HYDROMACH INC

Aerospace & Defense Precision Machining | Since 1972

PURCHASING TERMS & CONDITIONS

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THESE TERMS AND CONDITIONS SHALL BE APPLICABLE TO ALL PURCHASE ORDERS:

1. DEFINITIONS. As used in these Terms and Conditions, the following terms shall have the following meanings: (a) **—Supplies‖ means raw materials, components, intermediate assemblies, and end products; (b) —Services‖ means the direct** engagement of time and effort with the primary purpose to perform identifiable tasks rather than to furnish end items of supply; (c) "Construction" means construction, alteration, or repair (including excavating and painting) of buildings, structures, or other real property; (d)—Buyer‖ means Hydromach, Inc.; **(e) —Seller‖ means any person or legal entity that provides Supplies, Services, or Construction pursuant to a Purchase Order issued by Buyer; (f) —Purchase Order‖ means an offer by Buyer to Seller** to buy Supplies, Services, or Construction that becomes a binding contract between Buyer and Seller upon written acceptance of **Seller or upon Seller initiating performance; (g) —Government‖ means the United States Federal Government; (h) —Prime** Contract‖ means the contract under which a Purchase Order is issued or any other contract which requires Buyer to procure **services for a Customer; (i) —Customer‖ means a business entity or association, or any other entity or association, including,** without limitation, the Government, with whom Buyer enters into a Prime Contract; and **(j) —Work‖ means the provision of Services or Construction as set forth in the Purchase Order. Any use of the phrase —these Terms and Conditions‖ shall be** deemed to include the Purchase Order issued to Seller by Buyer to which these Terms and Conditions are attached or to which these Terms and Conditions relate.

2. PURCHASE ORDERS. Purchase Orders issued by Buyer to Seller - together with any referenced or attached drawings, specifications, statements of work, or special conditions - will specify the Supplies or Work required, including, but not limited to, the delivery schedule, period of performance, total compensation, rate/price and payment schedules related thereto. Each Purchase Order issued by Buyer shall be governed by these Terms and Conditions.

3. PAYMENT TERMS; INVOICES; SETOFF; TAXES. Unless otherwise specified in the Purchase Order, terms of payment shall be net thirty (30) days from the latest of the following: (a) Buyer's receipt of Seller's invoice; or (b) delivery of Supplies or performance of the Work to the satisfaction of Buyer and the Customer. An itemized invoice shall be submitted by Seller to the **address shown on the face of the Purchase Order to the attention of: —Accounts Payable Department.‖** The invoice shall contain the Purchase Order number, a description of the Supplies furnished, or Work performed, and the unit prices, quantities, and total contract price relating thereto. Payment of invoices may be delayed pending the correction of omissions or errors in the Work performed or Supplies delivered. Buyer shall have the right at all times to setoff any amount due or payable to Seller against any claim or charge Buyer or its Customer may have against Seller. Any amounts paid by Buyer that the Seller is obligated to pay pursuant to these Terms and Conditions or the Purchase Order will be promptly reimbursed to Buyer by Seller together with (i) attorney's fees, if any, and (ii) monthly interest at 1.5%, if allowed by law, otherwise at the highest rate allowed by law. If not reimbursed, Buyer may deduct such amount (with attorney's fees and interest as above provided) from any amounts then or thereafter due Seller. Unless otherwise specified in the Purchase Order, prices and rates shall include all applicable federal, state

and local taxes, duties, tariffs and similar or dissimilar fees imposed by any governmental entity, all of which shall be listed separately on Seller's invoice.

4. NO EXTRA CHARGES. The total price payable to Seller hereunder for Supplies, Services, and Construction furnished in accordance with the procurement requirements shall be stated in the Purchase Order. The price shall not be increased to cover any future Seller price increases and shall be inclusive of packing, packaging, cartage, premium transportation charges, reusable containers, service or carrying charges, permits, insurance, fees and licenses, or any other charges of any nature unless specifically agreed to in writing by Buyer.

5. CHANGE ORDER; MODIFICATION. Buyer or the Customer, may, at any time by written notice to Seller, make changes to the Purchase Order (a —Change Orderl). If any such change causes an increase or decrease in the cost or time required to perform the Work or deliver the Supplies, the price, performance/ delivery schedules, or both, shall be equitably adjusted and the Purchase Order so modified. Seller shall submit any claim for adjustment to Buyer within ten (10) days following receipt of the written Change Order. Failure of the parties to agree to an adjustment shall be considered a dispute under Section 33 (Disputes) hereof and shall be addressed in accordance therewith; if the change is directed solely by the Buyer any claim for adjustment shall be resolved in accordance with Section 33(a); if the change is directed by the Customer, any claim for adjustment shall be resolved in accordance with Section 33(b). Pending resolution of any such dispute, Seller shall immediately proceed with the performance of the Purchase Order as changed by the Change Order. Seller shall not be entitled to any compensation for extra Work or additional Supplies not stated in the Purchase Order or Change Order unless, prior to the performance of such extra Work or delivery of such additional Supplies, Seller shall have received from Buyer written authorization for the same. Buyer shall have no liability for any Work performed or Supplies delivered by Seller and not described in the Purchase Order or a Change Order. Seller shall make no changes affecting the Work or Supplies without Buyer's or the Customer's prior written approval. Any approvals by Buyer or the Customer shall not relieve Seller of responsibility for any errors or deficiencies that may exist, or for performing the Work or delivering the Supplies in strict accordance with the requirements of the Purchase Order.

6. DELIVERY AND PERFORMANCE SCHEDULES. Seller shall deliver the Supplies or perform the Work in strict adherence to the schedules set forth in the Purchase Order. Seller agrees that time is of the essence in the performance of the Purchase Order and there is potential for financial loss by Buyer in the event that Seller fails to deliver the Supplies or complete the Work within the time specified in the Purchase Order. Therefore, Seller agrees to pay Buyer for all expenses arising from Seller's failure to deliver the Supplies or complete the Work within the time allocated including, but not limited to, additional Buyer expenses for technical services, inspection, and administration costs; additional costs to other suppliers, subcontractors or consultants caused by the delay and charges from the Customer, including any liquidated damages for which Buyer may be liable to Customer resulting from Seller's failure to deliver the Supplies or complete the Work as provided in the Purchase Order or breach of these Terms and Conditions. Seller agrees to advise Buyer, as soon as possible, of any delays in complying with the performance schedule of any Purchase Order and the reasons thereof. If a delay is due to causes beyond the control of Seller and, where applicable, its suppliers or subcontractors, and without fault or negligence of any of them, and provided that Seller reports the delay to Buyer within a reasonable time of its' discovery, Buyer will either adjust the performance schedule or terminate the Purchase Order, or its effected portion, for convenience. Acceptance of late deliveries or performance not in strict conformance with the Purchase Order schedule shall not constitute a waiver of Buyer's rights under this Section 5 or elsewhere under these Terms and Conditions.

7. ADDITIONAL REQUIREMENTS FOR DELIVERY OF SUPPLIES. The following additional conditions apply to Purchase Orders for Supplies:
(a) Packaging and Packing: Seller shall be responsible for properly packing and packaging the Supplies in suitable containers for protection during shipment in accordance with applicable law and good commercial practice. All packaging must be in accordance with MIL-STD-129 and details for each line item are specified on Form AMC 158. No additional charge will be allowed for packing and packaging unless specifically agreed to in writing. Seller shall label each package with the number of the Purchase Order. Seller shall prepare an itemized packing list bearing the number of the Purchase Order, Seller's packing list number, description of items, part number and quantity shipped for each package. One copy of the packing list shall be enclosed in the shipping container and one copy shall accompany Seller's invoice. Buyer's order number and Seller's Packing list number shall be shown on all Bills of Lading. For instances where the customer is the US Government the seller shall be responsible for preparation of the equivalent of Form DD250 within the WAWF system.

(b) Unauthorized Changes to Supplies. Upon Buyer's or its Customer's approval of Seller's drawings, designs, specifications, etc., Seller shall make no changes affecting form, fit or function of the Supplies without Buyer's prior written approval. Any approvals by Buyer or its Customer shall not relieve Seller of responsibility for any errors or deficiencies that may exist, or for furnishing the Supplies in strict accordance with the Purchase Order requirements.

(c) Variation in Quantity. It is Seller's responsibility to deliver the quantity of Supplies called for in the Purchase Order. No variation in the quantity specified in the Purchase Order will be accepted as compliance with the Purchase Order. Buyer reserves the right to refuse or return, at Seller's expense, any excess shipments or deliveries made in advance of the delivery schedule.
(d) Shipment, Title, and Risk of Loss. Unless otherwise specified in the Purchase Order, Supplies shall be shipped FOB Destination, whereupon title and risk of loss will pass to Buyer when such Supplies have been delivered to and accepted at Buyer's specified destination. For Purchase Orders providing for shipment of Supplies FOB Origin, title and risk of loss shall pass to Buyer upon Seller's delivery to the common carrier specified or approved by Buyer except that Seller shall be responsible for any loss due to its failure to properly preserve, package, handle or pack the Supplies.

(e) Progress Payments- Material purchased for which progress payments were made shall be the property of Hydromach customer unless otherwise identified by Hydromach at time progress payments are made. Material shall be clearly identified as Government owned material. Requirements of FAR52.232-16(d) apply.

8. STOP WORK ORDER. Buyer or the Customer may, at any time, by written notice to Seller, stop all or any part of the Work or stop delivery of Supplies for up to ninety (90) days (a —Stop Work Orderl). Upon receiving a Stop Work Order, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional cost allocable thereto. Within ninety (90) days after the effective date of the Stop Work Order, unless Seller and Buyer mutually agree to an extension, Buyer shall either cancel the Stop Work Order or terminate the portion of the Purchase Order covered by the Stop Work Order. Buyer shall make an equitable adjustment in the Purchase Order performance schedule or contract price if the Stop Work Order results in an increase in time or cost for performance. Seller must assert a claim for equitable adjustment within ten (10) days after the end of the work stoppage. Failure of the parties to agree to an adjustment shall be considered a dispute under Section 33 (Disputes) hereof and shall be addressed in accordance therewith. If the Stop Work Order is directed solely by the Buyer any claim for adjustment shall be resolved in accordance with Section 33(a); if the Stop Work Order is directed by the Customer, any claim for adjustment shall be resolved in accordance with Section 33(b).

9. INSPECTION OF SUPPLIES. Buyer and its Customer may inspect or test materials, work in progress and completed Supplies at all reasonable times and places prior to shipment. If inspections and tests are performed on Seller's premises, Seller shall, without additional charge to Buyer, its Customer or any of their or its representatives, provide reasonable facilities and assistance for the safety and convenience of the parties performing such inspections or tests. Unless otherwise agreed to in writing, all Supplies furnished under the Purchase Order are subject to Buyer's inspection and acceptance or rejection at Buyer's specified destination, notwithstanding any previous inspection, prior payment, or test by Buyer or its Customer it being understood and agreed that payment shall not constitute acceptance. An inspection or test at source or at destination shall not relieve Seller of its responsibility to furnish the Supplies in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and its Customer. Seller shall furnish Buyer the records of inspection or test for Supplies delivered under the Purchase Order at any time upon Buyer's request. No inspection or monitoring by Buyer or its Customer, or failure to do so, shall affect or diminish Seller's sole responsibility and liability for the quality of the Supplies purchased by Buyer.

10. INSPECTION OF SERVICES AND CONSTRUCTION. Buyer and the Customer, or DCMA shall have the right to inspect Work in progress at all reasonable times and places during performance. Rejected Work shall promptly be re-performed in an acceptable manner and within a reasonable period of time at Seller's sole cost and expense. If inspections are made on Seller's premises Seller shall, without additional charge, provide reasonable assistance for the safety and convenience of the inspectors performing these duties. Inspections shall be performed in such a manner as to not unduly delay Work in progress. Unless otherwise agreed to in writing, all Work is subject to Buyer's and the Customer's inspection and acceptance or rejection of the Work, notwithstanding any previous inspection by Buyer and the Customer. Inspections shall not relieve Seller of its responsibility to furnish the Work in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and the Customer. Seller shall furnish Buyer and the Customer with the records of inspection for the Work at any time during the performance of the Work upon request therefore by Buyer or the Customer.

11. WARRANTY OF SUPPLIES. Seller warrants that all Supplies delivered pursuant to the Purchase Order shall: (a) conform to drawings, specifications or other description supplied by the buyer or it's customer; (b) be of good material and workmanship and free of defects; (c) meet Seller's published specifications and standards; and (d) be new (not used, new surplus, reconditioned, or remanufactured), merchantable and suitable for the purpose intended. These warranties shall begin upon final acceptance of the Supplies as provided herein and extend for a period of twelve (12) months (the —Warranty Periodl). If any non-conformance is identified within the Warranty Period, Seller, at Buyer's option, shall promptly replace the non-conforming item. Transportation of replacement items shall be Seller's expense. All of the foregoing warranties and remedies shall run to Buyer and its Customers and are in addition to all other warranties and remedies set forth elsewhere in these Terms and Conditions or expressed or implied by law.

12. WARRANTY OF SERVICES AND CONSTRUCTION. Seller warrants that all Work performed pursuant to a Purchase Order shall be: (i) in accordance with all requirements of the Purchase Order; (ii) free from defects in workmanship; (iii) free from errors and omissions in design or engineering; (iv) conducted in a manner consistent with the level of care and skill ordinarily exercised by professionals performing services of a nature similar to the Work, taking into account standards, state of the art, and Laws existing at the time the Work is performed; and (v) upon passage of title to Buyer, either by incorporation in the construction or upon Buyer's receipt of payment, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances. Seller shall be deemed to have examined the site of the Work applicable to the Purchase Order and to have secured full knowledge of all conditions under which the Work is to be performed. The foregoing warranties shall survive inspection, acceptance and payment of and for the Work. Seller shall, without additional compensation, correct, or revise any errors or deficiencies in the Work that are discovered within twelve months of final completion of the Work. If such deficiencies are not corrected in a timely manner, Buyer may cause the same to be corrected and deduct such corrective action costs incurred from monies otherwise due to Seller. Seller shall be liable for any such excess costs and shall reimburse Buyer within 30 days of receipt of invoice. This warranty and corrective action shall be in addition to any warranty or guarantee specified elsewhere in these Terms and Conditions or the Purchase Order and shall not limit the application of any other warranty or remedy available under law.

13. PRICE AND RATE WARRANTY. Seller warrants that the prices and rates charged for the Supplies or Work specified in the Purchase Order do not exceed the price(s) or rate(s) Seller charges its most favored customer for the same or substantially similar Supplies or Work, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller agrees that in the event of an announced price or rate reduction prior to the completion of the performance of the Work or shipment of Supplies, said price or rate reduction shall be passed on to Buyer for Supplies remaining to be shipped or Work remaining to be performed under the Purchase Order.

14. INSURANCE. In accordance with subpart (a), upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverage's are in force and providing not less than thirty days notice prior to any cancellation or restrictive modification of the policies. Further, the required insurance coverage's below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverage's and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.
(a) To the extent that Seller is performing services under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage:
(i) Commercial General Liability;

(ii) Automobile Liability;

(iii) All-Risk Property Insurance in an amount adequate to replace property, including supplies covered by this Order, of Buyer and/or Buyer's customer which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.

15. PERFORMANCE/PAYMENT BONDS. The proper and timely submission of any performance or payment bonds required pursuant to the Purchase Order is a material condition for award of the Purchase Order. Seller is not authorized to proceed with performance of the Purchase Order unless all required bonds have been obtained and are acceptable to Buyer. The surety securing any performance or payment bonds must be listed in the most recently issued publication of Department of the Treasury Circular 570, licensed to provide bonds in the state in which any Work is to be done, the underwriting limitation specified for the Surety in the circular must be greater than the full amount of the contract awarded. Unless otherwise specified in Buyers request for bid or proposal, Seller shall include the full cost of the performance and payment bonds in the Purchase Order price and include an adjustment of the bond cost in any proposal subsequently submitted for a change in the Purchase Order price. If the surety for any bond furnished by Seller files bankruptcy papers or is declared bankrupt, or its' right to do business is terminated, or it otherwise becomes unsatisfactory to Buyer, Seller shall within seven calendar days furnish at no additional cost a replacement bond with a surety acceptable to Buyer.

16. SELLER CONTACTS WITH BUYER'S CUSTOMER. Buyer shall be responsible for all liaison and communications with Buyer's Customer, including the Government. Seller shall not communicate with Buyer's Customer regarding the Purchase Order unless Buyer provides Seller with prior written authorization to do so.

17. INFORMATION OF SELLER. Any information Seller discloses to Buyer regarding these Terms and Conditions, the Purchase Order, or any Work performed or Supplies delivered thereunder shall not be deemed confidential or proprietary unless expressly agreed to in writing by the parties or otherwise protected under applicable law. All evaluations, reports, records, and other work products or instruments of service produced by Seller pursuant to a Purchase Order shall be considered proprietary technical data belonging to the Customer and shall be subject to the provisions of Section 18 (Information of Buyer).

18. INFORMATION OF BUYER. Information provided by Buyer to Seller remains the property of Buyer or it's customer. Seller shall comply with the terms of any non-disclosure and non-use agreement between Buyer and Seller and with all proprietary information markings and restrictive legends applied by Buyer to anything provided to Seller under these Terms and Conditions or any Purchase Order. In the absence of a non-disclosure and non-use agreement between the parties, Seller shall not use any information of Buyer or Customer – whether relating to the Purchase Order, and Work performed or Supplies delivered thereunder, or to the business and affairs of the Customer or Buyer - for any purpose except to perform the Purchase Order and shall not disclose such information to third parties without the prior written consent of Buyer, which such consent may be withheld by Buyer in its sole discretion.

19. PUBLIC RELEASE OF INFORMATION. No public release of information, news release, announcement, advertisement, denial or confirmation of the Purchase Order or the subject matter hereof or thereof shall be made without Buyer's prior written approval.

20. INDEPENDENT CONTRACTOR. Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform the Purchase Order shall be Seller's employees exclusively without any relation whatsoever to Buyer.

21. THIRD PARTY BENEFICIARY. Seller acknowledges and agrees that Buyer's Customer is a third party beneficiary of these Terms and Conditions and has the power and authority to enforce these Terms and Conditions against Seller.

22. INDEMNIFICATION. To the fullest extent permitted by law, Seller shall at all times indemnify, save, defend and hold harmless Buyer and its officers, directors, shareholders, employees and agents and Buyer's Customers, their parents and affiliates, and all of their officers, directors, employees and agents, from and against all claims, causes of action, suits, injuries (including, without limitation, death) to persons and damage or loss to property, losses, liabilities, fines, penalties, costs, expenses (including, without limitation, expenses of investigation and remediation) and detriments of every nature and description (including, without limitation, all expenses, legal and otherwise, incidental to all such claims and actions) which are caused by, or are the result of, or are in any way
sustained by reason of: (a) any breach of these Terms and Conditions by Seller or its employees, agents or subcontractors at any tier; (b) any breach of express or implied warranty hereunder; (c) any defect in design or manufacture of Supplies furnished in the performance of the Purchase Order; and (d) any wrongful or negligent act, error, or omission of Seller or any of its suppliers, subcontractors, agents and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable in the performance of the Purchase Order; and (e) any act or omission, while on or near the premises of Customer or Buyer, of Seller or any of its suppliers, subcontractors, agents and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnification obligation shall not be limited in any way by required, actual, or available insurance coverage.

23. LIMITATION OF LIABILITY. Buyer's liability to Seller hereunder shall not, under any circumstances, be greater than the total dollar amount of the Purchase Order for which such liability relates to or arises out of. UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, A BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY OF RECOVERY AND REGARDLESS OF WHETHER BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

24. WAIVER OF RIGHTS. Failure of either party to insist on performance of any provision of the Purchase Order or these Terms and Conditions shall not be construed as a waiver of that provision or a waiver of Buyer's or Seller's right to require compliance with such provision in any later instance. If any provision of the Purchase Order or these Terms and Conditions is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of the Purchase Order or these Terms and Conditions, as the case may be, shall not be affected thereby and shall remain in full force and effect.

25. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY. Seller shall indemnify, defend and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, shareholders, employees, agents, Customers, and those for whom Buyer may act as agent, from any fines, penalties, losses, damages, liabilities, costs or expenses (including attorneys' fees) that Buyer, its affiliates, subsidiaries, directors, officers, shareholders, employees, agents, Customers may incur as a result of any claim of infringement of any patent, copyright or trademark by reason of sale or use of any Work performed or Supplies sold to Buyer under the Purchase Order. In the event of an injunction or restraining order, Seller shall, at is own expense, either procure for Buyer the right to continue to sell or use the infringing Work or Supply or replace or modify the infringing Work or Supply so that it becomes non-infringing.

26. WAIVER, RELEASE, AND REMOVAL OF LIENS. Where applicable, and to the extent permitted by law, prior to commencement of the Work, Seller agrees to execute and tender to both Buyer and the Customer a waiver of liens form (each, a ―Lien Waiver‖), waiving on behalf of itself and all of its suppliers, materialmen and subcontractors, all mechanics' liens, materialmens' liens, construction liens and other types of liens against Buyer, the Customer and any of the property thereof. In such event, Seller acknowledges and agrees that the project described in the Purchase Order will be a ―no-lien‖ project under applicable law, and that Buyer or the Customer will be filing the aforementioned waiver of liens in the appropriate recording offices, if required. To the extent that applicable law does not permit a lien waiver to be effective prior to commencement of the Work, Buyer and the Customer may require that each invoice for payment submitted by Seller be accompanied by a Lien Waiver properly completed by the appropriate parties to cover the amount and date of payment to Seller (or its materialmen, suppliers or subcontractors, as applicable) as reflected in the applicable invoice. Without limiting the generality of the foregoing, as a condition precedent to the final payment of the contract price (which may include retainage) pursuant to the Purchase Order, Seller shall provide to Buyer and Customer a full and unconditional waiver and release of liens properly executed by Seller and all parties engaged by Seller to furnish labor or materials in connection with the performance of the Work. Without limiting the foregoing, Seller shall keep all Work performed and the property at which such Work was performed free and clear of all liens arising out of the performance of Work. Within ten (10) days after written demand by Buyer to remove any lien or notice of suit or other proceeding from any property, and such lien arises from or is connected with the Work of any other acts or omissions of Seller, including without limitation, Seller's failure to promptly pay its subcontractors, materialmen, and suppliers, Seller shall cause any such lien or notice to be removed as a matter of record against the title of the property. If Seller fails to cause any such lien or notice to be expunged within such time period, Buyer shall be entitled to use whatever means in its discretion it may deem appropriate to cause such lien, suit, or notice connection with such removal or dismissal, together with all reasonable attorney's fees shall be immediately due and payable to Company by Subcontractor and may be set off against any payments due to Subcontractor.

27. TERMINATION FOR CONVENIENCE. Buyer reserves the right, at any time, in its sole discretion, to terminate the Purchase Order, in whole or in part, by written notice of termination for convenience to Seller. If the Purchase Order is so terminated then, within ten (10) days following Seller's receipt of said termination notice, Seller shall be entitled to submit a claim for equitable adjustment, which claim shall document the basis for Seller's claim. Failure of the parties to agree to an adjustment shall be considered a dispute under Section 33 (Disputes) hereof and shall be addressed in accordance therewith. If the termination for convenience is directed solely by the Buyer any claim for adjustment shall be resolved in accordance with Section 33(a); if the termination for convenience is directed by the Customer, any claim for adjustment shall be resolved in accordance with Section 33(b). Buyer shall be obligated to pay only for Work performed or Supplies ordered prior to the termination date.

28. TERMINATION FOR DEFAULT. Buyer may, without liability, terminate the Purchase Order, in whole or in part, by written notice of default to Seller, and Surety if any, if Seller: (a) fails to make progress so as to endanger performance of the Purchase Order; (b) fails to provide written adequate assurances of future performance; (c) fails to comply with any other instructions stated in the Purchase Order or any of the provisions of these Terms and Conditions or otherwise incorporated herein or therein or appended hereto or thereto; or (d) becomes voluntarily or involuntarily subject to any proceeding under bankruptcy or insolvency laws, or a receiver for Seller is appointed or applied for, or makes an assignment for the benefit of creditors. If Buyer terminates the Purchase Order, in whole or in part, Buyer may procure similar Work or Supplies from a third party, and Seller shall be liable for any additional costs above the contract price stated in the Purchase Order for the remaining Work or Supplies. In the event of a partial termination, Seller shall perform that portion of the Purchase Order not terminated. Buyer may withhold from any payments due Seller any sum necessary to protect Buyer against any liability or expenses due to the termination for default. In the event of termination, Seller shall be compensated only for Work actually performed and accepted by Buyer and the Customer or Supplies actually delivered and accepted by Buyer and the Customer. Buyer may require Seller to deliver to Buyer any supplies and material, manufacturing materials and manufacturing drawings, inspection reports, technical data, computations, and designs that Seller has specifically produced or acquired for the terminated portion of the Purchase Order. Buyer and Seller shall agree on the amount of payment for these other deliverables. If after termination under this Section 28, it is determined that Seller was not in default such termination shall be deemed a termination for convenience as provided for in Section 27 hereof.

29. NON-EXCLUSIVE REMEDIES. The remedies afforded Buyer herein are cumulative and are in addition to all remedies Buyer may be entitled to at law or in equity.

30. ASSIGNMENT. Seller shall not assign the Purchase Order to any other party without the prior written consent of Buyer. Buyer may withhold such consent in its sole discretion. Any attempted or purported assignment of the Purchase Order without Buyer's prior written consent shall be null and void and not binding upon Buyer.

31. COMPLIANCE WITH LAWS; PERMITS, LICENSES. Seller shall comply with all applicable federal, state and local laws, rules, regulations and orders (―Laws‖), including, but not limited to, the following, as may be amended from time to time: (a) the

Service Contract Act of 1965; (b) the Davis- Bacon Act of 1931; (c) the Fair Labor Standards Act of 1938; (d) the Walsh-Healy Public Contracts Act; (e) the Federal Occupational Safety and Health Act of 1970, including the preparation of Material Safety Data Sheets; (f) the Toxic Substances Control Act of 1976; and (g) any other federal law concerning labor relations, non-discrimination in employment, minimum wages, overtime compensation and hours of employment. Seller shall obtain all permits and licenses required for the performance of the Purchase Order at no additional charge to Buyer. If, as a result of any violation of Laws by Seller, its employees, agents or subcontractors at any tier,: (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of the Purchase Order or any other contract with Seller, or demand payment (in whole or in part) of the corresponding amounts. Seller shall pay such amounts within ten (10) days of such demand.

32. APPLICABLE LAW. These Terms and Conditions shall be governed by and construed in accordance with the laws of the state of California, except that State of California's conflicts of laws rules shall not apply, and except that any provision under these Terms and Conditions that is: (a) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR) or the Defense Federal Acquisition Regulations Supplement (DFAR), as the case may be; (b) incorporated in full text or by reference from any agency regulation that implements or supplements from the FAR or DFAR or; (c) that is substantially based on any such agency regulation or FAR or DFAR provision, shall be construed and interpreted according to federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals and quasi-judicial agencies of the Government.

33. DISPUTES. (a) Any controversy or claim arising out of or relating to these Terms and Conditions, or Buyer or Seller's breach thereof, that is not settled by direct negotiation between the parties, shall be settled by arbitration in California, administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures currently in effect, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
(b) Any controversy or claim arising out of or relating to a Customer mandated change, direction or breach shall be settled subject to a pass-through claim under the Contract Disputes Act, 41 U.S.C. 601 et seq. whereby Buyer may act as a conduit for Seller's claims for any controversy or claim arising out of or relating to Customer. Buyer may elect to sponsor any such claim under the Prime Contract Disputes Clause, provided, that (a) Seller's claim is certified to the extent required by the Prime Contract Disputes Clause, (b) Buyer is given no less than sixty (60) days to review the certified or uncertified claim before its submission to the Government's Contracting Officer, and (c) Buyer reasonably determines that the claim is fairly stated and reasonable in both substance and amount. If Buyer has reasonable grounds to dispute any part of any claim, the non disputed claim elements shall be submitted to the Government and the disputed amounts shall be promptly mediated or arbitrated so as not to prejudice either party in recourse against the Government. The rights and obligations of the parties under this Section shall also apply to requests for equitable adjustment. Seller shall furnish all required testimony and documentation to support its claims. Buyer assumes no fiduciary responsibility for prosecution and recovery on Seller's behalf. Seller shall be obligated to compensate Buyer for all costs and expenses, including legal and consulting fees and administrative expenses, that Buyer incurs to present Seller's claims to the Customer for consideration or payment or to arbitrate, mediate, or litigate such claims. In the event that Buyer recovers and collects damages from Customer on account of Seller's claims through negotiation, litigation, mediation, or arbitration, then Buyer shall tender to Seller the amount actually recovered and collected less the cost of prosecution and administration, and Seller shall accept that amount as payment in full for its claims and damages releasing Buyer from any additional liability or damages on the claims. If the claim is denied or the amount claimed or recovered is not collected, the Seller shall release Buyer from any and all liability for the claims and damages. Seller agrees that it shall not be entitled to recover any damages from Buyer on account of claims for additional compensation arising out of or related to a Customer directed change, direction, or breach unless and until Buyer recovers and collects such damages from Customer. Such recovery and collection from Customer is an absolute condition precedent to Seller's right of recovery from Buyer. It is understood and agreed that Seller shall present all claims in strict accordance with the time limits and documentation requirements in this Purchase Order so as to permit Buyer to mitigate damages and advise the Customer. To the extent not covered elsewhere in the Purchase Order, all claims or requests relating to the payment or schedule of the Work must be made in writing with supporting detail and documentation within ten (10) business days of the Seller's discovery of the claim, or when the Seller otherwise should have discovered the claim with the exercise of reasonable diligence, whichever is earlier. Seller's failure to strictly comply with this provision, and similar provisions in this Purchase Order and the Contract Documents, shall be conclusively presumed to constitute a waiver of Seller's rights and claim.
(d) Pending final resolution of any controversy or claim hereunder, Seller shall proceed with the performance of the Purchase Order in accordance with Buyer's instructions.

34. ORDER OF PRECEDENCE. The following descending order of precedence shall apply in the event of an ambiguity, discrepancy or conflict in the documents comprising these Terms and Conditions: (a) the Purchase Order; (b) these Terms and Conditions as may be amended or supplemented from time to time; and (c) any other documents relating to theses Terms and Conditions. However, in the event of an ambiguity, discrepancy or conflict in any of the technical requirements or drawings

related to the Purchase Order, Seller shall immediately consult Buyer for a resolution prior to proceeding with the performance of the Purchase Order.

35. NOTIFICATION OF ORGANIZATIONAL CHANGES. Suppliers are required to notify Hydromach, Inc. in writing when there are significant facility or organizational changes such as company name, location, or senior quality management.

36. SHELF-LIFE MATERIALS. Suppliers shall have in place procedures for verifying that purchased shelf-life materials meet specification requirements. These procedures shall include:
(a) Verification upon receipt, and throughout their use, that purchased material having shelf-life requirements are within specified dates.
(b) Withholding from production, purchased material not within the specified shelf-life requirements unless special testing is accomplished to verify conformity.
(c) At least 80% of shelf life must remain on any product.

37. LANGUAGE REQUIREMENT: All paperwork, inspection forms and any other documents must be written in the English language.

38. APPLICABLE FEDERAL ACQUISITION REGULATIONS. This order is issued under a United States Government Department of Defense prime contract, and the regulations of the below identified clauses set forth in the Federal Acquisition Regulations (FAR), DOD Far Supplement (DFAR), or Air Force Material Command Far Supplement (AFMCFARS) in effect on the date of this order are incorporated herein by reference, it being understood that as used herein, the terms "Government" and "Contracting Officer" shall be deemed to mean Buyer, "Contractor" shall be deemed to mean Seller, and "Contract" shall be deemed to mean this purchase order. Clauses beginning with 52 can be found in 48 CFR Chapter 1 and clauses beginning with 252 can be found in 48 CFR Chapter 2.

52.203-3 Gratuities
52.203-5 Covenant Against Contingent Fees
52.203-6 Restrictions on Subcontractor Sales to the Government
52.203-7 Anti-Kickback Procedures
52.203-8 Cancellation, Rescission, And Recovery Of Funds For Illegal Or Improper Activity
52.203-10 Price Or Fee Adjustment For Illegal Or Improper Activity
52.203-12 Limitation On Payments To Influence Certain Federal Transactions
52.204-9 Personal Identity Verification of Contractor Personnel
52.209-3 First Article Testing and Approval
52.209-4 First Article Approval - Government Testing
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
52.211-5 Material Requirements
52.211-15 Defense Priority and Allocation Requirements
52.211-9005 Conditions for Evaluation and Acceptance of
Offers for Critical Safety Items
52.211-9006 Changes in Contractor Status, Item Required
And/or manufacturing Process/Facility—Critical
Safety Items
52.111-9007 Withholding of Material Review Board (MRB)
Authority –Critical Safety Items
52.215-2 Audit and Records - Negotiation
52.215-14 Integrity of Unit Prices
52.219-8 Utilization of Small Business Concerns
52.222-20 Walsh-Healy Public Contracts Act
52.222-21 Prohibition of Segregated Facilities
52.222-26 Equal Opportunity
52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-36 Affirmative Action for Workers with Disabilities
52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees
52.222-50 Combating Trafficking in Persons
52.223-11 Ozone-Depleting Substances
52.223-14 Toxic Chemical Release Reporting
52.225-1 Buy American Act
52.225-13 Restrictions on Certain Foreign Purchases
52.227-1 Authorization and Consent
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement
52.227-10 Filing of Patent Applications - Classified Subject Matter

52.232-11 Extras
52.232-16 Progress Payments
52.232-17 Interest
52.242-15 Stop-Work Order
52.242-17 Government Delay of Work
52.244-6 Subcontracts for Commercial Items
52.246-2 Inspection of Supplies - Fixed Price
52.246-15 Certificate of Conformance
52.246-16 Responsibility for Supplies
52.246-9000 Certificate of Quality Compliance
52.248-1 Value Engineering
252.203-7001 Prohibition On Persons Convicted Of Fraud Or Other Defense-Contract- Related Felonies
252.204-7000 Disclosure of Information
252.204-7008 Export-Controlled Items
252.209-7004 Subcontracting with Firms That Are Owned or Controlled By the Government of a Terrorist Country
252.211-7003 Item Identification and Valuation
252.225-7001 Buy American Act and Balance of Payments Program
252.225-7002 Qualifying Country Sources as Subcontractors
252.225-7012 Preference for Certain Domestic Commodities
252.225-7013 Duty-Free Entry
252.225-7014 Preference for Domestic Specialty Metals Alternate I and Deviation (Oct 2007)
252.225-7016 Restriction on Acquisition of Ball and Roller Bearings
252.225-7025 Restriction on Acquisition of Forgings
252.225-7028 Exclusionary Policies and Practices of Foreign Governments
252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate
252.227-7013 Rights in Technical Data - Noncommercial Items
252.227-7016 Rights in Bid or Proposal Information
252.227-7030 Technical Data-Withholding of Payment
252.227-7037 Validation of Restrictive Markings on Technical Data
252.243-7001 Pricing of Contract Modifications
252.243-7002 Requests for Equitable Adjustment
252.244-7000 Subcontracts for Commercial Items and Commercial Components
252.246-7000 Material Inspection and Receiving Report
252.246-7003 Notification of Potential Safety Issues
252.247-7023 Transportation of Supplies by Sea
252.247-7024 Notification of Transportation of Supplies by Sea
5352.209-9002 Organizational Conflict of Interest - Alternates V and VI