherent incident to this Agreement shall not, unless otherwise specifically stated in writing by Coherent, be deemed to be confidential or proprietary information and accordingly shall be provided free from any restrictions on use or disclosure.

**11. WARRANTY.**

(a) Supplier warrants that all Products will be new, merchantable, free from defects in materials and workmanship, free from any encumbrance or lien, and conform to and perform in accordance with all applicable specifications, drawings, descriptions and samples for a period of three years after delivery to Coherent ("Warranty Period") unless otherwise set forth in a written instrument executed by both parties. Unless manufactured pursuant to a design furnished by Coherent, Supplier assumes design responsibility and warrants that the Products are free from design defects and suitable for

the purposes intended by Coherent. Supplier's warranties, together with its service guarantees, shall run to Coherent and Coherent's customers or users of the Products and shall not be deemed to be exclusive remedies. Coherent's inspection approval, acceptance, use of, or payment for all or any part of the Products shall in no way affect its warranty rights, whether or not a breach of warranty had become evident at the time.

(b) Delivery of Products which are found to be defective or nonconforming with respect to the warranties stated in Section 11(a) during the Warranty Period constitute a breach of warranty by Supplier. Claims for breach of warranty do not accrue until discovery of applicable defects or nonconformities, even if the Goods were previously inspected. Any applicable statute of limitations runs from the actual date of discovery by Coherent.

(c) In the event that Supplier breaches the warranties set forth in Section 11(a), Coherent may, in its sole discretion, return any defective or nonconforming Products to Supplier. Risk of loss to such Products shall transfer to Supplier once possession is transferred to the return shipper, until such time as repaired, replacement, or corrected Products are delivered to Coherent. Supplier shall promptly repair, replace, or correct such defective or nonconforming Products and deliver conforming Products to Coherent. Supplier is responsible for all costs of repairing, replacing, or correcting such defective or nonconforming Products, including all incidental or consequential costs associated with return shipping, reshipping, and/or other logistics. In the event that Supplier fails to promptly repair, replace, or correct defective or nonconforming Products covered by this Section 11, Coherent may engage a third party to repair, replace, or correct defective or nonconforming Products, and Supplier shall be responsible for any associated costs. To the extent attributable to nonconforming Products delivered by Supplier, Supplier is responsible for all related costs, expenses, and damages including, without limitation, the costs of removal, disassembly, failure analysis, fault isolation, reinstallation, and re-inspection of the defective or nonconforming Products. Supplier will reimburse Coherent for all these costs upon receipt of Coherent's invoice. The warranties and rights provided by this Section 11 are cumulative and in addition to any warranty or other right provided by Coherent by law or equity.

**12. SUPPLY COMMITMENT.** In return for Coherent agreeing to enter into this Agreement, Supplier grants Coherent an option for a period seven (7) years following final delivery (the "Commitment Term") to purchase the Products and/or component parts or spare parts of any Products, including those which become obsolete during the Commitment Term, at the lesser of (a) the lowest price at which Supplier currently sells such Product, component parts, or spare parts; or (b) at the last price paid by Coherent for any such Product, component parts, or spare parts. Purchase Orders submitted during the Commitment Term shall be subject to the same terms and conditions as those governing the final transaction under this Agreement, and the Contract Price may not exceed the prior Contract Price unless otherwise agreed to by Coherent in writing. If for any reason Supplier is unable or unwilling, or otherwise fails, to supply any Products or applicable component parts or spare parts, Coherent shall have the right to produce such Products or applicable spare parts or component parts using any of the Intellectual Property related to those Products, spare parts, or component parts, and shall be entitled to reimbursement from Supplier for any difference in price associated with such production from the last applicable price. In the event Coherent exercises its rights under this Section 12, Supplier shall promptly provide Coherent with all applicable documentation to enable Coherent to manufacture such Products or applicable spare parts or component parts.

**13. AUDIT/INSPECTION.** For a period of up to two (2) years after the later of expiration or termination of this Agreement, and upon no less than twenty-four (24) hours prior notice, Coherent shall have the right to audit and inspect Supplier's facilities, personnel, computer

systems, finances, and records in order to determine Supplier's compliance with this Agreement.

**14. NON-ASSIGNMENT.** Supplier shall not assign this Agreement, any obligation under any Purchase Order, any interest therein, or any payment due or to become due thereunder, without the express written consent of Coherent. Any such assignment for any reason shall be null and void. For the avoidance of doubt, change of control resulting from any merger, acquisition, amalgamation, or consolidation activity shall constitute an assignment for purposes of this Section 14.

**15. DEFAULT AND EXCUSABLE DELAYS.** Coherent may, in its sole discretion, cancel this Agreement and some or all open Purchase Orders tendered hereunder in the event of a default by Supplier of any of these Terms. In the event of any such cancellation, Supplier shall reimburse Coherent for excess procurement costs above the contract price which Coherent incurs in purchasing similar or replacement products from one or more third party. Notwithstanding the foregoing, Supplier shall not be liable for excess procurement costs where such costs are related to the termination of Purchase Orders due to the occurrence of a Force Majeure event beyond the Supplier's control and which occurs without the fault or negligence of Supplier. Force Majeure events include without limitation fire, natural disaster, riot, acts of God, war, terrorism, and public disorder.

**16. INSPECTION, TESTING AND EXPEDITING.** All materials and workmanship related to any Purchase Order may be inspected and tested at all times and places either before, during or after manufacture by representatives designated by Coherent. The exercise of this right to inspect and test materials and workmanship shall in no way relieve Supplier of its obligation to furnish all Products in strict conformity with applicable specifications in accordance with the Terms of this Agreement. If inspection and testing are made on the premises of Supplier or its subcontractor, Supplier shall furnish without additional charges all reasonable facilities and assistance for the safety and convenience of the Coherent representatives in the performance of their duties.

**17. TOOLS AND MATERIALS.** Title to all tooling, equipment, or materials furnished or paid for by Coherent directly or indirectly for use hereunder (collectively, "Supplies") shall be and remain vested in Coherent. Coherent shall perpetually enjoy the right of possession in those Supplies. Coherent does not guarantee or warrant the accuracy of any Supplies it furnishes to Supplier. Supplier shall: (a) be responsible for all loss or damage to the Supplies while in its possession and insure against risk in this respect with adequate fire and extended coverage insurance; (b) clearly mark the Supplies as belonging to Coherent and keep the Supplies separate from other tooling, equipment and materials in Supplier's possession; (c) maintain the confidentiality of the Supplies as set forth in Section 18; (d) keep the Supplies in good operating condition; and (e) use the Supplies exclusively for the performance of work for Coherent and not for production of larger quantities than specified or in advance of normal production schedules except with Coherent's prior written consent. All taxes and similar charges levied against the Supplies while in Supplier's possession or control shall be borne by Supplier. Upon completion of work to be performed under this Agreement, all Supplies shall be disposed of as Coherent directs.

**18. CONFIDENTIAL INFORMATION.** "Confidential Information" means any information disclosed by Coherent to Supplier, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation drawings, documents, specifications, samples, prototypes and designs. Confidential Information shall include all information relating to Products and may include third-party information. Confidential Information shall not include information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by Coherent to Supplier; (b) becomes publicly known and made generally

available in the public domain by Coherent through no action or inaction of Supplier; or (c) was already known or possessed by Supplier without confidentiality restrictions as evidenced in Supplier's files and records in existence immediately prior to the time of Coherent's disclosure. Supplier shall take reasonable measures to protect the secrecy and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Supplier shall take at least those measures that it takes to protect its own most highly confidential information. Supplier shall make no copies of the Confidential Information unless the same are previously approved in writing by Coherent. Supplier shall reproduce Coherent's proprietary rights notices on any such approved copies in the same manner in which such notices were set forth on the original. Supplier shall not use any Confidential Information for any purpose other than to perform its obligations under this Agreement. Supplier shall not disclose Confidential Information to any third party unless authorized in advance in writing. Supplier shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody Coherent's Confidential Information. Supplier shall immediately notify Coherent in the event of any unauthorized use or disclosure of the Confidential Information, and shall take all possible steps to prevent distribution and further use or disclosure of that Confidential Information.

**19. GRATUITIES.** Supplier warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities to any of Coherent's employees, agents, or representatives and complies with Coherent's Supplier Code of Conduct available on the Supplier Portal. If Coherent, in its sole determination, believes in good faith that Supplier or any of its employees, agents or representatives has offered or given any gratuities to Coherent's employees, agents, or representatives for purposes relating to securing Purchase Orders or contracts from Coherent or securing favorable treatment with respect thereto, Coherent may terminate this Agreement and cancel any applicable Purchase Order upon written notice to Supplier, as set forth in Section 20.

## **20. TERMINATION FOR CAUSE**

(a) Coherent may terminate this Agreement and any or all outstanding Purchase Orders in the event that: 1) the Supplier defaults in the performance of any material term or condition; 2) Coherent provides written notice to Supplier of the existence of the default; and 3) Supplier fails to cure the default within thirty (30) calendar days of receiving such notice.

(b) Supplier may terminate this Agreement and any or all outstanding Purchase Orders in the event that: 1) Coherent fails to pay the Contract Price for accepted Products within net 60 days of receiving an invoice which accurately reflects the Contract Price for accepted Products properly delivered under this Agreement; 2) Supplier provides written notice to Coherent of its delinquency in payment; and 3) Coherent fails to make sufficient payments to cure such delinquency within thirty (30) calendar days of receiving such notice. Supplier's right to terminate under this Section 20(b) shall not apply in the event of unpaid amounts for disputed balances.

(c) Either party may terminate this Agreement and any or all outstanding Purchase Orders with immediate effect upon written notice to the other, in the event that the other party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, makes an assignment for the benefit of creditors, has a receiver appointed to it, or if it undergoes a sale of all or substantially all of its assets necessary to perform under this Agreement.

## **21. TERMINATION AT WILL**

(a) Coherent may terminate this Agreement and any or all outstanding Purchase Orders, in whole or in part, at any time by written notice to Supplier specifying the effective date and extent of such termination.

(b) Upon receipt of such notice of termination, and except as otherwise directed by Coherent, Supplier shall promptly:

(i) Stop work on the date and to the extent specified in such notice of termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portions of the work which Coherent does not direct Supplier to terminate or which, by its nature, cannot be terminated without incurring substantial costs, losses, or other liability;

(iii) Terminate all orders and subcontracts yet to be performed which relate to the terminated work;

(iv) Settle all claims arising out of any terminated orders and subcontracts relating to such terminated work, subject to the approval or ratification of Coherent;

(v) Transfer title and deliver on Coherent's instruction all fabricated and unfabricated parts, work in process, completed work, supplies, and other materials produced as a part of, or acquired in respect of the terminated work; and

(vi) Take any necessary action to protect property in Supplier's possession in which Coherent has or may acquire an interest.

(c) In the event of termination under this Section 21, Coherent shall, without duplication, pay to Supplier within a reasonable time from the date of such termination, the following amounts which both Coherent and Supplier hereby agree constitutes fair and reasonable compensation exhaustive of any and all obligations Coherent owes to Supplier related to the terminated work: (i) the Contract Price for any Products which have been completed; and (ii) the actual costs incurred by Supplier which are properly allocable under recognized commercial accounting practices to the terminated portion of a Purchase Order. The total sum to be paid Supplier under this Section 21(c) shall not under any circumstances exceed the total Contract Price minus the amount of payments already made and the Contract Price of work not terminated.

(d) Supplier will promptly deliver and transfer title to Coherent any property for which the cost of is reimbursed under Section 21(c). Nothing contained in this Section 21 shall impair the right of Coherent to change or cancel any Purchase Order pursuant to Sections 2, 6, or 20 of this Agreement. Coherent may audit all elements of any termination pursuant to Section 13 of these Terms.

**22. COMPLIANCE WITH LAWS.** The following policies, rules, laws, and regulations are hereby incorporated by reference into this Agreement, and Supplier represents and warrants compliance with each of the following in performance of its obligations under this Agreement:

(a) All applicable federal, state, or local governmental laws, regulations, and orders, including without limitation those expressly enumerated elsewhere in this Section 22;

(b) All applicable Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulations Supplement (DFARS), and all other governmental requirements incorporated into this Agreement or otherwise provided in the FAR Subcontracting Flow Down Matrix

and DFARS Subcontract Flowdown Provisions, as referenced in the “FAR/DFARS Flowdown Provision” tab of the Supplier Portal. All such requirements are hereby incorporated into this Agreement by reference, except that references to the U.S. Government shall be amended to refer to “Coherent,” and references to Contractor shall be amended to refer to “Supplier.” Without limiting the generality of this Section 22(e), Supplier represents and warrants that it has established and maintains processes to monitor its own supply chain to protect against the use of counterfeit items in accordance with 48 CFR Parts 202, 231, 244, 246 et. al. (Defense Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Electronic Parts (DFARS Case 2012–D055) (Final Rule)).

(c) All compliance requirements available in the “Compliance Requirements” tab of the Supplier Portal and are hereby incorporated in the Terms of this Agreement: (i) “Supplier Quality Requirements;” (2) “Supplier Environmental Requirements;” and (3) “Supplier Code of Conduct.”

(d) All environmental laws, regulations, or ordinances governing environmental and energy characteristics, product content prohibitions (e.g., REACH and RoHS), product end-of-life management/product take-back, and/or product safety related to the transport, import, export, distribution, sale and/or use of Supplier’s products.

(e) All applicable export regulations, including without limit the Arms Export Control Act of 1976 (22 U.S.C. § 39), Export Administration Regulations (15 C.F.R. SS 730-772), and the International Traffic in Arms Regulations (22 C.F.R. §§ 120-131). Supplier shall obtain all necessary licenses required under such rules prior to the shipment thereof, and shall clearly label all products and technical data with the relevant ECCN or reference to applicable Categories of the U.S. Munitions List, as appropriate. Supplier shall indemnify and hold harmless Coherent and its officers, employees, agents, shareholders, heirs, and assigns from and against any costs or damages incurred as a result of violations of export regulations by Supplier.

(f) **Executive Order 11246, (41 CFR 60-1.4); (ii) Section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)); and (iii) Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, (41 CFR 60-300.5(a)). These regulations prohibit discrimination against qualified individuals with disabilities and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment such qualified individuals with disabilities and qualified protected veterans. Supplier represents and warrants that it has developed and has on file affirmative action programs as required by the foregoing rules and regulations.**

(g) The Fair Labor Standards Act of 1938 as amended, and unless otherwise agreed in writing, Supplier shall certify on all invoices submitted in connection with this Agreement that the Products were produced in compliance with said Act as amended.

(h) 31 U.S.C. 1352 Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions; 18 U.S.C. 431 Contracts by Member of Congress; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58 Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 Whistleblower Protections; 49 U.S.C. 40118 Fly American; and 41 U.S.C. 432 Procurement Integrity.

### 23. PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. This certification is required by FAR Sections 52.203-12, and OMB Circular A 110, Appendix A.7.

(a) Without limiting the generality of Section 22, Supplier hereby acknowledges, certifies, and agrees:

(i) To the best of Supplier’s knowledge and belief, no Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf to: (i) award any Federal contract, grant, or loan; (ii) enter into any cooperative agreement; or (iii) extend, continue, renew, amend, or modify any such Federal contract, grant, loan, or cooperative agreement;

(ii) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been or will be paid to any person for influencing or attempting the influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress to award, extend, continue, renew, amend, or modify any Federal contract, grant, loan, or cooperative agreement, Supplier shall complete and submit OMB standard form LLL, Disclosure of Lobbying Activities, to Coherent;

(iii) To include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly; and

(iv) Submission of this certification is a prerequisite for making or entering into this Agreement and any Purchase Order tendered thereunder, which is imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(b) The Supplier certifies, to the best of its knowledge and belief, that the Supplier and/or any of its Principals (as defined below):

(i) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(ii) Have not within a three-year period preceding Supplier’s acceptance of these Terms been convicted of or had a civil judgment rendered against them for: (i) committing fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; (ii) violating Federal or state antitrust statutes; or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(iii) Are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in Section 23(b)(ii) of these Terms; and

(iv) Have not within a three-year period preceding Supplier’s acceptance of these Terms had one or more contracts terminated for default by any Federal agency.

(c) “Principals,” for the purposes of this certification, means officers; directors; owners; partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager, head of a subsidiary, division or business segment, and similar positions).

(d) This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, U. S. C.

(e) The representations, warranties, and certifications required under this Agreement, including without limitation those expressly required under Sections 22 and 23 hereof, are material representations of fact upon which reliance was placed when executing this Agreement or tendering any Purchase Order hereunder. If it is later determined that the Supplier knowingly rendered an erroneous certification, in addition to other remedies available to it, the Coherent may terminate this Agreement and open Purchase Order for default.

**24. CLEAN AIR AND WASTE.** If any Purchase Order issued under this Agreement: (i) exceeds \$100,000, or is part of an indefinite quantity contract that will exceed \$100,000 when all Purchase Orders tendered in a one year period are aggregated; (ii) will be performed at least in part at a facility that has been the subject of a conviction under the Air Act (42 U.S.C. § 7413(c)(1)) or the Water Act (33 U.S.C. § 1319(c)) and is listed by the Environmental Protection Agency as a violating facility; and (iii) the Purchase Order is not otherwise exempt from applicable requirements, Supplier agrees as follows:

(a) To comply with the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Clean Water Act (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those Acts before the Effective Date of this Agreement;

(b) That no portion of the work required by this Agreement will be performed in a facility is or was listed on the Environmental Protection Agency list of Violating Facilities on the Effective Date of this Agreement unless and until the EPA eliminates the name of the facility from the listing;

(c) To use best efforts to comply with clean air standards and clean water standards at the facility in which this Agreement is being performed; and

(d) To insert the substance of this Section into any nonexempt subcontract, including this subparagraph (d).

**25. INSURANCE.** Supplier will maintain and carry adequate liability insurance to mitigate commercial risk under this Agreement.

This includes, but is not limited to: (a) commercial general liability (including product liability insurance, insurance for services to be performed, and completed operations liability) in a sum no less than \$1,000,000 per incident and \$5,000,000 in aggregate, (b) if automobiles will be used in performance of this Agreement or a Purchase Order, automobile liability for all vehicles used in a sum no less than \$1,000,000 per accident combined single limit for bodily injury and property damage liability, (c) workers' compensation insurance as required by any applicable law or regulation and in accordance with the laws of any state, territory or province having jurisdiction over Supplier's employees, and (d) employer's liability in an amount of no less than \$1,000,000 per accident. All policies shall be maintained with carriers acceptable to Coherent. Prior to delivery of any Products, Supplier will provide Coherent with certificates of insurance from its carrier(s) on the foregoing coverages. Such insurance will be primary and non-contributory, and the coverage will not be limited solely to the term of this Agreement. Supplier shall add Coherent as an additional named insured on each policy required by this Section 25. Except where prohibited by law, Supplier will require its insurers to waive all rights of recovery or subrogation against Coherent insurers, Coherent, any of Coherent's subsidiaries and affiliated companies, and any officer, director, shareholder, employee, and agent of Coherent and its subsidiaries and affiliated companies. The amount of insurance carried in compliance with the above requirements is not to be construed as either a limitation of liability or satisfaction of the indemnification obligations under this Agreement.

**26. GENERAL:** The relationship of the parties hereunder is that of independent contractors, and these Terms will not be construed to imply that either party is the agent, employee, partner, or joint venturer of the other. In the event that any provision of these Terms is held to be unenforceable, these terms and conditions will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties. Notwithstanding the expiration or termination of this Agreement, Suppliers obligations under Sections 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 22, 23, 24, and 26 of these Terms shall survive in perpetuity or until such time as their nature and substance render them no longer enforceable as a matter of law. These Terms are governed by and shall be construed under the laws of the State of California without regard to its conflicts of law principles. The parties consent to the personal and exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. Waiver by either party of a breach of any provision of these Terms or the failure by either party to exercise any right hereunder will not operate or be construed as a waiver of any subsequent breach of that provision or as a waiver of any right under any other circumstance.