4. Applicability: Objection to Additional or Different Terms and Conditions. This Master Agreement, together with the purchase orders and any exhibits, attachments and other documents incorporated by reference (collectively, the “Order”) is an offer by Strike, LLC and/or its Affiliates (defined below) (“Client”) to purchase the goods or services indicated on the Order upon the terms and conditions contained herein. SUPPLIER’S ACCEPTANCE OF THE ORDER IS EXPRESSLY CONDITIONED UPON SUPPLIER’S ACCEPTANCE HEREOF AND IS LIMITED TO THE TERMS AND CONDITIONS SET FORTH HEREIN. By acknowledging receipt of the Order or by supplying the goods and/or services described in the Order, Supplier agrees to the terms and conditions set forth herein. Once accepted, the Order is the final and complete expression of agreement between the parties, setting forth the entire agreement between the parties regarding this transaction and including all promises and representations both express and implied. Any matters not contained herein, or otherwise referenced or incorporated herein, are not a part of the Order. Whenever any term or condition of sale or rental is not addressed by the Order, the Uniform Commercial Code, as adopted by the State of Texas, will apply. For the purposes of this Master Agreement, “Affiliate(s)” shall mean an entity that is controlling, controlled by, or is under control with Client, where control may be either management authority, contract, or equity interest.

5. Payment. Unless otherwise stated on the face of the Order, payment shall be due sixty (60) days after Client’s receipt of an undisputed invoice. All invoices shall state the payment date, including the determination of any applicable discount period, will be calculated from the date the invoice is received by Client at 1800 Hughes Landing, Suite 500, The Woodlands, TX 77380. Client may withhold any payment due hereunder to such extent as may be necessary to protect Client from loss resulting or arising from any breach by Supplier of any of the provisions of the Order. Client may withhold payment hereunder for Supplier’s failure to provide insurance certificates that comply with the requirements of the Order. Payment shall be deemed to have been made when deposited in the mail or sent by electronic delivery. Payment of an invoice shall not constitute acceptance of the goods and shall not be subject to appropriate adjustment for failure of Supplier to meet the requirements of the Order. Supplier shall have ninety (90) days after delivery of the goods or rental to invoice, in a form and manner satisfactory to Client at Client’s sole discretion, for such goods or rental. In the event Supplier fails to invoice Client for all amounts due within such timeframe, Supplier waives the right to seek payment for and releases Client from any obligation to pay such amounts. In the event Client is required to or agrees to pay invoices not submitted within ninety (90) days after delivery of the goods, then Client may withhold from such payment the amount of fifteen percent (15%) of the applicable invoice, and Supplier agrees and acknowledges that such amount is a liquidated damage and represents a fair, reasonable, and proportionate approximation of Client’s damages caused thereby and do not constitute a penalty.

6. Taxes. Unless otherwise specified in the Order, the price includes all applicable federal, state, and local taxes, duties, and other governmental charges and fees imposed on the sale, use, production, or handling of the goods. If applicable law or regulation requires the payment of any sales or use tax, or a tax account of a transaction, which tax is paid by Client, Supplier shall separately state on its invoices the amount of tax due and paid by Client to the taxing authority. If Client incurs any additional taxes or penalties from a taxing authority due to incorrect or incomplete information furnished by Supplier, Supplier will be responsible for all such additional taxes, penalties, and any legal expenses incurred by Client. Supplier shall be liable for all taxes applicable to income or profits received by Supplier in relation to the goods.

7. Setoff. Client may credit toward the payment of any monies that may become due Supplier under the Order, any sums which are now or hereafter may be owed to Client or an Affiliate by Supplier or by an affiliate of Supplier.

8. Transportation. All sales are F.O.B. Client’s designated point of delivery unless otherwise expressly stipulated by Client. Extra charges, including but not limited to charges for packing, boxing or carting, and similar expenses permitted except as agreed to by the parties in writing. Supplier’s failure to ship by the most economical means that is reasonably available may result in a back charge of the additional freight expense incurred.

9. Risk of Loss. Notwithstanding anything to the contrary herein, the risk of loss to the goods shall remain with Supplier until actual delivery of the goods to Client or its customers at the delivery point specified on the Order, or at such other delivery point specified in writing by Client. Supplier shall bear all risks of loss to the goods until such time as Client or Client’s customer has accepted the goods.

10. Time. Timely completion and delivery of the Order is of the essence. Delinquency in delivery or otherwise unsatisfactory service will be considered cause for cancellation and/or rejection of custom and non-custom goods at no expense to Client. If at any time Supply has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause and duration of the anticipated delay will be given immediately to Client. Acceptance of late delivery of goods shall not be deemed a waiver of Client’s right to hold Supplier liable for any loss or damage resulting therefrom; nor shall it act as a modification of any of Supplier’s performance obligations hereunder. In the event Supplier is delayed in delivering goods and such delay is caused by war, riot, civil insurrection, act of public enemy, act of civil or military authority, fire, flood, earthquake, or act of God, such delay shall be excused, provided that if any such delay continues for a period of ten (10) days or more, then Client may terminate the Order upon written notice to Supplier without penalty. Supplier shall not be entitled to additional or extra compensation by reason thereof.

11. Inspection. Client and Client’s customer have the right to inspect and test all goods at Supplier’s plant, any sub-supplier’s plant, or a third-party inspection location during manufacture, upon completion, and at destination before acceptance. Inspection of goods, failure to inspect goods, acceptance of goods, or failure to ascertain or discover defects or non-conformances shall in no way be a waiver of any warranties or any rights Client may have pursuant to the Order. Receipt of goods by Client or Client’s customer, or inspection and testing of received goods received by Client or Client’s customer,
shall not constitute acceptance of such goods by Client. Payment by Client shall not constitute acceptance of such goods. Client may reject or revoke acceptance of any and all goods found by Client: (a) not to be in compliance with: (i) the warranties applicable to such goods, (ii) the specifications, design, drawings, or descriptions for such goods, or (iii) with any other term or instruction set out in the Order; (b) to be unsatisfactory; (c) to be subject due to defects or nonconformities in similar goods; or (d) to have been rejected or returned by Client’s customers. If any goods are rejected or acceptance is revoked, Client may, without prejudice to any other rights or remedies, and without authorization from Supplier, return the goods or any part thereof to Supplier, and all amounts therefore paid by Client to Supplier on account of the purchase price of such returned goods, together with any costs incurred by Client in connection with the original delivery and/or return of such goods, shall be repaid to Client by Supplier or set-off by Client. In the event of any rejection or revocation of acceptance of any goods, Supplier shall have no right to the cure causing rejection or revocation of acceptance of such goods. In the event any dispute arises between Client and Supplier, Supplier shall, in its sole discretion, elect to require correction or cure of such defect or the furnishing of replacement goods, all at the sole cost and expense of Supplier.  

12. Warranty. Supplier warrants that all goods supplied under the Order will be: (i) in strict accordance with the specifications, samples, drawings or other descriptions provided by or through Client, and all applicable performance and material standards, including without limitation, and by way of example only, those defined by the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM); (ii) new (unless otherwise expressly stated on the Order), (iii) merchantable and free from defects in design, material and workmanship; (iv) fit for the purpose for which they are intended; and (v) produced in compliance with all laws, rules, regulations, and standards, including without limitation, the Occupational Safety and Health Act (OSHA). Supplier further warrants that: (i) the goods (including, but not limited to, the manufacture, sale, and Client’s or its customer’s intended use of such goods) are not infringing upon any patents or other proprietary interests (including, but not limited to, copyrights, trademarks, and trade secrets); and (ii) it has, and will convey to Client, good and marketable title to the goods, free and clear of all security interests and all other liens and encumbrances. Supplier further warrants that all services will be performed in accordance with the standards of care and diligence normally practiced by persons performing similar services and in the best workmanlike manner. If goods require calibration, filling, or assembly (including assembly to other goods), Supplier shall provide Client written instructions and procedures, and Client’s customer or any third party may require additional instructions necessary, and certify Client’s or its customers’ personnel and facilities as needed, which training and certification shall be subject to the same warranty as other services provided by Supplier. All warranties provided herein shall apply to goods calibrated, filled, modified, or assembled in accordance with Supplier’s instructions and procedures, or industry standards. Supplier acknowledges that these warranties will be assigned and passed on to Client’s customers, and hereby consents to such assignment. Supplier agrees to indemnify, defend, and hold Client harmless from and against any and all actions, losses, claims, damages, liabilities, and settlements, as well as costs and expenses, including attorney’s fees, related to the defense of any of the above (“damages”), which may be asserted against Client or to which Client may hereafter be subject, pay out, or refund and which arise out of or are in any manner connected with the Order, Supplier’s or its agents’, employees’, or subcontractors’ performance thereunder, or with the sale, use, design, manufacture, marketing, quality of goods supplied, or performance of any services under the Order. Without limiting the scope of this indemnity, this indemnity shall extend to damages arising under Supplier’s warranty obligations, express or implied, whether by contract or in law or equity, to Client, Client’s customers or others, and product liability based on strict liability. This indemnity does not extend to damages solely caused by Client’s gross negligence or willful misconduct. For purposes of this indemnity, “Client” shall extend to and mean Client as well as its subsidiaries, affiliates, directors, officers, employees, and agents, whether or not a party to this Agreement. At Client’s request, Supplier shall, at Client’s cost, defend, indemnify, and hold Client harmless from and against any and all claims, demands, suits, costs, losses, expenses or liabilities in connection with the original delivery and/or return of such goods, all at the sole cost and expense of Supplier.

13. Drawings, Data, and Technical Information. Client’s intellectual property rights shall not constitute acceptance of such goods by Client. Payment by Client shall not constitute acceptance of such goods. Client may reject or revoke acceptance of any and all goods found by Client: (a) not to be in compliance with: (i) the warranties applicable to such goods, (ii) the specifications, design, drawings, or descriptions for such goods, or (iii) with any other term or instruction set out in the Order; (b) to be unsatisfactory; (c) to be subject due to defects or nonconformities in similar goods; or (d) to have been rejected or returned by Client’s customers. If any goods are rejected or acceptance is revoked, Client may, without prejudice to any other rights or remedies, and without authorization from Supplier, return the goods or any part thereof to Supplier, and all amounts therefore paid by Client to Supplier on account of the purchase price of such returned goods, together with any costs incurred by Client in connection with the original delivery and/or return of such goods, shall be repaid to Client by Supplier or set-off by Client. In the event of any rejection or revocation of acceptance of any goods, Supplier shall have no right to the cure causing rejection or revocation of acceptance of such goods. In the event any dispute arises between Client and Supplier, Supplier shall, in its sole discretion, elect to require correction or cure of such defect or the furnishing of replacement goods, all at the sole cost and expense of Supplier.

14. Insurance. Supplier, at its own expense, shall procure, carry and maintain on all of its operations and the Work performed under this Master Agreement and each Subcontract, the policies of insurance specified below:

- **Workers Compensation** - Statutory limits in each state in which Supplier is required to provide workers compensation coverage.
- **Employers Liability** - not less than $1,000,000 per accident.
- **General Liability** - Including Contractual Liability, Independent Contractors Liability, Products and/or Completed Operations Liability, Personal Injury/Property Damage Coverage, and Sudden and Accidental Pollution – not less than $2,000,000 per occurrence, $5,000,000 annual aggregate.
- **Automobile Liability** - For owned, non-owned and hired vehicles – not less than $1,000,000 per occurrence.
- **Umbrella Liability** - Follow-form policy covering Employers Liability, General Liability, and Automobile Liability in a combined single limit of not less than $10,000,000.

Supplier shall furnish Client with Certificates of Insurance and endorsements evidencing the specified coverage, identifying Client as a named additional insured and stating that the policies may not be changed or terminated without at least 30 days prior written notice to Client. Such insurance shall be primary to, and receive no contribution from, any insurance maintained by or on behalf of Client, and Client shall not be responsible or liable for any deductibles, self-insured retainments and/or premiums of Supplier’s insurance. Where Client is an additional insured, such insurance shall be without any limitation that restricts the scope of coverage afforded thereof to Client to less than that afforded to Supplier. Supplier shall require its underwriters and/or insurers to waive their rights of subrogation against Client and its insurers.

15. Pricing. No extra charges, fees, costs, or compensation of any kind will be allowed unless specifically agreed to in writing by Client.

16. Audit Rights. The Supplier shall keep full and detailed accounts as may be necessary and satisfactory to Client to ensure compliance with the pricing structure under the Order. Client, its agents, and customers shall be afforded access to all of Supplier’s records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Order, and Supplier shall preserve all such records for a period of four (4) years after final payment.

17. Changes. Client reserves the right to make changes at any time in any one or more of the following: specifications, drawings, design, and data for goods to be specifically manufactured for Client or Client’s customers, as well as method of shipment or packing of any of the above (to the extent of increase or decrease). If in Supplier’s judgment such change or changes causes an increase or decrease in the cost of or time required for performance of the Order, Client and Supplier shall equitably adjust the Order price or delivery schedule (or both). Supplier shall not unilaterally change the Order or substitute goods. Nothing contained in this paragraph shall excuse or release Supplier from proceeding without delay in the performance of the Order as changed.

18. Cancellation/Termination and Return Provisions. For non-custom goods, Client may cancel the Order at any time prior to receipt of goods. As to custom goods designed and manufactured exclusively for Client, Client and Supplier shall equitably determine a cancellation charge for such goods taking into account the liability of Client’s customer to Client for such cancellation.

19. Control of Drawings, Specifications and Technical Information. Drawings, data, designs, inventions, and other technical information supplied by Client or Client’s customer’s connection herewith (hereafter called “Data”), shall remain the property of the party that supplied the Data and shall not be reproduced, used, or disclosed to others by Supplier without Client’s prior written consent. Upon completion of work by Supplier under the Order, Supplier shall promptly return all Data to the party that supplied it, together with all copies or reprints thereof and Supplier shall thereafter make no further use, either directly or indirectly, of any such Data or any information derived therefrom without Client’s prior written consent. Any information which Supplier may disclose to Client respect to the design, manufacture, sale, or use of the goods covered by the Order shall be deemed to have been disclosed as part of the consideration of the Order and Supplier shall not assert any claim against Client by reason of Client’s use thereof.

20. Intellectual Property Rights. Supplier agrees to protect, indemnify, hold harmless and defend Client, its parent companies, subsidiary companies, affiliated companies, customers, and their respective directors, officers, employees and agents against any loss or damage arising out of any claim or suit for infringement of any patent or copyright, or the misappropriation of trade secrets or other proprietary right in the United States or any country of destination, related or incidental to performance under the Order or the goods.

21. Relation of the Parties. The Order is not a partnership, joint venture, or any other type of legal entity. Nothing in the Order shall be construed as creating a fiduciary relationship between the parties. Neither party shall hold itself out to be an agent, representative, or partner of the other by reason of the Order or the relationship created hereby, and neither shall have the right to enter into any contracts or commitments in the name of the other. Neither party shall have the right to sue in the name of the other. Supplier shall at all times perform and execute the provisions of the Order as an independent contractor, maintaining complete and exclusive control over Supplier’s personnel and operations.
22. Venue and Governing Law. Any and all lawsuits initiated by either party and arising out of or relating to the Order, its performance or its breach, or goods supplied pursuant to the Order, shall be brought in Harris County, Texas and in no other city, state, country, or jurisdiction, and the parties hereby submit to the exclusive jurisdiction and venue of the State and Federal courts in Harris County, Texas. The laws of the State of Texas shall govern the validity, interpretation, and enforcement of the Order without regard to choice of law rules that would apply the law of another state.

23. Dispute Resolution. The parties agree to cooperate with each other in an attempt to resolve any dispute. If the parties are not able to resolve the dispute, then the parties agree to submit the dispute to mediation to be conducted before a mutually agreeable mediator pursuant to mutually agreeable rules within sixty (60) days of the request for mediation by either party. Each party shall pay its own costs plus an equal share of the cost of the mediator and mediation facilities. Mediation shall take place exclusively in Harris County, Texas. BOTH SUPPLIER AND CLIENT HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT, THE ORDER, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Waiver of Liens. Supplier shall not put or permit any lien, attachment, or encumbrance on Client’s or its customers’ premises or any improvement to be constructed thereon and shall, at its sole cost and expense, bond or take such other action as may be required to discharge any encumbrance upon or against any account of any work or goods furnished hereunder or by reason of any other claim or demand by or against Client, its customers, the Supplier, its agents, or any subcontractor. Supplier hereby waives any claim which it may have now or in the future to place or claim a mechanic's or materialman’s lien, or any other statutory or constitutional lien, on Client’s or its customers’ premises in connection with services or goods provided hereunder. Supplier shall notify Client of the identity of any subcontractor or supplier of any goods with which Supplier’s or Client’s or its customers’ premises in connection with and prior to performance of any services under the Order and shall obtain from and provide to Client from each subcontractor or supplier of goods in advance a waiver of any right they may have to claim a mechanic’s or materialman’s lien, or any other statutory or constitutional lien, in connection therewith.

25. Gifts. Supplier shall not allow its officers, employees or agents, subcontractors, or vendors to offer Client’s officers, employees, subcontractors, or vendors any gift or entertainment of significant cost or value in connection with the Order or otherwise. Any violation of this clause will cause for immediate cancellation of the Order at no expense to Client.

26. Compliance with Laws. Supplier warrants that the goods sold or services furnished under the Order have been produced or furnished in full and complete compliance with all applicable federal, state, county and municipal laws, ordinances and regulations.

27. Foreign Corrupt Practices Act. Neither Supplier, nor any of its directors, officers, employees, agents, subcontractors, or vendors shall engage in any conduct, including providing any gift or entertainment of significant cost or value in connection with the Order or otherwise, that may be construed as a violation of the United States Foreign Corrupt Practices Act, as amended, or any similar federal, state, county or municipal law, ordinance, regulation or rule. Supplier represents and warrants that Supplier is not an Embargoed Person and is not controlled by or acting as an agent of any embargoed government or regime or (ii) to anyone on the U.S. Treasury Department’s Office of Foreign Asset Control’s list of Specially Designated Nationals, Specially Designated Global Terrorists, and Foreign Terrorist Organizations. By entering into the Order, Supplier represents and warrants that Supplier is not an Embargoed Person and is not controlled by or acting as an agent of any such Embargoed Persons.

30. MSDS: To the extent that any goods contain hazardous materials, Supplier will provide all relevant information pursuant to Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910.1200, as amended, if applicable, including a completed Material Safety Data Sheet (OSHA Form 20), and any other applicable law, rule or regulation, and mandated labeling information, or any similar requirements in any other jurisdictions to which Client informs Supplier the products are likely to be shipped.

31. Safety Procedures. Supplier shall comply with any safety measures initiated by Client.

32. General Provisions. 

a. Headings. All headings are provided for the sake of convenience only and are not intended to be, and shall not be construed as constituting, a part of the Order.

b. Assignment. The Order may be exercised by all parents, subsidiaries, and Affiliates of Client. Client may assign any warranties, indemnities, promises, representations, and/or other benefits acquired by Client from Supplier to any third-party who purchases or acquires Supplier’s goods from Client. Supplier shall recognize, accept, and support all such assigned rights and benefits. However, any such assignment shall not operate to diminish, limit, waive, or otherwise impair Client’s right to claim the protection of any warranties, indemnities, promises, representations, or other benefits made or granted by Supplier. Supplier shall not assign the Order at any time without the prior written consent of Client.

c. Waiver. The failure or delay of either party in the enforcement of the rights detailed in the Order, or at law in equity, shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. Either such party may exercise its rights despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

d. Severability. If any provision of the Order is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; the Order shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Order; and the remaining provisions of the Order shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance. Furthermore, in lieu of such illegal, invalid or unenforceable provisions, there shall be added automatically as a part of the Order, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.

e. Survival. The representations and warranties made by Supplier, the confidentiality obligations, and the Supplier’s indemnification obligations in the Order shall survive completion and/or termination of the Order.

33. Additional Rental Terms. To the extent Supplier rents equipment to Client, the following additional terms apply:

a. Transportation. All transportation costs, including but not limited to, loading and unloading costs, storage, carriage, towage, and salvage and demurrage costs shall be included in the purchase order.

b. Inspection of Equipment. Client acknowledges that Client will inspect the equipment within two (2) business days of taking possession thereof, and will confirm them to be in good working order and repair, and suitable for Client’s needs.

c. Damage to Equipment. During the term of this rental, Client shall not be responsible for deterioration caused by normal wear and tear which would not be remedied by a prudent operator.

d. Rental Charges. Client shall pay the amounts owed at the rate stipulated in the purchase order without deduction for project downtime, except to the extent caused by reasons beyond Client’s reasonable control or as authorized by Supplier.

e. Limits of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS MASTER AGREEMENT OR PROVIDED FOR UNDER ANY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL CLIENT OR SUPPLIER BE LIABLE TO ANY PERSON, EITHER IN CONTRACT OR TORT, FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT AND INDIRECT LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY, OR LOSS OF PROSPECTIVE REVENUE, RELATING TO THIS MASTER AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO THE OTHER PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH OTHER PARTY.

f. Rental Warranties. Equipment shall be delivered to Client in good and serviceable condition.