



TCS-1: KEEL Terms and Conditions of Sale

Terms and Conditions of Sale

These Terms and Conditions of Sale are between

KEEL (as defined below) ("Seller") and the Party issuing the Order ("Buyer").

"KEEL" means the subsidiary of Keel Holdings LLC (Merrill Technologies Group, LLC, Pegasus Steel, LLC, or Metal Trades, LLC) identified as the selling party in the Order.

"Order" means the purchase order issued by Buyer for the purchase of Seller's products or services.

"Agreement" means the Order, these Terms and Conditions of Sale, all other documents incorporated by reference into the Agreement, and any subsequent changes or modifications thereto.

1. Products and Services to be Supplied

- a. Seller shall sell and deliver to Buyer the Product(s) or Service(s) described in the Order.

2. Quoting and Ordering Procedures

- a. Seller may issue a proposal to sell the Products or Services that Buyer desires to purchase. Each proposal shall show the price, quantity, and estimated delivery date for each proposed Product or Service and the validity period of the proposal.
- b. Buyer shall issue Orders for Products or Services proposed by Seller that Buyer agrees to purchase. Each definitive Order issued by Buyer shall include only the following information where applicable:
 - i. Identification of the Products to be supplied (Part Number, NSN, Quantity, Price) or Service to be supplied
 - ii. Identification of the effective date
 - iii. Identification of any U.S. Government Priority Rating applicable to the procurement
 - iv. Identification of the mandatory flowdown requirements as prescribed by the FAR/DFARS
 - v. Identification of Buyer Furnished or Government Furnished Property to be provided and the date(s) that the property is to be delivered
 - vi. Identification of the delivery dates in accordance with the Seller's proposed delivery schedule
 - vii. Complete shipping and marking instructions
 - viii. Identification of delivery as FOB Origin, Seller's Facility unless otherwise agreed to in writing by an authorized representative of the Seller
 - ix. A statement that reads, "Seller's KEEL General Terms and Conditions of Sale dated 6/11/24 apply to this purchase order. Any additional terms and conditions included in this purchase order shall not be binding upon Seller unless made in writing within the purchase order and signed by a duly authorized representative of the Seller."

- c. No unpriced orders will be accepted. All Orders shall be subject to written acknowledgement by Seller. It is understood that an acknowledgement to a unilateral order signed by the Buyer does not constitute, in any way, acceptance of waivers, alterations, modifications or additions to these terms and conditions.
- d. All proposals of Seller are subject to change at any time prior to acceptance by Seller of an order and expire at the end of the validity period stipulated in such proposals. In the event that a validity period is not stipulated in a proposal issued by Seller, the applicable validity period shall be thirty (30) days.
- e. Each resultant Order will be subject to these Terms and Conditions of Sale and nothing contained in or attached to those Orders will operate to modify or add to these provisions unless agreed to in writing by both Parties under a bilaterally signed Order.

3. Prices

- a. The prices set forth in Seller's proposals are in U.S. dollars and include the cost of Seller's usually factory tests, inspection, and commercial packing and, if applicable, commercial export packing for air shipment.
- b. The prices shall be subject to Economic Price Adjustment (if applicable) as described in Seller's proposal or the Agreement.
- c. The Agreement shall be subject to Progress Payments (if applicable) as described in Seller's proposal.

4. Delivery

- a. Delivery dates are based upon (1) prompt receipt by Seller of all Buyer furnished information/parts/equipment necessary to permit Seller to proceed with work immediately and without interruption, (2) Buyer's compliance with the payment terms, (3) such evidence as Seller may request that any required Export or Import License has been issued, and is in effect and (4) continued availability of Buyer-provided or U.S. Government facilities and special tooling and special test equipment to Seller and its subcontractors for use hereunder. All transportation costs, as well as cost resulting from any additional factory testing, inspections and/or packaging requirements shall be paid by Buyer.
- b. Delivery of Products to the Buyer shall occur Free on Board (FOB) Origin, Seller's facility and shall officially occur upon the completion of the Memorandum of Shipment and the Certificate of Conformance prescribed in Article 8, Inspection and Acceptance. Title and risk of loss shall pass to Buyer upon delivery.
- c. Partial deliveries of Products are permitted, and Seller shall submit invoices at time of delivery. In addition, Seller may deliver and shall receive payment for any part of the Products in advance of the delivery schedule agreed upon in the Agreement.
- d. If for any reason Buyer cannot physically take possession of the Products delivered at Origin, Seller may make delivery by executing the acceptance criteria under Article 8, Inspection and Acceptance and place the Products in storage. Upon this act, title shall pass to the Buyer and the Buyer shall assume risk of loss or damage to such Products. Buyer shall bear all storage and storage related expenses, such as handling, inspection, preservation, insurance and warehouse expenses. If

Products are stored in Seller's facility, Buyer shall pay storage charges as determined by Seller. Seller shall assist and cooperate with Buyer in any reasonable manner with respect to the removal of any Products placed in storage.

5. Payment

- a. Payment shall be made in U.S. dollars. All payments will be due and payable net 30 days from date of invoice. The Agreement may provide for advance, progress, partial, or milestone payments, with the balance payable upon delivery.
- b. Buyer shall make all payments under this Agreement in U.S. dollars via Electronic Fund Transfers (EFT) where possible. Such payment(s) shall be immediately available for use without any right of set-off deduction.
- c. If Seller is ready to make delivery but Buyer cannot accept delivery as scheduled due to any cause, any amounts otherwise payable to Seller upon delivery shall be payable upon delivery into storage and submission of Seller's invoice.
- d. If Buyer fails to fulfil any condition of these terms of payment, Seller may, after notification to Buyer, (i) withhold deliveries and suspend performance, or (ii) continue performance if Seller deems it reasonable to do so, or (iii) place the Products into storage pursuant to the provisions of Article 4, Delivery. In any event, the costs incurred by Seller as a result of Buyer's non-fulfillment shall be payable by Buyer upon submission of Seller's invoices thereof. Seller shall be entitled to an extension of time for performance of its obligations equaling the period of Buyer's non-fulfillment whether or not Seller elects to suspend performance.

6. Changes

- a. Either of the Parties hereto may propose changes in the Products or Services and any such proposed change shall be incorporated provided the change is technically feasible and provided further that both Parties have agreed to the change in writing, including any resulting adjustment in price, delivery schedule or other pertinent provisions.

7. Use of U.S. Government or Buyer Owned Property

- a. In the event that permission for Seller to use Buyer-owned or U.S. Government-owned facilities, special tooling and/or special test equipment is denied, modified or withdrawn by the authorized representatives of the Buyer or U.S. Government, the price and delivery schedule set forth in the Agreement shall be appropriately adjusted, or alternatively, Seller, may (1) withdraw its proposal and/or (ii) terminate the Agreement without penalty or further obligation to perform, whereupon Buyer shall pay Seller's charge in accordance with Article 15, Termination/Cancellation.
- b. Seller is authorized to utilize its established property tracking system for the handling of Buyer Owned or Government Owned property.

8. Inspection

- a. All quality control exercised in the manufacture of the Products or performance of Services shall be in accordance with Seller's normal quality control policies, procedures, and practices as documented in Seller's MP16 procedure. Seller shall provide evidence of inspection by Seller's quality control representative upon

request from the Buyer. The Memorandum of Shipment and the Certificate of Conformance furnished by Seller shall constitute final acceptance of the Products or Services performed and is the Seller's acknowledgement that the Products comply with the applicable requirements of the Agreement and shall be conclusive.

- b. Seller's obligations for failures of the Products or Services to conform to the requirements of the Agreement which are discovered subsequent to final acceptance shall be limited to those stated or referenced in the warranty contained in the Agreement under Article 13, Warranty.

9. Taxes

- a. The selling prices include, and Seller shall be responsible for, the payment of any Taxes measured by the income of the Seller.
- b. Unless Seller arranges for export shipment, Buyer agrees to furnish (without charge) evidence of exportation or other evidence of tax or duty exemption acceptable to the taxing or customs authorities when requested by Seller, failing which the amount of any U.S.A. taxes imposed on Seller in connection with the transaction shall be promptly reimbursed in U.S. Dollars by Buyer to Seller upon submission of Seller's invoices therefore.
- c. Any other taxes levied in connection with the sale and/or delivery of Products or Services under this Agreement, other than taxes measured by the income of Seller, whether levied against Buyer, against Seller or its employees or against any of Seller's subcontractors or their employees, shall be the responsibility of Buyer and shall be paid directly by Buyer to the governmental authority concerned. If Seller or its subcontractors, or the employees of either, are required to pay any such taxes in the first instance, or as a result of Buyer's failure to comply with any applicable laws or regulation governing the payments so made, the amounts paid by Seller, plus the expense of currency conversion, shall be promptly reimbursed in U.S. dollars by Buyer upon submission of Seller's invoices therefore.
- d. For the purposes of this Article 9, "Taxes" means all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, excise, franchise, gross receipts, import, income, license, property, sales, stamp, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto).
- e. All payments by Buyer pursuant to this Agreement shall be free of all withholdings of any nature whatsoever except to the extent otherwise required by Law, and if any such withholding is so required, Buyer shall pay an additional amount such that after the deduction of all amounts required to be withheld, the net amount actually received by Seller shall equal the amount that Seller would have received if such withholding had not been required.

10. Preservation, Packing, Packaging, and Marking

- a. Products shall be prepared, packaged, marked and packaged in accordance with Seller's normal commercial practices unless otherwise specified in the Agreement.

11. Governmental Authorizations

- a. Seller shall be responsible for obtaining and maintaining any required Export license for Products or Services sold to Buyer under this Agreement. Buyer shall be responsible for obtaining any Import Licenses, Exchange Permits or any other required government authorization. Buyer and Seller shall assist each other in every manner reasonably possible in securing and complying with such authorizations as may be required. Buyer agrees to comply with all applicable U.S. Laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and the import certification and export notification requirements under the Toxic Substance Control Act.
- b. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not thereby be relieved of its obligation to pay Seller.

12. Excusable Delays

- a. Seller shall not be liable for delays in performing its obligations and the date on which Seller's obligations are to be fulfilled shall be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from (i) act of God, unforeseeable circumstances, acts (including delay or failure to act) of Buyer or any government authority (dejure or defacto, including political subdivisions thereof), war (declared or undeclared), terrorism, riot, revolution, priorities, fires, strikes or other labor disputes, sabotage or epidemics, or (ii) Seller's inability, due to causes beyond Seller's reasonable control, to timely obtain necessary and proper labor materials, components, facilities, transportation, or instructions from Buyer, or (iii) any other cause beyond Seller's reasonable control. The foregoing extension shall apply even though such cause may occur after Seller's performance of its obligations has been delayed for other causes.
- b. If delay resulting from any of the foregoing extends for more than one hundred and eighty (180) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment for price, then either party, upon thirty (30) days written notice, may terminate the Agreement with respect to the unexecuted portions of work, whereupon Buyer shall pay Seller's charge in accordance with Article 15, Termination/Cancellation.

13. Warranty

- a. Seller warrants that, at the time of Delivery of the Products sold to Buyer or Services performed hereunder that those items will conform with Buyer's specifications set forth and specifically referenced in the Agreement, or if none are set forth and referenced, will conform with Seller's published specifications and samples provided to Buyer. Further, Seller warrants for a period of 12 months after Delivery of all Products sold to Buyer or Services performed hereunder that those items will be free from defects in material and workmanship. If any nonconforming Product or Service is identified within the warranty period, Seller, at its option, shall repair or replace the Product or re-perform the Service. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN,

STATUTORY, ORAL OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE). ANY WARRANTIES BEYOND THIS ARTICLE 13 ARE DISCLAIMED AND SHALL NOT APPLY TO ANY GOODS SOLD OR SERVICES PROVIDED.

14. Limitation of Liability

- a. The liability of Seller, including its subcontractors, suppliers, affiliates, subsidiaries or co-producers (collectively referred to as "Seller" for purposes of this Article), to Buyer arising out of, connected with, or resulting from the design, manufacture, sale, delivery, repair, replacement, support, operation, use or handling of the Product or the performance (or non-performance) of the Services hereunder, whether in contract, warranty, tort (including negligence of any degree) product liability, or otherwise, shall be as set forth in the applicable warranty contained in Article 13. The foregoing shall constitute the sole and exclusive remedy of Buyer and the sole and exclusive liability of Seller. Buyer hereby waives, releases, and renounces all other rights, claims, and remedies against Seller. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS.
- b. In no event shall the liability of Seller, however founded, exceed the price allocable to the Product or Service (as applicable to the Agreement) that initially gives rise to the claim. All liability of Seller on all claims of any kind shall terminate upon expiration of the Warranty Period. Buyer shall release Seller from, and shall indemnify and hold Seller harmless from and against any and all claims, liabilities and losses whatsoever of any nature or kind, including, but not limited to injury to or death or any employee or representative of Buyer or third party, or loss of or damage to the property of Buyer, its employees, representatives or any third party, arising out of, in connection with or resulting from performance hereunder, whether in contract, warranty, tort (including negligence of any degree), patent infringement or otherwise. With respect to cumulative liability, Seller's total liability for any and all claims arising out of, connected with or resulting from the manufacture, sale, possession, use, or handling of supplies (whether the claim alleges negligence of any degree, breach of contract or otherwise) shall not, in any event, exceed fifty (50%) percent of the total contract value.
- c. Seller shall not be liable for loss of or damage to property of the Buyer or Government (excluding the supplies delivered under this contract) that occurs after Buyer's acceptance of the Products. Such paragraph(s) shall not diminish the Seller's obligations to the extent that they arise otherwise under the Warranty.
- d. If Seller furnishes Buyer with advice or other assistance which concerns any Product supplied hereunder or any equipment in which any such Product may be installed and which is not required by the terms of the Agreement, the furnishing of such advice or assistance shall not subject Seller to any liability, whether in contract,

warranty, tort (including negligence of any degree), strict liability, patent infringement, or otherwise.

15. Termination/Cancellation

- a. Termination for Convenience: Buyer has the right to terminate this Agreement for its convenience. Should Buyer elect to exercise this right, a written termination notification shall be submitted to Seller effective upon receipt by the Seller. In the event of such termination, the Seller shall stop all work hereunder, cause any and all of its suppliers and subcontractors to cease work, and deliver any Products completed as of the effective date of the termination notification. Subject to the terms of this Agreement, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate using its standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Buyer any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided after receipt of the written termination notification.
- b. Under Buyer initiated terminations, raw materials, processed materials, items in process and purchased components acquired by Seller in the performance of this Agreement shall, at Buyer's option, be completely manufactured and delivered to Buyer and paid for pursuant to Paragraph A above or shall be delivered to Buyer under "As Is" conditions, and Buyer shall accept and pay for them pursuant Paragraph A above.

16. Intellectual Property

- a. "Intellectual Property" means creations of the mind, ideas, inventions, works of authorship, symbols, names, images and designs used in commerce embodied in, for example, technical data, designs, information, computer software, drawings, formulae, specifications, diagrams, processes, know-how, procedures and technology legal rights in such creations of the mind. Intellectual Property developed or otherwise acquired by Buyer or Seller prior to or outside the scope of this Agreement ("Background Intellectual Property"), and any Intellectual Property rights therein, shall be owned by the Party that developed or otherwise acquired the Background Intellectual Property and associated rights. Intellectual Property developed or otherwise acquired by Buyer or Seller within the scope of this Agreement shall be owned by the Party which funded the development of the Intellectual Property. Furthermore, any know-how, manufacturing methods and processes, fixture designs, tooling information, and machine coding of Seller ("Manufacturing Information") shall remain the exclusive property of the Seller regardless of whether the Manufacturing Information is pre-existing or generated as part of this Agreement. Unless explicitly identified and agreed by Buyer and Seller, nothing in these terms and conditions shall convey a license to Buyer regarding any of Seller's Intellectual Property or Manufacturing Information.

17. Dispute Resolution

- a. If a dispute arises under or relating to this Agreement in any way, the parties will endeavor to resolve the dispute amicably, including by designating senior managers who will meet and use commercially reasonable efforts to resolve any such dispute. If the parties' senior managers do not resolve the dispute within sixty (60) days of first written request, then any action or proceeding arising out of or relating to this Order must be brought:
 - i. If Seller is Merrill Technologies Group, in the courts of the State of Michigan located in the County of Oakland, Michigan, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Michigan.
 - ii. If Seller is Pegasus or Metal Trades, in the courts of the State of South Carolina located in the City of Charleston, South Carolina, or, if it has or can acquire jurisdiction, in the United States District Court for the District of South Carolina.

Each of the parties knowingly, voluntarily and irrevocably submits to the exclusive jurisdiction of each such court in any such action or proceeding and waives any objection it may now or hereafter have to venue or to convenience of forum.

- b. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS ORDER.
- c. Any claim against Seller shall be barred unless Buyer has requested that it be resolved in accordance with this Article within one year of the date the dispute arose, which shall be the effective date of termination if the dispute is related to termination.

18. General Provisions

- a. The right of access to Seller's books, records, and documentation is restricted solely to the U.S. Government or its authorized representative who may verify, on U.S. Government acquisitions only, the proposed pricing methodology where necessary. Once the U.S. Government representative completes the audit/verification, the findings are to be reviewed with Seller prior to release to Buyer in order to ensure that Competition Sensitive and/or Proprietary Information is not disclosed.

19. Change in Control or Ownership

- a. Each of the Parties shall notify the other Party as soon as it learns of any change in its ownership or control. If the Party receiving such notices objects to the change in ownership or control, that Party shall have the unilateral right to terminate this Agreement in accordance with Article 15, paragraph A. In the event of any such termination, the Party subject to the change in ownership or control agrees to render full cooperation to the other Party in order to minimize disruption to that Party's contract effort. In lieu of termination, the Party receiving the notice may require the Party subject to the change in ownership or control to provide adequate

assurance of performance of the Agreement and institute special controls, including but not limited to, special controls regarding the protection of proprietary information of the Party receiving the notice.

20. Applicable Law

- a. The rights and obligations of the Parties hereunder shall be governed in all respects by the substantive law of (i) if Seller is Merrill Technologies Group, the State of Michigan, U.S.A., excluding its choice of laws rules and excluding the U.N. Convention on Contracts for the International Sale of Goods, or (i) if Seller is Pegasus or Metal Trades, the State of South Carolina, U.S.A., excluding its choice of laws rules and excluding the U.N. Convention on Contracts for the International Sale of Goods.

21. Entire Agreement

- a. These terms and conditions of sale, together with any additional or different conditions of sale set forth in Seller's proposal, shall be the only and entire terms and conditions for the sale to which the Agreement relates. No waivers, alterations, modifications or additions to these terms and conditions of sale, included in the Order or otherwise, shall be binding upon Seller unless made in writing within the Order and signed by a duly authorized representative of the Seller. To the extent a conflict exists between a term of this Agreement and any conditions of sale in the proposal, the proposal shall control. To the extent a conflict exists between a term of the Order and the terms of this Agreement, the Agreement shall control. Any failure or delay in the exercise of rights or remedies hereunder shall not operate to waive or impair such rights or remedies. Any waiver given in writing shall not be construed to require future or further waivers unless otherwise stated within the waiver itself.

22. Assignment

- a. Any assignment of this agreement or any rights or obligations hereunder by either Party without the prior written consent of the other Party shall be void, except that Seller may assign any or all of its rights or obligations under this Agreement to a subsidiary or affiliated company of Seller, without Buyer's written consent.

23. Specifications

- a. The Specifications and standards explicitly cited in the statement of work, drawings, or elsewhere in the Agreement are first tier specification and standards, and are applicable only to the extent specified in the Agreement. Second tier and lower tier documents referenced in those first-tier documents are for guidance only and are not contractually binding.

24. Invalidity

- a. The invalidity, in whole or in part, or any provision hereof shall not affect the validity of the remainder of such provision or of any other provision hereof. If the principal objective of this Agreement can no longer be accomplished in view of the invalid provision, the Buyer and Seller will in good faith, negotiate a revised Agreement.

25. Indemnification

- a. Buyer hereby agrees that it shall indemnify and hold harmless the Seller from and against any liability, expense, including attorneys' fees, resulting from any suit or claim by any third parties for any injury, death, property loss or damage (including loss of or damage to Buyers Product or Facilities or other financial loss) sustained by Seller or any of its employees, officers, directors or agents, arising in any manner out of or in connection with activities relating to the performance of this Agreement.

26. Government Flowdown

- a. For all U.S. Government work subcontracted by Buyer to Seller under this agreement, Seller shall comply only with the terms of this agreement and the following FAR/DFARS clauses: 1) clauses which are included in Buyers prime contract and 2) which are required to be flowed down to subcontractors per the requirements of the clause and 3) which have been specifically identified by the Buyer as being applicable to this Agreement. For avoidance of doubt, "standard terms documents" located on Buyer's website are not considered specifically identified flowdowns.

27. Order of Precedence

- a. In the event of any inconsistency between any parts of Agreement, the inconsistency shall be resolved by giving precedence in the following order:
 - i. Purchase Order modifications
 - ii. The Order
 - iii. These Terms and Conditions of Sale
 - iv. The Statement of Work
 - v. The proposal