



6820 Moquin Drive  
Huntsville, AL 35806  
256.726.4800

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. DEFINITIONS**

As used herein, (i) “Buyer” means CFD Research; (ii) “Seller” means the entity identified on Buyer’s Order from which Buyer is purchasing Goods and/or Services; (iii) “Goods” means the products, materials, and equipment purchased by Buyer; (iv) “Services” means services purchased by Buyer and performed by Seller; (v) “Offer” means any quotation, bid, or proposal for Goods and/or Services made by Seller to Buyer; “Statement of Work” means the specification(s), requirements, and details related to the Goods and/or Services; and (vii) “Order” means Buyer’s purchase order, or similar procurement instrument. All references to “terms and conditions” herein mean and include (i) these “General Terms and Conditions of Purchase”; (ii) Buyer’s Special Terms and Conditions of Purchase (when incorporated in Buyer’s Order); and

(i) any other terms and conditions mutually agreed upon by the Parties in writing in accordance with Section 2 herein. Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

### **2. ACCEPTANCE OF ORDER**

These terms and conditions apply to all Orders issued by Buyer to Seller. Seller’s acceptance of Buyer’s Order, and any changes or amendments thereto, is expressly conditioned upon and strictly limited to Seller’s acceptance of Buyer’s terms and conditions. Unless otherwise agreed upon in writing by a duly authorized representative of Buyer, Buyer objects to and is not bound by any terms or conditions that differ from, add to, or modify these terms and conditions including, but not limited to, any terms and conditions proposed by Seller whether contained in any forms, acknowledgements, or Seller’s website. Buyer’s failure to object to any terms and conditions or any other provisions contained in any communication from Seller does not waive any of Buyer’s terms and conditions. Buyer’s Order shall be binding upon the Parties upon the earlier of Seller.

(i) returning an Order acknowledgement to Buyer; (ii) commencing performance of Buyer’s Order; or (iii) delivering any of the Goods or performing any Services under Buyer’s Order.

### **3. SCOPE OF WORK AND PERFORMANCE**

Seller is responsible for delivery of Goods and/or performance of Services under Buyer’s Order, as applicable.

If Buyer’s Order includes a Statement of Work, (i) Seller is responsible for meeting all requirements specified therein and (ii) Seller is strictly prohibited from subcontracting any part of the Statement of Work to third parties without Buyer’s prior written authorization. In the event Buyer provides such authorization, the subcontractor will be bound by all obligations herein, including adherence to all export control requirements.



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Seller shall give Buyer no less than 30 days' prior written notice in the event of any changes, including, but not limited to, any (i) organizational, operational, or other changes which may affect Seller's performance of Buyer's Order; (ii) relocation of any of Seller's facility involved in performance of Buyer's Order; (iii); transfer of any significant part of the relevant process or manufacturing operations from one facility to another; (iv) significant changes to Seller's workforce; or (v) refusal, suspension, withdrawal, or revocation of a relevant quality or capabilities, systems, or approvals.

#### **4. PRICES**

Unless stated otherwise in Buyer's Order or otherwise agreed in writing by a duly authorized representative of Buyer, all prices stated in Buyer's Order are firm and stated in United States Dollars, and all invoices issued by Seller and payments made by Buyer shall be in United States Dollars. Seller shall not charge Buyer prices higher than those stated in Buyer's Order unless authorized by a written change order or notice issued and signed by a duly authorized representative of Buyer.

Seller warrants that the prices charged for Goods and/or Services under Buyer's Order are the lowest prices charged by Seller to any other customer for substantially similar goods and services under similar conditions. If Seller charges any other customer a lower price for such similar goods and/or services, Seller shall notify Buyer and apply that price to the Goods and Services under Buyer's Order.

#### **5. INVOICES AND PAYMENT**

Unless stated otherwise in Buyer's Order, Seller shall not issue invoices and Buyer shall not make any payments to Seller prior to delivery of Goods or completion of Services. Seller invoices shall identify Buyer's Purchase Order Number, line-item number(s), part number(s), description(s), quantity invoiced, billing period, cumulative amounts, and Project Agreement. Shipping charges, applicable taxes, or any other charges Buyer has agreed to pay and not furnished an exemption certificate must be itemized separately on Seller's invoices. Unless such charges are itemized, Buyer may take any applicable discount based on the full amount of each invoice. Seller agrees that its books and records, or such parts thereof as may relate to the performance hereunder, shall at all reasonable times be subject to inspection by a duly authorized representative of the US Government.

Buyer shall make payment to Seller within forty-five (45) days of receipt of a correct invoice for Goods delivered to and accepted by Buyer unless Buyer's Order specifies different payment terms, in which case the payment terms specified in Buyer's Order shall apply. Unless otherwise authorized by Buyer, the payment due date for Goods delivered early by Seller shall be calculated based on the delivery schedule specified in Buyer's Order. Any payment discount offered by Seller shall be computed from the later of (i) the date of delivery, or (ii) the date a correct invoice is received by Buyer. For purposes of earning the discount, payment shall be deemed to have been made on the date Buyer's check is mailed, or the date funds are electronically transferred to Seller's account.



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## **6. TAXES**

Except as otherwise specified in Buyer's Order or unless prohibited by law, Seller shall pay all federal, state and local sales, use, excise, or other taxes that may be levied upon any of the Goods and/or Services or the Parties hereto, by reason of the sale, delivery, or use of the Goods and/or Services. All taxes of any nature invoiced to Buyer must be specifically identified and itemized separately. If any tax, or portion thereof, included or added to the price paid by Buyer to Seller is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund.

## **7. PACKAGING AND MARKING**

If stated in Buyer's Order, Seller shall comply with any special packaging and marking requirements; otherwise, Seller shall package and mark all Goods in accordance with best commercial practices and adequately protect Goods against damage and deterioration during transit. Packing or marking charges are not allowed unless specifically authorized in Buyer's Order. Seller's packing list must include, at a minimum, Buyer's Order number, line item number(s), part number(s), description(s), and quantity shipped.

## **8. DELIVERY, SHIPPING TERMS, TITLE, AND RISK OF LOSS**

Buyer's production schedules and warranties to its customers are dependent upon Seller meeting the required delivery dates stated in Buyer's Order. Accordingly, time of performance and delivery is of the essence. Seller shall be responsible for all damages of any kind incurred or suffered by Buyer that arise as a result of any delay of Seller in making deliveries of conforming Goods or in performance of Services. Seller agrees to notify Buyer in writing immediately if at any time it appears that Seller may not be able to comply with the Order's delivery schedule. Such notification shall include the actual or potential reasons for the delay, the actions being taken to remedy the delay, and the anticipated revised delivery schedule. Such notice, and any assistance furnished by Buyer to overcome delays, shall not waive Buyer's remedies for delay and resulting default, including termination rights, if Seller fails to meet the Order delivery schedule. In such events, Buyer reserves the right to require Seller to ship delayed Goods via expedited or fastest means.

All domestic shipments shall be delivered F.O.B. at the point of delivery stated in Buyer's Order in accordance with the Uniform Commercial Code (UCC). All international shipments shall be delivered DAP at the point of delivery stated in Buyer's Order in accordance with the version of Incoterms in effect as of the date of Buyer's Order. Seller shall bear risk of loss or damage to Goods during transit, and title to Goods shall not pass to Buyer until received at Buyer's designated location in accordance with the terms of Buyer's Order. Delivery shall not be deemed complete until the Goods have been actually received by Buyer at the delivery location identified on Buyer's Order. Unauthorized advance shipments and shipments of excess quantities may be returned at Buyer's sole option and Seller's sole risk and expense.

## **9. ACCEPTANCE**

Payment for any Goods and Services under Buyer's Order shall not constitute acceptance thereof. Buyer reserves the right to reject and refuse acceptance of Goods that do not conform



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to the requirements, instructions, specifications, drawings, data, or warranties stated or referenced in Buyer's Order. Nonconforming Goods shall be returned to Seller for full credit, repair, or replacement at Seller's sole risk and expense, including transportation charges and Buyer will suspend payment of any invoice relating such nonconforming Goods. Buyer's acceptance of Goods is not a waiver of Buyer's right to reject and/or return Goods which are subsequently found to not conform to Buyer's Order, or by reason of patent or latent defect, or other breach of warranty, or to make a claim for damages, including manufacturing costs, damage to material or articles caused by improper boxing, crating, or packing, or other damages. Such rights and remedies shall be in addition to any other remedies provided by law.

## **10. WARRANTIES**

All warranties of Seller, whether created expressly by law or in fact, are incorporated herein by reference, apply to Buyer's Order, and are supplemented by the following express warranties. For a period of twelve (12) months from Buyer's acceptance, or such other period as may be agreed by the Parties in writing or specified in Buyer's Order (the "Warranty Period"), all Goods and/or Services shall (i) conform with any and all specifications, drawings, samples, or other descriptions referenced in and/or furnished with Buyer's Order; (ii) be merchantable, of good design, material, and workmanship; (iii) be new and not contain used or reconditioned material; (iv) be free from defects; (v) be suitable for their intended purpose; (vi) not infringe upon or violate the legal or equitable rights of any third party or out of any license, franchise, patent, trademark, or other proprietary right, now or hereafter in effect; (vii) be free and clear of any security interests, liens or other encumbrances; and (viii) comply with all applicable laws and regulations.

If Buyer determines there is a defect in the Goods at any time during the Warranty Period, Seller shall, at its sole expense and without delay, repair or replace the defective Goods or, at Buyer's sole option, refund to Buyer the price of the defective Goods. In the event that it is impractical to return the rejected Goods to Seller, Buyer may require Seller to carry out the necessary re-design, repair, modification or replacement as appropriate at Seller's expense where the Goods are located.

Any and all repaired or replaced Goods shall be covered by this warranty for a new period equal to the original Warranty Period. All obligations of Seller hereunder shall survive acceptance of and/or payment for the Goods. Seller shall indemnify and hold Buyer harmless from and against all liability, loss, consequential and incidental damages, and expenses resulting from the breach of any warranty, or resulting from any other act or omission by Seller, its agents, or employees, while in the performance hereof.

If at any time the Goods and/or Services become non-conforming for any reason, Seller must immediately notify Buyer in writing. In addition, if required by Buyer, Seller shall provide Buyer a report identifying the cause of the non-conformance and any additional Goods or Services that may be affected by the defect, and/or the repair action to be taken.

The forgoing warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance and payment and shall extend to Buyer's customers at whatever tier.

The rights and remedies granted to Buyer under this Section are in addition to any other rights or



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remedies provided elsewhere in Buyer's Order or under law.

## **11. COUNTERFEIT PARTS**

As used herein, "Part" means any material, product, component, device, module, assembly, subassembly, or the like sold or delivered by Seller to Buyer either as Goods or as a constituent part of a Goods. "Counterfeit Part" means a Part that is (i) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the Part's legally authorized source and/or has been misrepresented to be an authorized item of the legally authorized source, and/or (ii) previously used parts provided or represented as "new." A Part is a "Suspect Counterfeit Part" if visual inspection, testing, or other information provides reason to believe that the Part may be a Counterfeit Part. As used herein, "authentic" means (i) genuine; (ii) from the legitimate source claimed or implied by the marking and design of the Part offered; and (iii) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the Part.

Seller represents and warrants that only new and authentic Parts and materials are used in Goods ordered by Buyer and that such Goods contain no Counterfeit Parts. No other Part other than a new and authentic Part shall be used unless approved in advance in writing by Buyer's duly authorized representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from original equipment manufacturers ("OEMs") and original component manufacturers ("OCMs") or through the OEM's/OCM's authorized distributors. Seller shall make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the Parts to the applicable OEM/OCM. Purchase of Parts from independent distributors is not authorized unless first approved in writing by Buyer's duly authorized representative.

Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to Buyer and Buyer's written approval before Parts are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distributors. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request. Seller's system shall be consistent with applicable industry standards including, as a minimum, AS5553 for the detection and avoidance of Counterfeit Parts and Suspect Counterfeit Parts.

Acceptance of Buyer's Order constitutes confirmation by Seller that it is the OEM, OCM, or a franchised or authorized distributor of the OEM/OCM for the Goods procured under Buyer's Order. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the Parts is available upon request. Should Seller become aware of a confirmed or suspect Counterfeit Part that, by any means, has been delivered to Buyer or acquired for Buyer's Order whether or not delivered to Buyer, Seller shall notify Buyer in writing as soon as possible but not later than five (5) days of such discovery. Seller shall verify receipt of this notification by Buyer. This requirement shall survive expiration or completion of Buyer's Order. Seller shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required by Buyer to remedy the use or inclusion of such Parts. Seller shall quarantine remaining Suspect Counterfeit Parts and Counterfeit Parts, in



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inventory and make them available for investigation by appropriate government authorities.

Seller shall flow the requirements of this Section to its subcontractors and suppliers at any tier for the performance of Buyer's Order.

## **12. DATA, HARDWARE, AND SOFTWARE**

For reports and data other than computer software delivered pursuant to or in connection with Buyer's Order, Seller grants to Buyer and their end users, a paid-up, non-exclusive, irrevocable worldwide license, including a right to provide reports and data to its subcontractors, customers and their end-users, of all such information, including copyrighted data, to reproduce or prepare derivative works, , by or on behalf of Buyer for Buyer's, its subcontractors', customers' or their end-users' use or performance.

For hardware delivered pursuant to or in connection with the Buyer's Order, Seller grants to Buyer and their end users, a paid-up, non-exclusive, irrevocable worldwide license, including a right to sublicense or deliver to its subcontractors, customers and their end-users, all such hardware, including copyrighted or patented hardware, for test and evaluation purposes by or on behalf of Buyer for Buyer's, its subcontractors' customers' or their end-users' use or performance.

For computer software delivered pursuant to or in connection with Buyer's Order, Seller grants to Buyer and their end users, a paid-up, non-exclusive, irrevocable worldwide license, including a right to sublicense to its subcontractors, customers and their end-users, of all such computer software, including copyrighted or patented software, to reproduce or prepare derivative works, by or on behalf of Buyer for Buyer's, its subcontractors', customers' or their end-users' use or performance.

## **13. CHANGES**

Buyer may at any time, by a written change order or similar instrument issued by a duly authorized representative of Buyer, make changes within the general scope of Buyer's Order including, but not limited to, changes to (i) specifications, drawings, designs, or description of Services; (ii) method of shipment or packaging; (iii) reasonable adjustments in quantities or delivery schedules or both; and (iv) place of delivery. Seller shall comply promptly with such direction.

If Buyer's change order causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment may be made to the Order price and/or delivery schedule and Buyer's Order shall be modified in writing accordingly. Any claim for adjustment under this Section shall be deemed waived unless asserted in writing within twenty (20) days from the date of receipt by Seller of the change order, provided, however, that Buyer in its sole discretion may receive and act upon such claim submitted at any time prior to final payment under Buyer's Order. Any such claim must set forth the amount of any increase or decrease in the cost of performance resulting from the change in the format and detail



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reasonably specified by Buyer. Failure to agree upon an equitable adjustment shall not relieve Seller from proceeding without any delay in performance of Buyer's Order as changed. Where the cost of property made obsolete or excess as a result of a change order is included in Seller's claim for adjustment pursuant to this Section, Buyer shall have the right to prescribe the manner of disposition of such property.

Buyer's engineering and technical personnel may from time to time render assistance, give technical advice, or exchange information with Seller's personnel in relation to Buyer's Order. Such assistance, advice, and/or exchange of information shall not be construed as Buyer's consent or authority to effect any changes to Buyer's Order or the Goods and/or Services provided thereunder. Under no circumstances shall any resulting change in Goods and/or Services or provisions of Buyer's Order be binding upon Buyer unless incorporated as a change in accordance with paragraph (a) above.

Seller shall provide Buyer not less than sixty (60) days' prior written notice of any organizational, operational, or other changes that may affect Seller's performance of Buyer's Order including, but not limited to (i) the relocation of any of Seller's facilities involved in the manufacture Goods under Buyer's Order; (ii) any significant changes in Seller's processes or manufacturing operations affecting the Goods; (iii) any significant changes to Seller's workforce that impacts Buyer's Order; (iv) any changes to suppliers or subcontractors; and (v) the refusal, suspension, withdrawal, or revocation of a relevant quality or manufacturing approvals or certifications.

#### **14. STOP WORK**

Buyer may direct Seller to stop work on Buyer's Order for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the Parties may agree. In such event, Seller shall take all reasonable steps to minimize the incurrence of costs allocable to Buyer's Order during the period of work stoppage. Within such period, Buyer shall either terminate Buyer's Order in accordance with the termination provisions herein or direct Seller to continue performance of Buyer's Order by providing written notice to Seller. In the event a stop work continues beyond the ninety (90) day period, an equitable adjustment to the price, delivery schedule, or other provision(s) to the extent impacted by the stop work shall be made in accordance with the principles of the "Changes" Section herein.

#### **15. CANCELLATION; TERMINATION FOR CONVENIENCE**

Buyer may cancel or terminate performance or work under Buyer's Order in whole or in part for any reason by providing written notice to Seller. Upon receipt of such notice, Seller shall (i) stop work on the date and to the extent specified in the notice; (ii) terminate all lower-tier purchase orders and subcontracts to the extent they relate to the terminated work; (iii) promptly advise Buyer of the quantities of materials and work-in-process on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof; (iv) comply with Buyer's instructions regarding transfer and disposition of title of such material and work-in-process; and (v) submit all Seller's claims resulting from such termination within sixty (60) days of the date of the notice of termination.



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Buyer shall have the right to check such claims at any reasonable times by inspecting and auditing the records, facilities, work-in-process, and materials of Seller relating to Buyer's Order. Buyer shall pay the Order price for completed Goods accepted by Buyer and the substantiated cost to Seller of raw materials and work-in-process allocable to the terminated work based on any audit Buyer may conduct under generally accepted accounting principles, less (i) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (ii) the agreed value of any items used or sold by Seller with Buyer's consent; and (iii) the cost of any defective, damaged, or destroyed work or material.

Buyer shall make no payment for finished work, work in process, or raw material fabricated or procured by Seller in excess of Buyer's Order. Payments made under this Section shall not exceed the aggregate price specified in Buyer's Order, less payments otherwise made or to be made, and downward adjustments shall be made for costs of raw materials and work-in-process to reflect any indicated loss on the entire Order had it been completed. Payment made under this Section constitutes Buyer's sole liability in the event Buyer's Order is terminated hereunder.

#### **16. TERMINATION FOR DEFAULT**

Buyer may, by written notice to Seller, terminate Buyer's Order for default in whole or in part if (i) Seller fails deliver the Goods or to perform the Services within the time specified in Buyer's Order or any extension authorized by Buyer unless such failure is the result of a Force Majeure Event as defined above; (ii) Seller fails to make progress so as to endanger performance of Buyer's Order; (iii) Seller fails to perform any of the provisions of Buyer's Order; (iv) Seller makes any significant change to its processes or manufacturing operations which, in the sole opinion of Buyer, adversely affects the Goods; (v) Seller experiences any refusal, suspension, withdrawal, or revocation of a relevant quality or manufacturing approvals or certifications; or (vi) Seller is adjudicated bankrupt, files a petition for bankruptcy, makes an assignment for the benefit of creditors, or if an action under any law for the relief of debtors is taken.

Buyer's right to terminate Buyer's Order under subparagraphs (a)(ii) and (a)(iii) above may be exercised if Seller does not cure such failure within ten (10) days (or more if authorized in writing by Buyer) after receipt of Buyer's notice specifying the failure. If Buyer terminates Buyer's Order in whole or in part, Buyer may acquire Goods or Services similar to those terminated from a third party, and Seller shall be liable to Buyer for any excess costs for those Goods or Services. However, Seller shall continue any portion of the work not terminated by Buyer.

Except for defaults of vendors or subcontractors at any tier, Seller shall not be liable for any excess costs if the failure to perform Buyer's Order arises as a result of a Force Majeure Event, as defined above.

Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Goods, partially completed Goods, and materials, parts, tools, dies, fixtures, plans, drawing, information, and contract rights (collectively referred to as "Manufacturing Materials" in this Section) that Seller has specifically produced or acquired for the terminated portion of Buyer's Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. Buyer shall pay the Order price for completed Goods





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delivered and accepted. Seller and Buyer shall agree on the amount of payment for the partially completed Goods and Manufacturing Materials delivered and accepted and for the protection and preservation of the property. Buyer may withhold from these amounts any sum that Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders. If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer. The rights and remedies of Buyer in this Section are in addition to any other rights and remedies provided by law, or under Buyer's Order.

## **17. CONFIDENTIALITY**

Buyer may disclose to Seller certain Confidential Information, as defined herein, to facilitate Seller's performance of Buyer's Order. All Confidential Information and any other technical information provided by Buyer to Seller shall at all times be and remain the property of Buyer and shall only be used by Seller in connection with Seller's performance of Buyer's Order. Unless agreed otherwise, Seller shall return all copies of Confidential Information provided by Buyer upon completion of Buyer's Order, unless agreed otherwise in writing by Buyer, or at any time upon Buyer's request. "Confidential Information", as used herein, includes, but is not limited to, specifications, drawings, designs, technical data, data sheets, schematics, diagrams, configurations, business, financial, statistical, and commercial information, formulae, analyses, trade secrets, ideas, methods, processes, know-how, software, and computer programs.

Seller hereby agrees that any Confidential Information disclosed by Buyer (i) shall be maintained in a secure location; (ii) shall not be copied without the prior written approval of Buyer; (iii) shall be used by Seller solely to facilitate performance of Buyer's Order; and (iv) shall only be disclosed to Seller's employees on a need-to-know basis. Seller shall not disclose Buyer's Confidential Information to any third parties including, but not limited to, Seller's agents, consultants, vendors, suppliers, or subcontractors, without the prior written approval of Buyer. In the event Buyer provides Seller with written approval to disclose Confidential Information to a third party, Seller shall ensure all third parties are bound by terms and conditions consistent with this Section prior to receiving such information. If it becomes necessary for Seller to disclose Buyer's Confidential Information to a third party as a result of a requirement of law or regulation, such Confidential Information may be disclosed only to the extent required by law or regulation and, if so permitted, no earlier than five (5) business days after Seller provides Buyer with written notification of the requirement for such disclosure. Unless agreed otherwise, Seller shall return all copies of Confidential Information provided by Buyer upon completion of Buyer's Order or at any time upon Buyer's request.

The obligations of confidentiality and restrictions on the use and disclosure of Confidential Information specified in these terms and conditions do not apply to any information that (i) is lawfully and rightfully already in the possession of Seller without obligation of confidentiality at the time of receipt from Buyer; (ii) is independently developed by Seller without use or reference to the Confidential Information as evidenced by tangible evidence; (iii) appears in any printed publication or patent, or is in the public domain, except as a result of a breach of these terms and conditions by Seller; or (iv) is lawfully and rightfully received, free of restrictions, by Seller from a third party not known by Seller to be under any nondisclosure or confidentiality



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obligation or to have misappropriated or otherwise unlawfully obtained such information.

Except as required by law or regulation, no news releases, public announcements, or advertising materials regarding Buyer's Order shall be issued by Seller without the prior written consent of Buyer. Seller shall extend this restriction to all lower-tier vendors and subcontractors involved in the performance of Buyer's Order.

#### **18. PATENT INDEMNITY**

Seller agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer, its parent, subsidiaries or affiliates, constituent companies, agents, customers, subcontractors, or suppliers for alleged infringement of any United States or foreign patent, copyright, or trademark, as well as for the alleged unfair competition resulting from similarity in design, trademark, or appearance of Goods, by reason of the use or sale of any Goods or processes furnished under Buyer's Order, except for Goods manufactured or processes developed entirely from Buyer's designs. Seller further agrees to indemnify Buyer against any and all losses and damages, including court costs and attorney's fees, resulting from the bringing of such suit or proceeding, including any settlement or decree of judgment entered therein. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding, if it so desires. Seller's obligation hereunder shall survive acceptance of the Goods or processes and payment by Buyer and expiration or completion of Buyer's Order.

#### **19. PROPRIETARY RIGHTS**

Unless otherwise agreed in writing, all tangible and intangible property including, but not limited to, information or data of any description, drawings, computer software, know-how, documents, trademarks, or copyrights ("Buyer's Intellectual Property") provided by Buyer to Seller, or paid for by Buyer under Buyer's Order, shall be and remain the property of Buyer. Buyer hereby grants a limited license to Seller to use any such Buyer's Intellectual Property solely for the purposes of performing Buyer's Order. This license is non-assignable, and may be terminated with or without cause by Buyer at any time.

Buyer recognizes and agrees that, unless otherwise agreed in writing between the Parties, the above rights and ownership of such rights shall not extend to or encompass any intellectual property owned, developed, or conceived by Seller prior to, or not in connection with, Buyer's Order.

#### **20. INDEMNIFICATION**

Seller agrees to indemnify, defend, and hold harmless Buyer, its officers, directors, employees, and representatives (the "Buyer Parties") from and against any and all liabilities, losses, expenses, liens, claims, demands, and causes of action for death, personal injury, or property damage arising from any negligent act or omission of Seller in the performance of Buyer's Order.



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## **21. LIMITATION OF LIABILITY**

Except for (i) infringement of third party patents and intellectual property and (ii) violations of law, under no circumstances shall Buyer be liable for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under Buyer's Order including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of Claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Buyer's total liability arising from or related to Buyer's Order including, but not limited to, its liability for indemnity, defense, and hold harmless obligations under Buyer's Order, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order, and Seller agrees to indemnify Buyer for any excess amounts. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this Section.

## **22. LIMITATION OF LIABILITY**

Except for (i) infringement of third party patents and intellectual property and (ii) violations of law, under no circumstances shall Buyer be liable for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under Buyer's Order including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of Claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Buyer's total liability arising from or related to Buyer's Order including, but not limited to, its liability for indemnity, defense, and hold harmless obligations under Buyer's Order, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order, and Seller agrees to indemnify Buyer for any excess amounts. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this Section.

## **23. ORDER OF PRECEDENCE**

The following order of precedence shall apply in the event of an inconsistency within Buyer's Order and its related documents, as applicable: (i) Buyer's Order; (ii) Buyer's Special Terms and Conditions of Purchase;

(iii) Buyer's General Terms and Conditions of Purchase; (iv) the Specification; and (v) the Statement of Work or Scope of Services. Any inconsistencies between any documents must be clarified and agreed with Buyer.

## **24. COMPLIANCE WITH LAW**

Seller warrants and represents that the provision and shipment of Goods and/or the provision of Services or work to be performed by Seller under Buyer's Order are in compliance with all



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applicable federal, state, and local laws, orders, rules, ordinances, and regulations including, but not limited to, (i) the Equal Employment Act of 1972 and regulations thereunder; (ii) the Fair Labor Standards Act of 1938, as amended; (iii) orders of the U.S. Department of Labor, as applicable; (iv) all U.S. and international prohibitions on child labor, forced labor, slavery, and human trafficking; and (v) all laws and regulations of Seller's place of performance.

Sellers that furnish any materials identified on any governmental agency's list of hazardous substances must furnish a Material Safety Data Sheet (MSDS) with the delivery of the material in a form and manner that conforms with the requirements of such governmental agency.

Seller warrants and represents that it has and shall maintain all registrations, licenses and permits required for the performance of Buyer's Order.

Seller shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) to any employee of Buyer for the purpose of obtaining or rewarding favorable treatment. By accepting Buyer's Order, Seller warrants and represents that it has not made or solicited, and shall not make or solicit, kickbacks in violation of the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd1 through 78dd3, as amended, the Anti-Kickback Act of 1986 (41 USC 51-58), the anticorruption laws, regulations and policies of the home country of Seller, and/or the anticorruption laws, regulations and policies of any other country with jurisdiction over the activities in the performance of Buyer's Order.

All of the provisions stated in subparagraphs (a) through (c) of this Section are incorporated by reference as part of Buyer's Order. Any modification or amendment to Buyer's Order shall be deemed a re-certification of the accuracy and truthfulness of the foregoing representations and warranties herein. If at any time Seller becomes aware of information or circumstances that suggest any of the representations, warranties, and covenants referenced in this Section may not be accurate, it shall notify Buyer immediately in writing, but not more than five (5) days after becoming aware of such circumstances. Seller further agrees to indemnify Buyer against any loss, cost, liability, or damage whatsoever, including attorney's fees, which may result from Seller's violation of this Section.

## **25. CONFLICT MINERALS**

Upon request of Buyer, Seller shall determine whether any Goods contain tin, tantalum, tungsten, gold or any other materials that are designated under applicable rules of the United States Securities and Exchange Commission ("SEC") as a "conflict mineral". If no Goods contain one or more conflict minerals that are necessary to the functionality or production of such Goods within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify same to Buyer. If any Goods contain one or more conflict minerals, Seller shall certify to Buyer the country of origin of any such conflict mineral(s) or that the conflict mineral(s) came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict mineral(s), and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict mineral(s) that are necessary to the functionality or production of any Goods



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originated from a “covered country” within the meaning of the SEC’s conflict minerals rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publicly available, and to provide written documentation of such determination. Seller shall also take such additional actions and provide such additional information requested by Buyer as may be necessary in order for Buyer to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.

## **26. SUPPLY CHAIN SECURITY**

Buyer supports internationally recognized initiatives to secure the commercial supply chain (e.g., AEO, WCO SAFE Framework of Standards, or relevant equivalent standards) so as to assure freight and/or merchandise is not compromised contrary to applicable laws. Upon Buyer’s request, Seller agrees to inform Buyer of Seller's status regarding any such initiatives. Seller shall use reasonable commercial efforts to (i) implement reasonable security control standards to ensure the integrity and correctness of merchandise and accompanying commercial documentation related to relative to Buyer's Order; (ii) implement procedures to protect against un-manifested material being introduced into the supply chain; (iii) implement safeguards to resist unlawful entry to Seller’s facilities and to protect against outside intrusion; (iv) implement measures for positively identifying employees, visitors, and vendors and to prevent unauthorized access to information technology systems; (v) to the extent required by applicable laws, conduct employment screening of prospective employees to include periodic background checks and application verifications; (vi) provide security awareness education and training for employees covering cargo integrity and determining and addressing unauthorized access and communications protocols for notifying policing agencies when suspected or known illegal activities are present; and (vii) implement reasonable steps to protect against the introduction of unauthorized personnel and material in conveyance (e.g., containers, trucks, drums, etc.) destined to Buyer. If, as a result of facilitating a shipment to Buyer, Seller suspects a supply chain security breach or concern after dispatch from its facility, Seller is obligated to notify Buyer immediately. Buyer shall cooperate with Seller's assessment of its supply chain security and review of security measures.

## **27. EXPORT COMPLIANCE**

The shipment of Goods, provision of Services, and delivery and use of technical information under Buyer’s Order is subject to all decrees, statutes, laws, legislation, rules, and regulations which govern export, re- export, or otherwise pertain to the export controls of the United States and any other country in which the Goods are manufactured, transferred, sold, shipped, or exported, including, but not limited to, (i) the U.S. Department of Commerce Export Administration Regulations (EAR) and (ii) the U.S. Department of State International Traffic in Arms Regulations (ITAR). Seller hereby agrees to indemnify Buyer for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

Information furnished to Seller under Buyer’s Order may contain technical data, as defined in



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ITAR Section 120.10. Seller is advised and hereby acknowledges that such technical data, relating to export controlled items appearing on the U.S. Munitions List (USML) at ITAR Section 121, may not be exported, disclosed, or transferred, as defined in ITAR Section 120.17, to any foreign person (whether in the United States or abroad), as defined in ITAR Section 120.16, without first complying with all relevant requirements of ITAR Sections 120-130 (22 CFR 120-130), including the requirement for obtaining any written export authorization from the United States Department of State, Directorate of Defense Trade Controls (DDTC), or otherwise make and document the determination that an ITAR licensing exemption applies, as the case may be. A downloadable copy of the ITAR is accessible at the DDTC web site at [www.pmdtdc.state.gov](http://www.pmdtdc.state.gov).

## **28. NOTICES**

All notices given by the Parties shall be made in writing and delivered personally or sent by prepaid mail, facsimile, or email, addressed to the intended recipient at its address or at its electronic address. Regardless of the method of transmittal, the sending Party is responsible for obtaining a return receipt for the notice.

## **29. ASSIGNMENT AND SUBCONTRACTING**

Seller shall not assign, delegate, sublicense, transfer Buyer's Order or any of its obligations thereunder, whether by operation of law or otherwise, without Buyer's written consent, and any assignment, delegation, sublicense, or transfer (i) without such written consent is void and of no effect and (ii) if consent is given, shall be binding upon, and inure to the benefit of the successors and assigns of Seller. Buyer may, without Seller's consent, assign Buyer's Order to a parent, subsidiary, or affiliate company of Buyer, and shall have the right to assign Buyer's Order to any successor, by way of merger or consolidation, or the acquisition of substantially all of the entire business and assets of Buyer relating to the subject matter of Buyer's Order, provided that such successor shall expressly assume all of Buyer's obligations and liabilities under Buyer's Order.

Seller shall not subcontract any portion of Buyer's Order or the performance thereof to any third party without Buyer's written consent.

## **30. REMEDIES**

The remedies herein reserved or created for Buyer shall be cumulative and in addition to any other or further remedies provided by law or equity. Failure of Buyer to insist upon the performance of any of the terms, conditions, or provisions of Buyer's Order, or to enforce any right or remedy hereunder, shall not be construed as a waiver or relinquishment of the future performance or exercise of such right or remedy; rather, the same shall continue in full force and effect. Nothing herein shall be waived by any act or knowledge on the part of Buyer, except by written instrument signed by a duly authorized representative of Buyer. In the event a waiver is granted by Buyer, it is not a continuing waiver or a waiver of any other rights or of any material breach or failure of performance of Seller. Seller shall pay all Buyer's costs and



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expenses, including attorney's fees, incurred by Buyer in exercising any of its rights or remedies hereunder or enforcing any of the terms or conditions hereof.

### **31. HEADINGS; MODIFICATIONS; SEVERABILITY**

The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of any term, condition, or provision herein. Buyer's Order may only be modified by a written instrument, signed by a duly authorized representative of Buyer. If any term, condition, or provision herein is invalid, ineffective, or unenforceable under present or future laws, then the remainder of the terms, conditions, and provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

### **32. ENTIRE AGREEMENT**

These terms and conditions (including Buyer's Special Terms and Conditions, as applicable) and Buyer's Order, including any applicable specifications, statement of work, or other applicable documents, constitute the entire agreement between the Parties, and supersede any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of Buyer's Order.

### **33. SURVIVAL**

Any Section or provision herein which contemplates performance or observance subsequent to any termination or expiration of Buyer's Order, or which by its nature should survive, shall survive any termination or expiration of Buyer's Order and continue in full force and effect.