



Fuel Tech, Inc. Purchase Order Terms & Conditions (“PO Terms”)

1. Acceptance and Effect. These PO Terms are between Fuel Tech, Inc., a Delaware corporation (“Fuel Tech”) and the supplier identified in the applicable SOW (“Supplier”) and cover:

a. “Deliverables”: all work product developed by Supplier (or Supplier’s approved sub-Supplier) for Fuel Tech as part of the delivery of Goods or Services, including intellectual property (“IP”) in connection with these PO Terms. Deliverables are “work made for hire” for Fuel Tech as that term is defined under copyright law.

b. “Goods”: software and/or tangible goods licensed or purchased by Fuel Tech under these PO Terms.

c. “Services”: professional services, advertising, consulting services, and support and maintenance services purchased by Fuel Tech under these PO Terms.

d. “SOW” means any of the following: (1) Fuel Tech purchase orders; (2) statements of work or other order forms signed by both parties’ authorized representatives; or (3) written agreements signed by both parties’ authorized representatives referencing, and subject to, these PO Terms.

2. Relationship to Other Agreements. The terms and conditions of these PO Terms are the complete and binding agreement between Fuel Tech and Supplier except:

a. If the parties mutually executed an agreement which expressly applies to the Goods, Services or Deliverables ordered with these PO Terms, then the provisions of such agreement are incorporated. If a conflict arises between these PO Terms and such agreement, to the extent of that conflict, the terms of such agreement will apply.

b. If multiple agreements with similar or contradictory provisions could apply to these PO Terms, the parties agree the terms most favorable to Fuel Tech will apply, unless the result would be unreasonable, unconscionable, or prohibited by law.

c. Except as stated above in this Section 2, and other than changes described in Section 8 and the Termination provisions in Section 12, additional or different terms (for example, online terms or terms included in sales orders or sales confirmations) will not supersede these PO Terms unless the parties mutually execute a written document.

3. Packing, Shipment and Returns of Goods or Deliverables. Unless specifically provided in these PO Terms:

a. Packing.

(1) Price based on weight will include net weight only.

(2) Supplier will not charge Fuel Tech for packaging or pre-shipping costs, such as boxing, crating, handling damage, drayage, or storage.

b. Shipping.

(1) Supplier will mark all containers with necessary handling and shipping information, PO number(s), date of shipment, and names of the consignee and consignor.

(2) An itemized invoice and packing list, and other documentation required for domestic or international transit,

regulatory clearance or identification of the Goods or Deliverables will accompany each shipment.

(3) Fuel Tech will not be charged for shipping or delivery costs.

(4) Unless otherwise agreed, Goods and Deliverables will be delivered on the 15th day after the purchase order date: (i) FOB to the Fuel Tech designated delivery location if the Goods and Deliverables originate in the same jurisdiction as the Fuel Tech designated delivery location; or (ii) DDP (Incoterms 2010) to the Fuel Tech designated delivery location for cross border delivery of Goods and Deliverables to the Fuel Tech designated delivery location.

(5) Supplier will bear all risk of loss, damage, or destruction to the Goods or Deliverables, in whole or in part, occurring before final acceptance by Fuel Tech at the designated delivery location. Fuel Tech is responsible for any loss caused by the negligence of its employees before acceptance.

c. Returns. Supplier will bear the expense of return shipping charges for over-shipped quantities or rejected items.

4. Invoices.

a. Unless otherwise agreed, Supplier will invoice Fuel Tech monthly in arrears and only for accepted Goods, Services and Deliverables.

b. Supplier will invoice Fuel Tech as per instructions received in their PO email notification. Invoices must contain the following information: PO number, item number, description of item, quantities, unit prices, extended totals, packing slip number, shipping, ship to city and state, taxes, and any other information reasonably required by Fuel Tech. Supplier will not charge Fuel Tech for researching, reporting on, or correcting any errors relating to its invoices.

c. Fuel Tech may dispute any invoice by providing written notice or partial payment. Fuel Tech will make commercially reasonable efforts to notify Supplier in writing of any disputed amount within 45 days of receiving the applicable invoice. Neither failing to provide notice nor payment of an invoice is a waiver of any claim or right.

5. Payment Terms, Offset, and Expenses.

a. After Fuel Tech accepts the Goods, Services or Deliverables and receives a correct and undisputed invoice (the “Create Date”), Fuel Tech will release payment by net 60 days.

b. Fuel Tech is not obligated to pay any invoice received from Supplier more than 180 days after Fuel Tech accepts the Goods, Services or Deliverables

c. Payment of an invoice will not constitute acceptance under these PO Terms, and is subject to adjustment for errors, shortages, defects, or other failure of Supplier to meet the requirements of these PO Terms.

d. Fuel Tech may set-off amounts owed to Fuel Tech against an amount Fuel Tech owes Supplier or any entity that directly or indirectly controls, is controlled with or by or is under common

control with Supplier. Fuel Tech will provide notice to Supplier within a reasonable time after the set-off.

e. Unless otherwise agreed, Supplier is responsible for all expenses incurred providing the Goods, Services or Deliverables and performing under these PO Terms.

6. Taxes.

a. Except as otherwise provided below, the amounts to be paid by Fuel Tech to Supplier do not include taxes. Fuel Tech is not liable for any taxes that Supplier is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Fuel Tech will pay Supplier any sales, use or value added taxes it owes due to these PO Terms and which the law requires Supplier to collect from Fuel Tech.

b. Fuel Tech will not be involved in the importation of the Goods, Services, or Deliverables, and import taxes are the responsibility of the Supplier unless otherwise agreed in a SOW.

c. If Fuel Tech provides Supplier a valid exemption certificate, Supplier will not collect the taxes covered by such certificate.

d. If the law requires Fuel Tech to withhold taxes from payments to Supplier, Fuel Tech may withhold those taxes and pay them to the appropriate taxing authority. Fuel Tech will deliver to Supplier an official receipt for such taxes. Fuel Tech will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.

7. Inspection and Acceptance.

a. Fuel Tech may cancel these PO Terms or the applicable SOW immediately upon written notice to Supplier if Supplier fails to comply with the standards and specifications in these PO Terms and fails to cure such noncompliance within 10 days of written notice thereof.

b. All Goods and Services will be subject to Fuel Tech's inspection and testing, at any time and place, including the period of manufacture and before final acceptance. If Fuel Tech inspects or tests at Supplier's premises, Supplier, without additional charge, will provide all reasonable facilities and assistance for the safety and convenience of Fuel Tech's inspectors. No inspection or testing done or not done before final inspection and acceptance will relieve the Supplier from responsibility for defects or for other failure to meet the requirements of these PO Terms.

c. If any item provided under these PO Terms is defective in materials or workmanship or not in conformity with the requirements, then Fuel Tech may reject it without correction, require its correction within a specified time, accept it with an adjustment in price, or return it to Supplier for full credit. When Fuel Tech provides notice to Supplier, Supplier will promptly replace or correct, at their expense, any item rejected or requiring correction. If, after Fuel Tech's request, Supplier fails to promptly replace or correct a defective item within the delivery schedule, Fuel Tech may, at its sole option: (1) replace or correct such item and charge the cost to Supplier; (2) without further notice terminate these PO Terms or the applicable SOW for default, return the rejected item to Supplier at Supplier's expense and Supplier will promptly refund any amounts paid by Fuel Tech for the returned item; or (3) require a reduction in price.

d. Notwithstanding any prior inspections or payments made, all Goods and Services will be subject to final inspection and acceptance at Fuel Tech's designated location within a reasonable time after delivery or performance. Records of all inspection work will be complete and available to Fuel Tech during performance of

these PO Terms and for such further period as Fuel Tech reasonably determines.

8. Fixed Price; Changes.

a. Unless otherwise mutually agreed in writing between Fuel Tech and Supplier, all prices stated on the applicable SOW shall be firm, fixed, fully burdened and include any applicable delivery or freight charges and any other costs required to provide the Goods, Services or Deliverables. Such price is not subject to any adjustment or revision for any reason whatsoever, including, without limitation, price or currency fluctuations, increases in prices due to tariffs or customs duties or the actual costs incurred by the Supplier in performing the SOW.

b. Fuel Tech may at any time, by written orders, modify, change, omit or add to the Goods, Services or Deliverables to be performed pursuant to these PO Terms (a "Change Order"). If any such Change Order affects the cost of, or the time required for performance, an equitable adjustment in Supplier's compensation or time of performance shall be made. Where necessary to prevent undue delay, Fuel Tech may issue a Change Order before agreement as to an equitable adjustment has been reached. In such event, Supplier shall immediately proceed in accordance therewith notwithstanding any delay in reaching agreement. Neither the issuance, nor performance of such a Change Order shall prejudice the rights of either party as to the adjustments, if any, either may be entitled to on account of such a Change Order.

c. If Supplier believes that it is being required to perform work which is outside the scope of work contemplated by these PO Terms, or that an action, directive, order or other communication from Fuel Tech constitutes a change for which Supplier is entitled to a Change Order (each such case a "Constructive Change"), then Supplier may preserve its rights to a Change Order by notice to Fuel Tech in writing not later than five (5) days after the first to occur of (i) Supplier's receipt of Fuel Tech's written directive, order or other communication, or (ii) the date Supplier becomes aware that, or with the use of reasonable diligence should have become aware that, it is required to perform work outside this Scope of Work. Such notice shall be in the form of a letter, signed by an officer of Supplier, and conspicuously marked with the title "Constructive Change Notice." Unless directed not to proceed by Fuel Tech within five (5) days of Fuel Tech's receipt of such Constructive Change Notice, the Supplier shall proceed with such work and shall within a reasonable time, not to exceed ten (10) days following Fuel Tech's receipt of the Constructive Change Notice, provide to Fuel Tech an estimate in reasonable detail of the costs and/or schedule impacts resulting from such Constructive Change. Notwithstanding the foregoing, the parties agree that unless a Constructive Change Notice is submitted within the time specified in this paragraph, Supplier is not entitled to any extra compensation and Supplier acknowledges its failure to submit such Constructive Change Notice constitutes such a waiver.

9. Tools and Equipment. All tools, equipment or materials acquired by Supplier for use in providing the Goods and Services, which have been furnished to, paid for by or charged against Fuel Tech, including specifications, drawings, tools, dies, molds, fixtures, patterns, hobs, electrodes, punches, artwork, screens, tapes, templates, special test equipment, gauges, content, data, and software, will remain or become Fuel Tech's property, treated as Fuel Tech Confidential Information, and delivered in good condition, normal wear and tear excepted, by Supplier to Fuel Tech's designated delivery location per Section 3, immediately upon demand and without cost to Fuel Tech. Supplier warrants the item(s) and information will not be used for any work or production of any materials or parts other than for Fuel Tech, without Fuel Tech's prior written permission. Supplier will identify for Fuel Tech all third-party IP or software used in conjunction with the Services.

10. Ownership and Use of the Parties' Respective IP.

a. Each party will own and retain all rights to its pre-existing IP and any IP developed independently of the Goods, Services and Deliverables under these PO Terms, including any of such party's IP rights therein.

b. Fuel Tech will own all Deliverables, including all IP rights, all media in any format, hardware, and other tangible materials created by Supplier while delivering the Services. Any Supplier work which is a written or customized product or report related to, or to be used in, a Deliverable is regarded as IP.

c. If Deliverables do not qualify as a work made for hire, Supplier assigns to Fuel Tech all right, title, and interest in and to the Deliverables, including all IP rights. Supplier waives all moral rights in Deliverables.

d. If Supplier uses any Supplier or third-party IP in any Good or Service, Supplier will continue to own Supplier's IP rights. In such event, Supplier hereby grants Fuel Tech a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid up right and license, under all current and future IP rights, to use Supplier's and third-party IP consistent with Fuel Tech's ownership interests under this Section 10.

e. Supplier grants to Fuel Tech and its affiliated companies (including their employees, Suppliers, consultants, outsourced workers, and interns engaged by Fuel Tech or any of its affiliated companies to perform services) a worldwide, irrevocable, nonexclusive, perpetual, paid-up and royalty free license for any Goods that include software or other IP not subject to a mutually executed separate license (including installed applications). The license allows Fuel Tech to use such software and IP in connection with Goods. Fuel Tech may transfer this license to a Fuel Tech customer, or a successor owner by sale or lease.

f. To the extent allowable by law, Supplier assigns and passes through to Fuel Tech all of the third-party manufacturers and licensors' warranties and indemnities for the Goods.

g. Title to the Goods (other than licensed software) will pass from Supplier to Fuel Tech on final acceptance.

h. Fuel Tech IP.

(1) Supplier may use "Fuel Tech Materials," meaning any tangible or intangible materials, provided by or on behalf of Fuel Tech, any of its affiliated companies, or their respective end users, to Supplier to perform Services, Or Deliverables, or obtained or collected by Supplier in connection with the Goods, Services, or Deliverables (e.g., usage data) (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, reports and data).

(2) Fuel Tech grants Supplier a nonexclusive, non-sublicensable (except to subsuppliers approved by Fuel Tech in accordance with these PO Terms), revocable license under Fuel Tech's IP rights in the Fuel Tech Materials to copy, use and distribute Fuel Tech Materials provided to it only as necessary to perform the Services in accordance with these PO Terms. Supplier will not, directly or indirectly, sell, manufacture, share, license or otherwise commercialize any Fuel Tech Materials.

(3) Fuel Tech retains all other interest in Fuel Tech Materials and related IP rights. Supplier has no right to sublicense Fuel Tech Materials except to approved subSuppliers as required to perform the delivery of Goods, Services or Deliverables.

(4) Supplier will take reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of Fuel Tech Materials.

(5) Fuel Tech may revoke the license to Fuel Tech Materials at any time for any reasonable business reason. The license will terminate automatically on the earlier of the expiration or termination of these PO Terms or an applicable SOW. Supplier will promptly return any Fuel Tech Materials on request or termination of Supplier's license.

(6) Regarding Supplier's use of Fuel Tech Materials: (i) Supplier will not modify, reverse engineer, decompile, or disassemble Fuel Tech Materials except as allowed by Fuel Tech; (ii) Supplier will leave in place, and not alter or obscure proprietary notices and licenses contained in Fuel Tech Materials; (iii) Fuel Tech is not obligated to provide technical support, maintenance, or updates for Fuel Tech Materials; (iv) all Fuel Tech Materials are provided "as-is" without warranty; and (v) Supplier assumes the risk of loss, damage, unauthorized access or use, or theft or disappearance of Fuel Tech Materials in Supplier's (or subSupplier's) care, custody, or control.

(7) Supplier and Fuel Tech expressly agree that the limitation of liability in Section 14 will not apply to claims based on a breach of this section.

11. Representations and Warranties. Supplier represents and warrants that:

a. it has full rights and authority to enter into, perform under, and grant the rights in according to these PO Terms and its performance will not violate any agreement or obligation between it and any third party;

b. Services will be performed professionally and be at or above industry standard;

c. Goods, Services and Deliverables will strictly comply with all standards and specifications in the Purchase Order and these PO Terms and, with respect to Goods or Deliverables, shall be free from defects in design, workmanship and material for a period of twenty-four (24) months from the date Supplier notifies Fuel Tech the Goods or Deliverables are ready for shipment;

d. Supplier will provide to Fuel Tech all Goods, Services, and Deliverables free from: (1) any liability for royalties; and (2) any mechanic's liens or any other statutory lien or security interest or encumbrance;

e. the Goods, Services, Deliverables and any Supplier or third-party IP provided to Fuel Tech under these PO Terms will not:

(1) to the best of Supplier's knowledge, infringe any third-party patent, copyright, trademark, trade secret or other proprietary right of any third party; or

(2) contain any viruses or other malicious code that will degrade or infect any Goods, Deliverables, products, services, or any other software or Fuel Tech's network or systems;

f. Supplier will comply with all Laws, rules, and regulations, including all Laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, and/or money-laundering, including the U.S. Foreign Corrupt Practices Act), whether local, state, federal or foreign. "Law" means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, enactments, resolutions, and requirements of

any government authority (federal, state, local, or international) having jurisdiction.

g. SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER IMPLIED WARRANTIES OF DESIGN, CAPACITY, USAGE OF TRADE, OR PERFORMANCE RELATING TO THE WORK.

12. Termination. Fuel Tech may terminate these PO Terms or the applicable SOW with or without cause. Termination is effective upon written notice. If Fuel Tech terminates for convenience, its only obligation is to pay for Supplier's documented out-of-pocket, direct costs incurred in cancelling orders with its vendors plus:

a. Deliverables or Goods it accepts before the effective date of termination; and

b. Services performed, where Fuel Tech retains the benefit after the effective date of termination.

13. No Waiver. Fuel Tech's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.

14. Insolvency; Limitations of Liability.

a. The insolvency or adjudication of bankruptcy, filing a voluntary petition in bankruptcy, or making an assignment for the benefit of creditors by either party will be a material breach of these PO Terms. For these PO Terms, "insolvency" means either (1) the party's liabilities exceed its assets, each fairly stated, or (2) the party's failure to pay its business obligations on a timely basis in the regular course of business.

b. Limitations of Liability. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS STATED IN SECTION 16, A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER THESE PO TERMS, INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF IP RIGHTS IN CONNECTION WITH THESE PO TERMS, OR FRAUD, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF REVENUE AND/OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, WHICH ARISE OUT OF THESE PO TERMS, REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES OR OTHERWISE, AND EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

15. Subcontracting. Supplier will not subcontract with any third party to furnish any Goods, Services, or Deliverables without Fuel Tech's prior written consent. If Supplier subcontracts any Services or Cloud Services to any sub-Supplier, Supplier will be fully liable to Fuel Tech for any actions or inactions of sub-Supplier, remain subject to all obligations under these PO Terms, require the sub-Supplier to agree in writing that Fuel Tech is an intended third-party beneficiary of its agreement with Supplier and require the sub-Supplier to agree in writing to terms no less protective of Fuel Tech than the terms of these PO Terms applicable to the work performed by the subSupplier.

16. Indemnification and Other Remedies.

a. Supplier will defend, indemnify and hold harmless Fuel Tech and Fuel Tech affiliates companies against all claims, demands, loss, costs, damages, and actions for: (1) actual or alleged infringements of any third-party IP or IP rights or Fuel Tech IP or IP Rights, which arise from the Goods, Services or

Deliverables provided under these PO Terms; (2) any act or omission of or failure to comply with tax obligations or Law by Supplier or Supplier's agents, employees, or subSuppliers; (3) any breach by Supplier or its subSuppliers of confidentiality obligations under these PO Terms; (4) actions and proceedings that are brought by third parties to the extent of negligent or intentional acts of Supplier, its employees, agents, consultants or subSuppliers which result in personal injury and/or property damage; and (5) any claims of its employees, affiliated companies or subSuppliers regardless of the basis, including, but not limited to, the payment of settlements, judgments, and reasonable attorneys' fees.

b. In addition to all other remedies available to Fuel Tech, if use of the Goods, Services or Deliverables are enjoined, injunction is threatened, or may violate applicable law, Supplier, at its expense will notify Fuel Tech and immediately replace or modify such Goods, Services or Deliverables so they are non-infringing, compliant with applicable law, and useable to Fuel Tech's satisfaction. If Supplier does not comply with this Section 16(b), then in addition to any amounts reimbursed under this Section 16, Supplier will refund all amounts paid by Fuel Tech for infringing or non-compliant Goods, Services or Deliverables.

17. Insurance. Supplier will maintain sufficient insurance coverage to meet obligations required by these PO Terms and by Law placed with carriers having an A.M. Best rating of not less than A-, Financial Size Category VII or higher. Supplier's insurance must include the following coverage (or the local currency equivalent) to the extent these PO Terms or the applicable SOW creates risks generally covered by these insurance policies:

Required Insurance Coverage

Coverage ⁽¹⁾⁽²⁾	Form	Limit
Commercial general liability ⁽¹⁾⁽²⁾	Occurrence	\$2,000,000
Automobile liability	Occurrence	\$2,000,000
Workers' compensation	Statutory	Statutory
Employer's liability	Occurrence	\$500,000
Professional liability/E&O	Per claim	\$2,000,000

NOTES:

(1) Supplier will deliver to Fuel Tech proof of the insurance coverage required under these PO Terms on request.

(2) Upon Fuel Tech's request, Supplier will name Fuel Tech and its directors, officers, and employees as additional insureds.

18. Non-Disclosure of Confidential Matters. Supplier agrees that during the term of these PO Terms and for 5 years thereafter, Supplier will hold in strictest confidence and will not use or disclose to any third party (except to a Fuel Tech Affiliate), any Fuel Tech Confidential Information. The term "Fuel Tech Confidential Information" means all nonpublic information that Fuel Tech or an affiliated company designates in writing or orally as being confidential, or which, under the circumstances of disclosure would indicate to a reasonable person that it ought to be treated as confidential. If Supplier has questions regarding what comprises Fuel Tech Confidential Information, Supplier will consult Fuel Tech. Fuel Tech Confidential Information will not include information known to Supplier before Fuel Tech's disclosure to Supplier, or information publicly available through no fault of Supplier. On expiration or termination of these PO Terms or the applicable SOW, or on request by Fuel Tech, Supplier will without undue delay: (i)

return all Fuel Tech Confidential Information (including copies thereof) to Fuel Tech; or (ii) where requested by Fuel Tech or its Affiliate, destroy the Fuel Tech Confidential Information (including copies thereof) and certify its destruction, in each case unless the Law expressly requires otherwise. For any Fuel Tech Confidential Information that Supplier retains after expiration or termination of these PO Terms or the applicable SOW (for example, because Supplier is legally required to retain the information), Supplier will continue to comply with all terms of these PO Terms applicable to that Confidential Information, including all confidentiality obligations, and those applicable terms will survive such termination or expiration.

19. Independent Development. Nothing in these PO Terms restricts Fuel Tech's ability to, directly or indirectly, acquire, license, develop, manufacture, or distribute, same or similar technology or services to the Goods, Services or Deliverables contemplated by these PO Terms. Fuel Tech may use, market, and distribute such similar technology or services in addition to, or in lieu of, the technology or services contemplated by these PO Terms.

20. Audit. Solely with respect to work performed on a time and material basis, Supplier agrees that during the term of these PO Terms and for 2 years after (or a longer term as required to comply with Law), Supplier will keep usual and proper records and books of account and quality and performance reports related to Goods, Services or Deliverables ("Supplier Records"). During this period, Fuel Tech may audit and/or inspect the applicable records and facilities to verify Supplier's time and materials expended in compliance with these PO Terms. Fuel Tech or its designated independent consultant or certified public accountant ("Auditor") will conduct audits and inspections. Fuel Tech will provide reasonable notice (15 days except in emergencies) to Supplier before the audit or inspection and will instruct the Auditor to avoid disrupting Supplier's operations, including consolidating audits where practical. Supplier agrees to provide Fuel Tech's designated audit or inspection team reasonable access to the Supplier records and facilities.

21. Assignments. No right or obligation under these PO Terms (including the right to receive monies due) will be assigned without the prior written consent of Fuel Tech. Any assignment without such consent will be void. Fuel Tech may assign its rights under these PO Terms.

22. Jurisdiction and Governing Law. These PO Terms are governed by Illinois law (disregarding conflicts of law principles), and each party consents to exclusive jurisdiction and venue in the state and federal courts in DuPage County, Illinois. Neither party will claim lack of personal jurisdiction or forum non conveniens in the courts agreed above. In any action or suit related to these PO Terms, the prevailing party is entitled to recover its costs including reasonable attorneys' fees.

23. Prevailing Party. If any litigation or similar adjudicatory proceeding is commenced by any party to enforce its rights under these PO Terms against any other party, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, incurred by the prevailing party in such litigation, action or proceeding shall be reimbursed by the losing party; provided, that if a party to such litigation, action or proceeding prevails in part, and loses in part, the court or other adjudicator presiding over such litigation, action or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such party on an equitable basis.

24. Publicity. Supplier will not issue press releases or other publicity related to Supplier's relationship with Fuel Tech or these PO Terms without prior written approval from Fuel Tech.

25. Severability. If a court of competent jurisdiction determines that any provision of these PO Terms is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect. Neither party has entered into these PO Terms in reliance on anything not contained or incorporated in these PO Terms. These PO Terms will be interpreted according to their plain meaning without presuming that they should favor either party.

26. Survival. The provisions of these PO Terms which, by their terms, require performance after the termination or expiration or have application to events that may occur after the termination or expiration of these PO Terms or the applicable SOW, will survive the termination or expiration of these PO Terms and the applicable SOW. All indemnity obligations and indemnification procedures will survive the termination or expiration of these PO Terms and Conditions.

27. Notices. All notices, and other communications hereunder shall be in writing, and shall be addressed to Supplier or to an authorized Fuel Tech representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed telex or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

28. Force Majeure. Any failure of performance by either party shall not constitute default hereunder if and to the extent caused by Force Majeure, which is defined to be occurrences beyond the reasonable control of a party, including but not limited to: acts of God; strikes or labor disputes; fires, floods, explosions, or other natural disasters; riots, war, rebellion, insurrection, and sabotage; or acts of governmental authority (excluding any failure to obtain standard permits or licenses). The party affected by a Force Majeure event shall provide written notice to the other party within seven (7) business days of its occurrence, describing in detail the event, its expected impact on the project schedule, and the affected party's plan to mitigate such impact.

Provided the affected party has complied with the notice requirements and continues to use all commercially reasonable efforts to mitigate the impact (including, where applicable, sourcing from alternative locations or providers), the time for performance shall be automatically and equitably extended for a period equal to the duration of the delay. Except as specifically set forth under Section 8, additional costs encountered by either party as a result of Force Majeure shall not be chargeable to the other party. Notwithstanding the foregoing, if a Force Majeure event prevents performance in whole or in material part for more than thirty (30) consecutive days, the non-affected party may terminate this Purchase Order immediately upon written notice without penalty or further liability.

29. Compliance with Laws.

(a) Supplier warrants that all Goods and Services supplied pursuant to this Agreement will have been produced and supplied in compliance all applicable federal, state and local laws, orders, rules and regulations including, but not limited to, all applicable employment, tax, export control, Occupational Safety and Health Act of 1970, and environmental laws, orders, rules and regulations. Supplier certifies compliance with the Fair Labor Standards Act of 1938, as amended, and the Walsh-Healy Act. Supplier shall indemnify Fuel Tech against any claim or liability on account of any non-compliance.

(b) Fuel Tech is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations

sections 60-1.4(a) (1-7), 60-250.4(a-m) and 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement. If applicable, Supplier will comply with the following Federal Acquisition Regulations: (i) 52.222-26 "Equal Opportunity", (ii) 52.222-35 "Affirmative Action for Special Disabled and Vietnam Veterans", and (iii) 52.222-36 "Affirmative Action for Handicapped Workers." Supplier warrants that it has submitted Standard Form 100 (EEO-1) compliance reports as required by 41 C.F.R. 60-1.7 as implemented by FAR 52.222-22.

(c) This Agreement incorporates by reference all provisions of FAR 52.219-8 and FAR 52.219-9 as they pertain to utilization of small business concerns and small disadvantaged business concerns and small business and small disadvantaged business subcontracting plans. Supplier agrees to comply with any and all applicable State and local government small business utilization laws including any and all applicable statutes, rules, regulations, ordinances, orders and other guidelines promulgated by any such governmental entity.

(d) If Goods include hazardous materials Supplier represents and warrants that Supplier understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials. All chemicals supplied by Supplier under this Agreement shall be accompanied with a Material Safety Data Sheet provided by the chemical supplier/manufacturer. All chemical suppliers certify by acceptance of this Agreement that the chemicals supplied are on the Toxic Substances Control Act, 15 U.S.C.S. §2601, et.seq., chemical inventory or are subject to an exemption and that such exemption is specified in the Material Safety Data Sheet.