



EMERGENT TERMS AND CONDITIONS OF PURCHASE

The following provisions are the standard Terms and Conditions of Purchase (“**Terms and Conditions**”) of the legal entity listed as the buyer on the Order (“**Buyer**”), and shall govern and control each instance whereby Buyer obtains or otherwise acquires from you (“**Vendor**”) items or products (collectively “**Products**”) or services (“**Services**”), whether pursuant to issuance of a written purchase order to Vendor, an order for purchase made by credit card transaction, an on-line order or by any other means (each, an “**Order**”). Buyer agrees to purchase, and Vendor agrees to deliver to Buyer, the Products and Services identified in the Order, subject to the terms herein. Buyer and Vendor are hereinafter sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

1. **Acceptance.** Acceptance of each Order is expressly subject to these Terms and Conditions unless (a) otherwise agreed to in writing by an authorized representative of Buyer, or (b) such Order is generated pursuant to a fully-executed agreement between Buyer and Vendor that specifically provides for the issuance of such Order. Vendor's consent to these Terms and Conditions shall be conclusively presumed from any Vendor conduct that recognizes the existence of an agreement, including written acceptance of an Order, shipment of any part of an Order, provision of Products or Services pursuant to an Order, or transmittal of an invoice to Buyer. Any Vendor alterations to the documents comprising Buyer's Order and any terms contained in Vendor's documents or Vendor's acceptance, are hereby expressly rejected by Buyer and shall only constitute a proposal for modification of these Terms and Conditions unless and until they are expressly accepted in writing by an authorized representative of Buyer. Vendor expressly acknowledges and agrees that all such alterations and terms are null and void, and of no force or effect.
2. **Scope.** Vendor will provide Products or Services as described in Buyer's Order in conformance with the specifications and requirements and in the amount(s) set forth in such Order.
3. **Price/Payment.** Buyer will pay Vendor the applicable amounts, unit prices, or rates that are expressly listed in each Buyer Order. Buyer may deduct or set off from any amount due and payable to Vendor any disputed amount that Buyer determines is the result of (a) Vendor's attempt to charge Buyer more than the amount specified in the applicable Order, or (b) any claim against Vendor resulting from an Order or any other transaction. Invoices shall be payable within sixty (60) days from receipt of invoice, unless otherwise agreed upon by both Parties.
4. **Delivery.** Time is of the essence regarding each Order. If delivery of Products or performance of Services is not completed by the time stated in each Order, Buyer reserves the right, without liability and in addition to and without waiver of any of Buyer's other rights and remedies, to terminate an Order by written notice as to any or all stated Products or Services, and to purchase substitute Products or Services elsewhere and charge Vendor with any loss or damage incurred by Buyer. Notwithstanding the foregoing, Vendor shall not be liable for damages resulting from unforeseeable delays due to causes beyond Vendor's reasonable control (such as acts of God, natural disasters and government acts), provided that such delay is not due to the fault or negligence, in whole or in part, of Vendor, its employees, agents or representatives. Vendor shall provide prompt notification to Buyer of any delay in fulfillment of an Order. Any provision herein for delivery of Products or performance of Services by installments shall not be construed as making Vendor's obligations severable. Except to the extent otherwise agreed to in writing by Buyer, all deliveries of Products shall be D.D.P. (Delivery Duty Paid) Buyer's facility in accordance with Incoterms 2020.



5. **Title to Products, Risk of Loss.** Products shall be delivered to Buyer at the address specified in Buyer's Order. Unless otherwise explicitly provided for in Buyer's Order, title and risk of loss to Products shall pass to Buyer at the time and place of delivery at Buyer's facility.
6. **Billing, Packaging, Documentation and Shipping.** No charge shall be made for packaging, transportation or storage of Products, except as agreed upon in writing by Buyer. All Products shall be suitably packed in containers to avoid damage during shipment and storage and in a manner to secure lowest transportation costs. Unless otherwise specified in writing by Buyer, Vendor shall properly mark each package (a) with Buyer's Order numbers and where multiple packages comprise a single shipment, each package as well as each individual container within each said package shall also be consecutively numbered, and (b) in accordance with any other Buyer written instructions or specifications included in an Order. Purchase order number and package numbers shall be shown on packing slips, bills of lading, and invoices. Proper and legible documentation, including but not limited to, Certificates of Analysis, packing slips, and other documents specified in or required by (i) these Terms and Conditions, (ii) the Order, and (iii) the Quality Agreement, as applicable, (collectively the "Documentation") must be delivered to Buyer upon delivery of the Products or Services or in advance of delivery. Invoices received prior to delivery of the Documentation will be rejected and must be resubmitted by the Vendor following delivery of the Documentation.
7. **Inspection, Rejection of Products or Services.** All Products and Services furnished hereunder shall be subject to inspection and acceptance, and Vendor shall be given notice of any nonconformance or defects (other than latent defects) within a reasonable time after receipt of such Products or Services. Buyer may, at its sole option, reject or require the prompt correction of any Product or Service which is found not to conform in all respects to (a) Buyer's specifications, (b) each of Vendor's express or implied warranties, or (c) any other instructions or requirements contained in Buyer's Order. In the event of any non-conformance, in addition to any other rights Buyer may have, Buyer may, at its sole option and at Vendor's sole expense, prepare for shipment and return ship such Product to Vendor, or require Vendor to replace or correct the nonconforming Product or Service. If Vendor fails to promptly replace or correct the nonconforming Products or Services, Buyer may, at its sole option, replace or correct such Products or Services at the expense of Vendor, including any excess procurement and other costs. Payment for any or all of the Products or Services supplied pursuant to an Order shall not constitute acceptance by Buyer.
8. **Warranty.** Vendor represents and warrants that all Products and Services (a) shall be new and not refurbished, unless otherwise expressly agreed to in writing by Buyer, (b) will conform to the designs, specifications, drawings, samples or other descriptions referred to in Buyer's Order or as represented by Vendor in its catalog or other Vendor written description, (c) will be manufactured in accordance with any applicable Good Manufacturing Practices, and (d) will be free from defects in material, design and workmanship (including damage due to unsatisfactory packing by Vendor). Vendor further represents and warrants that it will perform all Services in a professional and competent manner. Vendor further represents and warrants that Vendor shall keep Buyer's premises free from any and all liens and encumbrances arising out of or in connection with performance of Services. The warranties contained herein shall run to Buyer and its customers and users of Buyer's products or services, and shall survive inspection, acceptance and payment.
9. **Confidentiality.** Vendor acknowledges that Vendor and its employees, agents and subcontractors may have access to or create Proprietary Information as a result of an Order. Vendor shall protect such Proprietary Information from disclosure to a third-party using measures at least as stringent as those Vendor uses to

protect its own proprietary information, but in no event less than a reasonable standard of care. Vendor shall not disclose Proprietary Information to any third party without Buyer's prior written consent, and shall ensure that such third party is bound by obligations of confidentiality, non-use and non-disclosure, at least as stringent as those binding Vendor with regard to such Proprietary Information. Vendor shall not use, or permit to be used, Proprietary Information other than for fulfillment of an Order. Vendor expressly acknowledges that a breach of its obligations set forth in this Section 9 will cause immediate, substantial, and irreparable harm to Buyer for which monetary damages would not be a sufficient remedy. Accordingly, Vendor agrees that any such breach shall, in addition to any other remedies available, entitle Buyer to injunctive relief. Vendor shall promptly return to Buyer all Proprietary Information (including any copies thereof) upon Buyer's request. No information furnished by Vendor to Buyer shall be considered confidential or proprietary information of Vendor unless specifically agreed to in writing by Buyer. Nothing in these Terms & Conditions purports to assign, transfer or license any Proprietary Information to Vendor. "**Proprietary Information**" shall mean non-public and proprietary information of Buyer, in either written or oral form, including, without limitation: (a) any business information or plans, including customer identity information, manufacturing, operating and cost information, financial data, marketing data, formulae, graphs, letters, drawings, R&D information, designs, engineering information, test data, processing or packaging technology, and similar information, (b) any technical information, including specifications and requirements provided by Buyer in connection with fulfillment of an Order, and (c) Materials (as hereinafter defined). Information shall not be deemed to be Proprietary Information if such information is: (i) in the public domain at the time it is communicated to Vendor or thereafter enters the public domain through no fault of the Vendor; (ii) developed by Vendor independently and without the use of any Proprietary Information, as demonstrated by Vendor's contemporaneous written records; (iii) properly and lawfully known to Vendor at the time of disclosure other than through prior disclosure to Vendor by Buyer, as evidenced by contemporaneous written records; (iv) subsequently lawfully received by Vendor from a third party whose rights to disseminate such information are without restriction; or (v) ordered to be disclosed by a court of competent jurisdiction, provided that Vendor shall (1) promptly notify Buyer of such order, (2) reasonably assist Buyer in any opposition of such order prior to disclosure, and (3) only disclose such portion of the Proprietary Information as is necessary to comply with such order.

10. **Indemnification.** Vendor shall indemnify, defend and hold Buyer harmless from and against any and all claims, actions, proceedings, losses, damages, liabilities, costs and expenses of any nature, including reasonable attorneys' fees and costs (collectively "**Claims**"), that may be sustained by or claimed against Buyer arising from or in connection with (a) possession or use of any Products or Services or the actions or inactions of Vendor and its employees, agents, representatives and contractors, except for Claims arising solely and directly from Buyer's gross negligence or willful misconduct, (b) defects, omissions or negligence in the design, manufacture or labeling of Products or furnishing of Services under any Order, and (c) Vendor's breach of any warranty, representation or obligation contained in the Terms and Conditions or any Order.
11. **Insurance.** Vendor shall have and maintain in effect, at its sole cost and expense, insurance policies meeting the following minimum requirements:
 - (a) Workers' Compensation insurance in accordance with applicable statutory requirements.
 - (b) Commercial General Liability insurance including products/completed operations coverage at annual limits of liability not less than \$1 million per occurrence; \$2 million general aggregate; and \$3 million products/completed operations aggregate.

- (c) Employer's liability insurance in an amount not less than \$1 million.
- (d) Automobile Liability insurance in an amount not less than \$1 million per occurrence.
- (e) "All-risk" property insurance for all equipment, merchandise and all other items belonging to Vendor on Buyer's premises at full replacement value.
- (f) Umbrella liability insurance in the amount of \$5 million per occurrence and in the aggregate.
- (g) As applicable, Network Security & Privacy liability insurance with a minimum limit of \$5 million.
- (h) As applicable, Professional Liability insurance with a minimum limit of \$5 million.

Insurance requirements required herein may be satisfied by a combination of primary and excess policy limits or an umbrella policy. Vendor shall (i) promptly provide certificates of insurance to Buyer evidencing limits of liability and expiration dates, and (ii) ensure that Vendor's subcontractors comply with all insurance requirements contained herein, including, without limitation, requiring each such subcontractor to procure and maintain insurance of the type and to the limits specified above. Vendor acknowledges and agrees that Vendor's compliance or non-compliance with the insurance requirements of this section shall not be construed to limit or affect Vendor's other obligations or liability under these Terms and Conditions.

12. **Work Product.** Any material created for or at the request of Buyer, including, without limitation, artwork, designs, sketches, samples, audiotapes, videotapes, photographs, advertising copy, publicity materials, packaging, reports, data, documents or other creative material ("**Material**"), in any form whatsoever (including electronic form) and regardless of whether such Material incorporates Buyer's trademark(s), shall constitute work-made-for-hire under the copyright laws of the United States and shall be promptly provided to Buyer by Vendor. In the event that any Material is not copyrightable subject matter or is otherwise deemed for any reason not to be a "work made for hire", Vendor hereby irrevocably assigns to Buyer all of its respective right, title and interest worldwide in and to the Material. Material shall be the sole and exclusive property of Buyer, and Buyer shall be deemed to be the author and owner of any copyright or other intellectual property right in Material throughout the world. Vendor hereby irrevocably grants, assigns and transfers to Buyer, free and clear of any further compensation, all right, title and interest in the copyright or other intellectual property right with respect thereto and will, upon Buyer's request and without further compensation, execute any document or take any other actions necessary to convey title to Buyer. Vendor hereby waives all moral rights subsisting in the Material in favor of Buyer and will, upon Buyer's request without further compensation, execute any document and take any other action necessary to effect such waiver.
13. **Vendor Intellectual Property.** Notwithstanding Section 12 or anything contained herein to the contrary, Vendor owns and retains at all times all intellectual property rights in the Product and/or the Services which it created, owned or controlled prior to the date of the Order ("**Vendor IP**"). Vendor hereby grants to a Buyer a non-exclusive, perpetual, worldwide, fully paid-up license to any and all Vendor IP necessary for Buyer to use or exploit the Products and/or Services as intended by the Order.
14. **Intellectual Property Indemnity.** Vendor agrees to defend, indemnify and hold harmless Buyer, its directors, officers, employees, agents, representatives, successors and assigns and any of Buyer's customers and all persons claiming under Buyer ("**Buyer Parties**") from and against any and all third party (i.e.: non-Buyer or Vendor) Claims arising by reason of actual or alleged infringement or contributory infringement of Intellectual Property Rights arising in any way out of or connected with an Order, including, without limitation, by reason of the manufacture, delivery, use or sale of Products or Services supplied to Buyer, and Vendor agrees to

defend at its own expense any and all actions or proceedings charging infringement of said Intellectual Property Rights that may be brought against any Buyer Parties and to pay all costs and damages that may be assessed or incurred in every such action. "Intellectual Property Rights" as used herein means any and all common law and statutory proprietary rights, including patent rights (including design patents), industrial designs, trademark rights, trade secret rights, confidential information, rights of copyright, moral rights, know-how and any other intellectual property rights and equivalent and similar forms of protection, whether registered or unregistered, as well as the applications for registration and the right to apply for registration of any of these rights, in all cases existing from time to time under the intellectual property laws of the United States, Canada, any state or foreign jurisdiction, or international treaty regime. This provision shall apply notwithstanding that any of said Claims shall ultimately be determined to be unjustified or to have been unfounded.

15. **Personal Data.** Each Party shall comply with the obligations that apply to it under applicable data protection laws. Vendor shall process personal data under the control of Buyer on behalf of Buyer only pursuant to these Terms and Conditions and disclose Buyer's personal data in accordance with Buyer's instructions only. Vendor shall ensure that any person it authorizes to have access to Buyer's personal data shall respect and maintain the confidentiality and security of such personal data of Buyer. Vendor shall put in place appropriate technical and organizational measures to protect the personal data of Buyer against destruction, loss, unlawful disclosure or other unlawful processing in accordance with all applicable laws and good industry practice policies and processes. Vendor shall not disclose any personal data of European data subjects to third parties located outside of the European Economic Area without Buyer's prior written consent.
16. **Changes To Order.** Buyer may, at any time upon written notice, make changes or additions to an Order. If such modification changes the cost of Products or Services or the time required for performance, Vendor shall notify Buyer in writing within ten (10) days of receipt of Buyer's notice of the amount of cost increase or decrease and/or the time required for performance and an appropriate equitable adjustment will be made by written modification of the applicable Order. If Buyer and Vendor are unable to agree on an equitable adjustment within thirty (30) days of the date of Vendor's adjustment notification, Buyer and Vendor shall resolve the matter pursuant to the "Dispute Resolution" section of these Terms and Conditions.
17. **Termination.** Buyer may terminate all or any part of an Order without cause by providing written notice of such termination to Vendor. In the event of a partial termination, Vendor shall continue fulfillment of the applicable Order to the extent not terminated. Upon receipt of a termination notice, Vendor shall immediately cease fulfillment of such Order as described in the notice and, as directed by Buyer, deliver or otherwise dispose of all completed and partially-completed Products, Materials and work in progress. Buyer's sole obligation and liability to Vendor following such termination shall be for payment of (a) the price provided in Buyer's Order for all Products or Services delivered or completed prior to such termination that are accepted by Buyer, and (b) reasonable, actual, non-recoverable expenditures or commitments by Vendor (including reasonable cancellation charges to Vendor's suppliers) on the uncompleted portion of the applicable Order; *provided, however*, that in no event shall Buyer's obligation exceed the total price or applicable unit price provided for in such Order. Notwithstanding the foregoing, if Vendor ceases to conduct its normal business operations, including failing to meet its obligations as they mature, or if any bankruptcy or insolvency proceeding is brought by or against Vendor, or a receiver for Vendor is appointed or applied for or an assignment of substantially all the assets of Vendor for the benefit of creditors is made by Vendor, Buyer may

terminate an Order without any liability whatsoever, except for deliveries previously made or for Products or Services covered by an Order then completed and subsequently delivered in accordance with the terms hereof. In the event of any termination by Buyer (including any Buyer-imposed work stoppage order), Vendor shall take all reasonable measures to mitigate damages and limit the incurrence of costs due to such termination or work stoppage. **In no event shall Buyer be liable for lost or anticipated profits, other consequential losses or expense, or any sum in excess of the total price or applicable unit prices under an Order.** Any claim for payment by Vendor arising under this Section must be asserted within thirty (30) days after Vendor's receipt of notice of termination, or such other period as may be agreed upon in writing by the Parties. Buyer's right to issue a termination or work stoppage order under this Section shall be in addition to any other rights or remedies Buyer may have for Vendor's default.

18. **Compliance with Applicable Law.**

- a) Vendor shall provide all Products and perform all Services in accordance with all applicable laws and regulations. Vendor shall take reasonable precautions consistent with applicable industry or professional standards to prevent any injury to person or property. If Vendor is required to operate on Buyer's premises to fulfill an Order, Vendor shall comply with Buyer's codes, policies and procedures, and shall attend all required site-specific training. Without limitation the generality of the foregoing, Vendor shall: (i) comply with all applicable laws and regulations relating to health, safety and the environment; (ii) provide appropriate training to employees on all hazards they may be exposed to; and (iii) provide employees with all required protective equipment and ensure it is in use when required.
- b) **Buyer is an equal opportunity employer and it and/or its affiliates are a United States ("U.S.") federal contractor or subcontractor. Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

19. **Governing Law; Jurisdiction.** These Terms and Conditions and all Orders are subject to and governed by the laws of the state of New York, without regard to any conflicts of law principles. Any action commenced by a Party to enforce the terms of this Agreement must be brought in the courts of the jurisdiction where the Products or Services were primarily delivered hereunder. The Parties hereby irrevocably consent to the jurisdiction and venue of those Courts. The Parties expressly waive any right that they have or may have to a jury trial of any dispute arising out of or in any way related to these Terms and Conditions or the Order, or any breach thereof.

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20. **Dispute Resolution.** All disputes or claims arising hereunder that cannot be resolved by the Parties shall be submitted to non-binding mediation in the United States for a period of thirty (30) days, which may be extended by written agreement of the Parties. The place of mediation shall be the same City and State where the Products or Services were primarily delivered hereunder. If such dispute is not resolved through mediation or otherwise within the specified period, either Party may pursue remedies available to it at law or in equity, subject to the provisions of these Terms and Conditions.
21. **Independent Contractor.** Vendor is an independent contractor, and these Terms and Conditions shall not create a joint venture, partnership, employer/employee relationship, agency or association between the Parties.
22. **Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if given (a) electronically, (b) by registered or certified mail, postage prepaid, return receipt requested, or (c) by reputable, nationally known overnight courier, to the addresses below. If given by mail or overnight courier, notices shall be effective upon receipt by the Party to which notice is given, or on the seventh (7th) day following the date such notice was mailed or deposited with the overnight courier, whichever occurs first. Notices shall be sent to (a) Buyer at the address or email provided by Buyer on the Order and (b) to Vendor at the address or email on Buyer's Supplier Information Form.
23. **Equipment or Machinery.** For each Order that includes equipment or machinery, the following terms shall specifically apply:
- (a) **Manuals.** Prior to shipment, Vendor shall deliver at no additional cost to Buyer: (1) English-language maintenance and installation manuals and any other Buyer-required documentation as specified by Buyer, and (2) one complete set of "as built" drawings, which set shall be provided on appropriate substrate (paper, blueprint, etc.) and on computer disk in a program format approved by Buyer.
- (b) **Spare Parts.** Vendor shall provide Buyer with a spare parts list that contains (1) part specifications and drawings on appropriate substrate (paper, blueprint, etc.) and on computer disk in a program format approved by Buyer, (2) Vendor-approved manufacturers for each part, and (3) a complete price list.
- (c) **Installation.** Unless otherwise agreed in writing by Buyer, upon receipt at Buyer's facility Vendor shall, at rates as agreed between the Parties: (1) provide Buyer with a suggested preventive maintenance plan, (2) send a qualified representative to install, ensure and document that such equipment or machinery performs to design specifications, and (3) provide adequate training of Buyer personnel to permit Buyer to safely and effectively operate the equipment or machinery. Vendor's representative will remain on-site at Buyer's facility until any and all problems have been resolved to Buyer's satisfaction and the equipment or machinery is functioning to the level of stated claims and specifications, as certified in writing by Vendor at Buyer's request. Vendor's representative shall provide whatever tools or equipment are necessary to ensure the foregoing.
- (d) **In Service.** Equipment or machinery shall only be considered "in service" and the warranty period effective upon final written acceptance by Buyer that such equipment or machinery meets Vendor's stated claims and specifications and is operating to Buyer's satisfaction.

24. **Export Control.** Vendor acknowledges that to the extent any products, software, or technical information to be provided to Buyer under an Order are subject to any export laws and regulations of the United States and/or any other jurisdiction, Vendor shall inform Buyer of the applicable export classification(s) in writing prior to performance of such Order.
25. **Use of Name.** Vendor shall not use the name, tradename or trademark of Buyer in a press release, advertising, customer list, publicity or other promotional or commercial activity without the prior written consent of Buyer.
26. **Flow-Down Provisions.** U.S. federal or other third party grants and contracts that are the source of funding provided by Buyer to Vendor for any Products or Services may require, as a condition of award and continued eligibility for such funding, that the Parties comply with additional contract provisions, including but not limited to certain clauses of the U.S. Federal Acquisitions Regulation, agency supplements, policy directives or other terms and conditions (“Flow-Down Provisions”) specific to the U.S. federal or other third party grant or contract. If Buyer is using U.S. federal or other third party funding to pay for Services or Products listed in an Order, Buyer shall have the right to include any applicable Flow-Down Provisions in each relevant Order, and Vendor shall comply with Flow-Down Provisions specified in the relevant Order, any attachments to that Order or other written instructions of Buyer and any attachment to these Terms and Conditions.
27. **Miscellaneous.** If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties hereto as nearly as may be possible. Notwithstanding the termination, completion, or expiry of the Order, all representations and warranties set out herein, all obligations relating to confidentiality, intellectual property, limitation of liability and indemnification, and any other provisions which by their nature are intended to survive, shall survive and continue to bind the Parties. Vendor shall not assign any interest in fulfilling an Order or subcontract any portion of its obligations hereunder or under any Order without the express, prior written consent of Buyer. No delay by or omission of either Party in exercising any right, power, privilege, or remedy shall impair such right, power, privilege, or remedy or be construed as a waiver thereof. The rights and remedies provided in these Terms and Conditions are cumulative and are not exclusive of other rights or remedies provided by law. These Terms and Conditions shall not be amended or changed in any manner except in writing signed by duly authorized representatives of Buyer and Vendor. The headings in these Terms and Conditions are inserted for the convenience of reference only and shall not affect the construction or interpretation hereof.