



CREATION TECHNOLOGIES POLICY

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Creation Technologies Standard Purchase Order Terms and Conditions

1. Definitions. As used herein, the following terms have the meanings indicated:

- (a) **Affiliate:** means any entity that directly or indirectly controls, is controlled by, or is under common control with the Buyer. "Control", for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity.
- (b) **Buyer:** means Creation Technologies Inc., or any of its Subsidiaries or Affiliates, as applicable, entering into a transaction referencing an Order, or these Terms and Conditions.
- (c) **Items:** means goods and/or services provided or sold to Buyer from Seller pursuant to an Order.
- (d) **Order:** means a transmission of a purchase order; purchase order release specifying specific quantities, shipping dates or delivery dates; or purchase order revision by Buyer to Seller electronically through a computer network or otherwise, by mail of hard copy, or by such other means as may be agreed by Buyer and Seller in writing, containing information evidencing a commitment by Buyer to purchase Items from Seller.
- (e) **Seller:** means the entity indicated as supplier on the Order.
- (f) **Subsidiary:** means any entity in which Buyer owns 50% or more of the voting interests of the subject entity.
- (g) **Terms and Conditions:** mean these Creation Technologies Standard Purchase Order Terms and Conditions.

2. Acceptance of Purchase Order. Any Order referencing these Terms and Conditions is an offer by Buyer to Seller to purchase Items described by such Order. Seller shall be deemed to have agreed to and accepted the Order (including any specifications or requirements stated therein) and these Terms and Conditions when Seller:

- (a) returns correspondence indicating its intent to be bound by the Order; or
- (b) delivers to Buyer any of the Items ordered; or
- (c) renders for Buyer any of the services ordered (where Items ordered are, or include, services).

By accepting this Order, Seller also agrees to comply with the Supplier Expectations and Code of Conduct, and the Supplier Quality Requirements, located at <https://www.creationtech.com/suppliers/>. Any Items received by Buyer shall only be purchased upon the terms of the Order (including these Terms and Conditions), notwithstanding any terms contained in any quotation, acknowledgment, invoice, or other document issued by Seller, or Buyer's act of accepting or paying for any shipment or any other act. Seller's acceptance of any Order is unqualified, unconditional, and subject only to these Terms and Conditions and any of Buyer's terms specifically set forth on the Order or any signed documents referenced in Buyer's Order. Buyer expressly rejects any additional or different terms and conditions, including those which appear in any quotation, acceptance, shipping documentation, invoice or acknowledgment of Seller. Seller waives any right to contest the validity of these Terms and Conditions, or assert that they are void for any reason, upon Seller's acceptance of the Order(s) referencing these Terms and Conditions. Buyer reserves the right to update or modify these Terms and Conditions, at its sole discretion, from time to time, without prior notice to Seller. Seller hereby assumes an affirmative obligation to request and review Buyer's then current terms and conditions. Each Order shall be subject to the terms and conditions in effect on the date of the Order. Time is of the essence in the fulfillment of the Order because the Items are needed for products or services to be marketed by Buyer.

3. Change Orders. Buyer may, at any time, by a written order, suspend performance hereunder, increase or decrease the ordered quantities, change the scheduled delivery date, or make changes in applicable drawings, designs, or specifications, method of shipment or packing, and/or place of delivery. If the changes cause an increase in the cost or the time required by Seller for performance of the Order, and Seller so notifies Buyer before incurring any costs associated with the change, then Buyer, upon mutual agreement of the parties, may make an equitable adjustment to reflect such additional costs and/or time, and the Order will be modified accordingly. No claim by Seller for such an adjustment will be valid unless asserted within twenty (20) days





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from the date of receipt by Seller of the notification of change. Nothing in this paragraph is intended to excuse Seller from proceeding with this Order as changed or amended pending resolution of any equitable adjustment.

4. **Modification.** No agreement or understanding to modify or supplement any Order or these Terms and Conditions shall be binding upon the Buyer and Seller unless in writing and signed by authorized agents of the Buyer and Seller, which writing must specifically acknowledge that these Terms and Conditions are superseded by such agreement or understanding.

5. **Disputes.** These Terms and Conditions and any Order shall be governed by and construed under the laws of the State of Delaware without regard to such jurisdiction’s conflict of laws principles, except that Federal Acquisition Regulation (“FAR”) clauses, federal agency supplement clauses, and clauses substantially based on Federal procurement clauses or regulations shall be construed and interpreted according to the federal law of government contracts as articulated by the federal administrative and judicial bodies with jurisdiction over such matters, including the U.S. Government Accountability Office, the Boards of Contract Appeals, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of Federal Claims. These terms are the product of negotiations between the parties and any rules of construction relating to interpretation against the drafter of an agreement shall not apply and are expressly waived. The courts located in the State of Delaware and the United States shall have exclusive jurisdiction over the litigation of any dispute initiated by either party arising under or related to this contract, whether arising in contract, tort, or otherwise. Pending resolution of any such dispute by settlement or by final judgment, Seller shall proceed diligently with performance. Seller's performance shall be in accordance with Buyer's written instructions. Any references to the "Disputes" clause or dispute procedures in FAR or agency supplement clauses shall be deemed to refer to this clause.

6. **Termination.**
 - (a) Convenience. Buyer reserves the right to terminate or suspend any Order and/or any agreement governing or relating to an Order, in whole or in part, without cause, for Buyer’s convenience. Buyer may return, for any or no reason, at its expense, all or a portion of the Items to Seller at any time within 90 days following delivery, without any penalties or restocking fees. Upon notice by Buyer, Seller shall immediately stop all work and observe any instructions from Buyer as to works-in-process. In the event of a termination for convenience, Buyer will determine an equitable adjustment for work performed as of the notification date which shall be the sole remedy of the Seller for such termination for convenience.

 - (b) Default. Buyer may, by written notice, cancel any Order and/or any agreement governing or relating to an Order, in whole or in part, for breach or default if, in Buyer’s good-faith opinion, Seller has (i) failed to make delivery of the Items within the specified time, or any extension thereof; (ii) failed to replace or correct defective Items as directed by Buyer; (iii) failed to perform any of the provisions of the Order; (iv) failed to comply with any laws or regulations applicable to the Order or the terms of any FAR or agency supplement clause; or (v) failed to make progress under the Order so as to endanger performance in accordance with its terms. If an Order is canceled for Seller’s breach or default, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, substitute Items similar or substantially similar to those canceled, and Buyer shall not be limited to procuring the least expensive substitute. Without limiting Buyer’s remedies, Seller shall be liable for, and shall hold Buyer harmless and indemnify Buyer from, any damages occasioned by Seller’s breach or default, including any difference in the cost of obtaining substitute Items. Seller agrees to continue to perform any portion of this Order not canceled. If it is determined by a court of law or similar judicial body that Buyer has improperly terminated this contract for breach or default, such termination shall be deemed to be for Buyer’s convenience.

7. **Shipping Instructions.**
 - (a) Freight. Shipping will be as directed by Buyer on the Order, or if not specified, shall be DDP Buyer’s receiving facility INCOTERMS 2020. Title shall transfer when risk of loss passes to Buyer under the applicable mode of transport described in INCOTERMS 2020. If a carrier or method of shipment is used that is not specified in the Order or in these Terms and Conditions, without the advance written approval of Buyer, Seller shall be debited for any increase in the cost of the shipment.





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- (b) Packaging; Classification; Labeling. Seller shall ensure that all Items are properly described, classified, packaged, marked, and labeled and are in proper condition for transportation according to applicable regulations, industry standards and the requirements set out in the Supplier Quality Requirements. Seller shall include a certificate of conformance for the Items and a packing slip/invoice with all shipments, and all packing slips/invoices related to an Order must reflect Buyer's Order number and respective part numbers as shown on the Order. All Items shall be packaged in accordance with Buyer's instructions or, if none are specified, in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition.
- (c) Early/Late Shipments; Over-shipments. On shipments made earlier than the period specified on the Order, Buyer, at its option, may return the Items at Seller's expense and/or withhold payment until the otherwise applicable payment date. Buyer may return over-shipments to Seller at Seller's expense. In either case, if Buyer so returns Items, Seller's account shall be debited for the total amount of any invoices (including, but not limited to, shipping expenses and taxes) paid thereon. Buyer reserves the right to reject all or any part of any delivery that varies from the quantity authorized by Buyer for shipment. If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements, Seller shall, at Buyer's option, ship the Items as expeditiously as possible, and bear the costs of any shipment by premium methods or expedited shipments. Seller is required to meet or exceed an on-time delivery ("OTD") performance metric set out in the Supplier Quality Requirements. In the event that Seller's OTD is not met for two consecutive months then the aggregate purchase price of the affected Items that did not meet the monthly OTD performance target over the non-compliant period will be reduced, in the aggregate, by 3%. The Seller and the Buyer agree that this reduction is not a penalty but rather an adjustment of the associated purchase price for the affected Items based upon the parties' agreement of the economics of timely performance hereunder.
- (d) Shipments of Hazardous Materials. "Hazardous Materials" are defined for purposes of these Terms and Conditions as any substances regulated as contaminants, or as threats or potential threats to human health, safety, or the environment, by any Environmental Requirements (as herein defined). For all Items, Seller shall provide Buyer with the appropriate hazard classifications and warning messages that should appear on product labels as required by Environmental Requirements, and other laws and regulations of any applicable jurisdictions in which such Items may be transported or distributed. Seller shall develop, revise, update, and transmit an electronic copy of the current (prepared or revised not more than three years prior to the date of the relevant Order) material safety data sheets for all Items purchased, in the appropriate language and format that may be required by the laws of the jurisdictions in which the Items will be distributed. "Environmental Requirements" means all applicable United States and foreign (non-United States) federal, state, provincial, or local laws, regulations, ordinances, orders, or other pronouncements now in effect or as hereafter amended, that have the force or effect of law, relating to human health or safety and the protection, preservation, or remediation of the environment.

8. Warranties.

- (a) General. Seller, in addition to any express or implied warranties of additional scope given to Buyer by Seller, or implied by law, hereby warrants that Items furnished by Seller will be merchantable and fit for their intended use; free of any lien or other encumbrance of title; in full conformity with Buyer's instructions, specifications, drawings, and data, and Seller's samples or representations; and will be free from defects in design (to the extent that Seller furnishes the design), materials, and workmanship. To the extent items furnished contain software, Seller warrants that such software will not contain any malicious code, viruses, trojan horse, or other similar code designed to modify software or hardware, permit unauthorized access or negatively impact the integrity of data. All Seller warranties shall also apply to, and be transferable in full to, Buyer's customers and subsequent owners or operators of the Items or products incorporating the Items. Seller may not change any specifications, engineering processes, materials, or design without the prior written consent of Buyer.
- (b) Services. To the extent that the Items include services to Buyer, Seller warrants that it is properly licensed, certified, and trained (in compliance with the applicable standards set forth by relevant governmental or industry association authorities), and that such services will be provided with a degree of care and





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competence that, at minimum, accords with customary industry standards and practice. Seller agrees that this warranty shall survive acceptance of the Items.

(c) **Counterfeit Work.** Seller represents and warrants that no Items delivered to Buyer are Counterfeit Work. “Counterfeit Work” means Items, consisting of all Electronic Parts delivered under an Order that are in the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies) that are or contain Counterfeit Electronic Parts or suspect Counterfeit Electronic Parts. “Counterfeit Electronic Part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Electronic Parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. The Seller shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system per DFARS 252.246-7007, using as a guideline industry standards SAE AS5553 or SAE AS6081. Seller shall only purchase products to be delivered or incorporated as Items to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller represents and warrants that no Goods shall be acquired from non-franchised distributors or brokers unless approved in advance in writing by Buyer. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the Goods to the applicable OCM/OEM. Unless otherwise specifically authorized in writing by Buyer, Electronic Parts shall bear manufacturing date codes no older than two years from the shipment date. Seller agrees to flow down the foregoing requirements relating to Counterfeit Work to its suppliers and sub-suppliers. Seller shall be responsible for every claim for compensation in respect of damage or injury that is based on a breach of the foregoing warranties, and, at Buyer’s option, Seller shall handle any such claims or shall provide all reasonable assistance to Buyer in Buyer’s handling of such claims. Cost of shipping, rework, re-performance, inspection, repackaging, and any related cost, including labor, material, overhead and administrative costs, shall be paid by or reimbursed by Seller.

9. Product Regulations. Seller represents and warrants that Items provided pursuant to any Order shall comply with all applicable Product Regulations. The term “Product Regulations,” shall mean Environmental Requirements, labeling, marking, license, authorization, certification, country of origin, hazard communication, and other United States, non-United States, and international entity regulatory requirements applicable to the import, export, manufacture, use, sale, packaging, marking, or distribution of Items pursuant to an Order(s). Such Product Regulations specifically include, but are not limited to, California Health & Safety Code Section 25249.5 et seq. (including the warning regulations and requirements relating to Proposition 65); Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; European Union (“EU”) European Conformity marking requirements (including the declaration of conformity, Technical Construction File and user’s manual, where applicable); and the following EU Directives, which may apply to the Items: Registration, Evaluation and Authorization of Chemicals (REACH); Restriction on Hazardous Substances Directive 2002/95/EC (ROHS); Directive on Waste Electrical and Electronic Equipment; Directive on Classification, Packaging and Labeling of Dangerous Preparations; and Battery Directive, all as updated from time to time. Seller is solely responsible for the compliance of the Items with applicable Product Regulations. Seller agrees to provide to Buyer all information and documentation, including, but not limited to, supply chain data, necessary for Buyer to comply with all Product Regulations applicable to Buyer, or required by its customers.

10. Inspection. Items are subject to Buyer’s inspection, testing, and approval at all reasonable times, including work in process at Seller’s facility. Buyer, at its option, may reject or refuse acceptance of Items that do not meet the requirements of the Order or any applicable warranty. Items rejected or not accepted by Buyer shall be kept by or returned to Seller, at Seller’s expense and with Seller bearing any risk of loss in transit, and Seller agrees to refund to Buyer any payments (including, but not limited to, shipping expenses and taxes) made by Buyer for such Items. Payment by Buyer for any Items shall not be deemed an acceptance thereof. Acceptance of any Item shall not relieve Seller from any of its obligations, representations, or warranties hereunder or pursuant hereto. For greater certainty, Items are subject to the requirements set out in the Supplier Quality





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Requirements.

11. Price, Payment Terms, and Invoices. Seller represents that the price charged to Buyer for Items is at least as low as the price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in the Order, and that prices comply with applicable government laws and regulations in effect at the time of quotation, sale, and delivery. Seller agrees that any price reduction regarding any Item that is implemented prior to shipment or rendering of such Items shall be applied to the Order for all shipments or rendering of Items following such price reduction. Buyer may withhold payment until proof of the absence of any liens or encumbrances on the Items is given to Buyer, upon Buyer's request. Further, in addition to any other rights or remedies available to Buyer, Buyer may withhold any payment for non-delivery of Items, or delivery of nonconforming Items by Seller, its subcontractors, or its agents. Unless otherwise stated in the Order, Buyer shall pay Seller all undisputed amounts within the time frame set forth on the face of the Order after Buyer receives a correct invoice. Unless otherwise specified thereon, prices quoted on any Order include any and all charges for the Items ordered (including, but not limited to, any charges for boxing, packing, crating, cartage, taxes, or other additional charges).

Seller shall invoice in an electronic format specified by Buyer and to the electronic location provided by Buyer to Seller. In the event that any Items supplied by Seller pursuant to an Order are properly subject to VAT, and where Buyer has agreed in writing to pay such VAT, Buyer shall, in addition to the price payable for any Items, pay to Seller the appropriate amount of VAT provided that Seller has first issued to Buyer a compliant invoice in accordance with the provisions of the relevant VAT legislation. Where Buyer has agreed, in writing, to pay any taxes relating to any Order, applicable taxes shall be listed separately on the invoice. "VAT" means value added tax or goods and services tax or any other similar transaction tax, but not sales and use tax.

12. Property Furnished to Seller by Buyer. Except as specified below, all patterns, dies, molds, tools, models, jigs, core boxes, piece parts, samples, materials, drawings, specifications, test reports, technical material, advertising material, and any other personal property furnished to Seller by Buyer, or specifically paid for by Buyer for use in performance of an Order (collectively "Materials"), shall be and remain the property of Buyer, shall be subject to disposition according to Buyer's instruction, and shall be used only in filling Orders from Buyer. Seller shall not claim any rights of ownership in any of the Materials and shall not mortgage, encumber, transfer, dispose of, remove, or allow the removal of any of the Materials from Seller's facility to which such Materials are initially delivered, except as permitted or instructed by Buyer in writing. Seller shall take all necessary precautions and actions to preserve and maintain the Materials in good working condition, including performing scheduled calibration. Seller shall perform any further act and execute, acknowledge, and deliver any further documents that Buyer may reasonably request in order to protect Buyer's title to the Materials Seller shall bear the risk of any damage to or loss of such Materials while in the possession of or under the control of Seller, Seller's agents or in the event of any un- authorized transfer to a third-party. Any waste materials or byproducts generated by or resulting from operations on, use of, or processing of Materials furnished to Seller by Buyer shall be and remain the property of Seller, and Buyer shall have no responsibility in connection therewith. Any Materials furnished to Seller by Buyer for use in connection with an Order are provided in AS-IS condition, and Buyer makes no representations or warranties of any kind, including warranties relating to the condition of such Materials or their suitability for the purposes required by Seller. BUYER DISCLAIMS ANY AND ALL WARRANTIES ASSOCIATED WITH SUCH MATERIALS, INCLUDING, BUT NOT LIMITED TO, EXPRESS OR IMPLIED WARRANTIES AND WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. Confidential Information.

- (a) "Confidential Information" means all non-public information relating to Buyer's products or operations, the government or higher-tier contractors, or other subcontractors or suppliers, that is disclosed to Seller or created during the performance of any Order. Confidential Information includes all business or technical information that is disclosed to Seller, directly or indirectly, in writing, orally or visually, but does not include information that (a) was already in Seller's possession before its receipt from Buyer without restriction on its use or disclosure, (b) is or becomes available to the general public through no act or fault of Seller, or
- (b) is rightfully disclosed to Seller by a third party without restriction on its use or disclosure. In the event of any dispute arising out of this Section, Seller must demonstrate that one of the exceptions applies by clear





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and convincing evidence.

- (c) Buyer makes no representation or warranty, expressed or implied, as to the accuracy or completeness of any Confidential Information and will have no liability to Seller or any other person relating to Seller's or such person's use of any Confidential Information or any errors therein or omissions therefrom, except as may be expressly provided in the Order.
- (d) Seller shall take all necessary steps to protect Confidential Information with at least the same degree of care that Seller uses to protect its own confidential and proprietary information of like kind, but in no event less than reasonable care, Seller may need to protect Confidential Information with the security measures outlined in a FAR or agency supplement clause included in the Order.
- (e) Except as otherwise expressly agreed to in writing by Buyer, Seller shall not (i) use any Confidential Information except to conduct business with or o. If applicable n behalf of Buyer or (ii) disclose to any third party any Confidential Information, except to conduct business with or on behalf of Buyer, in which event Seller shall (A) first ensure that such third party has signed a written confidentiality agreement having terms at least as restrictive as the terms of this Section and (B) Buyer has consented in writing to such disclosure.
- (f) Notwithstanding the foregoing, Seller may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure, at Buyer's expense.
- (g) Nothing in this Section shall be construed to convey to Seller any right, title, interest, or copyright in any Confidential Information, or any license to use, sell, exploit, copy, or further develop any such Confidential Information.
- (h) Seller acknowledges that money damages is not a sufficient remedy for any breach or threatened breach of this Section by Seller, and that any breach causes Buyer irreparable harm. Therefore, in addition to all other remedies available at law (which Buyer does not waive by the exercise of any rights hereunder), Buyer shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and Seller hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.
- (i) Upon expiration or termination of an Order, or at any time upon Buyer's request, Seller shall promptly return or destroy any media containing any Confidential Information. At Buyer's request, Seller will certify in writing the return or destruction of all Confidential Information.

14. Intellectual Property Rights.

- (a) "Intellectual Property Rights" means patents, copyrights, know-how, trade secrets, trademarks, service marks, and industrial design rights. Buyer may have valuable Intellectual Property Rights in tooling, documents, information, and other materials provided to Seller.
- (b) Seller shall not acquire any right, title, or interest in any Intellectual Property Rights of Buyer. Seller may use the Intellectual Property Rights of Buyer only in the production and supply of Items to Buyer and any Subsidiary or Affiliate of Buyer as Buyer may approve in writing. Without limiting the foregoing, Seller agrees that Items manufactured based on Buyer's Confidential Information, including drawings or specifications and other Confidential Information, may not be used for Seller's own use or sold to third parties without Buyer's prior express written consent.
- (c) If an Order includes development, such as designing a unique product or modifying an existing Seller product, Seller grants to Buyer and its Subsidiaries and Affiliates a perpetual, worldwide, paid-up, royalty-free, non-exclusive license, with the right to sublicense, to make, have made, use, offer to sell, sell, export, and import all inventions or other results of Seller's development work that Seller conceives, develops, acquires, or reduces to practice in the course of performing work under the Order.





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- (d) Notwithstanding anything contained herein to the contrary, Buyer shall own all Intellectual Property Rights, including any inventions that are derived from, based on, or incorporate any Confidential Information or Intellectual Property Rights owned by or licensed to Buyer. Seller shall promptly disclose and assign, and hereby does assign, all of Seller’s right, title, and interest in such Intellectual Property Rights to Buyer or shall cause the same to be so assigned. Further, Seller shall execute, or cause to be executed, at Buyer’s expense, all applications, assignments, or other instruments that Buyer may deem necessary in connection with such Intellectual Property Rights.
- (e) Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license under each copyright that Seller owns, controls, or has a right to license to reproduce, prepare derivatives of, sublicense, distribute, perform, and display any software that is embedded or loaded in the Items (“Embedded Software”) in conjunction with the use or sale of the Items. In addition, Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license under each copyright that Seller owns, controls, or has a right to license in any work of authorship other than Embedded Software fixed in any tangible medium of expression delivered by Seller under an Order (including, without limitation, drawings, prints, manuals, and specifications) to reproduce, prepare derivatives of, distribute, perform, and display such work.
- (f) Seller warrants that the Items do not infringe on any Intellectual Property Rights or other proprietary rights of any third party because or on account of the use, offer to sell, sale, or import/export of any such Items alone or in combination with other Items or materials, except and solely to the extent that such Items are specifically constructed in exact accordance with Buyer’s designs or technical specifications. If any of the Items furnished to Buyer become the subject of an alleged infringement of any Intellectual Property Right of any third party, Seller shall, at its expense, either (i) procure for Buyer the right to continue using the Items; (ii) replace or modify the Items so that they are non-infringing; provided, however, that such replacement or modified Items must provide equal or greater functionality than the original Items; or (iii) if, after exhausting commercially reasonable efforts, Seller is unable to obtain either of the above two results, refund Buyer’s full purchase price.
- (g) Seller shall have no right to apply, and further shall not apply, to Items any trademark, logo, or trade dress owned by Buyer, (hereinafter “Buyer’s Trademarks”) without Buyer’s prior written consent. Notwithstanding the foregoing, if Buyer desires for any of Buyer’s Trademarks to be applied to an Item, the drawing or print that accompanies the Order shall so state. Alternatively, Seller may be separately authorized to apply any of Buyer’s Trademarks to an Item if such authorization is specifically set forth on the Order or otherwise authorized by Buyer in writing. Seller agrees and acknowledges that it shall obtain all design artwork for Buyer’s Trademarks from Buyer, that it will not recreate any design aspects of Buyer’s Trademarks, and that it will correctly apply Buyer’s Trademarks to an Item according to Buyer’s specification. If Seller cannot correctly apply Buyer’s Trademarks to an Item, it must reject the Order. Further, Seller shall only apply Buyer’s Trademarks to those Items specifically referenced in the Order. Seller shall acquire no right whatsoever in Buyer’s Trademarks, either express or implied, by estoppel or by implication, through its action in fulfilling an Order.
- (h) Nothing in this section prohibits either party from reporting possible violations of federal law or regulation to any governmental agency or entity, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation.
- (i) If an applicable FAR clause or agency supplement clause requires a different allocation of intellectual property rights in connection with a particular Order or prohibits the operation of this Section, the FAR or agency supplement clause will take precedence.

15. Indemnification and Limitation of Liability. To the fullest extent permitted by law, Seller agrees to indemnify, defend (with counsel reasonably satisfactory to Buyer), and hold harmless the Buyer Parties, from and against any and all demands, claims, causes of action, lawsuits, losses, liabilities, judgments, fines, penalties, costs, and expenses, including reasonable attorneys’ fees, expert fees, and court costs (individually or collectively “Claims”), arising by reason of the manufacture, sale, import, export, and/or use of the Items sold hereby, or in





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connection with or resulting from the acts or omissions of Seller in the performance of an Order. Seller's obligation to indemnify, defend, and hold harmless, as required herein, shall include, directly or indirectly, without limitation: (a) Claims related to infringement or violation of any Intellectual Property Rights or similar rights (including, without limitation, unfair competition); (b) Claims relating to injuries or damage to property or persons, including death or injury to employees or agents, or loss or damage to property, of Seller or a Buyer Party; (c) Claims on account of the acts and/or omissions of Seller, or those for whom Seller is legally responsible or who act on Seller's behalf or who are under its control or direction, including, without limitation, any of Seller's shareholders, directors, officers, employees, agents, subcontractors, and representatives; (d) Claims due to the breach of any warranty (including, without limitations, the warranties in Section 8) or defects of any kind in the material or workmanship of the Items, including the presence or incorporation of any Hazardous Materials in the Items, which are not expressly required by Buyer to be included in the Items; (e) Claims relating to, arising from, or connected with attachments, executions, and liens by creditors of Seller or others making claims arising from or related to Seller's furnishing of Items hereunder or performance of an Order; and (f) Claims relating to, or arising from Seller's non-compliance with Seller's obligations under this Order and these Terms and Conditions, including, without limitation, Seller's non-compliance with Laws, Environmental Requirements, Product Regulations, handling and transportation of Hazardous Materials, Health and Safety Requirements, and EU Product Liability Directive 1999/34/EC of the European Parliament and the Council of 10 May 1999, or any other applicable laws. To the fullest extent allowed by applicable law, Seller's agreement and duty to indemnify, defend, and hold harmless, as required herein, also includes the duty to do so from Claims, directly or indirectly, based on or arising from the negligence or fault of a Buyer Party, except Claims caused directly by the sole negligence or willful misconduct of Buyer Parties. This indemnity and the limitation on the Buyer Parties' liability set forth below shall survive any termination or fulfillment of an Order,

NOTWITHSTANDING ANYTHING ELSE IN AN ORDER OR OTHERWISE, THE BUYER PARTIES WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF AN ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOST DATA OR LOST PROFITS, EVEN IF ADVISED OR AWARE SUCH ARE POSSIBLE OR LIKELY

- (II) ANY AMOUNTS IN EXCESS OF THE AMOUNT PAID BY BUYER HEREUNDER FOR THE ITEMS, OR
- (III) ANY MATTER BEYOND THE BUYER'S REASONABLE CONTROL.

16. Insurance.

(a) Seller and its subcontractors and agents, if any, at their sole cost, shall maintain insurance coverage as described below with insurance companies acceptable to Buyer. The limits set forth below are minimum limits and shall not be construed to limit Seller's liability. All cost and deductible amounts shall be for the sole account of Seller and its subcontractors and agents. All policies shall name Buyer as an additional insured per ISO Endorsement CG 2010 (or its equivalent, i.e., a company specific endorsement with the same wording as CG 2010 or a manuscript endorsement with the same wording as CG 2010) (this requirement does not apply to Worker's Compensation and Employers' Liability Insurance) and waive subrogation rights in favor of Buyer. All policies required shall also be designated as primary coverage to any similar coverage carried by Buyer.

- (i.) Worker's Compensation and Employers' Liability Insurance providing benefits as required by applicable law with a minimum limit of \$3,000,000 per occurrence or limits set by applicable law, whichever is greater. Alternatively, Seller may have a minimum limit of \$1,000,000 per occurrence, with umbrella/excess coverage of at least \$2,000,000 per occurrence;
- (ii.) Commercial General Liability Insurance (Occurrence Coverage), including products, completed operations, contractual liability coverage for indemnities contained in any Order or these Terms and Conditions, and Seller's contingent liability for subcontractors and agents with a minimum combined single limit of liability of \$3,000,000 per occurrence for bodily injury or death and property damage. Alternatively, Seller may have a minimum limit of \$1,000,000 per occurrence, with umbrella/excess coverage of at least \$2,000,000 per occurrence;





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- (iii.) Commercial Automobile Liability (“CAL”) Insurance (Occurrence Coverage) for owned, non-owned, and hired automotive equipment with a minimum combined single limit of liability of \$1,000,000 for each occurrence for bodily injury and property damage; and
- (iv.) If the Items include work by Seller that involves design, engineering and/or other professional services, Seller shall maintain Errors or Omissions Liability and Professional Liability Insurance with a minimum limit of \$1,000,000 each occurrence, and any other specialty policies with appropriate coverage limits as requested by Buyer.

- (b) Any policy or certificate of insurance evidencing coverage set forth herein, regarding Items contained in an Order, which include services to be performed under any Order or these Terms and Conditions, must be submitted by Seller. Prior to commencing any services under this Order or entering any premises owned or operated by Buyer, Seller shall furnish to Buyer an acceptable certificate(s) of insurance evidencing the required coverage and endorsements (including the waiver of subrogation, naming Buyer as an additional insured, and Seller’s coverage being primary in relation to any coverage carried by Buyer) and referencing this Order. If Seller relies on umbrella/excess coverage to meet the above requirements, Seller’s certificate of insurance must state that the umbrella/excess coverage follows form with respect to the applicable underlying coverage.
- (c) Insurers must have a minimum rating of AVII (A7), as evaluated by the most current A.M. Best Rating Guide. If the insurer has a rating less than AVII (A7), Seller must receive specific written approval from Buyer prior to proceeding.
- (d) Each insurance policy required by an Order or these Terms and Conditions shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to Buyer. If Seller does not obtain insurance, or such insurance is canceled, Buyer has the right, but not the obligation, to obtain insurance coverage on behalf of Seller, at Seller’s sole expense.
- (e) Buyer shall not insure nor be responsible for any loss or damage to property of any kind brought onto Buyer’s property or owned or leased by Seller or any subcontractors or agents, or its or their respective employees.
- (f) Irrespective of these insurance requirements, the insolvency, bankruptcy, or failure of any insurance company, or its failure to pay a claim, does not waive any of these provisions.

17. Compliance with Laws—General. Seller represents that it has read, understands, has complied, and during the performance of any Order for Items shall continue to comply, with the provisions of all applicable laws, rules, regulations, directives, ordinances, orders, or statutes (collectively, the “Laws”) from which liability may accrue to Buyer for violation thereof, including, but not limited to, compliance with all wood packing regulations of the country of destination; Environmental Requirements; Product Regulations; anti-bribery laws; the Sarbanes-Oxley Act; the False Claims Act; government procurement Laws; customs, export, and import Laws; all as amended. Seller shall procure all licenses or permits and pay all fees or other charges and comply with applicable guidelines or directives of any state, local and/or federal governmental authority. Seller shall promptly notify Buyer in writing if it becomes aware of any known or suspected violations of Sections 17, 18, 19, 20, 21, or 22.

18. Compliance with Laws—Government Procurement/Funding. Items may be used by Buyer in fulfilling a U.S. government prime contract or subcontract, a U.S. federally funded contract, or state or other government contract requiring compliance with various procurement or non-procurement regulations and socioeconomic programs. Seller shall comply with applicable Federal, state, and local procurement Laws in effect at the time of accepting the Order, including all relevant Laws applicable to providing supplies or services to Federal, state or local government. Among other obligations, Seller shall comply with applicable Department of Labor Office of Federal Contract Compliance Programs (“OFCCP”) requirements at 41 CFR Section 60-1.4(a); 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); and 29 CFR Part 471, Appendix A to Subpart A with





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respect to affirmative action program and posting requirements regarding equal employment opportunity, affirmative action, and nondiscrimination in relation to individuals with disabilities, protected veterans, and individuals of every race, color, religion, sex, sexual orientation, gender identity, and national origin. By submitting a proposal or invoice to Buyer, Seller is representing to Buyer that, at the time of submission: (1) neither Seller nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6); (2) Seller has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and (3) Seller is not aware of any facts or circumstances that could give rise to an organizational conflict of interest, except as disclosed in writing to Buyer's authorized representative before submission. Seller shall promptly notify Buyer if it is debarred, suspended, or proposed for debarment, or becomes aware of facts or circumstances that could give rise to a conflict of interest.

19. Subcontracting with Small Businesses. This provision applies if Buyer issues this Order in support of Buyer's obligations under a contract or subcontract with the U.S. government. Sellers classified as "Large Businesses" as established by the North American Industry Classification System (NAICS) are required to comply with FAR 52.219-8 "Utilization of Small Business Concerns" and FAR 52.219-9 "Small Business Subcontracting Plan." Small business status qualifications are as established by the U.S. Small Business Administration, the Department of Veterans Affairs, and the FAR. Seller's process of selecting subcontractors and suppliers shall provide all types of small, disadvantaged and women-owned businesses the maximum practical opportunity to compete to become a subcontractor or supplier, consistent with efficient performance (price, quality, delivery, and service) and sound purchasing practices. Seller shall maintain goals and records relating to its subcontracting, as well as a contact person with responsibility for reporting results. Seller shall promptly provide Buyer with reports and records regarding Seller's subcontracting upon request.

20. Business Ethics and Conduct. Seller shall conduct its activities under all Orders in a fair manner with honesty and integrity, observing the highest standards of personal and business ethics. Business books and records will be maintained in a proper, responsible, and honest manner. Buyer has the obligation to report to the Government where there is credible evidence of waste, fraud, or abuse, or violations of law. Accordingly, the Seller shall abide by all investigation and reporting obligations under FAR 3.1003 and shall notify Buyer where FAR 3.1003 mandates such notification. This obligation does not prevent Seller from reporting credible evidence of waste, fraud, or abuse, or other violations of law, relating to any Order directly to the appropriate Government entity or official as established in law or regulation, including but not limited to FAR 52.203-18 and FAR 52.203-19.

21. Customs and Import/Export Controls.

(a) Seller Compliance. Seller shall comply, and shall require its suppliers and subcontractors at any tier to comply, with all applicable export and re-export control laws and regulations, including but not limited to the Arms Export Control Act ("AECA"), 22 U.S.C. Ch. 39; the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120-130; the Export Control Reform Act of 2018 ("ECRA"), 50 U.S.C. §§ 4801-4852; the Export Administration Regulations ("EAR"), 15 C.F.R. 730-774, and any other export authorities identified in Supplement 3 to Part 730 of the EAR. Seller shall notify Buyer in writing of items or data controlled under any export law or regulation and provide Buyer with export classification information regarding all Items within 10 (ten) business days of receipt of an Order and in any event in advance of delivery of any item or data controlled under export law or regulation. Seller shall be responsible for export licenses or authorizations necessary for the export of Items unless otherwise indicated in these Terms and Conditions. Seller shall not disclose, transfer, or export any information identified or labeled as subject to export controls to any third party, including any foreign person or entity wherever located, whether or not related to or affiliated with Seller, without first obtaining the appropriate U.S. government authorization as required. If and to the extent Seller is shipping Items from jurisdictions outside the United States into the United States, Seller accepts responsibility for, and shall implement security measures to ensure, the safe and secure transportation of goods throughout the supply chain and adhere to all applicable security requirements (including, but not limited to, factory and shipping container security) of the country in which it operates, consistent with the security criteria required under the Customs-Trade Partnership Against Terrorism ("C-TPAT") sponsored by the United States Customs and Border Protection Agency.





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(b) Information for Buyer's Compliance. Seller shall provide all information necessary for Buyer or Buyer's agent(s) to comply with all applicable laws, regulations, and any related legal reporting, notification, or other types of approval obligations in the country or countries of origin and destination, including, without limitation, invoices, packing lists, certificate of origin, material safety data sheets, technical data sheets, permits, authorization, licensing, reporting, disclosure, or certification information required under the U.S. Food and Drug Administration, U.S. Customs and Border Protection, U.S. Export Administration Regulations, the International Traffic in Arms Regulations, the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, Product Regulations, Hazard Communication information of these Terms and Conditions and the Importer Security Filing (ISF). Seller shall provide all documentation and/or electronic transaction records to allow Buyer to meet all customs or export-related obligations, any local-content/origin/labelling requirements, and to obtain all tariff and trade program duty avoidance(s), deferral and/or refund benefits, where applicable. Seller represents and warrants that all information supplied to the Buyer is true and correct and that all declarations at the border made at no less than fair market value at the country of export. Seller shall reply promptly to all information and/or documentation requests from the Buyer or Buyer's agent(s), including without limitation, requests for the merchandise Export Control Classification Number (ECCN); Harmonized Tariff Schedule (commodity) number (HTS); Country of Origin of the Items; FDA Listing Number; description and characteristics of the Items.

22. Sanctions. Seller shall comply with the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC"), 31 C.F.R. §§ 501-598, and any other applicable economic sanctions or trade embargo laws or regulations administered by any governmental entity. Seller represents and warrants that neither it, nor any of its subsidiaries, nor any director, officer, employee, agent, affiliate or representative of Seller or any of its subsidiaries, is an individual or entity ("Person") who is (i) the target of any sanctions laws; (ii) currently the subject of any sanctions investigation; (iii) located, organized, or resident in a country or territory that is, or whose government currently is, the target of countrywide sanctions imposed by any U.S. government sanctions authority; (iv) directly or indirectly owned or controlled by any Person who is currently the subject of a sanctions investigation; (v) directly or indirectly owned or controlled by any Person currently included on the Specially Designated Nationals And Blocked Persons List or the Foreign Sanctions Evaders List maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury; or (vi) directly or indirectly owned or controlled by any Person who is located, organized, or resident in a country or territory that is, or whose government currently is, the target of countrywide sanctions imposed by any U.S. government sanctions authority.

23. Publicity Restrictions. Except as required by law or pursuant to written direction from an authorized U.S. government official or entity, Seller shall not disclose the existence, purpose, or terms and conditions of any Order, or use the name of Buyer, its affiliates, or any of its or its affiliates' directors, officers, employees, subcontractors or agents, or the U.S. government or any federal agency, in any publicity, advertising, or news release without the prior written approval of an authorized representative of Buyer.

24. Assignment and Third-Party Beneficiary. Any Order(s) accepted by Seller shall not be assigned by transfer, disposition, sale, or otherwise, without the written consent of Buyer. It is understood and agreed that these Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective parent(s), subsidiaries, affiliates, representatives, attorneys, agents, successors, and permitted assigns. There are no third-party beneficiaries to this Order. This Order shall not confer any rights or remedies upon any person other than the Buyer and Seller, and to the extent expressly set forth herein, their subsidiaries, affiliates, and their respective successors, and permitted assigns.

25. Set Off. In addition to any right of setoff or recoupment provided by law, Buyer may at any time and without notice recoup, deduct, or set-off claims by Seller or Seller's subsidiaries or affiliates (or its assignee or financing institution) for amounts due or to become due from Buyer against any claims that Buyer or any Buyer subsidiary or affiliate has or may have arising out of this or any other transaction between Buyer or Buyer's subsidiaries or affiliates and Seller or Seller's subsidiaries or affiliates.





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- 26. Severability; No Waiver.** Invalidation of any of the provisions contained in these Terms and Conditions, or the application of such invalidation thereof to any person, by legislation, judgment, or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes hereof. No failure of either party to enforce at any time any of the provisions of any Order or these Terms and Conditions, or any rights or remedies with respect thereto, or to exercise any election herein provided, shall constitute a waiver of any such provision, right, remedy, or election or in any way affect the validity thereof or of these Terms and Conditions. The exercise by either party of any of its rights, remedies, or elections under an Order or these Terms and Conditions shall not preclude or prejudice such party's right to exercise at any other time the same or any other right, remedy, or election it may have.
- 27. UN Convention on Contracts for International Sale of Goods.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any transaction pursuant to these Terms and Conditions.
- 28. Independent Contractor.** To the extent this Order calls for the provision of services, Buyer and Seller intend that an independent contractor relationship be created by this Order and nothing herein or done pursuant hereto shall be construed as creating an employer/employee relationship, partnership, joint venture, or other business group or concerted action. Seller shall have no authority to legally bind Buyer to any liability or obligation whatsoever. Seller shall pay for the services of all of its directors, officers, employees, agents, subcontractors, and/or representatives (including, without limitation, all salaries, taxes, insurance, fringe benefits, or other costs and expenses of any kind), and shall be solely responsible for the means and methods used by such directors, officers, employees, agents, subcontractors, or representatives and for maintaining control, direction and supervision of same in the performance of any services hereunder.
- 29. Non-Solicitation.** Neither Party shall actively solicit for employment any of the other's personnel involved in the performance of any Order during such performance and for the period of 6 months after involvement with such Order; except that neither Party shall be in breach of this Section to the extent that one Party's employee responds to a bona fide advertisement for employment offered to the public by the other Party.
- 30. Recordkeeping.** Seller shall adhere to all recordkeeping and reporting requirements required by these Terms and Conditions, by applicable law or regulation or as set forth in the Supplier Quality Requirements.
- 31. Force Majeure.** A "Force Majeure Event" shall mean the occurrence of unforeseen or unforeseeable circumstances beyond a party's reasonable control and unrelated to a party's negligence, and also beyond the reasonable control of and unrelated to the negligence of its suppliers or subcontractors, including acts of God. Neither party shall be responsible for any failure to perform due to a Force Majeure Event provided that such party gives notice to the other party of the Force Majeure Event as soon as reasonably practicable, but not later than five (5) days after the date on which such party knew or should reasonably have known of the commencement of the Force Majeure Event, specifying the nature and particulars thereof and the expected duration thereof.
- 32. Entire Agreement.** These Terms and Conditions along with the applicable Order and any other specifications or requirements transmitted by Buyer to Seller in writing in connection therewith which specifically references the applicable Order constitutes the entire agreement between the Seller and Buyer with respect to the matters contained therein and supersedes all prior oral or written representations and agreements.
- 33. Applicable Procurement Clauses.** If Buyer issues this Order in support of Buyer's obligations under a contract or subcontract with the U.S. government, then Seller shall be bound to the FAR and agency supplement clauses that are mandatory for inclusion in the Order pursuant to the terms of the clauses or that, in Buyer's discretion, should be flowed down to facilitate Buyer's compliance with the government contract or subcontract. All such clauses shall be deemed self-deleting if inapplicable per the terms of the clause to the services or products Seller is providing under the Order.





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If Seller is supplying a commercial product or service, as those terms are defined by FAR 2.101, then Seller shall be bound by Appendix A, "Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) Flow Down Clauses For Commercial Products and Services," in addition to any other terms Buyer shall flow down.

If Seller is not supplying a commercial product or service, then Seller shall comply with the terms attached to the purchase order and/or Appendix B, "Federal Acquisition Regulation (FAR) and Agency Supplement Flow Down Clauses For Non-Commercial Products and Services." The terms attached to the purchase order and/or Appendix B, as applicable, shall include all flow down provisions included in Buyer's contract or subcontract with the U.S. government. Buyer shall have exclusive authority to determine if Seller is supplying a commercial product or service. Seller shall provide any reasonable documentation and supporting information necessary for Buyer and Buyer's customer to assess whether Seller is supplying a commercial product or service.

34. Survival. Any rights, obligations, or duties of a Party to an Order, which by their nature or the express terms must survive expiration, termination, or completion of the Order, including but not limited to terms relating to warranties, indemnities, limitation of liability, intellectual property, non-solicitation, Buyer's Confidential Information, governing law, shall survive the expiration, termination, or completion of the Order.

35. Order of Precedence. In the event of any inconsistency, ambiguity, or conflict between or among the clauses of any Order subject to these Terms and Conditions, such inconsistency, ambiguity, or conflict shall be resolved by the following descending order of precedence:

- (a) applicable incorporated clauses of the FAR, DFARS, or any agency-specific supplement to the FAR, or other requirements flowed down from a government prime contract or any higher-tier contract;
- (b) Terms and Conditions;
- (c) other terms and conditions on the Order itself;
- (d) specifications provided by Buyer;
- (e) Supplier Quality Requirements;
- (f) incorporated or referenced documents or other specifications.

