

Varda Space Industries General Terms and Conditions of Purchase

Revision 3

November 2023

1. DEFINITIONS

When used herein, the following terms shall have the meanings set forth below:

1. "Varda" shall mean Varda Space Industries, Inc.
2. "Varda Authorized Representative" shall mean a duly authorized representative of Varda with the power and authority to act on behalf of and bind Varda.
3. "Goods" shall mean any physical goods furnished by SELLER under this Contract.
4. "Nondisclosure Agreement" shall mean the applicable nondisclosure agreement between Varda and SELLER.
5. "Purchase Order" shall mean the purchase order form remitted by Varda to SELLER.
6. "SELLER" shall mean the vendor as set forth on the applicable Purchase Order.
7. "Work" shall mean any services performed by SELLER and deliverables related thereto.
8. "Contract" means the General Terms and Conditions of Purchase together with the applicable Purchase Order and any documents incorporated herein by reference.

2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes all prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) This Contract is an offer by Varda for the purchase of the Goods and/or Work specified on the face of the Purchase Order in accordance with and subject to the terms of this Contract.
- (c) The first to occur of SELLER's acknowledgment of Varda's Purchase Order, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (d) Unless expressly accepted in writing by a Varda Authorized Representative, additional or differing terms or conditions proposed or provided by SELLER are hereby rejected by Varda and have no effect.
- (e) Varda may withdraw a Purchase Order at any time before it is accepted by SELLER.
- (f) SELLER acknowledges Varda has or may enter prime contracts with commercial or governmental customers who may require certain terms or conditions to be flowed down to Varda subcontractors. If applicable, SELLER agrees to comply with such flow-down requirements communicated in writing to SELLER.

3. EXPORT/IMPORT CONTROL

- (a) SELLER agrees to comply with all applicable U.S. export and import control laws and regulations, including, but not limited to, the Arms Export Control Act (22 U.S.C. § 2778); the Export Administration Act (50 U.S.C. App. §§ 2401-2420); the International Traffic in Arms Regulations (ITAR) (22 C.F.R.120130); the Export Administration Regulations (EAR) (15 C.F.R. 730-774); the regulations for the Importation of Arms, Ammunition and Implements of War (27 C.F.R. Part 447); the regulations enforced by the Office of Foreign Assets Control (OFAC) (31 C.F.R. Chapter V); and the International Emergency Economic Powers Act (50 U.S.C. § 1701-1706) as well as other laws and Executive Orders relating to

exports, imports and economic sanctions, including the requirement for obtaining any export or import license or other written authorization, if applicable.

(b) Without limiting the foregoing, SELLER agrees that it will not transfer any export-controlled item, data, or services, to include transfer or disclosure (including oral or visual disclosure) to any non-U.S. person employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers (whether in the United States or abroad), without the authority of an export license, agreement, or applicable exemption or exception.

(c) SELLER shall immediately notify a Varda Authorized Representative if SELLER is, or becomes, listed in any Denied Persons List (as such term is used under applicable law) or if SELLER's export privileges are otherwise restricted, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where SELLER is a signatory under an Varda export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to a Varda Authorized Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the SELLER's performance under this Contract.

(f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

4. PROHIBITION ON MATERIALS FROM RUSSIA AND CHINA

SELLER is strictly prohibited from the use of any material or goods in fulfillment of the Purchase Order originating from Russia or People's Republic of China ("PRC"), or produced or acquired by any organization, entity, or element of the Russian Federation or PRC, or by any entity that is owned or controlled by the Russian Federation/PRC or that has been organized under or is otherwise subject to the laws of the Russian Federation or PRC.

5. COUNTERFEIT WORK

(a) The following definitions apply to this clause:

1. "Counterfeit Work" means product or material that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

2. "Suspect Counterfeit Work" means product or material for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the work part is authentic.

(b) SELLER shall not deliver Counterfeit Work or Suspect Counterfeit Work under this Agreement.

(c) SELLER shall only purchase products to be delivered or incorporated as material to Varda directly from an Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM), or through an

OCM/OEM authorized distribution chain. Products or materials shall not be acquired from an independent distributor or broker unless Varda has provided prior written approval.

(d) SELLER shall immediately notify Varda with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit Work or Suspected Counterfeit Work. When requested by Varda, SELLER shall provide OCM/OEM documentation that authenticates traceability of products or materials to the applicable OCM/OEM.

(e) This clause applies in addition to any quality provision, specification, statement of work, or other provision provided in agreements between the parties addressing authenticity of work. To the extent that such provisions conflict with this clause, this clause shall prevail.

(f) If Counterfeit Work or Suspected Counterfeit Work is delivered under this Agreement, SELLER shall, at its own expense, promptly replace such Counterfeit Work or Suspected Counterfeit Work with genuine work conforming to Varda's requirements. Notwithstanding any other provision in this Agreement, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work or Suspected Counterfeit Works including without limitation SELLER's costs of removing Counterfeit Work, of installing replacement products or materials, of any testing necessitated by the re-installation of products or materials after replacement, and any fines or penalties assessed to Varda as a result of the Counterfeit Work.

(g) SELLER shall include this clause in all lower tier subcontracts for the delivery of items that will be included or furnished as product or material to Varda.

6. FURNISHED PROPERTY

(a) Varda may provide to SELLER property owned by either Varda or its customer ("Furnished Property"). Furnished Property shall be used by SELLER only for the performance of this Contract.

(b) Title to Furnished Property shall remain in Varda or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify Varda of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At Varda's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal of Furnished Property as may be directed by Varda.

7. INFORMATION OF VARD A

Information provided by Varda to SELLER remains the property of Varda. SELLER agrees to comply with the terms of the Nondisclosure Agreement with Varda and to comply with all proprietary information markings and restrictive legends applied by Varda to anything provided by Varda or its agents to SELLER. Without limiting the obligations of SELLER under the Nondisclosure Agreement, SELLER agrees not to use any Varda provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Varda. For the avoidance of doubt, SELLER may not disclose to any third party, whether verbally (including by confirmation or denial) or in writing, the nature of any Goods or Works relevant to its relationship with Varda, including as relates to any use case, geometry, material, process, etc. Upon request by Varda, SELLER shall promptly return, or destroy and certify such destruction, of any confidential information of Varda. Varda shall be entitled to injunctive relief for any violation of this Section. SELLER shall maintain data protection processes and systems sufficient to adequately protect Varda information. The obligations of this Section shall survive termination or expiration of this Contract.

Except as required by law, no public release of any information, or confirmation or denial of same, with

respect to Varda's information, this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of Varda. SELLER and its subcontractors may not refer to this Contract, their dealings with Varda, any business affairs or activity of Varda (including any Goods or Works to be performed or delivered under this Contract), nor use the name, logos, markings or other indicia of Varda ("Varda Markings") for any purpose promotional or otherwise, or in any news release, on any website, in any public announcement or private discussions without the prior written approval of Varda.

8. INTELLECTUAL PROPERTY

(a) SELLER warrants that the Goods and any Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party unless and except to the extent arising from SELLER's use of designs, specifications or information provided by Varda for use solely in the completion of this Contract. SELLER agrees to defend, indemnify, and hold harmless Varda and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney fees, arising out of any action by a third party that is based upon a claim that the Goods or Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity unless and except to the extent arising from SELLER's use of designs, specifications or information provided by Varda for use solely in the completion of this Contract.

(b) All work product, deliverables, information, data, discoveries, concepts, ideas, inventions (whether or not patentable), developments, designs, know-how, trade secrets, improvements, works of authorship, reports, documents, computer programs, source and object code, mask works and any other materials jointly conceived, written, created, prepared, made, reduced to practice, or learned by SELLER in the course of any Work performed for Varda under this Contract arising solely from Seller's use of designs, specifications or information provided by Varda or specific to the production of Goods by SELLER for Varda and all intellectual property rights related to and contained therein shall be the sole property of Varda and shall be used by SELLER solely in connection with Work for Varda. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, SELLER hereby assigns to Varda the ownership of any and all intellectual property rights in the deliverable items and Varda shall have the right to obtain and hold in its own name copyrights, patents, registrations, and similar protection which may be available in the deliverable items. SELLER agrees to give Varda or its designees all assistance reasonably required to perfect such rights.

(c) To the extent any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Work or deliverable items and not owned by Varda, SELLER hereby grants to Varda an irrevocable, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

(d) All reports, memoranda or other materials in written form, including machine readable form, prepared by SELLER pursuant to this Contract and furnished to Varda by SELLER hereunder shall become the sole property of Varda and SELLER hereby assigns to Varda ownership of any and all intellectual property rights in such materials.

9. PURCHASED TOOLING AND UNFINISHED HARDWARE AND SOFTWARE

Varda reserves the right, but not the obligation, to assume physical possession of all purchased tooling

and unfinished hardware developed and/or manufactured in fulfillment of a Purchase Order(s). This includes test hardware and software produced during product development or associated non-recurring engineering, hardware scrapped for any reason be it the SELLER or Varda's fault, or custom tooling that SELLER developed during manufacturing process at the expense of Varda. Prior to disposal, SELLER shall provide Varda with the option to receive of any test, scrap or tooling hardware at Varda's El Segundo headquarters. Varda will cover the delivery costs associated with such action. For avoidance of doubt, any other disposal of unfinished hardware without Varda's consent may result in a violation of the Nondisclosure Agreement between both parties.

10. CHANGES

(a) A Varda Authorized Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Varda shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) SELLER must assert its right to an equitable adjustment under this clause within fifteen (15) days from the date of receipt of the written change order from Varda.

(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

11. PACKING AND SHIPMENT

(a) Unless otherwise specified, all Goods are to be packed in accordance with good commercial practice, and the requirements of this Contract. SELLER shall process, pack and store all Goods in a secure location physically and visually segregated from any common areas or other locations where any subcontractors, customers or other third parties may ingress/egress or obtain access. SELLER will maintain Goods at all times prior to shipment without any Varda Markings unless otherwise specifically requested by Varda (e.g., by marking Goods in process or storage generically and without any Varda specific markings, such as "CUSTOMER X's PROPERTY").

(b) A complete packing list shall be enclosed with all shipments from SELLER to Varda. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the Varda Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) When Goods originate outside of the United States, prior to making any shipment of Goods to Varda, SELLER shall provide Varda a Certificate of Origin specifying the Country of Origin, SELLER's name, Varda Contract number, and any other documentation required for compliance with U.S. Customs laws and regulations.

(d) Unless otherwise specified, delivery shall be DAP final destination (Incoterms 2010).

12. PRICING PAYMENT

(a) The price of the Goods or Work is the price stated in the Purchase Order (the "Price"). If no price is included in the Purchase Order, the Price shall be the price set out in SELLER's published price list in force as of the date of the Order. Unless otherwise specified in the Purchase Order, the Price includes as applicable, all packaging, transportation costs, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether

due to increased material, labor or transportation costs or otherwise, without the prior written consent of Varda.

(b) SELLER shall issue an invoice to Varda on or any time after the completion of delivery and only in accordance with this Contract. Varda shall pay all properly invoiced amounts due to SELLER within 30 days after Varda's receipt of such invoice, except for any amounts disputed by Varda in good faith. Without prejudice to any other right or remedy it may have, Varda reserves the right to set off at any time any amount owing to it by SELLER against any amount payable by Varda to SELLER under the Purchase Order.

13. DEFAULT

(a) Varda, by written notice, may terminate this Contract for default, in whole or in part, if SELLER (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) violates the terms of Section 7, INTELLECTUAL PROPERTY with respect to use of Varda's intellectual property; (v) defaults on a material term of any other agreement to which Varda and SELLER are parties, and such other default is not cured after any required notice and/or cure period; (vi) files or has filed against it a petition in bankruptcy; or (vii) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as Varda may authorize in writing) to cure any such failure after receipt of notice from Varda. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. Varda may require SELLER to deliver to Varda any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has produced or acquired for this Contract. Varda and SELLER shall agree on the amount of payment for these other deliverables, unless they have previously been paid for by Varda.

(c) Upon the occurrence and during the continuation of a default, Varda may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.

(d) SELLER shall continue all Work not terminated or cancelled.

14. STOP WORK

(a) If requested by Varda, SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from Varda, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, Varda may, in its sole discretion, either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that SELLER delivers a claim for equitable adjustment to Varda within thirty (30) days after date of Varda's notice to continue.

15. TERMINATION FOR CONVENIENCE

(a) Varda reserves the right to terminate this Contract, or any part hereof, at any time for its convenience. Varda shall terminate by delivering to SELLER a "Notice of Termination" specifying the extent of termination and the effective date of such termination. In the event of such termination, SELLER shall immediately stop all Work hereunder and cease delivery of any Goods on the effective date of such termination and shall immediately cause any and all of its suppliers and subcontractors to cease

Work related to this Contract. For clarity, termination under this Contract shall not impact any other contract between the parties. Subject to the terms of this Contract, SELLER shall be paid a percentage of the Contract price reflecting the percentage of the Work performed or Goods delivered prior to the notice of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of Varda using its standard record keeping system have resulted from the termination. SELLER shall not be paid for any Work performed or for any Goods or other costs incurred following such termination that reasonably could have been avoided or which could otherwise be recoverable if SELLER would be able to repurpose, re-package or re-sell any Goods or Work for any other customer.

(b) In no event shall Varda be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within forty-five (45) days from the effective date of the termination.

(c) SELLER shall continue all Work not terminated.

16. TIMELY PERFORMANCE

(a) SELLER's timely performance is a critical element of this Contract.

(b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify Varda, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(c) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent to such manufacture or procurement by Varda.

17. WARRANTY

SELLER warrants that all Work performed and Goods furnished pursuant to this Contract shall (a) strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract (b) with respect to Goods, be new and not refurbished products; and (c) be free from (i) defects in design, material, and workmanship and (ii) liens, security interests or other encumbrances. This warranty shall begin upon final acceptance of the Work or Goods by Varda and extend for a period of one (1) year thereafter. These warranties are cumulative and in addition to any other warranty provided by law or equity. If any nonconforming Goods or Work is identified within the warranty period, SELLER, at Varda's option, shall promptly repair or replace the non-conforming Goods, or reperform the Work. Transportation of repair or replacement of non-conforming Goods, return of nonconforming Goods, and reperformance of Work shall be at SELLER's expense. Alternatively, Varda may elect, itself or through a third party, to return, re-perform, repair, replace, or re-procure the nonconforming Work at SELLER's expense. All warranties shall run to Varda and its customers. Notwithstanding any other provision in these General Terms and Conditions of Purchase, any applicable Purchase Order or any other document incorporated by reference herein and therein, SELLER's liability for any breach of warranty shall not exceed the total value of the underlying and applicable Purchase Order. The foregoing reflects Varda's exclusive remedy for any breach of warranty.

18. INSPECTION AND ACCEPTANCE

(a) Varda and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. Varda's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming Work, Varda may, in addition to any other remedies available at Varda Proprietary and Confidential

law or at equity: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of Varda necessary to enable such Work to comply in all respects with Contract requirements; and/or (iv) charge costs associated with non-conforming Work.
(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

19. INSURANCE AND RESPONSIBILITY FOR OPERATIONS

Each Party is responsible to maintain insurance for its respective operations. Except as otherwise provided herein, neither party will be responsible for any damages incurred by the other party or its employees for any damages to its property or injuries resulting from the other party's performance, and each party will indemnify the other from such damages.

20. QUALITY CONTROL SYSTEM

(a) SELLER warrants all Work and Goods furnished pursuant to this Contract shall comply with each Varda Quality Clause listed in the Purchase Order (if any).
(b) SELLER shall provide and maintain a quality control system to an industry recognized quality standard and in compliance with any other specific quality requirements identified in this Contract.
(c) Records of all quality control inspection work by SELLER shall be kept complete and available to Varda and its customers.

21. SUBCONTRACTOR QUALITY

SELLER may not contract with third parties related to SELLER's fulfillment of this Contract without the prior written approval of Varda. If any subcontractors approved by Varda are performing chemical processing, coating, conventional machining, heat treating, nondestructive testing, welding, or other Work that might affect the form, fit, or function of the product, such subcontractors must be Nadcap accredited. SELLER will provide evidence of subcontractor's Nadcap accreditation upon request of Varda.

22. GOVERNING LAW AND JURISDICTION

This Contract is governed by the laws of California without regard to any conflicts of law principles that would require the application of the law of a jurisdiction outside California. Any claim or controversy arising out of or related to this Contract or any breach hereof shall be submitted to a court of applicable jurisdiction in California and each party hereby consents to the jurisdiction and venue of such court.

23. ASSIGNMENT

Neither party may not assign its rights or obligations under this Contract without the prior written consent of the other party. This Contract is binding upon and inures to the benefit of the successors and permitted assigns of each respective party to the extent necessary to carry out the intent of this Contract. Any purported assignment in violation of this Section is null and void.

24. WAIVER; AMENDMENT

No failure or delay of either party to insist upon strict performance of any of its rights or powers under this Contract will operate as a waiver thereof, nor will any other single or partial exercise of such right or power preclude any other further exercise of any rights or remedies provided by law. No provision of this Contract may be altered or amended except by a writing signed by both parties.

25. COMPLIANCE WITH LAW

SELLER is in compliance with and shall comply with all applicable laws, regulations and ordinances.

SELLER has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Contract.

26. RELATIONSHIP OF THE PARTIES

SELLER is an independent contractor in all its operation and activities hereunder. The employees and agents used by SELLER to perform Work under his Contract shall be SELLER's employees and agents exclusively without any relation whatsoever to Varda. Neither party, nor any employee or agent of either party, shall have the authority to bind or act on behalf of the other party without its prior written consent. This Contract does not constitute or create, and shall not in any way be interpreted as, a joint venture, partnership or business organization of any kind.

27. SEVERABILITY

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

28. FORCE MAJEURE

Neither Varda nor SELLER shall be liable for any damages resulting from any delay of failure of performance arising from any cause not reasonably with such party's control including, but not limited to, the following: Acts of God; fire; earthquake; hurricane or other windstorm; labor disputes, whether or not the demands of labor are within the ability of the party to meet; embargoes; unavailability or shortage of power, labor, transportation, raw materials, or usual means of supply; shortage or curtailment of energy sources; wars; rebellions; civil disorder; regulations or acts of government, government agencies or instrumentalities; or any other cause whether similar or dissimilar to the foregoing. The party affected by the force majeure shall give prompt notice thereof to the other. In the event of force majeure, the time for performance (except Varda's obligation to pay to SELLER money due) right to allocate its available goods among its own uses and its customers, including those not under contract, in such manner as SELLER may deem fit. SELLER shall have no obligation to purchase substitute goods or transportation in order to complete delivery to Varda; and if SELLER contemplated a specific source of supply, manufacture or transportation, whether or not specified, SELLER shall not have any obligation to deliver goods to Varda from any other source. Notwithstanding the foregoing, in the event that one or more events of force majeure occurs, which in the aggregate result in a delay in delivery in excess of ninety (90) days, Varda may terminate any Purchase Order affected by such force majeure event(s) without any liability to SELLER, and SELLER shall be responsible to provide a refund of any payments previously made with respect to such purchase order.

29. DISPUTES

(a) All disputes and controversies arising out of this Contract including the existence, construction, validity, interpretation, performance, nonperformance, enforcement or breach of any provision, shall be settled by mediation and, if necessary, arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties agree to submit any dispute or controversy to binding arbitration before one (1) impartial arbitrator selected by AAA with costs to be borne equally by the parties. The federal rules of civil procedure shall apply, including with respect to depositions, with respect to the arbitration. Any arbitration hearings shall take place in the Los Angeles metropolitan area. The findings of the arbitrators shall be final and binding upon the parties. Any award of arbitration may include attorneys' fees and costs, including but not limited to expert witness fees, payable to the prevailing Party in the arbitration, as determined by the arbitrators.

(b) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance

of this Contract as directed by Varda.