

## GENERAL TERMS OF PURCHASE

### 1. ACCEPTANCE AND AGREEMENT

This purchase order ("Order") shall be deemed accepted by Seller's commencement of performance, provision of services, shipment of products ("Services" and "Products"), or other indication of agreement, whichever occurs first, and shall constitute acceptance of this Order and all of its terms and conditions (the "Acceptance Date"). This Order constitutes the entire agreement between Continuum Global Solutions LLC and its affiliates ("Customer") and Seller and, except to the extent inconsistent with a separate agreement signed by the parties that expressly applies to the subject matter of this Order, this Order supersedes all other oral or written agreements, arrangements, representations and communications regarding its subject matter, including without limitation, quotations, proposals, or bids. Customer hereby objects to any terms proposed by Seller in Seller's quotation, invoice, proposal, bid, acceptance or acknowledgment of Customer's offer which add to, vary from, or conflict with the terms of this Order. Any such proposed terms shall not operate as a rejection of this offer but are deemed a material alteration, and this offer shall be deemed accepted by Seller without said additional, different or conflicting terms. If this Order is deemed under applicable law to be an acceptance of a prior offer by Seller, such acceptance is limited to and expressly conditioned on Seller's assent to the terms contained within this Order.

### 2. PRICE

The price of the Products shipped or Services performed against this Order shall be as indicated on the face of this Order, which is expressed in US dollars if not otherwise indicated (the "Price"). The Price is inclusive of all of Seller's costs (including labeling, packaging, taxes, duties, insurance and handling). If the Price is omitted from the Order, the Price shall be the lowest prevailing market price and in no event shall exceed the price paid for similar Products shipped or Services performed against preceding Orders between Seller and Customer. Seller hereby guarantees that the Price is Seller's best price to any customer for the

same or similar Products and/or Services and is competitive with any other seller's prices for similar products and services (the "Price Guarantee"). Customer may terminate this Order in whole or in part without liability if Seller breaches its Price Guarantee and shall have no obligation to pay any amount in excess of the Price Guarantee. Seller will keep appropriate records to demonstrate compliance with this Article 2.

### 3. INVOICING AND PAYMENT

Unless otherwise instructed by Customer in writing, Seller will invoice Customer upon Customer's receipt of the Products or completion of Seller's performance, whichever occurs later. Customer's payment of the invoice will be made only in accordance with the terms of this Order and shall not be deemed an acceptance of any terms and conditions proposed by Seller's documents. Upon request from Customer, Seller will invoice and accept payment in other currencies at prevailing currency exchange rates. Seller shall separately state on each applicable invoice (and not include them in the Price) any import duties or sales, use, value added, excise or similar tax. Seller shall not charge tax if Customer is exempt from such taxes and furnishes Seller with a certificate of exemption in a form reasonably acceptable to Seller. Customer will be responsible for any sales, use, VAT, or similar taxes, import duties or any other such assessment however designated. All payments due under this Order will be made without deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If Customer is required to deduct or withhold income or profits tax, Customer will pay the required amount to the relevant governmental authority; furnish Seller with evidence of all withholding tax payments paid by it on behalf of Seller which, to the extent permitted by law, will be in the name of Seller. Customer shall deliver to Seller all original tax receipts or certified copies or other documentation with respect to the payment of such taxes as Seller may reasonably request promptly after receipt from the relevant tax authority. Seller's invoice shall then be paid net of said withholding tax. Unless a different period

is indicated by Customer on the face of this Order, payment is due net sixty (60) calendar days from the date of Customer's receipt of Products, or from the date Customer receives an invoice, whichever occurs latest. If there is a dispute that is not resolved within that period, payment will be due ten (10) calendar days after the dispute is resolved and a corrected invoice is received. Customer shall have the right to apply any amounts owed by Seller to Customer under this or any other order or obligation to reduce any amounts payable by Customer to Seller under this or any other order or obligation. Title to all work, whether completed or in the course of construction and to all materials on account of which any payment has been made by Customer, shall be vested in Customer.

### 4. CONFIDENTIAL AND PROPRIETARY INFORMATION

Confidential Information means confidential or proprietary data or information disclosed by Customer to Seller in connection with this Order in oral or in written, graphic, machine recognizable, electronic, sample, or any other visually perceptible form. By way of example, pricing data, product specifications, prototypes, designs, and samples, testing processes and results, quality and manufacturing procedures and requirements, Customer information, software and related documentation, and the existence of this Order, and its terms and conditions are Confidential Information. In addition, all Customer information regarding product or technology roadmap, cost or price information, demand or volume information or financial projections shall be deemed Customer Confidential Information. Seller will: (i) maintain the confidentiality of Confidential Information and not disclose it to any third party; (ii) restrict disclosure of Confidential Information only to its employees, contract employees and third party contractors who have a "need to know" in order for the party to perform its obligations and exercise its rights under this Order, and who are bound to maintain the confidentiality of the Confidential Information by terms of nondisclosure no less restrictive than those contained herein; (iii) handle

Confidential Information with the highest degree of care; (iv) use Confidential Information only for the purpose of performing its obligations under this Order; and (v) promptly notify Customer upon discovery of any unauthorized use or disclosure of the Confidential Information and take all necessary steps to regain possession of the Confidential Information and prevent further unauthorized actions. Seller will not reverse engineer, de-compile, or disassemble any Confidential Information. Confidential Information is and at all times will remain the property of Customer. No use of any Confidential Information is permitted except as expressly provided herein, and no grant under any proprietary rights is hereby given or intended, including any license implied or otherwise. Upon receipt of Customer's written request, Seller will return to Customer all Confidential Information, along with all copies and portions thereof. Seller will not export or re-export, directly or indirectly, any of Confidential Information or Products to any country for which any applicable government, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining the license or approval. Seller's obligation to keep confidential and restrict the use of Confidential Information will survive five (5) years from the termination of this Order.

#### **5. OWNERSHIP OF PROPERTY, SPECIFICATIONS AND WORK PRODUCT**

Seller shall provide all labor, materials, tools, equipment, personnel, supervision, and facilities necessary to provide the Products or perform the Services described in this Order. All tools, equipment, dies, gauges, models, drawings, or other materials paid for or furnished by Customer to Seller ("Property") are, and will remain, the sole property of Customer. Customer will retain ownership of all specifications for the Products and Services ("Specifications") provided by Customer to Seller under this Order, including all modifications or enhancements made by Seller to such Specifications. Additionally, Seller agrees that all materials in whatever form prepared or produced by Seller under this Order ("Work Product") shall be considered a "work made for hire" under the copyright laws of the United States and are assigned to and shall become the sole

property of Customer. At Customer's request and expense, Seller shall execute all papers and provide reasonable assistance to Customer necessary to vest ownership in Customer of all such Work Product and modifications or enhancements to Specifications and to enable Customer to obtain Intellectual Property Rights in any such Work Product, and modifications or enhancements to Specifications. "Intellectual Property Rights" means any and all: (a) copyrights, trademarks, maskworks, and patents; (b) rights relating to innovations, know-how, trade secrets and Confidential Information (technical, and non-technical); (c) moral rights, author's rights, and rights of publicity; and (d) other industrial, proprietary and intellectual property related rights anywhere in the world, that exist as of the Acceptance Date or hereafter come into existence, and all renewals and extensions of the foregoing, regardless of whether or not such rights have been registered with the appropriate authorities in such jurisdictions in accordance with the relevant legislation. Seller's obligations as stated in this Article 5 will survive the termination of this Order.

#### **6. FEEDBACK**

Seller agrees that any feedback, suggestions or comments provided by Seller to Customer with respect to Customer products or Confidential Information provided by Customer ("Feedback") will be given entirely voluntarily, and grants to Customer the right to use, have used, disclose, reproduce, license, distribute, or exploit the Feedback for any purpose, entirely without obligation, payment or restriction on use or disclosure of any kind.

#### **7. PERFORMANCE**

Seller shall perform its obligations under this Order in strict accordance with the terms and conditions of all applicable schedules or specifications, drawings, documentation, Customer instruction books or service manuals. Seller agrees that, if directed to do so by Customer, it will use Customer's internet-based forecast sharing and collaboration system, the terms and conditions of which shall be incorporated into and made a part of, this Order. If Seller is required to access Customer computer resources, systems or facilities in order to perform Services, Seller agrees that, it

shall first execute and deliver to Customer, and shall cause any person performing such Services on Seller's behalf who may require such access to first execute and deliver to Customer, Customer's form of information protection and security/confidentiality agreement. Seller will safeguard all Property: (i) while it is in Seller's custody and control; (ii) be liable for any loss or damage to the Property; (iii) keep the Property free from all liens or charges of any type; (iv) use the Property only for Customer Products; and (v) return the Property to Customer upon request without further bond or action. Seller agrees to waive and hereby does waive any lien it may have in regard to the Property and to ensure that subcontractors do the same. At Customer's request, Seller will provide Customer information about, and participate in regular meetings with Customer to discuss, the status of outstanding deliverables, and any actual or potential issues that may arise related to Seller's performance under this Order. Seller may not sell, recycle or otherwise dispose of excess, obsolete, scrap, WIP, raw materials, or finished Products associated with this Order without Customer's permission. Seller will maintain all records related to the Products and this Order, as required by this Order, law, rule, or regulation.

#### **8. WARRANTIES**

Seller expressly represents and warrants that the Products are free of any condition that would pose a potential safety hazard and that: (i) for a period of sixty (60) months from the date of receipt by Customer, all Products and Services provided under this Order shall be merchantable, free from defects in design, material and workmanship, of the highest quality, and shall conform to the terms and conditions of all applicable schedules or specifications, drawings, documentation, Customer instruction books or service manuals, Customer test and quality standards, and industry standards; (ii) such Products and Services are fit and safe for the purpose intended by Customer; (iii) the Products provided under this Order are wholly new and contain new components and parts throughout; (iv) Seller has good and warrantable title to the Products, free and clear of any liens, encumbrances or other restrictions on use or distribution; (v) Seller on behalf of it and its licensors has all rights, licenses and full power and

authority to transfer title to or license copies of the Software (as defined in Article 9) furnished under this Order; (vi) Seller has no knowledge that the Products or Services infringe, misappropriate, or otherwise make unauthorized use of any Intellectual Property Rights of any third party; (vii) the Products and Services delivered under this Order do not infringe any Intellectual Property Rights; (viii) Seller has obtained all necessary rights under all Intellectual Property Rights of third parties necessary for the provision of Services, and the sale, use or other distribution of the Products supplied to Customer under this Order; (ix) the Products are appropriately labeled and packaged; (x) Services will be performed by qualified persons utilizing, if applicable, Customer parts or parts of equal quality, except for Services involving intrinsically safe equipment, for which only Customer parts shall be utilized; (xi) Seller has obtained all necessary approvals, consents and authorizations to enter into this Order and to perform and carry out its obligations under this Order; (xii) the performance of Seller under this Order does not violate any provision of any bylaw, charter, regulation, or any other governing authority of Seller and has been duly authorized by all necessary partnership or corporate action. In addition to the foregoing warranties, Seller provides and Customer is entitled to all warranties that arise by implication or operation of law, and Seller shall extend all warranties it receives from its vendors to Customer. All warranties run to Customer, and through Customer, to its customers. All warranties survive any inspection, acceptance, payment, or resale by Customer. Customer may, upon reasonable advance notice, inspect Seller's facilities, equipment, materials, records, and the Products that pertain to this Order, and may audit for compliance with this Order. Upon the fulfillment, expiration or termination of this Order, at Customer's request, Seller will transfer all records that pertain to this Order to Customer, but retain a copy of any records required to be kept by law, rule, regulation, or in connection with any legal process or proceeding, subject at all times to applicable confidentiality obligations.

## 9. ADDITIONAL WARRANTIES FOR SOFTWARE

For purposes of this Order, the term "Software" means: (i) software or

firmware embedded in Products; (ii) free-standing software, provided by Seller to Customer in either object code or source code, that works with, or runs on, Products; and (iii) documentation relating to the software or firmware provided by Seller to Customer. To the extent Software is contained in or associated with the Products, Seller represents and warrants that: (A) Software is free from (i) defects that result in malfunctions, (ii) self-destruction mechanisms, (iii) illicit code, or (iv) any copy protection scheme that interferes with Customer's ability to exercise its rights and privileges under this Order; (B) the Products have no vulnerabilities that allow unauthorized destruction of, access to or control of (i) the Products, (ii) other elements of a system that includes the Products, or (iii) any information residing on the Products or other elements of a system that includes the Products ("Security Vulnerabilities"); (C) Seller complies with general industry practices regarding the detection and correction of Security Vulnerabilities and that, (i) Seller will promptly notify Customer if it becomes aware of a Security Vulnerability with a reasonable likelihood of exploitation, and (ii) this notice will include a description of the nature of the Security Vulnerability, an analysis of the threats created by the Security Vulnerability and Seller's proposed mitigation plan; (D) Seller shall not, without Customer's written consent, incorporate into the Products or Software any software that contains, or is derived in any manner (in whole or in part) from, (i) any software that is distributed as free software, open source software or similar licensing or distribution models, (ii) any software that requires as a condition of use, modification and/or distribution of such software that such software (a) be disclosed or distributed in source code form, (b) be licensed for the purpose of making derivative works, or (c) be redistributable at no charge ("Publicly Available Software"); (E) any Publicly Available Software (i) is contained solely within specific package/components of the Software, (ii) does not have any portion residing outside of the Software and will not be available, intermingled, or dispersed within or outside the Software at any time or in any way; (F) Seller shall comply with the instructions of the Open Source Initiative (<http://www.opensource.org>) and will promptly report to Customer, in writing, any deviation therefrom; (G) Seller has processes and precautions necessary to prevent any risk that any Customer

software will be provided to, or become subject to an obligation to be provided to the open source community or otherwise into the public domain, as a result of Seller's activities pursuant to this Order.

## 10. REMEDIES

In addition to other remedies provided herein and those available at law or in equity, if Seller defaults on or breaches its obligations under any provision of this Order or delivers Products that are late, defective, non-conforming, or fail to comply with the warranties in this Order, whether or not apparent upon receipt, Seller shall promptly and at its sole expense, and at Customer's option: (i) re-perform, repair, or replace the affected Products, or provide a refund for the affected Products; (ii) expedite late deliveries and performance; (iii) pay for all related costs, including, without limitation, inspection, sorting inventories to isolate affected Products, reworking, retesting, storage, shipping, repackaging, removing, reinstalling, expediting, and replacing the affected Products; (iv) pay to Customer all costs of investigating, recovering, recalling, repairing or replacing products that incorporate or are otherwise potentially impacted by the affected Products; and (v) pay all other costs, charges, fines, penalties, or damages incurred by Customer or its customers related to the affected Products. Seller agrees to immediately re-perform, at Seller's cost and expense, any Services that fail to meet Customer's requirements or are not in compliance with the warranties in this Order. In addition, Seller shall be liable for all direct, indirect, incidental and consequential harm to Customer and its customers arising from any breach of any provision of this Order, including, without limitation, all costs, damages, losses and expenses incurred by Customer or its customers ("Damages"). Damages include without limitation, the cost to procure replacement goods, all costs of repair, inspection, storage, shipping, reinstallation, expediting, product recalls, stop of line, plant closures, lost profits, damage to goodwill and reputation, customer concessions or penalties, and any injury to person or property. In addition, Customer may cancel this and any other Order for the affected Product or Service or for other potentially affected products or services, without liability of any kind, including but not limited to liability for raw materials, work-in-process, or finished Products Seller may

have on-hand for the Order. Seller further agrees that Customer's rights and remedies, including, without limitation, the total amount and type of Damages Customer may recover, and the time in which Customer must assert a claim or file a lawsuit, shall not be reduced in any way. Customer shall have the right to seek and Seller agrees that Customer is entitled to receive specific performance by Seller of its obligations under this Article 10.

## 11. LICENSE GRANTS

Unless superseded by a separate, written license agreement between the parties, Seller grants Customer a perpetual, irrevocable, worldwide, nonexclusive, fully paid-up license, with right of sublicense, under Seller's Intellectual Property Rights to use, make, modify, copy, reproduce in copies, demonstrate, display, create derivative works of, and/or distribute copies of the Software; to assemble, edit, merge, translate, or compile additional copies or distribute embedded and free-standing copies of the Software, including derivative works; and to support and maintain the Software. Seller also grants to Customer a perpetual, irrevocable, worldwide, nonexclusive, royalty free and fully paid up license, with right of sublicense, under Seller's Intellectual Property Rights to: (i) use, make or have made, demonstrate or have demonstrated, market or have marketed, import, offer or have offered for sale, sell or have sold, license or have licensed, and otherwise distribute or have distributed, Customer's products into which the Products and/or Software have been incorporated; and (ii) provide to Customer's customers for these products the right to use the Software, which right will survive any termination of this Order. At Customer's request, Seller agrees to deposit with Customer's escrow agent ("Escrow Agent"), at the sole expense of Customer, the most recent source code of the Software ("Source Code") under the terms of a Source Code Escrow Agreement acceptable to Customer, which Source Code may be withdrawn by Customer upon any of the events set out in Article 13 of this Order or if Seller fails or refuses to support Products or Software. Customer shall be entitled to an injunction for specific performance of such obligation in the event Seller's representative, including any trustee in bankruptcy, refuses to comply with the foregoing obligations. In the event of

bankruptcy, the parties acknowledge that Customer shall be entitled to the full protection provided to licensees of Intellectual Property Rights specified in 11 U.S.C. § 365. Customer may, at its sole discretion, reproduce in whole or in part, any copyright notices or other proprietary legends belonging to Seller on any copies that Customer makes of the Software, including modified copies of the Software. Title to the copyright for Software will remain in and be the sole and exclusive property of Seller and its licensors. Customer may allow third parties to exercise the rights and licenses granted in this Article 11 for the benefit of Customer or its customers. Seller understands that one or more secondary sellers to Customer of products the same or similar to Seller's Products will be necessary, and Seller hereby covenants and agrees not to assert, bring, cause to be brought or threaten to bring against Customer or its customers (collectively, "Customer Parties") any claim, action or proceeding alleging that a Customer Party's purchasing, having made, using, offering for sale, selling, providing or otherwise distributing such products or Customer products incorporating them infringes any of Seller's Intellectual Property Rights or seek to enjoin the supply of such products by secondary sellers to or on behalf of Customer. The obligations of Seller in this Article 11 will survive termination of this Order and will apply to any such products of secondary sellers purchased by or supplied to Customer prior to or during the Seller's performance of obligations under this Order. This covenant will be binding on Seller's successors in interest to, all transferees or assignees of and any exclusive licensee of any Seller's Intellectual Property Rights. Seller agrees to inform all successors in interest, transferees, assignees or licensees of this covenant and to obtain their written consent to be bound by this covenant. No license, implied or express, under any Customer Intellectual Property Rights, including any license to use, exercise, or incorporate any Customer Intellectual Property Rights in the Products or any other products, is conveyed to Seller by Customer unless expressly conveyed in this Order or other agreement executed by Seller and Customer.

## 12. CUSTOMER TRADEMARKS

All trademarks, service marks, insignia, symbols, or decorative designs, and

trade names and other symbols and devices associated with Customer and Customer's products and services ("Customer Marks") are the sole property of Customer. Seller acknowledges and agrees that it: (i) has no right to use the Customer Marks without Customer's prior written consent; (ii) will take no action which might derogate from Customer's rights in, ownership of, or the goodwill associated with such Customer Marks; and (iii) will remove all Customer Marks from any Products not purchased by Customer.

## 13. TERMINATION

Customer may terminate all or any part of this Order immediately at any time for its convenience, without liability to Seller, by delivering written notice to Seller. Failure to comply with any provision of this Order, late delivery of Products or Services, provision of Products or Services that fail to meet Customer's requirements, deliveries of Products which are defective or which do not conform to this Order, failure to perform as agreed or to provide reasonable assurances of future performance if requested, appointment of a receiver, or an assignee for the benefit of creditors, insolvency or inability to pay debts as they become due, except as may be prohibited by applicable bankruptcy laws, shall entitle Customer to terminate this Order without liability. In such event, Customer shall be entitled to seek any or all remedies provided in this Order and those provided at law or in equity. Customer shall also have the right to seek and Seller agrees that Customer is entitled to receive specific performance by Seller of its obligations under this Order. From the Acceptance Date, Seller may not revoke its acceptance or otherwise refuse to fully perform its obligations under this Order. The representations, warranties, indemnities and other obligations that explicitly survive, or by their nature or context are intended to survive, termination of this Order shall survive. Seller may terminate this Order only based on Customer's material breach of an obligation under this Order and only after providing Customer with thirty (30) days advance written notice and a reasonable opportunity to cure any such breach.

## 14. INDEMNIFICATION

Seller hereby agrees to indemnify, hold harmless and fully defend Customer and all of its past, present, and future affiliates, customers, officers, directors, employees, contractors, and agents ("Indemnified Parties") from and against any and all claims, damages, expenses, suits, losses, or liabilities of any type, under any theory of liability or recovery, ("Claims") arising from or related to (i) any death, injury, or property damage caused by acts or omissions of Seller, its officers, directors, employees, contractors, or agents ("Indemnifying Parties") arising from or connected with the performance of this Order; (ii) Seller's or Seller's contractors', representatives' or agents' acts or omissions under this Order, including without limitation the delivery of Products and Services that are defective, non-conforming, or that otherwise fail to comply with Seller's warranties as set forth in this Order; or (iii) any actual or claimed infringement or misappropriation of any Intellectual Property Rights. Seller will reimburse the Indemnified Parties for all losses, costs, and expenses incurred as a result of such Claims, including court costs and attorneys' fees. In the case of a Claim of infringement of Intellectual Property Rights, if the use of any portion of the Products provided hereunder is enjoined as a result of any suit, then Seller, at no expense to Customer and its customers, will either procure the right for Customer and its customers to continue using the Products or replace or modify the Products so that they become non-infringing and are of equivalent or superior functionality as determined by Customer in its sole discretion. If neither of the foregoing alternatives is available on terms which are acceptable to Customer, Customer may return all or any part of the Products, at Customer's sole option, for a full refund of the total amounts paid for the affected Products and assert all other remedies available to Customer under this Order or under controlling law. Seller agrees that its obligations as set forth in this Article 14 will survive the fulfillment, termination, cancellation, or expiration of this Order. Seller will not enter into any settlement order that affects any Indemnified Parties without Customer's prior written consent. Customer may, at its sole expense, actively participate in any suit or proceeding, through its own counsel and at Seller's expense. Customer shall not have an obligation to indemnify Seller under any circumstances.

## **15. CHANGES**

Seller will not make changes to Products or to the manufacturing, testing, or quality processes, the bill of materials, materials, design, tools, sources of raw materials, or to locations used to manufacture, assemble, or package the Products without Customer's prior written approval. Any unauthorized change of any type whatsoever shall constitute a material breach of Seller's obligations under this Order. Customer may request changes at any time for its convenience upon written notice to Seller. Seller will implement the changes and this Order will be deemed amended to incorporate the changes. Provided, however, if the requested changes will increase or decrease the cost of performance or the time required to perform, Seller will advise Customer in writing within thirty (30) days of Customer's change request, and Seller will not implement the change until Customer gives Seller written authorization to do so. Provided Customer accepts in writing any variation in Price given in accordance with this clause, or any alteration to the delivery or performance required, Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Order.

## **16. INSPECTION AND QUALITY**

Seller's and its supply chain's facilities, equipment, materials, records, and the Products and Services purchased and to be purchased under this Order are subject to Customer's audit, inspection, and acceptance. Payment for the Products shipped and Services performed shall not constitute acceptance. Products and Services shall only be deemed accepted when they have actually been counted, inspected, and tested by Customer and found to be in conformance with this Order. Customer will have a reasonable opportunity to inspect Products. Seller promptly will issue a return material authorization ("RMA") to Customer for non-conforming Products. Title to Products designated for return by Customer will immediately revert to Seller. Upon receipt, Seller promptly will evaluate the Products to determine non-conformance and its root cause, and will provide Customer with an analysis of the nonconforming Products. Neither Seller's failure to issue an RMA nor Customer's return of nonconforming Products will

affect Customer's other rights and remedies under this Order or applicable law, including, without limitation, the right to reject or revoke acceptance of non-conforming Products. Seller will pay all freight expenses for the return of non-conforming Products. Seller shall meet Customer's quality standards and adhere to Customer-required quality processes on an ongoing basis, with the objective of delivering zero defects for all Products. Any failure to fully comply with the specifications, satisfy Customer's test and quality standards or processes, meet applicable industry quality and performance standards, comply with all applicable legal and regulatory requirements, and provide goods or services that are merchantable and fit for the purpose intended by Customer shall constitute a material breach of Seller's obligations under this Order. Products rejected and/or Products supplied in excess of those ordered or delivered in advance of the delivery schedule may, in addition to Customer's other rights, be returned to Seller at its expense, including all expenses of unpacking, examining, re-packing and reshipping. Nothing contained in this Order shall relieve Seller from its obligation to ensure that proper testing, inspection and quality control is performed.

## **17. PACKING, DELIVERY AND SHIPMENT**

All Products shall be packed and shipped in accordance with instructions or specifications contained in this Order or provided by Customer. In the absence of any such instructions, Seller shall comply with best commercial practices to ensure safe arrival at destination at the lowest transportation cost. TIME IS OF THE ESSENCE ON THIS ORDER. If Seller fails to timely perform or deliver, Seller shall reimburse Customer, at Customer's option, for (i) all Damages incurred by Customer as a result of late delivery or performance, or (ii) liquidated damages in the amount of 1% of the price of the delayed delivery or performance for each calendar day of delay, computed from the due date without grace period. In addition, Customer shall be entitled to terminate, without liability, this Order as to Products not yet shipped or Services not yet performed, by written notice effective upon receipt by Seller and purchase substitute Products or Services elsewhere and charge Seller any Damages incurred. In order to comply with Customer's required delivery date it

becomes necessary to expedite this Order, Seller shall pay all costs of expediting. Unless otherwise stated on the face of this Order, the delivery term for all deliveries under this Order is "FCA delivery point stated in this Order (Incoterms 2000)". If no delivery point is stated in this Order, the delivery term is "FCA closest airport to Seller's factory (Incoterms 2000)." Seller is responsible for loss or damage caused by Seller and discovered after transfer of title. No charge will be allowed for packing, labeling, commissions, import duties, storage, crating, express handling or travel, unless specifically indicated on this Order or under a mutually agreed separate logistics support program.

## **18. INSURANCE**

Seller shall (i) maintain statutory Worker's Compensation, Employer's Liability, Broad Form Commercial General Liability, and Business Automobile Liability Insurance on behalf of Seller and its subcontractors, and Contractual Liability Insurance for liability under this Order, in each instance of at least \$1,000,000 (U.S.) combined single limit; (ii) maintain Umbrella / Excess Liability Insurance of \$5,000,000 (U.S.) per occurrence; (iii) name Customer as an additional insured and, under the Commercial General Liability policy, include a cross-liability endorsement; (iv) provide a waiver of subrogation in favor of Customer under the Workers Compensation and Employers' Liability policies; (v) cause its insurance to be designated as primary and provide for thirty (30) days' minimum prior notice of amendment or cancellation to Customer; (vi) procure all required insurance from a locally licensed insurance provider acceptable to Customer; and (vii) require its supply chain to maintain, at a minimum, the same coverage and limits required of Seller. Seller shall provide evidence that it has procured the required insurance if Customer asks for such evidence. Customer's failure to ask for such evidence or Seller's failure to provide it shall in no way limit or waive Seller's obligations to procure insurance. Nothing contained in these insurance requirements will be deemed to limit or expand the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policies. Nothing contained within this provision will affect and/or alter the application of any other

provision contained with this Order. Deductibles or self-insured retentions must not exceed \$50,000 unless declared to and approved by Customer prior to the date of this Order. The deductible and/or self-insured retention of the policies will not limit or apply to Seller's liability to Customer and will be the sole responsibility of Seller. Customer shall have no obligation to procure or otherwise maintain any insurance covering Seller or the Products.

## **19. COMPLIANCE WITH LAWS**

Seller, on behalf of itself and its supply chain, warrants that all Products and Services supplied pursuant to this Order will have been performed, produced and supplied in compliance with all applicable federal, state and local laws, orders, rules and regulations, including but not limited to applicable rules and regulations of the U.S. Federal Communication Commission (FCC); the U.S. Occupational Safety and Health Administration (OSHA) and all applicable jurisdictions' rules and regulation concerning freedom of association, wages and working hours, safety and health, anti-discrimination, data privacy and humane treatment of workers. Seller shall have an affirmative duty to immediately correct any non-compliance and fully defend and indemnify Customer against any liability for Damages caused by any non-compliance with this provision. If a government contract number appears on the face of this Order, Seller agrees to comply with the applicable terms and conditions of that government contract and with any other laws and requirements as instructed by Customer, and Presidential directives or executive orders to the extent that they apply to the subject matter of this Order.

## **20. ETHICAL CONDUCT, ANTICORRUPTION AND UNFAIR BUSINESS PRACTICES**

Customer will not do business with any entity or person where Customer believes that payoffs or similar improper or unethical practices are involved. Customer expects its sellers to abide by this policy and not to have a relationship with another entity or person, or engage in any activity that results or may result in a conflict of interest, or embarrassment to Customer, or harm to Customer's reputation. Seller agrees to perform the Services and provide the Products

hereunder with the highest ethical standards. Seller will: (i) maintain transparency and accuracy in corporate record keeping; (ii) act lawfully and with integrity in handling competitive data, proprietary information and other intellectual property; and (iii) comply with legal requirements regarding fair competition and antitrust, and accurate and truthful marketing. Seller will not engage in corrupt practices, including public or private bribery or kickbacks. Customer is committed to operating ethically around the world.

## **21. ANTIDISCRIMINATION AND HUMANE TREATMENT OF WORKERS**

Seller will employ workers on the basis of their ability to do the job and not on the basis of their personal characteristics or beliefs. Seller will assure that Products (including parts) will not be produced, manufactured, mined, or assembled with the use of forced, prison, or indentured labor, including debt bondage, or with the use of illegal child labor in violation of International Labor Conventions for minimum age (ILO-C138) and child labor (ILO-C182). If Seller recruits contract workers, Seller will pay agency recruitment commissions, will not require workers to remain in employment for any period of time against their will, and will not impose any early termination penalties on workers. If Seller provides housing or eating facilities, Seller will assure the facilities are operated and maintained in a safe, sanitary and dignified manner. Seller will operate safe, healthy and fair working environments, including managing operations so levels of overtime do not create inhumane working conditions. Seller will pay workers at least the minimum legal wage, or where no wage laws exist, the local industry standard. Seller will assure that workers are free to join, or refrain from joining, associations of their own choosing, unless otherwise prohibited by law. Seller will not routinely require workers to work in excess of six (6) consecutive days without a rest day.

## **22. MATERIAL SAFETY DATA SHEETS/ENVIRONMENTAL PROTECTION**

Seller will electronically provide material safety data sheets, chemical safety data sheets, or equivalent documentation for all chemicals sold to Customer under this Order. For all chemicals supplied or imported into the United States, Seller

will certify that the chemicals are listed on the Toxic Substances Control Act, 15 USCS § 2601, et. seq., chemical inventory, or are subject to an exemption specified in the material safety data sheets. Seller will implement a functioning environmental management system in accordance with ISO 14001 or equivalent. Third-party registration is recommended but not required. Seller certifies that Products and their parts do not contain and are not manufactured with a process that uses any Class I ozone-depleting substances (as identified in 40 CFR Part 82 Appendix A to Subpart A, or as subsequently identified by the U.S. Environmental Protection Agency as Class I ozone-depleting substances). For Products imported into the United States, Seller will provide Customer with a completed and signed ODS Certification Questionnaire. For Products used as parts for Customer products, including the packaging used with such products and any manuals that accompany such products in the ordinary course, Seller will provide material disclosure or certification in the form required by Customer.

### **23. IMPORT/CUSTOMS**

Seller must comply with all import and customs laws, regulations and administrative determinations of the importing country. Seller must comply with the security criteria of any supply chain security government program of the importing country. If Seller is providing Products to and/or Services to support delivery to the U.S., Seller must comply with the security criteria of the U.S. Customs and Border Protection's Customs-Trade Partnership against Terrorism (C-TPAT) Program (available on <http://www.cbp.gov>). If Seller is the exporter of record, Seller must obtain all export authorizations from the United States government or other governments that may be required to lawfully make such shipments. Seller agrees to defend, hold harmless and indemnify Customer, its directors, officers and employees against all losses, claims, penalties, judgments, liabilities and expenses which any of them may pay or incur arising out of this Order, including but not limited to all representations made by Seller with respect to documentation or other Customs or Governmental requirements with regard to entry requirements, classification, valuation,

preferential treatment, duty drawback or trade terms (INCOTERMS).

### **24. EEO COMPLIANCE REPORTS/DIVERSITY/UTILIZATION OF SMALL BUSINESSES**

If applicable, Seller will comply with the provisions of FAR 52.222-21, 52.222-26, 52.222-35, and 52.222-36 pertaining to Segregated Facilities, Equal Opportunity, Equal Opportunity for Veterans, and Affirmative Action for Workers with Disabilities. If applicable, Seller will maintain, at each establishment, affirmative action programs required by the rules of the U.S. Secretary of Labor (41 CFR 60-1 and 60-2). If Seller is located in the United States or is supplying Products to Customer locations based in the United States: (a) Seller will track and report to Customer its supply chain's spend with minority-owned, women-owned and disabled veteran-owned business enterprises located in the United States; (b) Seller and Customer will agree on a goal for that spend, based upon a percentage of Seller's total gross revenues under this Order; (c) Seller will submit quarterly progress reports, in a format designated by Customer, by the twenty-fifth day of the month following the end of each calendar quarter, and (d) Seller will send all reports to Customer Supplier Diversity Group, 900 Broken Sound Parkway, Boca Raton, FL 33486. If applicable, Seller will comply with the provisions of U.S. Federal Acquisition Regulation (FAR) 52.219-8 pertaining to Utilization of Small Business Concerns, as well as any other state and local, small and other business utilization laws.

### **25. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

The parties agree and acknowledge that, regardless of the location from which this Order is issued, events related to this transaction, such as order fulfillment, logistics, design, manufacturing, quality control, establishing delivery schedules and quantities, shipments, payment, and other events may occur in various locations around the world. The parties further agree and acknowledge that the transaction contemplated by this Order may involve and inure to the benefit of entities in addition to the entity issuing this Order, including, without limitation, Customer and its affiliates, subsidiaries, divisions, and related entities, or their respective customers or subcontractors.

Seller agrees and acknowledges that the party issuing this Order might not use, consume, or resell the goods or services purchased hereunder and that any breach of Seller's obligations under this Order will cause harm to the entity issuing this Order and to other entities, including, without limitation, Customer, its affiliates, subsidiaries, divisions, and related entities, and their respective customers or subcontractors, and any entity that Customer expected or intended to use, consume, or resell the goods or services at issue. The parties therefore agree that this transaction and that this Order, all transactions and conduct related to this Order, and all disputes and causes of action between the parties related thereto (in contract, warranty, tort, strict liability, by statute, regulation or otherwise) shall be governed exclusively by and construed in accordance with the laws of New York, without regard to its conflicts of laws provisions. The parties specifically disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. Unless otherwise agreed to in a writing signed by both parties, the parties agree that the sole and exclusive venue for any disputes, claims, or causes of action, whether legal or equitable, shall be in the state or federal courts within the geographic bounds of the United States District Court for the Southern District of New York sitting in Manhattan. If any applicable law affords greater rights or protections to Customer than those specified in this Order, Customer shall be entitled to avail itself of any such greater rights or protections. If one or more provisions of this Order is held to be unenforceable under applicable law, the unenforceable portion will not affect any other provision of this Order and this Order will be construed as if the unenforceable provision was not present and at Customer's request, Seller must negotiate in good faith to replace the unenforceable provision with an enforceable provision with effect nearest to that of the provision being replaced. Seller must formally initiate any legal action or claim against Customer for non-payment within six (6) months of the date on which the payment was due. Failure to do so shall constitute a knowing and intentional waiver of all claims for non-payment, and Seller shall be estopped from pursuing any claim for non-payment more than six (6) months after the date on which the alleged payment was due. In addition, Seller must formally initiate

any legal action or claim against Customer for an alleged breach of any obligation related to or arising out of this Order within one (1) year of the date of the alleged breach or be forever barred from pursuing such action or claim. Prior to initiating a lawsuit or other formal legal action, Customer and Seller shall first attempt to settle any claim or controversy arising out of this Order through consultation and negotiation by the following process. The dispute will be submitted in writing to a panel of two (2) senior executives from each of Customer and Seller for resolution. If the executives are unable to resolve the dispute within fifteen (15) days, the parties shall mediate their dispute, the cost of which will be shared equally by the parties, except that each party will pay its own attorney's fees. Within fifteen (15) days after written notice demanding mediation, the parties will choose a mutually acceptable mediator. Neither party will unreasonably withhold consent to the selection of the mediator. Unless otherwise agreed in a writing signed by both parties, the mediation shall be conducted in Los Angeles, CA. If the dispute cannot be resolved through mediation within forty-five (45) days, either party may submit the dispute to the United States District Court for the Southern District of New York sitting in Manhattan. Use of any dispute resolution procedure will not be construed under the doctrines of laches, waiver, or estoppel to adversely affect the rights of either party. Except as set forth herein, Customer's right to pursue its claims in court and to proceed before a jury shall not be limited, and the time in which to file such lawsuits shall not be reduced. Nothing herein prevents either party from resorting directly to judicial proceedings if the dispute is with respect to intellectual property rights, or interim relief from a court is necessary to prevent serious and irreparable injury to a party or others. Seller shall continue to perform its obligations under this Order during the pendency of any dispute.

## 26. MISCELLANEOUS

Seller will not issue a press release or make any other disclosure regarding this Order, or about Customer or Customer's business generally, without Customer's prior written consent. Seller may not assign this Order or any of its rights or obligations hereunder, or subcontract any of its obligations under this Order, without the prior written approval of

Customer. Any attempted assignment, delegation or transfer without the necessary approval will be void. Customer may assign its rights or obligations under this Order, in whole or in part, without the need for Seller's approval, in whole or in part. Seller retains responsibility for all Services subcontracted hereunder and will indemnify Customer against any liability for Damages caused by the acts or omissions of Seller's subcontractors. UNDER NO CIRCUMSTANCES SHALL CUSTOMER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS. CUSTOMER'S TOTAL LIABILITY FOR DAMAGES UNDER THIS ORDER SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM. Any notice, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if mailed by registered or certified mail, postage prepaid, or delivered by overnight courier service with tracking capabilities to the respective addresses of the parties set forth in this Order (or such other addresses a party may designate by ten (10) days prior written notice. This Order and any documents attached to or referred to on this Order constitute the entire agreement between the parties and can only be modified in a writing signed by authorized representatives of both parties. Seller is an independent contractor in the performance of its obligations under this Order, and Customer is to have no control over the methods and means Seller uses to fulfill its obligations under this Order. Neither Seller nor its employees shall be considered employees of Customer or entitled to participate in any Customer employee benefits or plans of any kind. For a period of one (1) year after the Acceptance Date, Seller shall not actively recruit, induce, or solicit for hire or employment, whether directly or indirectly, any Customer personnel associated with this Order. Seller agrees that Customer has the right to set off any amount owed by Seller to Customer, whether arising out of this Order or any other transaction with Seller, against any amount due or to become due to Seller under this Order or any other transaction with Seller. Customer's failure to enforce or insist on performance of any of the terms or conditions in this Order shall not

operate as a waiver of that or any other right.