



Safety is our nature

P.O.# \_\_\_\_\_ (“Purchase Order”)

Date \_\_\_\_\_

**PURCHASE ORDER TERMS AND CONDITIONS**

**Seller**

**Buyer**

Seller: \_\_\_\_\_ (“Seller”)

Geobrugg North America, LLC (“GEOBRUGG”)

Address: \_\_\_\_\_

22 Centro Algodones

City, State, Zip code, Country: \_\_\_\_\_

Algodones, NM 87001 USA

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Tel: 505-771-4080 Fax: 505-771-4081

Email: \_\_\_\_\_

Email: chris.pierre@geobrugg.com

**The Purchase Order referenced above and the Standard Terms and Conditions of Purchase and Sale, attached, are hereby incorporated by reference. All communications related to this Purchase Order shall be made in writing using the contact information identified above.**

**Acknowledgment/Confirmation:** Seller shall provide written acknowledgment by email within 24 hours of receipt of this Purchase Order Terms and Conditions.

**Shipment/Delivery Date:** To the extent Seller is unable to meet GEOBRUGG’s shipment and/or delivery schedule, Seller shall notify GEOBRUGG in writing within 48 hours of receipt of this Purchase Order Terms and Conditions. GEOBRUGG RESERVES THE RIGHT TO ASSESS DAMAGES TO THE EXTENT SELLER DOES NOT MEET THE AGREED SHIPMENT AND/OR DELIVERY SCHEDULE.

**Shipment Confirmation:** Seller shall provide telephone or email notification of all shipments (including drop shipments directly to GEOBRUGG’s customers) to GEOBRUGG on the day of shipment, along with tracking information.

**Material Certifications:** Seller shall provide all material certifications at the time of shipment, both by hard copy sent with the shipment and electronic copy (email). GEOBRUGG shall not be required to make any payment until GEOBRUGG receives all material certifications and verifies that same are complete and correct.

**Material Origin:** Unless otherwise noted, Seller shall ensure that all materials provided pursuant to this Purchase Order Terms and Conditions and described as Domestic meet the requirements of Buy America (FEDERAL HIGHWAY ADMINISTRATION (FHWA) 23 U.S.C. § 313 – BUY AMERICA; 23 C.F.R. § 635.410). Seller shall obtain written pre-approval from GEOBRUGG of all deviations from the requirements of this section.

**Substitutions:** Seller shall obtain written pre-approval from GEOBRUGG for all substitutions. GEOBRUGG shall have no obligation to accept any substitutions that are not pre-approved pursuant to this section.

**Back orders:** Seller shall clearly indicate all back ordered items and provide an estimated date of shipment at the time Seller provides written acknowledgement of the order. Seller shall obtain GEOBRUGG’s written approval of back ordered items.

**Purchase Order Acknowledgment**

Acceptance of this purchase order shall be in writing by signed return of this acknowledgment. Any changes to this purchase order must be submitted in writing to GEOBRUGG and evidenced by GEOBRUGG’s signature on a revised order confirmation. Issuance of Seller’s order confirmation or signature below indicates Seller’s acceptance of this purchase order in full, and review and acceptance of the terms and conditions included in this Purchase Order Terms and Conditions, including the Standard Terms and Conditions of Purchase and Sale. The Seller’s representative executing this document represents that he or she is authorized to quote prices and receive orders for Seller.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Seller

Date: \_\_\_\_\_

## STANDARD TERMS AND CONDITIONS OF PURCHASE AND SALE

### 1. Scope

These Standard Terms and Conditions of Purchase and Sale (“T&Cs”) shall be binding whenever declared applicable in the offers and order contracts of GeoBrugg North America, LLC (“GEOBRUGG”) and its supplier (“Seller”) regarding the purchase and delivery of goods, products, materials, and/or equipment (“Delivery Items”). GEOBRUGG shall not be bound by any provision or alteration which may appear on Seller’s acknowledgment, offer, order confirmation, or other communication, whether written or otherwise, which is at variance with or odds with this agreement, which includes the Purchase Order, Purchase Order Terms and Conditions, and T&Cs (“Agreement”), unless GEOBRUGG expressly approves such provision or alteration in writing.

This Agreement contains the complete and final agreement between GEOBRUGG and Seller, and supersedes any prior or contemporaneous representations, proposals, quotes, understandings, correspondence and agreements. No agreement or understanding to modify this agreement shall be binding on GEOBRUGG unless in writing and signed by GEOBRUGG’s authorized agent. No course of dealings between the parties and no usage of the trade shall be relied upon to supplement or explain any term used in this agreement.

To the extent Seller subcontracts the manufacturing, packaging and/or delivery of the Delivery Items, in whole or in part, to a third party (e.g. sub-supplier, sub-contractor, etc.), the Seller shall ensure that said third party agrees in writing to comply with the terms of this Agreement.

### 2. Changes

Seller and GEOBRUGG, at any time and from time to time, may make changes in any one or more of the following, provided such changes are agreed to in writing, as provided herein:

- (a) Drawings, plans, designs or specifications;
- (b) Changes to the quantities of the items and/or amount of work furnished hereunder;
- (c) The method of shipment or packing;
- (d) Place of delivery; or
- (e) Time of delivery.

If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this agreement, the adjustment in cost shall be agreed to in writing prior to such change being implemented, and this agreement shall be modified in writing accordingly. Any change to any term of this agreement shall not affect any other term hereof unless expressed in writing and signed by GEOBRUGG’s authorized agent.

### 3. Communications

With respect to all communications related to this Agreement or the Delivery Items, the sender bears the burden of proving that such communications have been received and accessed by the recipient. Such communications are deemed to have been received at the time they are accessed by the recipient.

### 4. Cancellation

After this Agreement is executed by GEOBRUGG, and until arrival of the whole shipment of Delivery Items to the Place of Performance (see Section 9), GEOBRUGG shall be entitled to cancel orders, in whole or in part, by written notice for the convenience of GEOBRUGG, subject to refunding all costs incurred by Seller in connection with the order. Seller’s right to a refund shall not apply, however, where the Delivery Items may be sold or used elsewhere by Seller. GEOBRUGG will only refund costs which Seller substantiates by way of receipts. Upon receipt of GEOBRUGG’s written notice of cancellation, Seller shall immediately discontinue its work with respect to the cancelled portion of the order, cancel outstanding orders in writing, clean up its work at the Place of Performance, dispose of its rubbish, remove or deliver its materials, remove its equipment and

demobilize the Place of Performance, all as directed by GEOBRUGG. Seller waives any and all rights and claims to recover from GEOBRUGG any overhead, interest, or lost profit, or any special, indirect, incidental, consequential, or punitive damages.

#### **5. General Obligations of Seller**

Seller is obligated to manufacture, package, and/or deliver the Delivery Items in accordance with the requirements and specifications which it receives from GEOBRUGG. Seller is obligated to deliver Delivery Items which are of perfect quality and suitable for GEOBRUGG intended purpose. All Delivery Items shall be received subject to GEOBRUGG's inspection and rejection.

#### **6. Defective Items**

Defective Delivery Items not in accordance with applicable specifications will be held for Seller's instruction and at Seller's risk, and if Seller so directs, will be returned to Seller at Seller's expense. No Delivery Items returned as defective shall be replaced without a new order and shipping schedule. Payment for Delivery Items prior to inspection shall not constitute an acceptance thereof, nor will acceptance relieve Seller of responsibility for patent defects or for fulfillment of its warranties hereunder. Upon failure of Seller to direct disposition of rejected Delivery Items, GEOBRUGG may dispose of the same, at its option and at Seller's expense, in any manner provided by law. Correction or replacement by GEOBRUGG shall in no way invalidate, waive or affect any of Seller's warranties, express or implied, nor cause GEOBRUGG to waive any other remedy at law or in equity. GEOBRUGG may, at its option, inspect the Delivery Items ordered hereunder at Seller's place of manufacture, and Seller agrees to cooperate with GEOBRUGG in connection therewith. Final inspection and acceptance or rejection of the Delivery Items shall, nevertheless, be at the Place of Performance.

#### **7. Dispatch/Packaging**

All shipments of Delivery Items shall contain a delivery note indicating, in particular, the order number, number of items, article numbers,

description of the article, delivery date, orderer, and sender.

GEOBRUGG is entitled to return the packaging material sent and invoiced by the Sender to the latter at no additional cost. The transport costs for the return shipping shall be borne by the Seller.

When packaging material cannot be disposed of easily as a result of being harmful to the environment, Seller agrees to bear all disposal costs.

#### **8. Delivery Date/Partial Delivery**

Delivery dates are binding. Time is of the essence of this Agreement. Seller shall deliver the Delivery Items to the Place of Performance by the delivery date.

GEOBRUGG reserves the right to store shipments which arrive more than seven days before the agreed delivery date, at the cost of the Seller, or to return them at the cost of the Seller.

Where the Seller fails to effect performance on the contractually agreed delivery date, GEOBRUGG may, after granting a grace period and irrespective of any fault on the part of the Seller, rescind the Agreement, in whole or in part, and claim compensation or uphold the Agreement and claim compensation in lieu of performance, and this shall be without prejudice to GEOBRUGG's right to insist upon continued performance and claim damages for default. GEOBRUGG reserves the right, without liability, in addition to other rights and remedies it may have pursuant to this Agreement or arising under applicable law, to terminate this Agreement for such failure to perform by notice effective when deposited in the U.S. Mail, to proceed against Seller for all damages that GEOBRUGG has suffered on account of the breaches of this Agreement by Seller.

In the event of delayed delivery through no fault of GEOBRUGG, Seller shall grant GEOBRUGG, for each week of delay, a reduction of 1% of the agreed contract price excluding sales tax, but limited to a maximum of 10% of the agreed contract price per delayed delivery.

GEOBRUGG reserves the right to postpone agreed delivery dates by providing notification of postponement of the delivery date no later than 14 days before the agreed delivery date. Upon receipt of such notice, Seller agrees to reserve the shipment for GEOBRUGG for up to six months with no effect on the cost. The provisions related to invoicing pursuant to section 12 herein shall remain applicable.

Seller shall not effect partial delivery without the express written approval of GEOBRUGG. In the absence of such approval GEOBRUGG is not obligated to accept partial delivery. Where GEOBRUGG approves a partial delivery, Seller's delivery note shall so indicate.

All additional costs arising as a result of partial delivery, particularly shipping costs, shall be borne by Seller.

Where, as a result of force majeure – e.g. natural disaster, epidemic, strike, or other operational disruption arising through no fault of either party, lasting longer than three weeks – Seller or its sub-supplier or sub-contractor is temporarily unable to effect performance, both parties to the Agreement are entitled to rescind the Agreement, in whole or in part, and shall waive all claims for compensation, except that GEOBRUGG shall be entitled to assert claims for its damages unless Seller notifies GEOBRUGG in writing of the reason for the delay and its likely duration within one week of such force majeure occurring. Seller agrees that GEOBRUGG shall not be liable for any damage, whether direct, consequential, or otherwise, that Seller may experience due to such delay.

#### **9. Place of Performance, Benefit and Risk**

Delivery of the Delivery Items shall take place exclusively at the delivery address designated in the Purchase Order ("Place of Performance") and subject to the delivery conditions referred to therein.

The benefit and risk and ownership of the Delivery Items passes to GEOBRUGG upon delivery of the Delivery Items at the Place of

Performance upon GEOBRUGG's acceptance of such Delivery Items.

#### **10. Documentation of Origin**

In the case of cross-border transactions, Seller must provide with the Delivery Items the applicable proof of origin (Certificate of Origin, etc.) that may be required for import customs clearance in the country of destination. All costs arising in this regard shall be borne by the Seller.

Seller shall be responsible for the accuracy and completeness of the information contained in all proofs of origin. Seller shall compensate GEOBRUGG or GEOBRUGG's customer(s), irrespective of fault, for all losses (including, but not limited to, all duties, taxes, fees, and other additional costs) incurred because proof is lacking or incorrect.

#### **11. Prices**

The agreed contractual prices are fixed prices exclusive of sales tax which contain all the costs incurred by the Seller in connection with the delivery. This includes, in particular, the cost of transport, insurance, packaging, taxes, customs duty, any VAT that may be imposed, and charges relating to the import of the Delivery Items into the country of destination and/or delivery of the Delivery Items.

GEOBRUGG shall only bear costs that are expressly designated as being its responsibility in the Purchase Order.

In the absence of any provision to the contrary in the purchase order, the price is "Delivered Duty Paid" (DDP) registered office of GEOBRUGG as per Incoterms 2010.

#### **12. Invoicing, Payment Conditions, Set-off**

Seller's invoice shall indicate the date on which the Delivery Items were dispatched as well as the order number and must be sent separately to GEOBRUGG immediately after the Delivery Items are shipped.

Unless otherwise agreed in writing or required by law, the agreed price shall be due for payment within 90 days after the later of delivery of the

Delivery Items to the Place of Performance or GEOBRUGG's receipt of the invoice. Compliance with the payment deadline is determined by the date on which GEOBRUGG carries out the payment transaction.

Payment of the invoice shall not constitute confirmation that the delivery is free of defects or that it is complete.

Seller is only permitted to set off counterclaims which are undisputed or *res judicata*. Seller shall have no right of retention or other withholding rights.

Where the delivery is defective, GEOBRUGG shall be entitled to withhold payment until proper performance has been carried out.

### **13. Warranty**

In addition to the warranties implied by law, Seller warrants and guarantees that all Delivery Items and related services provided pursuant to this Agreement will be of the highest quality in design and workmanship and free from defect; shall be new, unless the parties agree otherwise in writing; shall conform to all applicable drawings, plans, designs, specifications, including the specifications provided by GEOBRUGG or its customer, and the terms of this Agreement; shall not be less than merchantable in quality; shall conform to the accepted standards for usage in trade; and shall be fit for the particular purpose intended by GEOBRUGG or its customer. GEOBRUGG is relying on Seller's skill and judgment to select and furnish suitable materials and related services. Seller represents and warrants that all plans, specifications, shop drawings, and other design documents furnished by or through Seller shall be free from errors and omissions and shall conform to all laws and to the requirements of this Agreement; provided, however, that if a higher standard is required to conform to requirements of good and generally accepted engineering practice, such design shall also comply with such higher standard.

Where the Delivery Items and/or related services do not meet any of the warranty standards herein within one (1) year from the date of initial use or acceptance, whichever is later, GEOBRUGG

may, without prejudice to any additional rights and irrespective of any fault on the part of the Seller, direct that Seller either remedy the defects or provide a replacement delivery. If Seller's efforts to remedy the defects or provide a replacement delivery are not satisfactory to GEOBRUGG, GEOBRUGG may, irrespective of any fault on the part of Seller, opt either for a price reduction or rescind the Agreement. Where loss is incurred due to the defect, GEOBRUGG shall have the right to claim compensation, irrespective of any fault on the part of Seller.

The limitation period for claims arising due to defective delivery shall be consistent with the applicable law in the state of the Place of Performance.

All replacements, corrections, and other remedies shall be additionally warranted against defects for a period of one (1) year by Seller, from the date of remedying such defect.

### **14. Marketing of Goods Elsewhere**

Delivery Items ordered by GEOBRUGG, which have either not been delivered by the Seller or not been accepted by GEOBRUGG, cannot be marketed elsewhere by Seller without the express written approval of GEOBRUGG to the extent these Delivery Items bear the company name "GEOBRUGG" or company slogans or brand names or were intended to be supplied especially and exclusively to GEOBRUGG.

Different breaches of the foregoing obligation shall not be considered a single occurrence. For every such breach, in recognition of the harm that would be suffered by GEOBRUGG, Seller shall be obligated to pay GEOBRUGG its damages, including but not limited to attorneys' fees and litigation or arbitration costs incurred in enforcing this provision. This fee shall be without prejudice to GEOBRUGG's right to assert additional claims for compensation irrespective of any fault on the part of Seller.

### **15. Indemnity**

To the fullest extent permitted by law and subject to the limitations provided herein, Seller shall defend, indemnify, and hold harmless



GEOBRUGG from any and all claims, actions, liabilities, losses, costs and expenses (including attorneys' fees, expert fees, expenses and court costs) arising out of its activities in supplying the Delivery Items and any related services, the acts and omissions of any agent, employee or representative of Seller, and any actual or alleged death or injury to any person, damage to any property, or other damage or loss, by whomsoever suffered, resulting or claimed to have resulted in whole or in part from any actual or alleged defect in such materials, whether latent or patent, including actual or alleged improper design or construction, or the failure of such materials to comply with specifications or with any express or implied warranties of Seller, or arising out of any actual or alleged violation concerning such Delivery Items under any law, statute, ordinance, governmental order, rule or regulation, or from any negligence of Seller in performing any required operations at the Place of Performance or project site of GEOBRUGG's customer, and any product recall.

The defense and indemnity obligation herein shall not apply to claims for damages arising out of any actual or alleged death of, or bodily injury to persons or damage to property caused by or resulting from the sole negligence or fault of GEOBRUGG, its employees or agents. In the case of such claims caused by, or resulting from the concurrent negligence or fault of (A) GEOBRUGG, its employees or agents, and (B) Seller, its employees or agents, Seller's duty to defend and indemnify GEOBRUGG shall apply only to the extent of the negligence or fault of Seller, its employees or agents, or other parties for whom Seller is legally responsible.

The indemnification obligation in this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits, or other employee benefit acts. Entitlement to recovery of defense costs shall include all fees (of attorneys and others), costs and expenses incurred in good faith. In addition, GEOBRUGG shall be entitled to recover compensation for its in-house expenses (including materials and labor) consumed in its defense. For the purposes

of this indemnity obligation to GEOBRUGG only, and not for the benefit of any employees of Seller, to the fullest extent permitted by law Seller waives its immunity under the applicable workers' compensation law of the state of the Place of Performance. ***By its signature on the Purchase Order Terms and Conditions form, Seller acknowledges that the foregoing provisions were mutually negotiated between GEOBRUGG and Seller.***

## 16. Insurance

Seller shall maintain one or more liability insurance policies providing coverage for product liability with minimum limits of \$1,000,000 USD annual occurrence, \$2,000,000 USD general aggregate, and \$2,000,000 USD products and completed operations aggregate.

To the extent this is a Design-Build Purchase Order, Seller shall also provide and maintain Professional Liability (Errors & Omissions) insurance as described herein for the duration of the applicable statute of repose. There shall be no exclusion in the policy(ies) for the type or scope of work associated with this Agreement. Minimum limits for such insurance shall be \$1,000,000 USD for each claim or occurrence, \$1,000,000 USD annual or general aggregate.

Seller shall maintain automobile liability insurance with minimum combined single limits of \$1,000,000 USD each occurrence for bodily injury and property damage.

Seller shall maintain workers' compensation insurance at the statutory limit.

Seller shall maintain employers' liability insurance with minimum limits of \$1,000,000 USD each accident for bodily injury; \$1,000,000 USD policy limit for bodily injury by disease; and \$1,000,000 USD each employee for bodily injury by disease.

All insurance supplied by Seller shall be in a form and from issuing companies acceptable to GEOBRUGG. The issuing companies must have a Best's rating of A-, VIII or better. All insurance shall be primary and non-contributing with any other insurance. The required insurance may be

provided through a combination of primary and excess policies including an umbrella form of policy.

To the fullest extent permitted by law, liability policies required hereunder shall, where prudently feasible, name GEOBRUGG, its customer, project owner (if different), and their respective assignees, officials, officers, directors, shareholders, members, managers, employees, construction consultants, agents, representatives, and any additional entities as GEOBRUGG may request, as Additional Insureds. The Additional Insured Endorsement shall be equivalent to ISO form CG2010 (07/04) and ISO form CG2037 (07/04) for completed operations editions and shall state that the coverage provided to the Additional Insureds is primary and non-contributory with respect to any other insurance available to the Additional Insureds. Each member of the Seller team is responsible to ensure to the best of its ability that those entering the job site or Place of Performance have evidence of and hold the appropriate insurance, or that those visitors are escorted while at the job site. Exceptions may be granted where mutually agreed to in writing in advance between GEOBRUGG, its customer or the job site owner, if different, and the member of the Seller team. All policies of insurance required pursuant to this section shall be endorsed to provide that the insurance company shall provide written notice to Seller at least thirty (30) days prior to the effective date of any cancellation of such policies. All policies of insurance that are in any way related to the Delivery Items and associated services to be provided by Seller shall include clauses providing that each underwriter shall waive all its rights of recovery under subrogation or otherwise, against GEOBRUGG, its customer, project owner if different, and GEOBRUGG's suppliers and subcontractors. Seller shall cause to be furnished to GEOBRUGG certificates of insurance evidencing all insurance as required by this Agreement. Upon request by GEOBRUGG, Seller shall provide proof of such insurance and/or copies of the insurance policies, renewals, or replacements thereof. All copies of policies, certificates, renewals and replacements

shall be in a form and content acceptable to GEOBRUGG.

### **17. Rights of Use, Third-Party Rights**

Where intellectual property rights arise or are acquired by the Seller, particularly copyrights and other intellectual property rights, with respect to the Delivery Items which are specially and exclusively manufactured, packaged and/or delivered for GEOBRUGG by Seller, all rights to use and exercise such intellectual property rights shall pass to GEOBRUGG irrevocably, immediately and exclusively and shall be unrestricted as to content, space and time.

Seller shall manufacture, package, and/or deliver the Delivery Items unencumbered by third-party rights, in particular copyrights and other third-party intellectual property rights, which impair and/or prevent attainment of the contractually agreed purpose. Seller shall defend, indemnify and hold harmless GEOBRUGG against all third-party claims, actions, liabilities, losses, costs and expenses (including attorneys' fees, expert fees, expenses and court costs) arising out of the breach of intellectual property rights due to GEOBRUGG's use of the Delivery Items manufactured, packaged, and/or delivered by the Seller.

### **18. Confidentiality, References**

Seller shall treat all legal relationships between GEOBRUGG and Seller and all commercial and technical details relating thereto, all findings arising from the collaboration with GEOBRUGG ("Information"), and all information passed to the Seller by GEOBRUGG in physical form such as technical documentation, drawings, plans, and other materials ("Documents") as trade secrets and therefore as absolutely confidential. In particular, Seller shall not copy any Documents. All Documents and any items provided on loan shall be returned by Seller immediately upon request by GEOBRUGG, which may be made at any time; and must be returned in any case, without request, no later than the end of the legal relationship. Seller shall have no right of

retention with regard to the Information, Documents or loaned items.

Seller shall not advertise or otherwise market its company, products or services using GEOBRUGG's name, brands, or other reference details unless Seller receives the prior written agreement of GEOBRUGG.

Seller shall enter into agreements with its employees, agents, sub-suppliers, and sub-contractors which impose the obligations of this section upon each of them. Seller shall be liable to GEOBRUGG for any failure by Seller's employees, agents, sub-suppliers, and sub-contractors to comply with the obligations of this section.

#### **19. Social Responsibility, Environmental Protection and Anti-Corruption**

Seller undertakes to comply with all laws, statutes, regulations, and ordinances with respect to employees, protecting the environment, health and safety at work, reducing the adverse effects of Seller's activities on human beings and the environment. For this purpose, Seller shall, where possible, set up and develop a management system in compliance with ISO 14001. In addition, Seller shall observe the principles of the UN Global Compact Initiative (<http://www.unglobalcompact.org>) and the ILO's International Labour Standards (<http://www.ilo.org>). These relate principally to the protection of international human rights, the right to collective bargaining, the abolition of child and forced labor, the elimination of discrimination in the field of employment and occupation, environmental responsibility and combatting corruption.

In particular, Seller shall ensure on behalf of its company that the manufacture or processing of the Delivery Items takes or has taken place without the use of exploitive child labor within the meaning of ILO Convention No. 182 and without violating the obligations arising from the implementation of this Convention or from other applicable national or international provisions on combatting exploitive child labor. Further, Seller gives its assurance that its company, sub-suppliers, and sub-contractors of every tier have

taken active and effective measures to exclude exploitative child labor, within the meaning of ILO Convention No. 182, from the manufacture or processing of the Delivery Items. Seller shall impose corresponding obligations on its sub-suppliers and sub-contractors and undertake monitoring measures in this respect. GEOBRUGG is entitled to examine the content of the agreements. Seller shall, upon request by GEOBRUGG, provide proof of the measures it has taken.

Seller shall not use any conflict commodities in the manufacture of its Delivery Items. Conflict commodities are, for example, columbite-tantalite (coltan), cassiterite (tin ore), gold, wolframite, and their derivatives from the Democratic Republic of the Congo and its neighboring countries, defined in more detail in Article 1502 Section (e)(1) and (4) of the Dodd Frank Acts (USA). Seller shall take and implement suitable measures to ban the procurement and use of conflict commodities. In the event the Supplier uses columbite-tantalite (coltan), cassiterite (tin ore), gold, wolframite, or their derivatives in the manufacture of the Delivery Items, Seller shall provide GEOBRUGG with proof, on an annual basis, that it has not violated the ban on the use of conflict commodities.

GEOBRUGG has undertaken to implement all transactions without the use of blackmail, bribery, and other unlawful, unethical and fraudulent activities. Seller undertakes to comply with all applicable laws and regulations, particularly the US Foreign Corrupt Practices Act.

In connection with transactions with GEOBRUGG, Seller shall not offer, promise, authorize, give, demand or accept any gift, loan, commission, consideration or other advantage from or to any person as an inducement to commit a dishonest or illegal act or a breach of contract, in order to obtain, keep or procure an order, or to secure any other unfair advantage. Under this provision, unlawful payments therefor include offers, promises, and authorizations of payments, whatever the amount, made with the aim of expediting routine administrative tasks. Seller shall introduce appropriate procedures for



Seller's employees to ensure they comply with all applicable anti-corruption laws and this provision.

#### **20. Severability**

Where one or more individual provisions of this Agreement are considered by a competent arbitration tribunal, official court of law, or competent authority to be invalid, void, unenforceable, or ineffective, this shall have no effect on the validity of the other provisions of the Agreement as a whole, and the appropriate authority shall reform each such invalid, void, unenforceable, or ineffective provision such that it is consistent with applicable law and is as close as possible to the legal and economic intent of the Parties in the original provision.

#### **21. Governing Law, Jurisdiction, and Dispute Resolution**

This Agreement shall be governed and interpreted according to the laws of the state of New Mexico.

Any controversy or claim arising out of or related to this Agreement or any breach thereof shall be submitted to arbitration. The parties shall endeavor to agree on an arbitrator, however the American Arbitration Association shall select an arbitrator if the parties are unable to agree. Any such arbitration shall be conducted subject to the rules of the American Arbitration Association. All such arbitrations shall occur within the state of New Mexico. The arbitrator's decision shall be final and binding upon the parties without right to appeal to any courts and the award may be entered in any court having jurisdiction thereof. The parties hereby waive a right to a jury trial. The arbitrator shall award the substantially prevailing party its reasonable attorneys' fees, costs and expenses.

#### **22. Supremacy Clause**

In the event of any conflict between the provisions of this Agreement and any other writing, the terms

and conditions of this Agreement shall control, unless the parties agree otherwise in writing.

#### **23. Electronically Submitted Copies**

The Parties agree that this Agreement may be executed and made binding through the use of signatures sent via facsimile and/or PDF (or similar format) through email, which signatures shall be treated and effective as originals. This Agreement may be signed in one or more counterparts which shall together constitute the Agreement.

#### **24. Waiver**

No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Waiver by either GEOBRUGG or Seller of a breach by the other of any provision of this Agreement shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect.