

## GENERAL TERMS AND CONDITIONS OF SALE

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### 1. Scope

- 1.1 These general terms and conditions (the "Conditions") apply to purchase orders ("PO") placed by a company ("Buyer") to EVERAXIS USA, Inc. whose address is 3030 Horseshoe Drive South Suite 300, Naples, FL 34104, for supply of products, systems, equipment and parts, including software (" Goods") and/or services ("Services"). EVERAXIS and Buyer may be referred to as "Party" or "the Parties".
- 1.2 These Conditions together with a purchase order ("PO") and any other documents referred to in the PO form the Contract between EVERAXIS and Buyer. These Conditions are the only terms and conditions upon which EVERAXIS will supply Goods and Services to Buyer and apply to the exclusion of any other terms and conditions of Buyer (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by custom, practice or course of dealing.
- 1.3 Any quotation is valid for a period of thirty days only from its date (or such other period if specified in such quotation), provided EVERAXIS has not previously withdrawn it, but no Contract shall be created by acceptance of such quotation. A Contract will be created on acknowledgement of PO by EVERAXIS as set out in clause 1.2.
- 1.4 A PO will be binding upon EVERAXIS only upon the earlier of:
  - i) express written acceptance of the PO which shall be made in a timely manner, or
  - ii) the commencement by EVERAXIS of the performance of such PO.

### 2. Delivery of the Goods and transfer of risk

- 2.1 Unless otherwise expressly specified in the written acknowledgement of PO, delivery of the Goods will be made EX-WORKS - INCOTERMS © 2020. Transfer of risk shall pass to the Buyer accordingly.
- 2.2 EVERAXIS will use reasonable endeavors to deliver and perform each of Buyer's orders for the Goods within the time agreed when Buyer places an order and EVERAXIS provides the acknowledgement of PO and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavors, EVERAXIS is unable for any reason to fulfill any delivery on the specified date, EVERAXIS will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will EVERAXIS have any Liability to Buyer for any delay or failure in delivery except as set out in these Condition.
- 2.3 Buyer will provide at its expense at the delivery point adequate and appropriate equipment and manual labor for loading the Goods.
- 2.4 If Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licenses or authorizations required to enable the Goods to be delivered on time (except solely on account of EVERAXIS's default), the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) EVERAXIS may store or arrange for storage of

the Goods until actual delivery or sale in accordance with this clause and charge Buyer for all related costs and expenses (including, without limitation, storage and insurance).

- 2.5 EVERAXIS may deliver the Goods by separate installments or perform any Services in stages. Each separate installment or stage will be invoiced and paid for in accordance with the provisions of the Contract. Each installment or stage will be a separate Contract and no cancellation or termination of any one Contract relating to an installment or stage will entitle Buyer to repudiate or cancel any other Contract, installment or stage.

### 3. Price

- 3.1 The price for the Goods will be the price specified in the acknowledgement of PO and, unless otherwise expressly specified in such written acknowledgement of PO, is exclusive of any costs of packaging and carriage of the Goods; and value added tax or other applicable sales tax or duty which will be added to the sum in question.
- 3.2 Cost of any pallets and returnable packaging or containers, which will be paid for by Buyer in addition to the price for the Goods when it is due to pay for the Goods.
- 3.3 EVERAXIS will be entitled to increase the price of the Goods following any changes in the specification made at the request of Buyer and agreed by EVERAXIS or to cover any extra expense as a result of Buyer's instructions or lack of instructions.
- 3.4 EVERAXIS reserves the right to revise the price in case of major increase of raw material, labor costs, carriage, energy or production costs, significant change in exchange rate. Any increase after acceptance of the PO shall be subject to agreement.

### 4. Payment

- 4.1 EVERAXIS will invoice Buyer for the Goods and/or Services at such time as set out in the acknowledgement of PO (or where no acknowledgement of PO is issued as stated in the quotation).
- 4.2 EVERAXIS may require for new Buyer a prepayment of 100% (one hundred percent) of the total Contract price payable on receipt of EVERAXIS's pro-forma invoice. Payment shall be made to EVERAXIS by either bank transfer or by banker's draft.
- 4.3 Buyer shall pay all invoices and pro-forma invoices in USD 0 days net from invoice, except otherwise agreed. No payment will be deemed to have been received until EVERAXIS has received cleared funds.
- 4.4 All sums payable to EVERAXIS under the Contract will become due immediately upon termination of the Contract.
- 4.5 The Buyer shall not be entitled to any set-off, counterclaim or condition and to any deduction or withholding for or on account of any taxes, levies, duties, charges or fees of any nature, unless Buyer is required by law to make any such deduction or withholding.

- 4.6 If any sum payable under the Contract, or any other agreement between Buyer and EVERAXIS, is not paid when due then, without prejudice to EVERAXIS's other rights under the Contract, EVERAXIS will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received by EVERAXIS from Buyer.
- 4.7 Notwithstanding anything contained in the Contract to the contrary, in the event that there are withholding taxes imposed by the tax authorities in respect of payments due pursuant to the Contract, Buyer shall be entitled to deduct and pay such withholding taxes to the said tax authorities on behalf of EVERAXIS unless EVERAXIS has previously provided Buyer with evidence satisfactory to the said tax authorities in the form of certification from its auditors/tax authorities that EVERAXIS is not subject to tax on the relevant income. If any withholding taxes are deducted and paid to such tax authorities then Buyer will provide to EVERAXIS within thirty days from the date of Buyer's payment to the EVERAXIS the tax credit documentation necessary for EVERAXIS to receive a tax credit equal to the withholding tax. Where EVERAXIS has made reasonable efforts to reclaim the withholding tax but is unable to do so (in whole or in part), Buyer shall pay such an amount to EVERAXIS such that the net amount, after deduction of the withholding taxes that EVERAXIS has been unable to reclaim, is equal to the amount that EVERAXIS would have received from Buyer had such withholding requirement not been applicable.
- 5 Ownership**
- 5.1 Ownership of the Goods (excluding Software) will not pass to Buyer until EVERAXIS has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.
- 5.2 Until ownership of the Goods (excluding Software) has passed to Buyer, Buyer must:
- 5.2.1 hold the Goods on a fiduciary basis as EVERAXIS's bailee;
- 5.2.2 store the Goods (at no cost to EVERAXIS) separately from all Goods of Buyer or any third party in such a way that they remain readily identifiable as EVERAXIS's property;
- 5.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 5.2.4 maintain the Goods in satisfactory condition insured on EVERAXIS's behalf for their full price against all risks to the reasonable satisfaction of EVERAXIS, and will whenever requested by EVERAXIS produce a copy of the policy of insurance.
- 5.3 Buyer may resell the Goods (or, in the case of the Software, sublicense the Software) before ownership has passed to it solely on the following conditions:
- 5.3.1 Any sale will be effected in the ordinary course of Buyer's business at full market value and Buyer will account to EVERAXIS accordingly; and
- 5.3.2 Any such sale will be a sale of EVERAXIS's property on Buyer's own behalf and Buyer will deal as principal when making such a sale.
- 5.4 EVERAXIS will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from EVERAXIS.
- 5.5 Buyer grants EVERAXIS, its agents and employees an irrevocable license and provision at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has deemed to have sold all goods of the kind sold by EVERAXIS to Buyer in the order in which they were invoiced to Buyer.
- 5.6 On termination of the Contract, howsoever caused, EVERAXIS's (but not Buyer's) rights contained in this clause 5 (Ownership) will remain in effect.
- 6 Warranty of the Goods**
- 6.1 EVERAXIS WILL, FREE OF CHARGE, WITHIN A PERIOD OF TWELVE MONTHS, OR NINETY DAYS FOR CONTRACTS AGREED FOR THE REPAIR OF BUYER OWNED GOODS ORIGINALLY SUPPLIED BY EVERAXIS, EACH PERIOD COMMENCING FROM THE DATE OF DISPATCH OF GOODS, WHICH ARE PROVED TO THE REASONABLE SATISFACTION OF EVERAXIS TO NOT COMPLY WITH SPECIFICATION DUE TO DEFECTS IN MATERIAL, WORKMANSHIP OR DESIGN (OTHER THAN A DESIGN MADE, FURNISHED OR SPECIFIED BY BUYER), REPAIR, OR AT ITS OPTION REPLACE, SUCH GOODS. THIS OBLIGATION WILL NOT APPLY WHERE:
- 6.1.1 NON-COMPLIANCE IS ATTRIBUTABLE TO ANY FAIR WEAR AND TEAR RELATING TO THE GOODS;
- 6.1.2 THE GOODS HAVE BEEN IMPROPERLY ALTERED IN ANY WAY WHATSOEVER, OR HAVE BEEN SUBJECT TO MISUSE OR UNAUTHORIZED REPAIR;
- 6.1.3 THE GOODS HAVE BEEN IMPROPERLY INSTALLED OR CONNECTED;
- 6.1.4 ANY MAINTENANCE REQUIREMENTS RELATING TO THE GOODS HAVE NOT BEEN COMPLIED WITH;
- 6.1.5 ANY INSTRUCTIONS AS TO STORAGE OF THE GOODS HAVE NOT BEEN COMPLIED WITH IN ALL RESPECTS; OR
- 6.1.6 BUYER HAS FAILED TO NOTIFY EVERAXIS OF ANY DEFECT OR SUSPECTED DEFECT WITHIN FOURTEEN DAYS OF THE DELIVERY WHERE THE DEFECT SHOULD BE APPARENT ON REASONABLE INSPECTION, AND IN ANY EVENT NO LATER THAN TWELVE MONTHS FROM THE DATE OF DELIVERY OR PERFORMANCE.
- 6.2 EVERAXIS'S OBLIGATION UNDER CLAUSE 6.1 IS SUBJECT TO THE GOODS BEING RETURNED, IF EVERAXIS SO REQUIRES, BY BUYER TO EVERAXIS CARRIAGE PAID. EVERAXIS WILL REFUND TO BUYER THE COST OF CARRIAGE ON THE RETURN OF ANY SUCH DEFECTIVE GOODS IF BUYER'S WARRANTY CLAIM IS SUBSTANTIATED TO THE REASONABLE SATISFACTION OF EVERAXIS, AND WILL DELIVER ANY REPAIRED OR REPLACEMENT GOODS TO BUYER AT EVERAXIS'S OWN EXPENSE.
- 6.3 ANY GOODS WHICH HAVE BEEN REPLACED WILL BELONG TO EVERAXIS. ANY REPAIRED OR REPLACEMENT GOODS WILL BE LIABLE TO REPAIR OR REPLACEMENT UNDER THE TERMS SPECIFIED IN THIS CLAUSE FOR THE UNEXPIRED PORTION OF THE TWELVE MONTH PERIOD FROM THE ORIGINAL DATE OF DELIVERY OF THE REPLACED GOODS PROCESS.

## 7 Performance of Services

- 7.1 EVERAXIS will use reasonable endeavors to deliver and perform each of Buyer's orders for the Services within the time agreed when Buyer places an order and EVERAXIS provides the acknowledgement of PO and, if no time is agreed, then within a reasonable time, but the time of performance will not be of the essence. If, despite those endeavors, EVERAXIS is unable for any reason to fulfill any performance on the specified date, EVERAXIS will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will EVERAXIS have any Liability to Buyer for any delay or failure in one hundred and twenty days' written notice (or such longer period specified in the written acknowledgement of Contract) to EVERAXIS requiring the performance to be made and EVERAXIS has not fulfilled the performance within that period. If Buyer cancels the Contract in accordance with this clause then:
- 7.1.1 EVERAXIS will refund to Buyer any sums which Buyer has paid to EVERAXIS in respect or part of the Contract which has been canceled and has not been delivered or is not ready for delivery; and
- 7.1.2 Buyer will be under no liability to make any further payments under clause 4.1 in respect of that Contract or part of the Contract which has been cancelled.
- 7.2 If Buyer fails to provide any instructions, documents, licenses or authorizations required to enable the Services to be performed on time (except solely on account of EVERAXIS's default), the Services will be deemed to have been performed on the due date
- 7.3 Buyer shall provide or procure the provision to EVERAXIS of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable EVERAXIS to fulfill its obligations under the Contract. This assistance shall include (but not be limited to) the timely provision of and access to information, data, accommodation, computing resources, appropriate Buyer employees and a safe working environment.

## 8 Warranty for the Services

- 8.1 EVERAXIS WILL, FREE OF CHARGE, WITHIN A PERIOD OF TWELVE MONTHS FROM THE DATE OF PERFORMANCE OF SERVICES WHICH ARE PROVED TO THE REASONABLE SATISFACTION OF EVERAXIS TO NOT COMPLY WITH SPECIFICATION DUE TO DEFECTS IN WORKMANSHIP REPAIR OR, AT ITS OPTION, RE-PERFORM SUCH SERVICES. THIS OBLIGATION WILL NOT APPLY WHERE BUYER HAS FAILED TO NOTIFY EVERAXIS OF ANY DEFECT OR SUSPECTED DEFECT WITHIN FOURTEEN DAYS OF THE DELIVERY WHERE THE DEFECT SHOULD BE APPARENT ON REASONABLE INSPECTION, OR WITHIN FOURTEEN DAYS OF THE SAME COMING TO THE KNOWLEDGE OF BUYER WHERE THE DEFECT IS NOT ONE WHICH SHOULD BE APPARENT ON REASONABLE INSPECTION, AND IN ANY EVENT NO LATER THAN TWELVE MONTHS FROM THE DATE OF DELIVERY OR PERFORMANCE.

## 9 Quality and Description of the Services

- 9.1 The quantity and description of the Services will be as set out in EVERAXIS's acknowledgement of PO.
- 9.2 All samples, drawings, descriptive matter, specifications and advertising issued by EVERAXIS and any descriptions or illustrations contained in EVERAXIS's or manufacturer's

catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described in them. They will not form part of the Contract.

- 9.3 "Specification" shall mean in relation to the Goods, EVERAXIS's equipment design specification for the Goods or the equivalent third party specification for Goods of third party origin; or in relation to the Services, EVERAXIS's documents detailing the requirements of the Services. Any other specifications or documents describing the requirements of or the performance of the works are only part of the Contract if referenced on the EVERAXIS's PO acknowledgement
- 9.4 EVERAXIS may make any changes to the Specification which: i) are required to conform with any applicable safety or other statutory or regulatory requirements; or ii) do not materially affect their quality or performance.

## 10 Intellectual Property

- 10.1 Subject to the pre-existing rights of third parties, all Intellectual Property Rights generated under the Contract in any Goods or arising out of the performance of any Services shall vest in and be the exclusive property of EVERAXIS.
- 10.2 "Intellectual Property Rights" shall mean all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United States and all other countries in the world and together with all renewals and extensions.
- 10.3 No right or license is granted to Buyer in respect of the existing or future Intellectual Property Rights of EVERAXIS, except the right to use the Goods, or resell the Goods (excluding the Software which may only be sublicensed), or use the Services in each case in Buyer's ordinary course of business and, in the case of the Software, solely for the purpose of the use of the Works.
- 10.4 Buyer will not without EVERAXIS's prior consent allow any trademarks of EVERAXIS or other words or marks applied to the Works to be obliterated, obscured or omitted nor add any additional marks or words.
- 10.5 Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or otherwise cause or permit any attempt to derive, obtain or modify the source code of the Software, except to the extent permitted by law.
- 10.6 If the Software is subject to a separate license agreement between Buyer and EVERAXIS, then the terms of such separate license agreement shall supersede the terms of any Contract insofar as they explicitly relate to the licensing of such Software.

## 11 Indemnification

- 11.1 **EVERAXIS will indemnify Buyer against any liabilities, costs and expenses arising out of a claim by a third party alleging a breach by EVERAXIS of its intellectual property rights, provided that:**
- 11.2 **EVERAXIS i) is notified within 5 business days in writing, ii) has sole conduct and control of the defence (at its costs), iii) the Buyer does not make any acknowledgment of liability or any statement detrimental to the case, iv) Buyer provides EVERAXIS with reasonable assistance in the defence.**

- 11.3 In case the use of the Good is enjoined, EVERAXIS shall at its sole option either : i) obtain for Buyer a license to continue using the Goods, ii) replace the Goods with a substantially equivalent Goods, iii) modify the Goods so it becomes non-infringing. In case where the foregoing are not economically viable, Buyer sole remedy shall be a return of the Goods and refund of the price paid.
- 11.4 EVERAXIS shall have no obligation under this clause where: the breach is caused i) by Buyer having modified the Goods without authorization, ii) by the combination of the Goods with other equipment or devices not provided by EVERAXIS and where the combination is the cause of the breach, iii) EVERAXIS having followed a design or specification of Buyer, iv) Goods are not use according to their intended and specified use and v) Buyer continues using the Goods after EVERAXIS has requested return, replacement or modification so as to make the Good non infringing.

## 12 Exclusion and Limitation of Liability

- 12.1 EVERAXIS DOES NOT EXCLUDE OR LIMIT ITS LIABILITY (IF ANY) TO BUYER FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR EVERAXIS TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.
- 12.2 WITHOUT PREJUDICE TO THE OTHER PROVISIONS OF THIS CLAUSE 12 (EXCLUSION AND LIMITATION OF LIABILITY), EVERAXIS'S AGGREGATE LIABILITY WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, RESTITUTION OR OTHERWISE, UNDER EACH CONTRACT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF 100% OF THE AMOUNT PAID BY BUYER TO EVERAXIS UNDER THAT CONTRACT OR \$10,000.00.
- 12.3 EXCEPT AS PROVIDED IN CLAUSE 12.1, EVERAXIS WILL BE UNDER NO LIABILITY TO BUYER WHATSOEVER IN RESPECT OF:
- 12.3.1 ANY CLAIM ARISING OUT OF AN EVENT WHICH IS CAUSED, OR CONTRIBUTED TO, BY THE GOODS AND SUCH EVENT OCCURS AFTER THE COMMENCEMENT OF THE LAUNCH PROCEDURE OF THE VEHICLE CARRYING SUCH GOODS INTO SPACE;
- 12.3.2 PURE ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL) OR
- 12.3.3 LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL) OR
- 12.3.4 ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, IN EACH CASE HOWSOEVER CAUSED ARISING OUT OF OR IN CONNECTION WITH:
- 12.3.5 ANY OF THE WORKS, OR THE MANUFACTURE OR SALE OR SUPPLY, OR FAILURE OR DELAY IN SUPPLY, OF THE WORKS BY EVERAXIS OR ON THE PART OF EVERAXIS'S EMPLOYEES, AGENTS OR SUBCONTRACTORS;
- 12.3.6 ANY BREACH BY EVERAXIS OF ANY OF THE EXPRESS OR IMPLIED TERMS OF THE CONTRACT;

12.3.7 ANY USE MADE OR RESALE BY BUYER OF ANY OF THE WORKS, OR OF ANY PRODUCT INCORPORATING ANY OF THE WORKS; OR

12.3.8 ANY STATEMENT MADE OR NOT MADE, OR ADVICE GIVEN OR NOT GIVEN, BY OR ON BEHALF OF EVERAXIS.

12.4 EXCEPT AS EXPRESSLY SET OUT IN THE CONTRACT, EVERAXIS HEREBY EXCLUDES TO THE FULLEST EXTENT PERMISSIBLE IN LAW, ALL CONDITIONS, WARRANTIES AND STIPULATIONS, EXPRESS (OTHER THAN THOSE SET OUT IN THE CONTRACT) OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE WHICH, BUT FOR SUCH EXCLUSION, WOULD OR MIGHT SUBSIST IN FAVOR OF BUYER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.5 EACH OF EVERAXIS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS MAY RELY UPON AND ENFORCE THE EXCLUSIONS AND RESTRICTIONS OF LIABILITY IN THE CONTRACT IN THAT PERSON'S OWN NAME AND FOR THAT PERSON'S OWN BENEFIT, AS IF THE WORDS "ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS" FOLLOWED THE WORD EVERAXIS WHEREVER IT APPEARS IN THOSE CLAUSES SAVE FOR EACH REFERENCE IN CLAUSE 12.3.5.

12.6 BUYER ACKNOWLEDGES THAT THE ABOVE PROVISIONS OF THIS CLAUSE 12 (EXCLUSION AND LIMITATION OF LIABILITY) ARE REASONABLE AND REFLECTED IN THE PRICE WHICH WOULD BE HIGHER WITHOUT THOSE PROVISIONS, AND BUYER WILL ACCEPT SUCH RISK AND/OR INSURE ACCORDINGLY.

12.7 BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR THE PROPER LEGAL DISPOSAL OF ALL MATERIALS PURCHASED FROM EVERAXIS AT THE END-OF- LIFE CYCLE OF SUCH MATERIALS.

## 13 Confidentiality

- 13.1 Confidentiality shall mean any information or data relating to Goods, software, and Services and information relating to a Party's business including that of its parent, associated, affiliated companies or which is otherwise related to the Contract, which is disclosed whether in writing, orally or by any other means to one Party by the other Party or which is otherwise obtained by the Receiving Party from the Disclosing Party, after the date of the Contract
- 13.2 Each Party will keep confidential any and all Confidential Information that it may acquire from the other Party.
- 13.3 Neither Party will use the Confidential Information of the other Party for any purpose other than to perform its obligations under the Contract. Each Party will ensure that its officers and employees comply with the provisions of this clause 13.
- 13.4 The obligations on the recipient of the Confidential Information set out in clauses 13.2 and 13.3 will not apply to any information which i) is publicly available or becomes publicly available through no act or omission of the recipient; or ii) the recipient is required to disclose by order of a court of competent jurisdiction, but only to the extent stated in such order.
- 13.5 Upon termination or expiration of the Contract, each Party agrees at the request of the other Party to destroy and certify destruction of all Confidential Information in its possession received from the other, except for data that exists as part of regularly generated electronic backup data or archive data, the destruction of which is not reasonably practicable.

#### 14 Force Majeure

- 14.1 Neither Party shall be in breach of the Contract or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under the Contract due to Force Majeure.
- 14.2 "Force Majeure" shall mean any cause preventing a Party from performing any or all of its obligations which is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of that Party including, without limitation, strikes, lockouts or other industrial disputes, protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, pandemics, epidemic.
- 14.3 If the event of Force Majeure continues for more than one hundred and eighty (180) days, either Party may give written notice to the other to terminate the Contract, without any indemnity due to the other Party.

#### 15 Termination

- 15.1 Either Party may by notice in writing served on the other Party terminate the Contract immediately if that other Party:
- 15.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Party in breach fails to remedy such breach within thirty days of service of a written notice from the Party not in breach, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with the Contract is a material breach of the terms of the Contract;
- 15.1.2 is unable to pay its debts as they fall due; admits its insolvency; commences a case or has a case commenced against it under any applicable bankruptcy, insolvency, or reorganization laws now or hereinafter in effect (except in the case of the filing of an involuntary petition for bankruptcy, in which case such right to terminate shall not arise unless an order for relief is entered or such petition is not dismissed within ninety (90) days of filing); commences any other dissolution, liquidation, or similar proceeding under the laws of any jurisdiction now or hereafter in effect; makes an assignment for the benefit of its creditors; suffers the appointment of any receiver, custodian, or like officer for itself or any substantial portion of its property that is not discharged or stayed within sixty (60) days;
- 15.1.3 has any distraint, execution or other process levied or enforced on any of its property; or ceases to trade or appears in the reasonable opinion of the other Party likely to cease to trade.
- 15.1.4 Ceases to trade or appears in the reasonable opinion of the other Party likely to cease to trade.
- 15.2 EVERAXIS may by notice in writing served on Buyer terminate the Contract immediately if:
- 15.2.1 Buyer has a change in its senior management and/or control, such that the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Buyer, whether through the ownership of voting shares, by contract, or otherwise, is changed, including by: (i) the

reorganization, consolidation, or merger of the Buyer with or into any other entity; or (ii) the sale, transfer, or other disposition of all or substantially all of the assets or stock of the Buyer;

- 15.2.2 the equivalent of any of clauses 9.1.1 to 9.1.4 or 9.2.1 occurs to Buyer under the jurisdiction to which Buyer is subject; or
- 15.2.3 Buyer commences the manufacture of any goods which are similar to or may compete with the Goods.
- 15.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Buyer or EVERAXIS accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 15.4 EVERAXIS will be entitled to suspend any deliveries or performance otherwise due to occur following service of a notice specifying a breach under clause 15.1.1, or if the Buyer is in breach or default under any other agreement between the Parties, until such breach or default is remedied or the Contract terminates, whichever occurs first.

#### 16 Law and Jurisdiction

- 16.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract or of any non-contractual obligation arising out of or in connection with it will be governed by the laws of the State of Florida applicable therein (without giving effect to its principles of conflicts of laws). The application of 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 16.2 Any dispute or claim arising out of formation, existence, construction, performance, validity of the Contract will be submitted to the relevant Court of the State of Florida. **EACH PARTY IRREVOCABLY AND EXPRESSLY WAIVES THE RIGHTS TO A TRIAL BY JURY IT MAY HAVE FOR ANY LITIGATION UNDER THE CONTRACT.**
- 16.3 The clause 16.2 will not prevent a Party (the "affected Party") from seeking injunctive relief in the case of any breach or threatened breach by the other Party of any obligation of confidentiality or any infringement by the other Party of the affected Party's Intellectual Property Rights in any court of competent jurisdiction.

#### 17 Export/Import

- 17.1 The Goods (including, without limitation, any Software) may be subject to the export or import laws and regulations of:
- 17.1.1 the United States, including without limitation the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations (15 C.F.R. Parts 730-774), and the economic and trade sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control;
- 17.1.2 the European Union and its member states, including without limitation Council Regulation (EC) No. 1334/2000; and other countries (collectively, "Export/Import Law"). Buyer agrees to comply strictly with all Export/Import Laws applicable to the Goods.

Buyer shall promptly notify EVERAXIS of any authorization requirements under Export/Import Laws that may apply to delivery of the Works to Buyer site(s). Buyer acknowledges and agrees that the Goods shall not be exported, re-exported, trans-shipped or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, or any other countries for which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "Denied or Restricted Parties"). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of their customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. (or EU as applicable) Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. §120.16).

#### 17.2 Registration

17.2.1 In accordance with 22 C.F.R. Part 122, any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the U.S. State Department's Directorate of Defense Trade Controls. Engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing defense services. Manufacturers who do not engage in exporting must nevertheless register.

17.3 Acceptance of these terms and conditions certifies to the EVERAXIS that the Buyer is in compliance with 22 C.F.R. Part 120 as required and the Buyer's registration will remain valid during the terms of this agreement.

17.4 Further to acceptance, the Buyer further certifies it:

17.4.1 Understands its obligation to protect EAR or ITAR controlled Goods and Services as data as necessary from unauthorized disclosure or access to foreign person employees or visitors.

17.4.2 In the performance of the contract, the Buyer understands its obligation to determine whether it will require the use of third party subcontractors to access any technical data, Goods and Services. If required, the Buyer is responsible for identifying and licensing any activity that requires export authorization from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.

17.5 Buyer confirms that the Goods will not be exported, re-exported, trans-shipped or otherwise transferred to any Denied or Restricted Parties.

#### 18 Data Protection

18.1 Each Party undertakes to comply with all applicable Data Protection Laws in connection with the performance of its obligations under the Contract and process data accordingly.

18.2 Data Protection Laws refer to the Federal Trade Commission Act of (15 U.S. Code § 41 et seq.).

18.3 If personal data is disclosed by a Party subject to European Data Protection Laws, and the recipient Party is established in a country outside of the European Union (as it is made up from time to time), the Parties shall either: a) comply with their respective obligations under the EU Model Controller to Controller Clauses and in such circumstances the parties hereby agree that the EU Model Controller to Controller Clauses will be incorporated by reference with the consequence that no separate signature will be required to make them binding between the respective parties; or b) the prior consent of the disclosing Party, put in place an alternative agreed transfer mechanism that is approved by the European Commission.

18.4 Buyer can send a request at [data.protection.usa@everaxis.com](mailto:data.protection.usa@everaxis.com) to request access correction or removal of its personal data.

#### 19 Compliance -Ethics

19.1 EVERAXIS attaches a great importance to Ethics in business, especially labor laws, human rights, competition law, money-laundering, anti-bribery and anti-corruption laws, and environment. EVERAXIS Code of Business & Ethics can be found at [www.everaxis.com](http://www.everaxis.com)

19.2 Each Party shall at all times comply with all Anti-Bribery and Corruption Laws and shall ensure that its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of that Party in connection with the Contract shall not, engage in any activity, practice or conduct which causes or could cause it or any member of its Group or the other Party or any member of the other party's Group to breach of commit an offence under any Anti-Bribery and Corruption Laws.

19.3 Each Party shall at all times comply, and shall ensure that its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of it in connection with the Contract comply, with the other party's anti-bribery policy in force from time to time as provided to that Party.

19.4 Each Party shall ensure that its subcontractors involved in the performance of the Contract does so only on the basis of a written contract which imposes on that subcontractor terms equivalent to those imposed on the Parties under this clause. Each Party is responsible for the observance of its subcontractors of the terms of the written contract.

19.5 Each Party shall promptly report to the other any request or demand for any improper financial or other advantage of any kind received by a Party, or which a Party gives or intends to give, in each case whether directly or indirectly, in connection with the performance of this Agreement.

19.6 Each Party will promptly give the other written notice of any breach of this clause 19. Breach of this clause shall be deemed a material breach of the Contract which is not capable of remedy and each Party may exercise its rights to terminate the Contract under clause 15.1.

19.7 Each Party shall indemnify each member of the other Party's from and against any and all losses, liability, damages, claims, demands, actions, costs, (including costs incurred in preventing, avoiding or mitigating loss), charges, interest, payment actions, proceedings, penalties, fines, adverse judgments, orders or other sanctions, expenses or liabilities (including lost opportunity costs, additional administrative and management time, loss of anticipated savings and costs and expenses of the other Party's Group and legal expenses calculated on a solicitor and client basis) suffered,

incurred or arising as a result of any breach by a Party of this clause 19 or by any subcontractor of any equivalent provisions contained in the relevant subcontract.

Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient). Business Day: mean Monday to Friday and excludes bank holidays in the USA.

## 20 Miscellaneous

- 20.1 These Conditions together with a Purchase Order ("PO") and any other documents referred to in the PO form the Contract between EVERAXIS and Buyer and embody the understanding between the Parties and supersede all previous oral and written agreement. Any change to these terms shall be made in writing and signed by a duly authorized representative.
- 20.2 Performance by EVERAXIS of its obligations is dependent upon prompt performance by Buyer of its obligations under the Contract.
- 20.3 Each right or remedy of EVERAXIS under any Contract is without prejudice to any other right or remedy of EVERAXIS under this or any other Contract.
- 20.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract but this will not affect any other provisions of the Contract which will remain in full force and effect. The Parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the illegal, invalid or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.
- 20.5 No failure or delay by a Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 20.6 EVERAXIS may assign, delegate, license, hold on trust or subcontract all or any part of its rights or obligations under the Contract.
- 20.7 The Contract is personal to Buyer who may not assign, delegate, license, hold on trust or subcontract all or any of its rights or obligations under the Contract without EVERAXIS's prior written consent.
- 20.8 Any notice or demand in connection with the Contract will be in writing and may be delivered by hand, registered mail or facsimile provided a transmission receipt is retained or legally binding registered e-mail, addressed to the recipient at its registered office and will be marked for the attention of the General Manager/Company Secretary (or such other address or person which the recipient has notified in writing to the sender in accordance with this clause, to be received by the sender not less than seven Business Days before the notice is dispatched).
- 20.9 The notice, demand or communication will be deemed to have been duly served:
  - 20.9.1 if delivered by hand, at the time of delivery; or
  - 20.9.2 if delivered by registered mail or e-mail, 48 hours after being posted or in the case of registered Airmail 10 days after being posted (excluding days other than Business Days) or in the case of facsimile the time received provided that, where in
  - 20.9.3 the case of delivery by hand or by facsimile such delivery occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next a