

STANDARD TERMS AND CONDITIONS

1. TERMS OF AGREEMENT. These terms and conditions, the Purchase Order to which these terms and conditions are attached, and any specifications, exhibits, instructions, drawings, and other written attachments to the Purchase Order constitute the entire and exclusive agreement (collectively the “*Agreement*”) between (“*Buyer*”) and the (“*Seller*”). This Agreement supersedes all prior and contemporaneous oral and written communications relating to the same Products or Services described in the Purchase Order. Any terms or conditions contained in any invoice or other document Seller submits to Buyer with respect to the transaction shall be ineffectual, null and void, and at all times the terms of this Agreement shall control. Notwithstanding the foregoing, if there is a written master agreement executed between Buyer and Seller covering the procurement of the Products or Services described in the Purchase Order, the terms of such master agreement will prevail over any inconsistent or conflicting terms in this Agreement.
2. DEFINITIONS. “*Claims*” means any or all of the following: claims, liabilities, damages, penalties, personal injuries, losses, judgments, costs, or expenses (including reasonable attorneys’ fees and expenses and other legal costs), including without limitation those related to the injury or death of persons and the damage or destruction of property. “*Products*” means the tangible goods to be purchased by Buyer as specified in the Purchase Order. “*Services*” means the services that Seller is to perform for Buyer as specified in the Purchase Order.
3. PRICES. Seller represents that the prices and other material terms reflected in this Agreement are the same as or better than those offered to any other customer of Seller for similar goods and/or services purchased in similar quantities.
4. INVOICES. Invoices must contain the following information (when applicable): material number, description of the Products and/or Services, quantities, unit price, freight charges, and totals. Seller is responsible for any and all taxes and import duties unless Buyer has expressly assumed in writing the obligation to pay such costs. Seller will issue an invoice within ten (10) days following the end of the month in which the Products or Services are delivered. Buyer shall have no liability for payment of any invoices which are not issued within the foregoing time requirement. Each invoice will be due and payable thirty (30) days following its receipt by Buyer.
5. PACKAGING AND PACKING. All Products must be suitably packaged and prepared for shipment in accordance with best commercial practices. Packing lists should accompany all Products and shall include the Purchase Order number and, when applicable, a description and the quantity of items shipped. Buyer shall advise Seller in writing, within ten (10) days of date of discovery, of any loss or damage or defect resulting from inadequate or improper packaging or packing. Seller shall be solely responsible for any such losses, damages, or defects.
6. SHIPPING. If Seller is responsible for shipping, Seller shall ensure that the Products are transported safely, within the time required, and at the lowest transportation cost in compliance with the requirements of carriers and of Buyer, all as set forth in the Purchase Order. Unless specified otherwise in the Purchase Order or proposal delivery shall be DDP Buyer’s site. Buyer shall advise Seller in writing, within ten (10) days of date of discovery, of any loss, damage or defect resulting from the shipping of Products. Seller shall be solely responsible for any such losses, damages, or defects.
7. DELIVERY. Time is of the essence in Seller’s performance of its obligations under this Agreement. If Seller is responsible for shipping, Seller shall immediately notify Buyer of any anticipated or potential delay in the delivery date. In addition to any other rights or remedies, Buyer may cancel all or any part of this Agreement for Seller’s failure to deliver in strict accordance with the delivery terms set forth in the Purchase Order. Delivery shall not be deemed to be complete until the items have been received and accepted by Buyer.
8. CHANGES. Buyer may at any time request changes in writing including but not limited to changes in the specifications, packing, shipment means, quantities, delivery time, and delivery place. If any such change causes a decrease in the costs or time required for performance, Seller shall immediately notify Buyer, and such decrease shall be for Buyer’s account. Any claim for an equitable increase under this clause is waived unless asserted in writing within five (5) days from Seller’s receipt of change request from Buyer. No changes, adjustments, revisions, or modifications to this Agreement shall be valid unless in writing and signed by an authorized representative of Buyer.
9. WARRANTY. Seller warrants that all Products and Services delivered pursuant to this Agreement shall (a) strictly conform with all applicable standards and specifications described in the Purchase Order (including without limitation information on functional performance, material content, size, appearance, etc.), (b) be free from all defects in workmanship and material, including latent defects, (c) be free from defects in design and suitable for their intended purpose, and (d) be free from all claims, encumbrances, and liens. This warranty shall survive inspection, delivery, and payment, shall run to Buyer and its successors, assigns, customers, and the users of the Products, and shall not be deemed to be exclusive. Seller shall promptly reimburse Buyer for all expenses incurred as a result of a breach of this warranty. If any Products or Services are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Agreement, Buyer (in addition to any or all other rights) may at its option, correct or have corrected

the nonconformity at Seller's expense or reject and return them at Seller's expense, including all incidental costs.

10. **SERVICES AND INTANGIBLES.** Unless otherwise noted in this Agreement, any items, materials, data, information, and intellectual property developed or created by Seller in the fulfillment of Products or Services ordered under this Agreement ("**Work Product**") is Buyer's property and all right, title, and interest, including without limitation copyright interest, shall belong exclusively to Buyer. In the case of Work Product containing copyrightable subject matter, such items shall be considered works made for hire on behalf of Buyer. Seller assigns all right, title and interest to such Work Product, and the intellectual property rights therein, to Buyer. Seller warrants that (a) it has the right and unrestricted ability to assign these rights, and (b) the Work Product, and Buyer's use of the Work Product, does not and will not infringe upon any third party's intellectual property rights or any other proprietary rights. Seller agrees to indemnify and hold Buyer, its parents, subsidiaries, affiliates, and its customers harmless from and against any and all Claims resulting from any actual or alleged infringement.
11. **COMPLIANCE WITH LAW.** Seller warrants that it has and will render all goods, services, and obligations required under this Agreement in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders including without limitation the Foreign Corrupt Practices Act. Seller hereby agrees to indemnify and hold Buyer, its parents, subsidiaries, and affiliates harmless for any and all Claims incurred by Buyer directly or indirectly arising from any failure of Seller to comply fully with the requirements of this Agreement or any applicable law, rule, regulation, or order, or for any claim related to the use of any Product or Service supplied to Buyer by Seller under this Agreement. Seller shall provide certifications of such compliance and sufficient data to support such certifications, either generally or specifically, promptly upon request of Buyer. Seller warrants that all Products supplied to Buyer shall comply with all federal, state, and local hazardous substance and consumer product health and safety laws and regulations.
12. **CONFIDENTIALITY.** If Buyer (or an Affiliate of Buyer) and Seller have entered into a Non-Disclosure Agreement ("**NDA**") which covers disclosure of confidential information, then the confidentiality obligations of the NDA shall be deemed to be incorporated by reference into this Agreement with a term that shall run until the later of: (i) two years after completion of Seller's obligations under this Agreement, and (ii) the term of the NDA. If there is no NDA between the parties, Seller shall keep all information, data, documents, and other items provided by Buyer, including all proprietary rights embodied therein, ("**Confidential Information**") confidential and secret, and shall not now nor hereafter disclose such Confidential Information to any person or entity without the express written consent of Buyer. Confidential Information also includes the existence of this Agreement and its terms. Seller shall not use, disclose, or reproduce Confidential Information for any purpose except as necessary for the performance of work under this Agreement. Upon the earlier of Buyer's written request or completion of this Agreement, Confidential Information shall be disposed of or returned to Buyer promptly and in accordance with Buyer's written instructions. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any proprietary and/or confidential information disclosed to Seller. Any information furnished by Seller to Buyer in connection with this Agreement shall not be deemed to be confidential information and shall be acquired free from any restriction as part of the consideration for this Agreement, unless otherwise agreed upon in writing by the parties. Seller acknowledges that it is aware that (a) the Confidential Information being furnished to it contains material, non-public information regarding Buyer, and (b) the United States and Canadian securities laws prohibit any persons who have material, nonpublic information concerning the matters which are the subject of this Agreement, from purchasing or selling securities of a company using such information or from communicating such information to any person (including its affiliates) under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities in reliance upon such information. Seller further confirms that it has in place internal information protection mechanisms to prevent unauthorized use of the Confidential Information.
13. **ASSIGNMENT/SUBCONTRACTING.** Seller may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Buyer. Seller shall not enter into a subcontract for any part of this Agreement, without Buyer's written consent. However, Seller is not prohibited from purchasing standard commercial articles, raw materials, or other supplies specified in this Agreement if these are typically purchased by Seller in the normal course of business. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
14. **TERMINATION.** Buyer may terminate this Agreement for any or no reason, upon written notice to Seller. Upon receiving such notice, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs under the terminated Agreement. Buyer's sole liability to Seller shall be for items completed and delivered to Buyer in accordance with the terminated Agreement and for Seller's reasonable costs to the date of termination, such costs being solely attributable to the terminated Agreement and not being recoverable from other sources. No allowance shall be made for any overhead costs or anticipated profits. Buyer shall have no further payment obligations or liabilities in connection with any termination.
15. **DEFAULT.** If (a) Seller fails to perform or make delivery pursuant to this Agreement when applicable, (b) the Products or Services do not conform to the standards,

specifications, or other contractual requirements, or (c) in Buyer's reasonable opinion, Seller's ability to perform is endangered or impaired, then Buyer may, at its sole option, provide notice and a ten (10) day period within which Seller may cure such defaults. If Seller fails to cure the default and Buyer terminates the Agreement for cause, Seller shall be liable to Buyer for any incidental and consequential damages sustained or incurred by Buyer. Buyer's rights as set forth herein shall be in addition to Buyer's other rights in the event of Seller's default, and Buyer shall be entitled to pursue any and all remedies available at law or in equity. Failure of Buyer to insist on strict performance shall not constitute a waiver of any of the provisions of this Agreement or waiver of any other default of Seller.

16. INDEMNIFICATION. Seller agrees to indemnify and hold Buyer, its parents, subsidiaries, and affiliates, Buyer's customers, and those for whom Buyer may act as agent harmless from (a) any and all Claims arising from the Products or their use, the Services, or the actions or omissions of Seller, its agents, subcontractors, suppliers or employees, or (b) any Claims arising from any breach by Seller of the terms of this Agreement, including without limitation any express or implied warranties or representations. Further, Seller shall indemnify and hold Buyer, its parents, subsidiaries, and affiliates, Buyer's customers, and those for whom Buyer may act as agent harmless for any injuries occurring to Seller's agents, subcontractors, suppliers or employees arising out of or in connection with Seller's performance of obligations under this Agreement.

17. INSURANCE. During the term of this Agreement and for a period of at least two years after completion of Seller's obligations hereunder, Seller shall maintain general liability, automobile liability, property damage, umbrella or excess liability (\$1,000,000 umbrella/excess liability limit), and worker's compensation and employer's liability insurance with reputable and financially sound insurance carriers. Such insurance shall be sufficient to protect Buyer from any claims under any applicable law, statute, or regulations. Seller will name Buyer and its affiliates as additional insureds and provide an insurance certificate to Buyer. Seller's policies of insurance will include a waiver of subrogation in favor of Buyer.

18. INDEPENDENT CONTRACTOR. Nothing in this Agreement is intended to, or does, create any joint venture, partnership, agency, or similar relationship between Buyer and Seller, other than a buyer and seller relationship. Seller shall not be, and is not authorized to represent itself as an agent or representative of Buyer for any purpose.

19. MODIFICATION/WAIVER. Except as allowed under Section 8 above, no waiver or modification of this Agreement shall be effective unless in writing and signed by both of the parties hereto. Failure of either party to enforce its rights shall not constitute a waiver of such rights or any other rights. Acceptance of notices of delay or other

changes in terms will not constitute Buyer's waiver of any of Seller's obligations.

20. INVALIDITY. In the event that any provision of this Agreement is declared invalid, illegal, or otherwise unenforceable by any duly authorized tribunal or law, the remainder of the provisions shall not be affected thereby, and each term and provision not declared invalid, illegal or unenforceable shall be valid and shall be enforced to the fullest extent permitted by law.

21. NOTICE. All notices and communications hereunder shall be in writing and sent by overnight courier, with tracking capabilities, to the respective addresses of the parties listed within the Purchase Order attached as part of this Agreement or on the Purchase Order.

22. APPLICABLE LAW. The provisions and performance of this Agreement shall be governed by the laws of California and applicable US federal law.