



Terms & Conditions of Purchase (Rev 08/1/2018)

1. ACCEPTANCE:

These Terms and Conditions of Purchase (“Agreement”), together with any incorporated attachments and/or specifications hereto, will constitute the entire and exclusive Agreement between the parties identified on the attached Purchase Order as “Seller” and “Buyer” concerning the purchase and sale of identified goods and/or services (“Order”), a copy of which is attached and incorporated herein. This Agreement will be considered as confirmed by Seller on Buyer’s receipt of Seller’s signed Order, commencement of performance of services, or the actual delivery of conforming goods. Receipt of the goods and/or services by Buyer under an Order shall not constitute Buyer’s acceptance of non-conforming goods and/or services, or of any of Seller’s own terms and conditions. In the event that the Seller exchanges any other purchase order, acknowledgment or any other document with Buyer, it is specifically agreed by the parties that such documents are for internal purposes only and no term or condition stated in such documents shall have any force or effect, except with respect to identifying the goods and/or services subject to this Agreement.

2. SPECIFICATIONS:

Goods and/or services shall be provided in accordance with Buyer specifications.

3. STANDARD OF PERFORMANCE:

Seller will perform all work under each Order subject to this Agreement according to good and sound quality workmanship, design and engineering practices, and conforming to any applicable data and specifications attached hereto or to any such Order. If Buyer requires Seller to remedy any deficiencies in the work or workmanship, Seller shall make such remedies at no additional charge to Buyer. Any increase or decrease in the scope of the work or any modification of the specifications made by Buyer or Seller shall be subject to written agreement signed by both parties. Buyer’s inspection or approval of any work done under this Agreement, including any Order, or Buyer’s failure to so inspect or approve shall not be deemed an acceptance of defective work or relieve the Seller of its obligations and liabilities with respect to such work.

4. INSPECTION OF GOODS AND ACCEPTANCE:

All goods received under this Agreement shall be subject to Buyer’s right of inspection and rejection. Defective goods or goods not in accordance with Buyer’s specifications will be held for Seller’s instruction at Seller’s risk and, if Seller so directs, will be returned at Seller’s expense. If inspection discloses that all or part of the goods received is not in accordance with Buyer’s specifications, Buyer shall have the right to cancel any unshipped portion of any Order. Buyer payment for goods received prior to its inspection shall not constitute acceptance thereof, and is without prejudice to any and all claims that Buyer may have against Seller. Buyer’s inspection of all products shall be final and conclusive.

5. CHANGES:

Buyer may, by written Change Order, request changes to an Order, including additions to or deletions from the quality or quantities of goods and/or services ordered, or in the design, specification and/or delivery schedule, at no additional charge or cost to Buyer. If any such change affects any delivery schedule to or the amount to be paid by Buyer, Seller shall notify Buyer immediately and request applicable adjustments. Any exchange of information or advice between the parties shall not authorize Seller to change the goods or services being purchased hereunder or the provisions of any Order, unless incorporated as a written Change Order, and executed by the Buyer, in accordance with this section.

6. WARRANTIES:

a) Seller expressly warrants that all right, title and interest in and to any and all goods sold to Buyer and/or services performed by or on behalf of Seller for Buyer under this Agreement will pass to Buyer upon delivery/completion, free and clear of any and all liens, claims, security interests and encumbrances, and that no materials, equipment, or supplies incorporated into any goods hereunder sold to, or any services hereunder performed by or on behalf of Seller for, Buyer will have been acquired by Seller subject to any agreement under which any interest therein or any encumbrance thereon is retained



by the Seller thereof which will survive delivery to Buyer.

b) Seller expressly warrants that all goods sold hereunder to, and all services performed by or on behalf of Seller for, Buyer shall conform to the specifications included or incorporated in this Agreement, including any Order, and that all such goods shall be fit and sufficient for the purpose intended, if Seller knows or has reason to know the intended use, of merchantable and marketable quality, new, and free from defects in materials and/or workmanship for a period of one (1) year from the date of acceptance by Buyer. Seller further warrants that all work performed hereunder shall be free from any and all defects in workmanship and/or materials for a period of one (1) year from date of acceptance of such work by Buyer.

(c) Seller represents, warrants and covenants that neither Seller nor its personnel are currently named as an excluded entity or individual on: (i) the "List of Excluded Individuals/Entities" maintained by the Department of Health and Human Services Office of the Inspector General ("OIG"); (ii) the "Excluded Parties List System" maintained by the System for Award Management (EPLS); (iii) the "Specially Designated Nationals List" (SDN List); (iv) the OIG List of Most Wanted Fugitives; or (v) any other sanctions list that would make Seller or its personnel ineligible to participate in any federal or state funded program (collectively, "Lists"). Seller shall check the Lists no less frequently than monthly and immediately notify Buyer if, at any point during the term, Seller or any of its personnel are named as an excluded entity on any of the Lists. Documentation evidencing Lists monitoring as required by this section must be maintained by Seller for no fewer than ten (10) years.

(d) All warranties shall survive inspections, testing, and acceptance by Buyer, and Seller's warranty obligations shall not be affected by inspection, testing, acceptance and/or use. If any such goods or services are manufactured or provided by any third party, Seller shall, in addition to its own warranties set forth above, shall transfer, assign and convey such available and additional warranties granted by any and all third parties to Buyer. Seller agrees to timely replace or correct defects in any goods or services not conforming to its warranties set forth

herein, without expense to Buyer, upon notice of nonconformity by Buyer. In the event Seller's failure to timely correct such nonconformity, Buyer, after reasonable notice to Seller, may take such action to correct or replace such nonconformity and charge Seller for the costs incurred by the Buyer thereby, and Seller agrees to reimburse Buyer for such costs.

7. DELIVERY OR PERFORMANCE SCHEDULE; QUANTITIES:

(a) Time is of the essence in Seller's performance under this Agreement and the delivery of goods and/or services hereunder.

(b) Buyer may cancel this Agreement and/or any Order for any nonconformity in any product lot or installment delivered or services rendered hereunder, including, without limitation, failure of Seller to deliver the goods or perform the services when due, delivery of defective or otherwise nonconforming goods, delivery of an insufficient quantity of goods, or deficient, defective and/or incomplete performance of services.

(c) Seller shall promptly advise Buyer of any delay or anticipated delay in the delivery of goods or performance of service, and shall timely pay Buyer for any actual losses sustained or costs incurred by Buyer as a result of such late or inadequate delivery or performance.

(d) Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time or deliver goods or perform services in advance of schedule. In the event of termination or change in the terms of this Agreement and/or any Order, no claim by Seller will be allowed for any such manufacture or procurement of materials or the performance of services in advance of such normal flow time without the prior written consent of Buyer.

(e) Unless specified otherwise on the face hereof, this Agreement, including any Order, shall not be deemed separable as to the goods and/or services to be provided hereunder.

(f) Goods that are to be shipped shall be shipped F.O.B. destination unless otherwise specified in writing by Buyer. Any shipments that are sent C.O.D. without Buyer's prior written consent will not be accepted and will be made at Seller's risk.



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8. PRODUCT SUBSTITUTES:

No substitute for goods and/or services will be accepted without specific prior written approval of Buyer who hereby reserves the right to reject and hold, subject to Seller disposal, all such goods and/or services in accordance with this Agreement.

9. OVERSHIPMENTS:

Buyer will pay only for maximum quantities ordered. Over shipments will be held by Buyer at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense. Any goods required to be held by Buyer for any longer than reasonable as provided hereafter, may be handled, disposed and/or liquidated at Buyer's sole discretion, and any proceeds therefrom shall be used by Buyer to defray costs associated therewith. Excess proceeds, if any, will be returned to Seller.

10. PACKAGING AND SHIPPING; RISK OF LOSS:

(a) All packing, and packaging shall be in accordance with specific instructions from Buyer, which may be stated herein, on any Order, or in separate notification. In the absence of specific instructions, all packing and packaging shall comply with good commercial practice, applicable carrier's tariffs, and all applicable state, federal, and local law, and shall consist of suitable containers for optimum protection of the goods and for in-plant handling and storage.

(b) Delivery shall be made by the carrier and routed as specified by Buyer. In the absence of instructions, shipments shall be routed via the most economical mode of commercially reasonable transportation available, consistent with the time requirements established for any Order.

(c) The number of the applicable Order must be shown on all packing slips and invoices, and, except in the case of ingredients, on all packages, crates and other containers, together with the destination party and address specified by Buyer.

(d) Delivery shall not be deemed complete until the goods have actually been received and accepted by Buyer, or by the person to whom the goods were delivered, and the risk of loss as to the goods shall be borne by Seller until such delivery and acceptance is acknowledged by

Buyer. Seller shall also bear the risk of loss on the goods rejected by Buyer from the time of shipment thereof to Seller, and until any redelivery of conforming goods to Buyer.

11. INSURANCE:

Upon entering into this Agreement, Seller agrees to maintain such insurance as Buyer may require to adequately protect Seller and Buyer, each, from claims of personal injury including death, and/or property damage arising directly or indirectly from Seller's obligations under this Agreement, with minimum limits of \$1 million per occurrence and \$2 million in the aggregate. Such insurance shall be primary insurance, and any liability insurance of Buyer shall be excess only. Buyer shall be named as an additional insured and provided a right of subrogation under such insurance. Seller agrees, upon Buyer's request, to furnish a certificate of insurance to Buyer before performance is commenced and shall provide that the insurer give thirty (30) days' written notice to Buyer prior to the effective date of expiration, any material change or cancellation of such policy. Seller guarantees that the design and performance of all goods and/or services being purchased conforms to the requirements of applicable insurance.

12. SELLER CLASSIFICATION:

It is Buyer's policy to encourage minority, women and disabled veteran owned businesses in its procurement contract opportunities. Buyer places a specific emphasis on Disabled Veteran Businesses (DVBE), which are classified as follows: Disabled Veteran Business Enterprise (In California): A Business must: 1) be at least 51% owned by one or more disabled veterans; 2) have its daily business operations managed and controlled by one or more disabled veterans (the disabled veterans who exercise management and control are not required to be the same disabled veterans who own the business); and 3) have its principle office located in the United States. The principle office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. The law defines a disabled veteran as a United States military, naval or air service veteran with a service related disability of at least 10 percent and who is a resident of the State of California. If you meet one of these categories, you will be required to





show evidence of Certification. Buyer observes the State of California Public Contracts Code §10115.10, and California Code of Regulations §1896.80.

13. PRICE:

(a) Prices shall be firm and not subject to adjustment or variation unless specifically approved in writing by Buyer.

(b) Seller warrants that the prices herein specified are as low as any net prices now given by Seller to any other customer for goods and/or services of like grade and quality in like quantities, and Seller agrees that if at any time during the pendency of an Order, lower net prices are quoted under similar conditions, said lower net prices shall be provided to Buyer from that time and substituted for the prices otherwise applicable to an Order. Seller agrees that any price reductions made in the goods and/or services under this Agreement or any Order subsequent to its acceptance, but prior to payment thereof, will apply to an Order. In that event, Seller shall either refund or credit to Buyer, at Buyer's option, the price difference between the contract price and the lower price charged as set forth herein. Except as otherwise provided herein, the prices herein include any and all costs and charges to be incurred by Seller, including, without limitation, installation and other service charges; all wages and fees for services and materials; all charges for transportation, packing, packaging, and returnable containers; all costs of design, engineering, and development; and all costs for tooling, gauges, jigs, fixtures, dies, molds, patterns, and similar property that may be obtained or required by Seller for use in the manufacture, fabrication, or assembly of the goods or performance of the services hereunder.

(c) Seller pricing made available via a catalog (defined as a static/CXML or active/punchout) shall remain fixed for a period of ninety (90) calendar days from the date when the catalog items are made available to Buyer, and thereafter may be adjusted on a quarterly basis to reflect changes in availability, market conditions, and other factors that reasonably affect the overall cost. Seller shall provide, at Buyer's request, substantiation of the reason for any quarterly price adjustment. If Buyer and Seller fail to agree on a price adjustment, the item will be removed from the catalog.

14. TAXES AND CHARGES:

The prices for goods and/or services provided under this Agreement or any Order shall include any and all taxes and import/export duties of all kind, except state sales tax which shall be added to each invoice and stated as a separate item. Seller agrees to pay for any penalty, interest, additional taxes and other charges levied or assessed as a result of the delay or failure of Seller to pay any tax or file any return or information required by law.

15. PAYMENT TERMS:

All invoices must have the applicable Order Number prominently shown thereon. Buyer's payment terms are Net 45 days from the date of receipt of an undisputed invoice. The "Bill to" address for all locations shall be stated on the body of the Order. If an invoice is subject to discount for prepayment, Seller shall state such terms clearly on the invoice. Buyer's opportunity for prepayment shall not be prejudiced by delays beyond Buyer's reasonable control.

16. COMPLIANCE WITH THE LAW:

Seller guarantees that all goods and/or services delivered hereunder are manufactured, assembled, packed, labeled, shipped, performed and sold in compliance with all applicable laws and all industry standard quality control procedures. Upon written request by Buyer, Seller agrees to timely execute and furnish to Buyer, a Buyer approved form of certification of compliance, as to any applicable federal, state, and/or local law or regulation, including, but not limited to, FLSA, EEOC, OSHA, and any economic control statutes or regulations. Seller shall comply with all applicable export and import laws and regulations. In particular, Seller will not export or import any technical data, confidential information, commodities or software derived from or pertaining to the goods and/or services without obtaining and making all required U.S. and foreign licenses and filings.

17. PROPRIETARY RIGHTS:

(a) In the event Seller, or any permitted subcontractor or other third party working for Seller, creates or develops any designs, goods and/or services especially for Buyer, the goods and/or services shall be deemed "work made for hire", and the proprietary and property rights to





such designs, goods and services shall vest in Buyer, and Seller hereby assigns and conveys, and shall assign and convey, or cause to be assigned or conveyed, any and all such proprietary and property rights, including, but not limited to, all copyright, trademark, and patent rights therein.

(b) Seller shall assert no claim of any proprietary or property interest in or to any drawings, specifications, or other material furnished by Buyer to Seller in connection herewith, and Seller shall not use such drawings, specifications or other material (other than in connection with this Agreement or any Order) without the prior written consent of Buyer.

(c) In no event shall Seller sell or distribute in any manner whatsoever, to persons other than Buyer, or parties authorized in writing by Buyer, any goods, supplies, materials or objects of any kind that are imprinted with or contain Buyer's name, logo, trade names, trademarks or labels, without Buyer's prior written consent, even where goods and/or services have been rejected by Buyer as nonconforming.

18. REMEDIES AND DAMAGES:

In addition to all other expressed remedies of the parties, which shall be cumulative and not alternative, in the event of a breach of this Agreement or any Order, Seller's and Buyer's rights and remedies or any express or implied warranties shall include, but not be limited to, those provided under the Uniform Commercial Code.

19. DEFAULT BY SELLER:

Buyer may, in its sole discretion, cancel this Agreement and/or any Order in whole or in part, without any further liability hereunder, in the event Seller: (a) becomes insolvent, makes a general assignment for the benefit of its creditors, files a petition in bankruptcy or is appointed a receiver due to insolvency; (b) fails to make timely delivery; or (c) breaches any other term or condition of this Agreement and/or Order. Seller shall continue to supply any portion of any Order which is not canceled. In the event of such cancellation, at Buyer's request, Seller will transfer title to, and deliver to Buyer all completed goods, any partially completed items, and all unique materials and tooling. Prices for partially completed goods and unique materials and

tooling accepted shall be negotiated; however, such prices shall not exceed the Order price per type of goods and/or services. If, after Buyer gives notice of termination, it is determined that Seller was not in default or Seller's default was excused, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience of Buyer.

20. TERMINATION FOR DEFAULT:

If Seller is in default under, or in breach of the terms or conditions of, this Agreement, including, without limitation, delivery and performance requirements or otherwise, Buyer may immediately terminate this Agreement, including any Order, in whole or in part, without any adjustment and, in addition to any other remedy provided by law or equity, may procure goods and/or services, similar to those under which this Agreement or any Order is terminated, and Seller shall be liable to Buyer for any and all costs for such similar goods and/or services in excess of the price or prices specified herein; provided, however, Seller shall continue the performance of this Agreement and/or any Order to the extent not terminated by Buyer.

21. DISPUTE RESOLUTION:

(a) Informal Dispute Resolution. Prior to referring a dispute, claim or controversy ("Dispute") to Mediation, the parties must attempt to resolve the Dispute by elevating it through the three escalation ladder level reviews by and between each party's respective business manager, senior business manager, and senior executive level manager. If the Dispute is not resolved by the tenth business day from the day first escalated to the level one dispute resolution, either party may initiate an action under this Section 21(b).

(b) Mediation. Except as provided herein, neither party shall initiate any action to resolve any Dispute until (i) such party has escalated such Dispute to a senior executive of the other party to seek resolution for at least ten (10) days from the date of such submission, and (ii) has thereafter submitted such Dispute to JAMS for mediation in accordance with this Section. The parties will cooperate with JAMS and with one another in selecting a single mediator from the JAMS panel of neutrals and in scheduling the





mediation proceedings. The mediation will occur in Sacramento, California. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however, except as otherwise provided herein, each party shall be responsible for its own respective costs, including, but not limited to, costs of attorneys and experts. If either party refuses to participate in the mediation or refuses to participate in good faith, they shall waive the right to recover an award of costs, attorney's fees and expenses in any resulting litigation that they might otherwise be entitled to pursuant to contract or other statute. Notwithstanding the forgoing, either party may seek equitable relief prior to the mediation to preserve the status quo or to prevent material harm to such party pending the completion of the mediation process provided for in this Section. Each party shall seek resolution of such Dispute by mediation until the earlier to occur of (a) the completion of the initial mediation session, or (b) forty-five (45) days after a party first files a written request for mediation in accordance with this Section. The provisions of this Section may be enforced by any court of competent jurisdiction, and a party successfully seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered. In the event mediation does not result in the settlement of all Disputes, either party may pursue any and all remedies it may have at law or in equity.

(c) Settlement Negotiations. The mediation process is to be considered a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. The parties hereto agree that the provisions of California Evidence Code §§ 703.5 and 1115 et seq. shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other official record shall be made except to memorialize a settlement record. All statements, admissions, writings, promises and offers made during the mediation by JAMS personnel, any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Likewise, all conduct, views and opinions, oral or written, made for the purpose of, in the course of,

or pursuant to the mediation by any person (including any party, party's agent, employee, attorney, mediator or other nonparty) are to be considered confidential and privileged. Such conduct, statements, admissions, writings, promises, offers, views and opinions shall not be subject to discovery or be admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise admissible or subject to discovery is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

22. INFRINGEMENT INDEMNIFICATION:

Seller warrants that the goods and/or Services purchased hereunder, and the manufacture, creation, purchase, sale and use thereof, are free and clear of, and do not and will not infringe, any third-party patent, copyright, trademark, trade secret or other proprietary or intellectual property right. Seller agrees to defend, indemnify and hold Buyer, its officers, agents, employees and representatives, harmless from and against all liabilities, losses, costs, obligations, and expenses, including attorneys' fees and court costs, claims or demands, either at law or in equity, for actual or alleged infringement of any copyright, patent, trademark, trade secret or other proprietary right arising from the manufacture, creation, purchase, use or sale of goods and/or services under this Agreement or any Order. In the event that any goods and/or services or portion thereof is held to constitute an infringement and its use is enjoined, Seller shall, at its expense, procure for Buyer the right to continue to use the infringing goods and/or services, rework/modify said goods and/or services so as to become non-infringing, replace the infringing goods and/or services with non-infringing goods and/or services which is acceptable to Buyer, or refund the amounts paid by Buyer to Seller under this Agreement and any Order.

23. GENERAL INDEMNIFICATION:

Seller agrees to defend, indemnify and hold Buyer, its officers, agents, employees and representatives, harmless from and against all liabilities, losses, costs, obligations, and expenses of any nature, including reasonable





attorneys' fees and court costs, incurred by Buyer as a result or arising out of any and all claims, demands, actions or judgments ("Claims") on account of the performance and/or nonperformance of this Agreement and any Order, including, but not limited to, Claims for personal injury or death or damages to property, incident to or resulting directly or indirectly, in whole or in part, from acts or omissions, negligent or otherwise, by Seller. Such indemnity shall apply whether an indemnitee is claimed to be passively, concurrently or actively negligent and regardless whether liability without fault is imposed on one of the indemnitees. Seller shall pay any such costs incurred in enforcing the indemnity granted above; provided that Seller shall not enter into a settlement of any such suit or claim without the prior written consent of Buyer. Buyer may participate in the defense of Claims by Seller at Buyer's own expense, and Seller shall cooperate with Buyer's participation.

24. LIMITATION OF LIABILITY:

IN NO EVENT SHALL BUYER, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES AND SHAREHOLDERS, HAVE ANY LIABILITY, TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT OR ANY ORDER, TO ANY PARTY HEREUNDER AND/OR ANYONE CLAIMING BY, THROUGH OR UNDER ANY PARTY FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES, COSTS AND/OR EXPENSES OF ANY KIND WHATSOEVER, WHETHER BASED ON CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY (INCLUDING MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR USE), TORTIOUS CONDUCT (INCLUDING NEGLIGENCE, STATUTORY DUTY AND/OR STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, INTEREST, DATA, INCOME OR PROFIT, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER SIMILAR DAMAGES ARISING OR RESULTING FROM, IN ANY WAY RELATED TO OR CONTAINED IN THIS AGREEMENT OR ANY

ORDER, INCLUDING ATTORNEY'S FEES AND EXPERT WITNESS FEES. IN NO EVENT SHALL BUYER'S AGGREGATE, TOTAL LIABILITY TO ANY PARTY OR PERSON EXCEED THE AMOUNT PAID UNDER ANY ORDER ENTERED INTO PURSUANT TO THIS AGREEMENT.

25. COMPLETE AGREEMENT; AMENDMENTS:

This Agreement, including any Order, represents the entire agreement between Seller and Buyer with respect to the goods and/or services to be purchased by Buyer under this Agreement and any Order by, or on behalf of, or for the benefit of, Buyer. All prior agreements, representations, statements, negotiations, and undertakings, whether oral or written, concerning the goods and/or services are hereby superseded and replaced. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument that specifically refers to this Agreement and the parties' intention to modify specific portions of it, and that is duly executed and delivered on behalf of both parties.

26. FORCE MAJEURE:

Neither party shall be liable for delay in its performance of its obligations and responsibilities under this Agreement, including any Order, due to causes beyond its reasonable control, including, but not limited to, war, embargo, national emergency, insurrection, terrorism or riots, acts of the public enemy, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to timely notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials shall not be considered to be an excusable delay. If Seller, due to an excusable delay, should be unable to meet all of its delivery/performance requirements as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in meeting Seller's obligations. However, if Buyer believes that the delay or anticipated delay in Seller's delivery/performance may impair Buyer's ability to meet Buyer's production schedules, or may otherwise interfere with Buyer's operation or, in any event, exceeds 30 days, Buyer may, in its sole discretion and without liability to Seller, cancel any then





outstanding delivery/performance requirements of Seller hereunder in whole or part.

27. GIFTS/GRATUITIES:

It is the Buyer's policy to refrain from any private business or professional activity that would create an actual or perceived conflict of interest. It is Buyer's current policy that none of its employees may accept any gratuity, gift or entertainment with a value of over \$25.00. It is preferable, therefore, that incentives be expressed in terms of quality, service and price of the goods and services Seller provides to Buyer.

28. GOVERNING LAW AND VENUE:

To the extent necessary so as not to invalidate the application of the dispute resolution process herein, this Agreement and any Order shall be construed and the legal relations between the parties determined in accordance with the laws of the State of California, USA, without giving effect to any choice of law rules which may direct the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to the interpretation or enforcement of this Agreement. The parties irrevocably consent and stipulate to the jurisdiction of the courts with competent jurisdiction in the State of California or of the United States of America located in Sacramento, California, provided, however, that this consent and stipulation is only for actions arising out of or in connection with this Agreement or any Order. Subject to the above-referenced consent and stipulation, each party waives any objections that venue is an inconvenient forum. Each party further agrees that it will not initiate any action against another party in any other jurisdiction.

29. INDEPENDENT CONTRACTOR:

In providing any goods and/or performing any services hereunder, Seller is, undertakes and agrees to complete delivery and/or performance as an independent contractor for all purposes, and not as an employee or agent of Buyer. Seller shall have sole responsibility for any and all persons employed or engaged in connection therewith, including, without limitation, exclusive liability for the payment of all federal, state, and local unemployment and disability insurance, all

Social Security and/or other forms of taxes and contributions payable with respect to each and all such persons. Seller, including its personnel, shall have no authority to bind Buyer to any agreement(s) with respect to third parties.

30. CONFIDENTIAL INFORMATION AND PUBLICITY:

Seller shall keep confidential, and shall under no circumstances disclose to any person inside or outside its employ, other than those employees or personnel that need to know in order to timely perform its requirements hereunder, any Buyer customer data or documents, information or property concerning the existence, terms and/or performance of this Agreement or any Order, including, but not limited to, designs, drawings, blueprints, descriptions, specifications and/or any other proprietary or confidential information ("Confidential Information") that is a part, or considered to be a part, of this Agreement or any Order. Seller shall not cause or make any publicity, advertisements, news release, public announcement, denial and/or confirmation regarding the subject matter of any aspect of this Agreement, any Order, or the program to which they pertain without Buyer's prior written approval. Seller agrees not to, and shall not, use Buyer's name, service marks and/or logos, or to quote the opinion of any of Buyer's employees, in any of its advertising, promotional literature, articles and/or similar publications without obtaining the prior written consent of Buyer. Upon Buyer's request, or in any event, upon the completion, cancellation, or termination of this Agreement, Seller shall immediately return to Buyer, all Confidential Information, delivered to Seller or generated by Seller pursuant to its performance under this Agreement or any Order, whether or not identified as confidential and/or proprietary by Buyer. Seller shall ensure that any and all Buyer prior approved subcontracts, purchase orders, and other agreements entered into by Seller or any of its permitted subcontractors or sellers of any tier shall provide to Buyer the same rights and protection with regard to such permitted subcontractors or sellers as are contained in this paragraph with regard to Seller.





31. WAIVER:

Buyer's failure to insist on Seller's strict performance of this Agreement, including any Order, at any time, shall not be otherwise construed as a waiver by Buyer of any of Seller's other performance under this Agreement or any Order.

32. BANKRUPTCY:

In the event of any bankruptcy or similar proceedings, voluntary or involuntary, with or without the Seller's consent, the appointment of a trustee, receiver or other such person, or assignment for the benefit of creditors, Buyer shall be entitled to cancel any unfilled part of this Agreement and/or any Order without any obligation or liability to Seller whatsoever.

33. ASSIGNMENT:

Seller may not assign, transfer or subcontract this Agreement or any Order to any third party, or any of its rights or obligations hereunder without Buyer's prior written consent. Any purported assignment, transfer or subcontract shall be void and ineffective. This Agreement and any Order is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. If Buyer authorizes Seller to retain a subcontractor pursuant to this section, that authorization will not release Seller from any of its obligations under this Agreement, and the actions or omissions of such subcontractor, for purposes of this Agreement, shall be deemed actions or omissions of Seller.

34. SEVERABILITY:

If any provision of this Agreement or any Order is found by a court of competent jurisdiction to be unenforceable, such provision will be modified and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions of this Agreement and any Order will continue in full force and effect.

35. CONSTRUCTION:

The section headings in this Agreement are for convenience of reference only, shall not be deemed to be part of this Agreement, and shall not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that

ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

36. NOTICE:

Any notice, approval, authorization, consent or other communication required or permitted to be delivered to a party under this Agreement or any Order must be in writing and shall be deemed to be properly delivered and given on receipt (or when delivery is refused) if delivered (a) by hand, (b) by courier or express delivery service, or (c) by email (with a copy sent by postage prepaid first-class mail) to the physical address or email address as such party may specify in the Order or otherwise (such as by reference to such notice provisions contained on Buyer's vendor portal website).

