

TERMS AND CONDITIONS FOR PURCHASE



DEFINITIONS – The following definitions shall apply to all Articles of these terms and conditions as appropriate.

- i) "Seller Group" shall mean (i) Seller, its parent, subsidiary or related companies, (ii) its and their respective partners and joint venturers, if any, and the respective parents, subsidiary or related companies thereof, and (iii) the officers, directors, managers, members, employees, consultants, agents and invitees of each of the foregoing.
- ii) "Buyer Group" shall mean (i) Buyer, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint venturers, if any, customers and the respective parents, subsidiary or related companies thereof, and (iii) the officers, directors, managers, members, employees, consultants, agents and invitees of each of the foregoing.
- iii) "Consequential Loss" shall mean:
- (a) loss or delay/deferral or diminution of or the benefit of: revenue, profit, anticipated profit, production, product, productivity, contracts, business opportunities, business interruptions, delay, interference with, or non-performance of any other contract, contractual commitments, or deadlines, liquidated damages or penalties under any other contract, economic loss, additional project management or fabrication and completion costs, or extended overhead costs (in each case, whether actual or anticipated and whether deemed to be direct or indirect);
- (b) any damage, loss or injury of whatsoever nature which does not flow directly from the act or omission in question but from a consequence or result of such act or omission including, without limitation: (i) loss of goodwill; (ii) special, exemplary or punitive damages; and
- (c) to the extent not included in the foregoing, any special, consequential, incidental, or indirect losses (including costs, damages, liabilities and expenses in respect of such losses).
- iv) "Claims" shall mean any of the following: causes of action, demands, allegations, claims, suits, losses, liabilities, fines, penalties, costs, damages, judgments, awards and expenses, including court costs and attorneys' fees and expenses, and sums paid by way of settlement and compromise, of whatever kind or character, whether in contract, tort, or otherwise, of every type and character, regardless of when incurred, and except as otherwise expressly provided in this Agreement without limit or regard to the cause or causes thereof, including those asserted by a party or any member of its respective Group including an Indemnitor or any Third Party including dependents, heirs, claimants, executors, administrators, successors, survivors or assigns, (including, without limitation, property loss or damage, personal or bodily injury, sickness, disease or death, loss of services and/or wages, or loss of consortium or society).
- v) "Indemnify" shall mean release, protect, defend, indemnify and hold harmless; and terms such as "Indemnified", "Indemnifying", "Indemnification", "Indemnity", "Indemnitor", and "Indemnitee" shall have appropriately corresponding meanings and be construed accordingly.
- vi) "Legal Fault" shall include negligence (whether sole, joint, or concurrent), gross negligence, willful misconduct, strict liability, breach of duty (statutory or otherwise), breach of contract, breach of any representation or warranty including but not limited to any warranty under this Agreement, and any other legal fault.
- vii) "Third Party" shall mean any person who is not a member of Seller Group or Buyer Group.

1. ACCEPTANCE – This purchase order is an offer by the company identified on the face of this purchase order (the "Buyer") for the purchase of the goods (the "Goods") or services (the "Services") specified, from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). This Order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to Buyer any letter, form, or other writing or instrument acknowledging acceptance ("Acknowledgement"); (b) any performance by Seller under the Order; or (c) the passage of ten (10) days after Seller's receipt of the Order without written notice to Buyer that Seller does not accept. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order, unless a separate overriding written contract has been entered into and signed by the parties. The Order expressly limits Seller's acceptance to the terms of the Order. Terms and conditions different from or in addition to these Terms, whether contained in any Acknowledgment of this Order, or with delivery of any Goods or Services under this Order, or otherwise, will not be binding on Buyer, whether or not they would materially alter this Order, and Buyer hereby rejects them. These Terms may be modified only by a written document signed by duly authorized representatives of Buyer and Seller.

2. DEFAULT – Time is of the essence of the Order. Buyer may by written notice to Seller (a) terminate all or any part of this Order if Seller fails to perform, or so fails to make progress as to endanger performance of this Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure; and (b) procure, on such terms as it will deem appropriate, goods or services similar to those so terminated. Seller will continue performance of this Order to the extent not terminated and will be liable to Buyer for any excess costs for such similar goods or services. As an alternate remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price will be negotiated. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller will promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Seller. The rights and remedies of Buyer provided in this Section 2 will not be exclusive and are in addition to any other rights and remedies provided by the Uniform Commercial Code, by law, at equity or under this Order.

3. INSPECTION – Buyer reserves the right to inspect the Goods and deliverables of the Services on or after the delivery date. Buyer, at its sole option, may reject all or any portion of the Goods or deliverables of the Services if it determines the Goods or deliverables of the Services are defective or nonconforming. If Buyer requires replacement of the Goods or deliverables of the Services, pursuant to Section 4, Seller shall promptly replace the nonconforming Goods or deliverables of the Services to Buyer's satisfaction. If Seller fails to timely deliver replacement Goods or deliverables of the Services, Buyer may replace them with goods or services from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 7. Any inspection or other action by Buyer under this Section 3 shall not affect Seller's obligations under the Order, and Buyer shall have the right to further inspection after Seller takes remedial action.

4. CUMULATIVE REMEDIES – The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Seller is in breach of the warranties set out in Section 8, Seller will, at its sole cost, replace or repair the Goods or re-perform Services to Buyer's satisfaction.

5. PRICE AND PAYMENT – The price of the Goods or Services is the price stated on the face of this Order (the “Price”). Unless specified otherwise on the face of the Order, the prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Order by the Buyer. Seller shall invoice Buyer for the Order within thirty (30) days of delivery. Invoices shall conform to Buyer’s requirements as provided with the Order. Unless otherwise stated in the Order, Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order.

6. CHANGE ORDER – Buyer may, from time to time, initiate changes by issuing to Seller written notices (each, a “Change Order”) that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Order. Seller will promptly comply with the terms of any Change Order.

7. TERMINATION – Buyer may terminate this Order, in whole or in part, for any reason upon fifteen (15) days’ prior written notice to Seller. In addition to any remedies provided herein, Buyer may terminate this Order with immediate effect, either before or after acceptance of Goods or Services, if Seller has breached any of the Terms herein. If the Seller becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order. If Buyer terminates the Order for any reason, Seller’s sole and exclusive remedy is payment for the Goods or Services received and accepted by Buyer prior to the termination.

8. WARRANTIES – Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party’s intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer’s discovery of the noncompliance. If Buyer gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services. Seller warrants that it is duly licensed and authorized to perform all Work covered hereby, or that it will be so licensed and authorized prior to commencement and throughout the performance of the work related to this Order. If Buyer requests Seller to perform work related to this Order on software, Seller shall confirm that it has the right to do so and shall Indemnify the Buyer Group from all infringement Claims. Seller further warrants that it will comply with all applicable laws, orders, ordinances, rules and regulations of the federal, state, parish and local governments, and all duly constituted governmental agencies, including, but not limited to those referenced in Section 13, and that the prices to be charged hereunder for materials or services will not be in violation of any laws or governmental regulations. Seller shall indemnify the Buyer Group from and against any and all Claims resulting from such failure to comply or other violations.

9. LIABILITIES, RELEASES AND INDEMNIFICATION

a) Seller shall Indemnify Buyer Group from and against any and all Claims in respect of personal or bodily injury to, sickness, disease or death of any member of Seller Group and all Claims in respect of damage to or loss or destruction of property owned, leased, rented or hired by any member of Seller Group.

b) Buyer shall Indemnify Seller Group from and against any and all Claims in respect of personal or bodily injury to, sickness, disease or death of any member of Buyer Group and all Claims in respect of damage to or loss or destruction of property owned, leased, rented or hired by any member of Buyer Group.

c) Seller shall Indemnify the Buyer Group from and against all Claims for or in respect of or based on personal injury or death or damage to or destruction of property suffered or incurred by Third Parties to the extent that such personal injury or death or property damage or destruction is caused by the negligence or strict liability of the Seller Group in the performance of work under this Order.

d) In the event this Order is subject to the indemnity limitations in Chapter 127 of the Texas Civil Practices and Remedies Code (or any successor statute), and so long as such limitations are in force, each party covenants and agrees to support the mutual indemnity obligations contained in Paragraphs a) and b) above, by carrying equal amounts of insurance (or qualified self-insurance) in an amount not less than U.S. \$1,000,000.00.

e) Notwithstanding anything contained in this Order to the contrary, neither Group shall be liable for Consequential Losses of the other Group (whether or not foreseeable at the time of this Order).

f) THE EXCLUSIONS OF LIABILITY, RELEASES AND INDEMNITIES SET FORTH IN PARAGRAPHS A. THROUGH E. OF THIS ARTICLE 9 SHALL APPLY WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING BUT NOT LIMITED TO PRE-EXISTING CONDITIONS, WHETHER SUCH CONDITIONS BE PATENT OR LATENT, UNSEAWORTHINESS OF ANY VESSEL OR VESSELS, IMPERFECTION OF MATERIAL, DEFECT OR FAILURE OF GOODS OR SERVICES, BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED), ULTRAHAZARDOUS ACTIVITY, STRICT LIABILITY, TORT, BREACH OF CONTRACT, BREACH OF DUTY (STATUTORY OR OTHERWISE), BREACH OF ANY SAFETY REQUIREMENT OR REGULATION, OR THE NEGLIGENCE OR OTHER LEGAL FAULT OR RESPONSIBILITY OF ANY PERSON (INCLUDING THE INDEMNIFIED OR RELEASED PARTY), WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.

g) BUYER’S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS ORDER IS LIMITED TO THE AMOUNT PAID BY BUYER FOR THE GOODS AND/OR SERVICES.

h) Redress under the Indemnity provisions set forth in this Article 9 shall be the exclusive remedy(ies) available to the parties hereto for the matters, claims, damages and losses covered by such provisions.

10. INSURANCE – Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes unless otherwise included on an Order: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers’ compensation insurance in compliance with the applicable laws of each jurisdiction affected by the Order; (c) if the Seller will use or provide for use of motor vehicles in providing and/or performing the Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000; (d) professional errors and omissions in a sum no less than \$1,000,000 for each occurrence. Upon Buyer’s request, Seller shall provide Buyer with a certificate of insurance evidencing the coverage specified in this Order. To the extent of Seller’s release and indemnity obligations expressly assumed hereunder, Seller agrees that all such insurance policies shall i) be primary to the Buyer’s insurance; ii) include as additional insured: the Buyer, its parent, subsidiary, and affiliated or related companies, and its and their respective officers, directors, employees, consultants and agents, and Buyer’s client where Seller is performing

work for Buyer's client on behalf of Buyer; and iii) be endorsed to waive subrogation against: the Buyer, its parent, subsidiary, and affiliated or related companies, and its and their respective officers, directors, employees, consultants and agents, and Buyer's client where Seller is performing work for Buyer's client on behalf of Buyer.

11. GOVERNING LAW/DISPUTE RESOLUTION – Buyer and Seller agree that this Order shall be construed under and governed by the general maritime laws of the United States or to the extent maritime law is not applicable then by the laws of the State of Texas, excluding any conflicts of law principles that would refer to the laws of another jurisdiction. In the event of a dispute arising out of this Order, whether arising in contract, tort, or otherwise (referred to in this Order for all purposes as a "Dispute"), the Parties shall attempt in good faith to settle such Dispute by mutual discussions between themselves or between their respective senior management within 30 days after the date that a Party gives written notice of the Dispute to the other Party. In the event a Dispute is not resolved by the Parties in such manner, the Parties hereby agree and submit to the sole and exclusive jurisdiction and venue of the United States District Court for the Southern District of Texas, Houston Division, or, failing such court having jurisdiction over the Dispute, a Texas District Court of competent jurisdiction in Houston, Texas. The Parties further agree to waive any right to a jury trial that either Party might otherwise have in any and all courts.

12. PATENTS AND COPYRIGHTS

a) Seller shall defend, indemnify, and hold harmless the Buyer Group from and against any and all claims arising out of this Agreement for or in respect of any infringement or alleged infringement of a patent, copyright, trade secret, trademark or proprietary rights due to the performance, use, or operation of any Goods or Services provided by Seller hereunder. Buyer agrees to (i) give Seller written notice of any such Claim; (ii) allow Seller, at Seller's expense, to control the defense and settlement of any such Claim. If any Goods or Services provided by Seller are held to constitute an infringement or its use is enjoined, then Seller shall at its sole expense, undertake to procure for the Buyer Group the right to continue using such Goods or Services. If, however, such right cannot be procured on terms and conditions reasonably acceptable to Buyer, Seller shall at its sole expense and at Buyer's sole election: (i) modify such affected Goods or Services to render it non-infringing but functionally equivalent, (ii) substitute the affected Goods or Services with a replacement that is not infringing but is functionally equivalent, or (iii) refund to Buyer the sums actually paid for the affected Goods or Services and Buyer shall cease to use such affected Goods or Services.

b) Seller shall report in writing the details of every invention, discovery or improvement (whether patentable or not) made or conceived by the Seller Group alone or in conjunction with others relating to, arising out of, or emanating from Services provided or performed hereunder. Seller shall assist Buyer and its nominee in obtaining patents covering said inventions, discoveries or improvements in any and all countries, and shall execute or have executed all papers needed in applying for and obtaining any such patents and shall sign and deliver instruments or assignments of such patents to Buyer Group, all as requested by Buyer. All such inventions, discoveries and improvements (whether patented or not) shall be and shall remain the property of Buyer Group.

c) All Work (including software enhancements and all source code) developed pursuant to this Agreement, shall be owned by Buyer Group and shall be considered work made for hire by Seller for Buyer Group and Buyer Group shall be deemed the author thereof. Seller shall execute and deliver to Buyer upon demand all assignments of copyright that Buyer may deem necessary or appropriate with respect to the Services performed in conjunction with this Order.

13. COMPLIANCE WITH LAWS – Seller represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Order. In particular and without limitation, Seller shall not act in any fashion or take any action that will render Buyer liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it them or Buyer in retaining or obtaining business or in supplying the Goods or performing the Services. Without limiting the foregoing, to the extent that Seller is a US federal contractor or covered subcontractor as contemplated in accordance with the applicable laws and regulations, then Seller agrees that this Order will be subject to the requirements of 41 CFR 60-1.4 and 29 CFR part 471, Appendix A to Subpart A, and the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which are incorporated herein by reference. The latter two regulations prohibit discrimination against qualified individuals on the basis of protected veteran status and disability and require affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities. Seller hereby certifies that it understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR") and the terms of any U.S. Department of State or U.S. Department of Commerce export license or export or temporary import exemption/exception applicable to this Order. Seller further warrants that Seller Group is not listed on any United States banned entity list restricting it from doing business with United States entities. Seller's failure to comply with this provision shall constitute a material breach of this Order.

14. CONFIDENTIAL INFORMATION – Each party recognizes and acknowledges that it shall maintain all data, information, disclosures, documents, drawings, specifications, patterns, calculations, technical information and other documents (collectively, "Confidential Information") obtained from the other party in strict confidence subject only to disclosure required by law, legal process or as authorized in writing by the party disclosing the information. However, nothing hereinabove contained shall deprive the party receiving the information (the "Receiving Party") of the right to use or disclose any information: a) which is, at the time of disclosure, known to the trade or public; or b) which becomes at a later date known to the trade or the public through no fault of the Receiving Party and then only after said later date; or c) which is possessed by the Receiving Party, as evidenced by the Receiving Party's written records, before receipt thereof from the party disclosing the information (the "Disclosing Party"); d) which is developed by the Receiving Party as evidenced by documentation, independently of the Confidential Information, or (e) which is required to be disclosed by the Receiving Party pursuant to an order of a court of competent jurisdiction or other governmental agency having the power to order such disclosure, provided that the Receiving Party uses its best efforts to provide timely notice to the Disclosing party of such order to permit the Disclosing Party an opportunity to contest such order.

15. INDEPENDENT CONTRACTOR – It is expressly understood that the Seller is an independent contractor of Buyer, and that neither Seller nor its principles, partners, employees or subcontractors are servants, agents or employees of Buyer. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

16. WORK ON BUYER'S PREMISES – If Seller's work under this Order requires Seller to be on the premises of Buyer Group or at Buyer Group's direction, Seller will take all necessary precautions to prevent any injury to persons or damage to property, including following any rules, procedures or other requirements of Buyer Group.

17. TITLE AND RISK OF LOSS – Unless otherwise specified in the Order, risk of loss of the Goods remains with Seller and title will not pass to Buyer until the Goods are delivered to and accepted by Buyer at the specified delivery location.

18. FORCE MAJEURE – Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes.

Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Order immediately by giving written notice to Seller.

19. SURVIVAL – Notwithstanding the term of this Order or any future changes thereof, the provisions of Articles 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, and 20 a), b), d), g) and h) and any other rights and obligations of the parties which have accrued shall survive any expiration of this Order.

20. MISCELLANEOUS –

a) **WAIVER** – Failure of Buyer or Seller to enforce any of the terms and conditions of this Order shall not prevent a subsequent enforcement of such terms and conditions or be deemed a waiver of any subsequent breach.

b) **SEVERABILITY** – Should any provisions of this Order, or portion thereof, be unenforceable or in conflict with governing country, state, province, or local laws, then the validity of the remaining provisions, and portions thereof, shall not be affected by such unenforceability or conflict, and this Order shall be construed as if such provision supersedes all prior oral or written agreements or representations.

c) **REPRESENTATIONS** – Seller acknowledges that it has not relied on any representations other than those contained in this Order.

d) **ENTIRE AGREEMENT** – This Order constitutes the entire agreement of the parties concerning this subject matter and shall not be varied, supplemented, qualified, or interpreted by any prior course of dealing between the parties or by any usage of trade and may only be amended by an agreement executed by an authorized representative of each party.

e) **NON-ASSIGNMENT** – Assignment of this Order or any interest in it or any payment due or to become due under it, without the written consent of the Buyer, will be void. An assignment will be deemed to include not only a transfer of this Order or such interest or payment to another party but also a change in control of Seller, whether by transfer of stock or assets, merger, consolidation, or otherwise.

f) **SELLER'S INVENTORY** – Buyer will have no obligation to request quotations or place Orders with Seller, both of which will be in Buyer's sole discretion. Buyer acting in its sole discretion will determine the actual quantity of Goods or Services to be purchased. Seller bears sole responsibility for managing Seller's raw material, work in process, and inventory, and Buyer will have no liability with respect thereto (whether upon termination of this Order or otherwise) other than in connection with termination for convenience as provided in Section 7.

g) **PUBLICITY** – Seller will not use Buyer Group's name or logo in publicity, advertising, or similar activity, except with Buyer's prior written consent. Seller will not disclose the existence of this Order or any of its respective terms to any third party without Buyer's prior written consent.

h) **NOTICES** - All notices, consents, waivers, and other communications required or permitted to be given pursuant to this Order, shall be in writing and shall be deemed to have been delivered either (i) on the delivery date, if personally delivered, or if delivered by confirmed facsimile, (ii) one (1) business day after delivery to any national overnight courier directing delivery on the next business day, receipt requested, or (iii) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, with adequate postage affixed thereto. All notices to Buyer shall be sent to the SGV International, LLC at 10497 Town and Country Way, Suite 700, Houston, Texas 77024, to the attention of the Contracts Administrator, and to Seller at its address as set forth in this Order, or at such other address as either party may designate in writing to the other party.

i) **FLOW DOWN TERMS** - Required flow down provisions from agreements between SGV and its customers or clients may be included in Amendments to this Agreement which are Order specific. With the exception of Section 5 of these terms – PRICE AND PAYMENT, in the event of any conflict between these terms and the flow down provisions, the interpretation of the flow down provisions will prevail.