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## **PURCHASE ORDER TERMS AND CONDITIONS**

1. **APPLICABILITY. THESE PURCHASE ORDER TERMS AND CONDITIONS (THE "TERMS AND CONDITIONS") CONSTITUTE THE ONLY TERMS AND CONDITIONS UPON WHICH MACDIARMID, LLC ("BUYER") IS WILLING TO ORDER AND TO PURCHASE THE GOODS AND/OR SERVICES IDENTIFIED ON ANY BUYER PURCHASE ORDER (THE "GOODS") FROM THE SELLER IDENTIFIED ON SUCH PURCHASE ORDER ("SELLER").**

2. **OFFER AND ACCEPTANCE.** Buyer's order to purchase the Goods (the "Purchase Order") is an offer to purchase, and is not an acceptance of any offer by Seller to sell the Goods. Seller's acceptance of the Purchase Order is expressly limited to these Terms and Conditions, and any terms and conditions proposed by Seller in Seller's acceptance, acknowledgment, invoice, transmittal, or any other document that are different from, conflict with, or add to the Terms and Conditions will be deemed to materially alter the Terms and Conditions and are hereby unconditionally objected to and rejected by Buyer. These Terms and Conditions constitute the complete and exclusive statement of the terms of the Purchase Order, are intended as a final expression of the terms of the Purchase Order and will supersede all prior and contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings between the parties and no usage of trade will be relevant to supplement or explain any term herein. Buyer's acceptance or acquiescence in a course of performance rendered by Seller hereunder will not be relevant to determine the meaning of this contract even though Buyer has knowledge of the nature of the performance and opportunity for objection. Any references in the Purchase Order to Seller's quotation or other Seller document(s) are for information only and Buyer hereby rejects all terms and conditions proposed by Seller therein. Acceptance of the Purchase Order, including the Terms and Conditions, both or either of which may be delivered to Seller in electronic form, will occur upon the first to occur of any of the following events: (i) when Buyer receives written acknowledgment that Seller has accepted the Purchase Order, or (ii) when Seller has commenced performance under the Purchase Order.

3. **PRICING AND PAYMENT.**

(a) Seller represents and warrants that the prices for the Goods are Seller's lowest prices currently in effect for such Goods. Should any lower price for any Good or any better terms be quoted to any of Seller's customers prior to completion of the Purchase Order, Seller shall promptly notify Buyer and thereupon, such lower price or better terms will apply to the Purchase Order. Buyer shall also receive the full benefit of all discounts, premiums and other favorable terms offered by Seller to its customers. Seller hereby acknowledges that the Buyer

does not make any guarantees regarding a specific quantity or minimum dollar volume of sales and that the pricing of the Goods is not dependent upon any specific volume of sales. Prices charged for Goods listed on the Purchase Order are not subject to increase, including specifically any increase based upon currency fluctuations, changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Buyer in writing.

(b) The prices for the Goods include all federal, state and local taxes from which Seller cannot obtain exemption. The amounts of any such taxes shall be shown separately on Seller's invoice. The Goods will be supplied at the prices set forth in the Purchase Order and in no instance will Buyer be liable to Seller in excess of such prices, less any applicable discounts and/or other deductions, and no interest or other charge will be recognized or paid by Buyer upon the Purchase Order or resulting invoice, whether claimed by reason of late payment or otherwise.

(c) Buyer shall not be responsible for any charges relating to the transportation, boxing, crating or other packaging of the Goods or any labor related thereto except to the extent set forth in the Purchase Order.

(d) Buyer's obligation to pay the prices set forth in the Purchase Order will be subject to any abatement, reduction, setoff, defense, counterclaim, or recoupment by Buyer for any reason whatsoever.

(e) Seller will invoice Buyer for Goods when shipped in a form acceptable to Buyer. Buyer's standard payment terms are net 60 days after delivery, unless otherwise specified on the face of the Purchase Order. Payment will not constitute acceptance of any defective or non-conforming Goods. Seller agrees that all its accounts with Buyer will be administered on a net settlement basis and that Buyer may set off debits and credits, including Buyer's attorney fees and costs of enforcement, against any of Seller's accounts regardless of basis for such debits and credits and without advance notice. In this Section, "Buyer" includes Buyer's parent, subsidiaries and affiliates, and "Seller" includes Seller's parent, subsidiaries and affiliates.

4. **MODIFICATIONS.** Buyer may at any time, by giving written notice to Seller, modify the Purchase Order specifications, designs, drawings, packaging, methods of shipment, quantities, place of delivery, or delivery schedules. If any such modification causes an increase or decrease in the cost of or the time required for Seller's performance, an equitable adjustment may be made in the price or delivery schedule, or both, provided Buyer agrees to such adjustment by written approval given within ten (10) business days from the date Buyer receives Seller's request therefor and any additional documentation that Buyer may request. Nothing contained in this Section will relieve Seller from proceeding without delay to perform the Purchase Order as modified.

5. **OBSOLETE PRODUCTS.** Seller acknowledges that Buyer designs and sells products to end-users which incorporate or otherwise use the Goods, and that alteration, modification or discontinuation of any Goods without adequate notice may cause undue harm to Buyer. As such, Seller shall provide Buyer not less than twelve (12) months written notice of its intent to modify, alter or discontinue production or sale of any of the Goods sold to Buyer within the prior five (5) year period. In the event Buyer so requests, Seller will continue to make such

modified, altered or discontinued Goods available in the form prior to such modification, alteration or discontinuation, for an additional period of one (1) calendar year, and shall provide Buyer with an appropriate recommendation to substitute for the Goods.

## 6. INSPECTIONS.

(a) Buyer and Buyer's customer or customer's representative may inspect and/or test the Goods, materials and any property belonging to Buyer (or its customers) under the control of Seller (or its sub-suppliers) at any time at its own expense and Seller, at no charge, will make its premises available (and will use its best efforts to procure that its sub-suppliers will make available their respective premises) for this purpose and provide any necessary assistance to make the procedures safe and convenient. No inspections and/or tests by Buyer will relieve Seller of its obligations to inspect and test the Goods and Seller acknowledges that any inspection by Buyer whether during manufacture, prior to delivery or within a reasonable period after delivery, shall not constitute acceptance of any work-in-progress or finished Goods. In addition to any other remedies it may have, if Buyer finds any Goods to be defective or not in conformity with its specifications or requirements, it may, in its sole discretion, return them to Seller for a refund of the purchase price, require Seller to repair or replace them, or rework or repair them itself or through third parties, all at Seller's sole expense and Seller will reimburse Buyer for all costs incurred by Buyer as a result of any defective or non-conforming Goods.

(b) Unless otherwise directed by Buyer in writing, any Goods determined to be nonconforming by Seller (or its suppliers) or rejected by Buyer (or its customer) as nonconforming, will be rendered unusable. Seller will not sell, and will procure that nonconforming Goods are not sold in the aftermarket as replacement or service assemblies or parts. Seller has, or will institute immediately, appropriate internal controls, as well as audit/review arrangements with its suppliers, to ensure compliance with the requirements of this Section. Seller shall defend, indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with the requirements of this Section.

(c) Buyer shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect the facility, Goods, materials and any property of Buyer covered by each Purchase Order and, without the necessity of a court order, may enter upon Seller's property and remove property belonging to Buyer or any customer of Buyer, including, without limitation, Tooling and other goods, inventory or Seller's property that has been or is agreed to be sold to Buyer under the Purchase Order.

7. **WARRANTY.** Seller warrants that the Goods (a) will conform to applicable specifications, instructions, agreed upon measurement and layout criteria, drawings, data, and samples, (b) will be merchantable, (c) will be of good material and workmanship and free from defects, (d) will be fit and sufficient for the purposes intended, (e) will be free from all liens and encumbrances, (f) will comply will all applicable federal, state and local laws, regulations and ordinances, and (g) will not infringe upon any patent, trademark, copyright, trade secret, or other intellectual property right of any other party. The warranty period is the longest of (i) the warranty period offered by Buyer or Buyer's customer to end-users for Goods installed on or as part of other products, or (ii) the warranty period provided by applicable law. Seller further

warrants that the Goods will comply with all government requirements of the countries in which the Goods or the products into which the Goods are to be installed are to be sold. These warranties are in addition to all other warranties, express or implied, and survive acceptance of and payment for the Goods by Buyer, its successors, assigns, customers, and users of its products. The warranties of Seller will not be excluded or limited in any manner whatsoever unless expressly authorized in writing by the President of Buyer. Buyer's approval of any design, drawing, material, process or specifications will not relieve the Seller of these warranties.

**8. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.**

Seller warrants that it will comply with all applicable laws, regulations, ordinances and orders in performing this Order and will furnish Buyer and its designees with such certificates or reports of legal compliance as Buyer may request from time to time. All purchased materials used in part manufacture shall satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials, as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture, transit and sale.

**9. HAZARDOUS SUBSTANCES.** Seller will properly classify, describe, package, mark, label and provide Material Safety Data Sheets for the Goods and pack and ship them in compliance with any applicable laws regulations, ordinances and orders relating to the packaging and shipment of hazardous materials. Seller warrants that all Goods which constitute or are comprised in whole or in part of chemical substances, shall not be, at the time of sale and the Buyer's receipt, listed on the then current list of chemical substances published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act, and that Material Safety Data Sheets shall be supplied in compliance with applicable laws.

**10. PACKING AND SHIPMENT:** Seller will pack and ship the Goods in accordance with the Buyer's instructions on the Purchase Order, furnish all shipping documents required by Buyer and plainly mark Buyer's name and the Purchase Order number on all packages and documents. Unless otherwise stated in the Purchase Order, Seller will bear all costs of delivering the Goods, including shipping and insurance charges, duties, taxes and other charges. Unless otherwise agreed upon the standard shipping terms are DDP (Delivered Duty Paid). Buyer's count or weight will be final and conclusive for all shipments. Seller will ensure that any third parties who supply packaging for the Goods agree to comply with Buyer's standards. Seller will reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking, routing, or shipping. Seller will not charge separately for packing, marking, or shipping, or for materials used therein unless Buyer specifies in writing that Buyer will reimburse Seller for such charges. Seller shall pay any costs incurred by Buyer, including costs charged by Buyer's customers as a result of Seller's failure to comply with shipping or delivery requirements. If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the Goods than the transportation method originally specified by Buyer, then at Buyer's option Seller will (i) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment of Seller's invoice by such difference, or (iii) ship the Goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

11. **DELAYS, FAILURE TO DELIVER.** Time and quantity are of the essence in Seller's performance of a Purchase Order. Seller will deliver all Goods in accordance with Buyer's instructions about volume, mix and 100% on time delivery. Seller shall provide appropriate planning information to demonstrate capability to provide 100% on time delivery at Buyer's request. If any Goods are delivered in excess of volumes ordered or in advance of schedule, Buyer may return them at Seller's expense or retain them and invoice Seller for any resulting handling and storage costs. Buyer will not process invoices for Goods shipped in advance of schedule until the scheduled delivery date. Buyer may change scheduled deliveries at any time by written notice to Seller and will reimburse Seller for reasonable, documented incremental costs incurred by Seller due to such changes. If Seller fails to deliver any shipment of Goods in accordance with Buyer's instructions, Buyer may cancel the Purchase Order and/or purchase substitute goods, in which event, Seller shall reimburse Buyer for its costs in procuring the substitute goods. Seller is responsible for excess costs associated with late delivery. This shall include (but will not be limited to) expedited freight, loss of production, and excess costs charged to Buyer by its customer due to late delivery. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Buyer until the Goods have been delivered to Buyer's facility and have been accepted at that facility.

12. **TOOLING AND DRAWINGS.**

(a) Unless otherwise agreed upon in writing by Buyer, Seller at its own expense will furnish, keep in good condition, and replace when necessary all tools, jigs, dies, gauges, fixtures, and molds ("Tools") necessary for the production of the Goods. At Buyer's request a complete set of Tool drawings will be made available to Buyer. Seller will insure the Tools and other Seller property for the replacement value thereof for all risks of physical loss, including theft, and provide proof of such insurance to Buyer at Buyer's request. Seller waives all subrogation rights against Buyer with respect to any of Seller's property on Buyer's premises or elsewhere. Seller grants Buyer an irrevocable option to take possession of and title to the Tools upon payment to Seller of the book value thereof less any amount that Buyer has previously paid to Seller for the cost of such Tools; provided, however, that this option will not apply if such Tools are used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others. All Tools furnished by Buyer, either directly or indirectly to Seller to perform the Purchase Order, or for which Seller has been reimbursed by Buyer, will be and remain the property of Buyer and Seller shall not cause or permit any lien to attach to any such Tools. All Tools owned by Buyer must be identified by the part number and marked "Property of MacDiarmid" or a Buyer-designated customer. At Buyer's request, such property shall be immediately released to Buyer or delivered to Buyer by Seller F.O.B. to the destination designated by Buyer, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property.

(b) Any documents, including drawings and specifications, produced or acquired by Seller under the Purchase Order will belong to Buyer without any restrictions on Buyer's use, including reproduction, modification, disclosure, or distribution of the documents or the information contained therein.



(c) All drawings, know-how, and Confidential Information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller. Seller is licensed to use Buyer's drawings, know-how, and Confidential Information only for the purpose of fulfilling its obligations under the Purchase Order. In addition to the obligations set forth in the Terms and Conditions, Seller will not disclose such drawings to third parties unless this is required for Seller to fulfill its duties under the Purchase Order. Seller will inform Buyer in writing of any third parties to whom Seller subcontracts any of the work required under the Purchase Order specifying in detail the work that had been subcontracted to such third party. Seller will ensure that any third party to whom Seller subcontracts any of the work hereunder is bound by all the Terms and Conditions relating to such work to which Seller is bound under the Purchase Order. Seller will nevertheless remain liable under the Terms and Conditions for all work performed by any subcontractor as if it had been performed by Seller even if Buyer has consented to such subcontracting.

(d) To the extent a Purchase Order that includes services or consulting services, Seller hereby assigns to Buyer, without further compensation, all rights, title and interest in and to any and all ideas, inventions, improvements, materials, copyrightable material, drawings, documents or the like, conceived or made by Seller as a result of or relating to work done or services performed for Buyer pursuant to the Purchase Order. Such assignment includes all proprietary rights appurtenant thereto, and Seller will execute any documents necessary to confirm such assignment.

### 13. **TERMINATION; DEFAULT.**

(a) Buyer may terminate performance of the work under the Purchase Order, in whole or in part, for any reason or no reason, by written notice to Seller, without incurring any liability to Seller other than as specifically set forth in this Section. Upon receipt of such notice, Seller will immediately discontinue all work and the placing of all orders for material, facilities, and supplies pursuant to the Purchase Order. Upon termination by Buyer under this Section, Buyer will negotiate payment to Seller based on Seller's non-recoverable, reasonable, and actual documented costs and expenses; in no case, however, will payments made under this Section exceed the aggregate price specified in the Purchase Order, less payments otherwise made or to be made. Nothing contained in this Section will be construed to limit or affect any rights or remedies that Buyer may have against Seller.

(b) If Seller's financial condition is found to be or becomes unsatisfactory to Buyer during the term of the Purchase Order, Buyer reserves the right, without incurring any liability to Seller, to cancel the Purchase Order by written notice and receive a refund of any deposits, down payments, or other advance payment (except for Goods or services already delivered). Buyer also reserves the right similarly to terminate all other contracts covering purchases by Buyer of Seller's products or services whether or not Seller may otherwise be in default, and no rights will accrue to Seller against Buyer on account of such termination. The foregoing rights of Buyer are in addition to, and not in lieu of, any rights Buyer may possess under §2-609 of the Uniform Commercial Code.

(c) If Seller fails to perform as specified in the Purchase Order or breaches any of the Terms and Conditions, Buyer reserves the right, without incurring any liability to

Seller, and upon giving Seller written notice, to: (i) cancel the Purchase Order in whole or part, and Seller will be liable to Buyer for all damages, losses, and liability incurred by Buyer directly or resulting from Seller's breach; (ii) obtain the Goods ordered herein from another source, with any excess cost resulting therefrom chargeable to Seller; (iii) setoff or reduce all claims for money due or to become due from Buyer to Seller to the extent Buyer is damaged by Seller's failure to perform; or (iv) repair any defective merchandise and charge the Seller for the expense involved when, in Buyer's opinion, the cost to the Seller would be less than replacement. The remedies herein provided will be cumulative and in addition to any other remedies provided at law or in equity. Buyer's failure to insist on performance of any of the Terms and Conditions or to exercise any right or privilege, or Buyer's waiver of any breach hereunder, will not be treated as a future waiver of any provision of the Terms and Conditions, whether of the same or similar type.

(d) If a Purchase Order is for a fixed duration, as specified on the face of said Purchase Order, Seller shall have no right to terminate said Purchase Order. For Purchase Orders of indefinite duration, Seller may terminate such Purchase Order on no less than twelve (12) months written notice provided to the Buyer.

(e) Buyer will have the right to suspend shipments from Seller hereunder and refuse to accept delivery of the Goods, without incurring any liability to Seller, in the event of war, riot, flood, acts of God, terrorist acts, fire, court order, strike, work stoppage, act of governmental authority, or other causes beyond Buyer's control.

(f) The rights and remedies of the Buyer shall be cumulative and in addition to any other rights or remedies provided by law or equity. Any attempt by Seller to limit its warranties or Buyer's remedies or the amount and types of damages that Buyer may seek shall be null and void. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Purchase Order by Seller with respect to its delivery of Goods to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required. In no event shall Buyer be liable to Seller for any lost profits, lost revenue, lost production or for any incidental, consequential, special, and exemplary or punitive damages, even if Buyer has been advised of the possibility of the same.

#### 14. **INDEMNIFICATION.**

(a) Except to the extent that any injury or damage is due solely to Buyer's gross negligence, Seller agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products against all claims, suits at law or in equity, recall campaigns or other corrective service actions and from all damages, claims, and demands in any other manner arising out of or alleged to have resulted directly or indirectly from the Goods, including but not limited to (i) any defect or alleged defect in the Goods supplied by the Seller, (ii) any noncompliance or alleged noncompliance by the Seller with any of its representations, warranties or obligations under a Purchase Order, (iii) any negligence or fault or alleged negligence or fault of the Seller in connection with the design, maintenance, transfer, transportation, processing,

application, or manufacture of the Goods, or (iv) Buyer's violation or alleged violation of any federal, state, foreign, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging, and labor practices (collectively, the "Claim"), and, when notified will, at Buyer's sole option, either defend the Claim at its own expense with counsel of Buyer's choosing or reimburse Buyer for all costs, damages, losses, claims and expenses (including but not limited to attorney, expert, and consultant fees, settlement costs and judgments) and all other costs and liabilities whatsoever for defending such Claim. The foregoing indemnification will apply whether the damage is caused by the sole or concurrent negligence of Seller.

(b) To the extent that Seller's agents, employees, or subcontractors enter upon the premises of Buyer, Seller will take all necessary precautions to prevent injury or death to any person or damage to property arising out of acts or omissions of such agents, employees, or subcontractors, and, except to the extent that any such injury or damage is due solely and directly to Buyer's gross negligence, will indemnify, defend, and hold Buyer, its officers, employees, and agents, harmless from any and all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including but not limited to attorney, expert, and consultant fees, settlement costs and judgments) arising out of any act or omission of Seller, its agents, employees, or subcontractors.

(c) Seller will indemnify and save and hold harmless Buyer, its successors, assigns, customers, and users of its products, and Buyer's officers, employees, and agents, from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including but not limited to attorney, expert, and consultant fees, settlement costs and judgments), resulting from any claim that the manufacture, use, sale or resale of the Goods infringe any patent, copyright, trademark, trade secret or other intellectual property rights; and Seller when notified will, at Buyer's sole option, either defend any action or claim of such infringement at its own expense with counsel of Buyer's choosing, or reimburse Buyer for all costs, damages, losses, claims and expenses (including but not limited to attorney, expert, and consultant fees, settlement costs and judgments), and all other costs and liabilities whatsoever for defending such action or claim. If the Goods or any part thereof or any use thereof in reasonable contemplation of the parties at the time of their purchase are held in such suit to constitute an infringement and their use is enjoined, Seller will promptly and at its own expense (i) procure for the Buyer the right to continue use of the Goods on the same terms contained in the Purchase Order, (ii) replace the same with non-infringing goods satisfactory to Buyer, or (iii) modify the Goods in a way satisfactory to Buyer and its counsel so they become non-infringing but performing with the same functionality.

(d) Seller will at all times maintain and cause its subcontractors to maintain insurance coverage for workers' compensation, employers' liability, public liability (including general commercial liability, automobile liability, contractual liability and product liability) and any other insurance as may be reasonably requested by Buyer in amounts and with insurers satisfactory to Buyer. On request, Seller will furnish Buyer with certificates of insurance that evidence this coverage, name Buyer as an additional insured, and prohibit the cancellation or reduction of coverage without 30 days prior written notice to Buyer. Compliance with these insurance provisions will not relieve Seller of its defense and indemnification obligations under this section.



15. **CONFIDENTIALITY.** Seller acknowledges and agrees that it will be obligated to maintain the secrecy and confidentiality of all information disclosed by Buyer to Seller during the course of work under any Purchase Order ("Confidential Information"), including, but not limited to, any information regarding Buyer or its business or its customers, the existence and terms of any Request for Quotation or Purchase Order, and any drawings, specifications, or other documents prepared by either party in connection with any Request for Quotation or Purchase Order. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without prior written authorization from Buyer. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Confidential Information shall not include any information that (a) was in the possession of Seller before receipt from Buyer; (b) is or becomes available to the public through no fault of Seller; or (c) is received by Seller in good faith from a third party having no duty of confidentiality to Buyer. The obligations of Seller with respect to Confidential Information shall remain in effect during the time that any Confidential Information is considered by Buyer to be secret or confidential or otherwise qualify for protection under the laws of the state in which Buyer is located. At the request of Buyer, Seller will return to Buyer all materials (in any form) that include, incorporate, or otherwise contain Confidential Information of Buyer. Unless otherwise agreed in a signed writing from Buyer, all information provided by Seller to Buyer in connection with each Purchase Order shall be disclosed on a non-confidential basis, and Buyer shall have no duty to maintain the secrecy or confidentiality of such information.

16. **STATUS OF PARTIES.** Seller and Buyer are independent contracting parties and nothing in the Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

17. **WAIVER.** The failure of Buyer at any time to require performance by Seller of any provision of the Purchase Order or the Terms and Conditions will not affect the right to require such performance at any time thereafter, nor will the waiver by Buyer of a breach of any provision of the Purchase Order or the Terms and Conditions constitute a waiver of any succeeding breach of the same or any other provision.

18. **ASSIGNMENT.** The Purchase Order may not be assigned or subcontracted by Seller without the Buyer's prior written consent. The Purchase Order and the Terms and Conditions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. **GOVERNING LAW.** All matters relating to the Purchase Order, the Terms and Conditions, and Buyer's purchase of and Seller's sale of the Goods will be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts, without reference to principles of conflicts of law thereof. In no event will the provisions of the United Nations Convention on the International Sale of Goods apply to the purchase and sale of the Goods pursuant to the Purchase Order. Any claim relating to the Purchase Order, the Terms and Conditions, or Buyer's purchase of or Seller's sale of the Goods will be adjudicated exclusively in any federal or state court located in the Commonwealth of Massachusetts and Seller hereby consents to such jurisdiction.

20. **SEVERABILITY.** The Terms and Conditions are severable and if any Terms and Conditions or portions of any Terms and Conditions are stricken or declared illegal, invalid, or unenforceable by a court of competent jurisdiction for any reason whatsoever, the legality, validity or enforceability of the remaining Terms and Conditions will not be affected thereby.

21. **GOVERNMENT CONTRACTOR.** Buyer may from time to time be considered a government contractor subject to the federal regulations referenced below, therefore, any Seller which is a subcontractor to Buyer, as defined in and for purposes of the relevant federal regulations (“Subcontractor”), agrees at any time Buyer is a government contractor during the performance the Purchase Order, as follows:

E.O. 11246

(a) The equal opportunity clause (“E.O. Clause”) required of government contractors and subcontractors, and as set forth in Federal Regulations promulgated under Executive Order No. 11246 of September 24, 1965, as amended (“E.O.11246”) (41 C.F.R. Section 60-1.4), is incorporated by reference in the Purchase Order as provided by 41 C.F.R. Section 60-1.4(d). The E.O. Clause includes Subcontractors commitments of non-discrimination and affirmative action regarding employment decisions; posting of notices; certain statements in advertisements; notice to unions; compliance with E.O. 11246 and its implementing regulations, and penalties for noncompliance; furnishing information and reports; and inclusion by Subcontractor of these E.O. Clause commitments in its subcontracts or purchase orders.

(b) Subcontractor will certify upon request that it requires its own subcontractors to comply with the E.O. Clause unless the value of its subcontract or purchase order is exempt under the rules, Regulations, or orders of the Secretary of Labor.

(c) Subcontractor shall file complete and timely reports on Standard Form 100 (550.1), as required by Federal regulations.

(d) Subcontractor certifies, as required by Federal regulations (41 C.F.R. Section 60-1.8), that it does not and will not maintain or provide for its employees any segregated facilities.

Rehabilitation and Veteran’s Acts

(e) The affirmative action clauses required pursuant to regulations issued under Section 503 of the Rehabilitation Act of 1973 (regarding persons with disabilities), 29 U.S.C. Section 793, and Section 402 of the Vietnam Era Veteran’s Readjustment Assistance Act of 1974 (regarding veterans), 38 U.S.C. Section 2012, are incorporated herein by reference as provided by those regulations. These clauses include Subcontractor’s commitments of non-discrimination, affirmative action, compliance with law and penalties for noncompliance, posting of notices, notification to unions, and Inclusion of the clauses in subcontracts and, in the case of veterans, to listing of openings and reporting requirements.

### Small Business Act

(f) It is the policy of the United States, as expressed in the Small Business Act (15 U.S.C. Section 637(d)), that small business concerns (“SBC”) and small business concerns owned and controlled by socially and economically disadvantaged Individuals (“SBCO”) shall have the reasonable and practicable opportunity to participate in performing contracts let by the Federal agency.

(g) Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. In such circumstance, Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or other awarding agency of the United States as may be necessary to determine the extent of compliance with the clause.

(h) Subcontractor acting in good faith may rely on written representations by one of its subcontractors regarding its status as either an SBC or an SBCO.

(i) Subcontractor agrees to require all subcontractors (except SBC’s) that receive subcontracts in excess of \$500,000 to adopt a subcontracting plan similar to the plan required by the clause at 48 C.F.R. Section 52.219-9.

### General

(j) To the extent required as a result of United States government contracts, Subcontractor agrees to file with Buyer an executed copy of Buyer’s Certificate of Compliance, which fully sets forth the various clauses referred to above as being part of the Purchase Order.

(k) Buyer shall be permitted access to Seller’s facilities in connection with work under this agreement and while on Seller’s premises, shall comply with all plant rules & regulations, and where required by government regulations, submit satisfactory clearance from the U.S. Department of Defense and other Federal authorities concerned. No charge will be made for such visits.

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