



376 Hale Street, Beverly, MA 01915
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Endicott College Purchase Order Terms & Conditions

The term "Seller" as used herein shall be defined as the addressee of the applicable Purchase Order, the term "Buyer" shall be defined as Endicott College, 376 Hale Street, Beverly, MA 01915, a Massachusetts 501(c)(3) corporation. Unless otherwise specifically consented to in writing by Buyer, the terms and conditions herein (the "Terms and Conditions"), and no others, shall govern the purchase order between the Buyer and Seller ("Purchase Order") for the purchase of certain goods ("Goods") from Seller and/or the performance of certain services ("Services") by Seller, including, without limitation, delivery and installation Goods by Seller, all as described in the Purchase Order provided by Buyer. Any attempt by Seller to modify these Terms and Conditions, whether in an invoice or otherwise, or any attempt to make Seller's acceptance of the Purchase Order conditional on Buyer's assent to additional or different terms and conditions, is hereby rejected and shall be of no force or effect.

APPLICABLE LAW AND ARBITRATION: These Terms and Conditions and the Purchase Order shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. The parties to the Purchase Order will submit all disputes arising under the Purchase Order or these Terms and Conditions to arbitration in Boston, Massachusetts before a single arbitrator of the American Arbitration Association ("AAA"). The arbitrator shall be selected by application of the rules of the AAA, or by mutual agreement of the parties, except that such arbitrator shall be an attorney admitted to practice law in Massachusetts. No party will challenge the jurisdiction or venue provisions as provided in this section. No party will challenge the jurisdiction or venue provisions as provided in this section. Nothing contained herein shall prevent the party from obtaining an injunction.

CHANGES: Buyer may at any time, by written notice, make changes or additions within the general scope of the Purchase Order in or to drawings, designs, specifications, instructions for work, method of shipment or packing or place of delivery. If any such change causes an increase or decrease in the cost of or in the time required for performance of the Purchase Order, Seller shall notify the Buyer in writing immediately and the parties shall work in good faith to agree upon an appropriate equitable adjustment to be made in the price or time of performance, or both, by written modification of the Purchase Order signed by both parties. Any claim by Seller for any such adjustment must be made prior to the delivery of the Goods or Services that are the subject of the change. Nothing herein contained shall excuse Seller from proceeding with the Purchase Order as changed.

INVOICES, PAYMENT AND TAXES: Invoices shall be rendered on completion of Services or delivery of Goods and shall contain the Purchase Order number, item number, description of Goods or Services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to one, and only one, purchase order. Payment shall be made on the terms of Net 30 days from the date of invoice. Seller recognizes that Buyer will be treated as a tax-exempt entity, and Buyer will provide Seller with its exemption certificates on request. All invoices of Seller to Buyer shall exclude taxes that are excludable under Buyer's tax-exempt status. Payment of Seller's invoice shall not constitute acceptance of Goods or Services ordered and shall be subject to appropriate adjustment, if Seller failed to meet the requirements of the Purchase Order. Buyer shall have the right at any time to set-off any amounts due to Seller, (or any of its associated or affiliated companies) against any amounts owed by Buyer with respect to the Purchase Order or any subsequent Purchase Order or any other contractual agreement between the parties hereto unless such set-off violates local law or regulations. Except as expressly provided to the contrary in the Purchase Order, all expenses incurred by the parties shall be the sole responsibility of the party who incurred the particular expense.

DELIVERY: Unless otherwise specified in the Purchase Order, all shipments shall be F.O.B. Destination to the "ship to" location specified in the Purchase Order. Delivery shall be in accordance with the schedule set forth in the Purchase Order, unless otherwise agreed to by Buyer. Delays in shipment shall be reported immediately by Seller to Buyer. Buyer reserves the right to cancel the Purchase Order, in whole or in part, if Seller should fail to make deliveries in accordance with the terms of the Purchase Order, or require Seller to ship Goods, at Seller's expense, by expedited routing. All shipments on which freight charges are due must be prepaid. Collect shipments cannot be accepted.

SHIPPING, PACKAGING AND LABELING: All Goods purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, Buyer's packaging specification. Seller shall mark on all containers, handling and loading instructions, shipping information, part number, Purchase Order number and item number, quantity in box, shipment date, and names and addresses of Seller, manufacturer, and Buyer. An itemized packing list must accompany each shipment. Each packing slip shall include; the Purchase Order number, quantity, item description, order date, shipping date and delivery address, but shall not include pricing information. Seller shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Purchase Order. Seller shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein. If applicable, the parties agree to assist each other in the prosecution of claims against Seller's shipping agent or carrier relating to any damage to the Goods caused by Seller's shipping agent or carrier.

ACCEPTANCE: As a condition precedent to payment of the purchase price for Goods or Services by Buyer to Seller, Buyer shall accept the Goods and Services (in whole or in part thereof) as set forth below. For purposes of these Terms and Conditions, "Acceptance" means the point at which Buyer accepts or is deemed to accept the Goods or Services in accordance with the terms set forth in the Purchase Order. Acceptance shall include the terms "Accept" and "Accepted." The Goods or Services shall be deemed to have been Accepted in the absence of written notification of non-Acceptance by Buyer to Seller, within a reasonable period of time. Buyer hereby retains the right to reject any non-

conforming Goods or Services and shall not be obligated to Accept any non-conforming Goods or Services. Payment for Goods or Services provided under the Purchase Order shall not constitute Acceptance thereof. Buyer may inspect and test such Goods or Services and reject any or all Goods or Services that are, in Buyer's sole judgment, non-conforming and/or not timely delivered. Goods or Services rejected or supplies in excess of quantities ordered may, at the option of Buyer, be returned to Seller at expense of Seller. Failure by Buyer to inspect and/or test the Goods or Services shall not be deemed Acceptance by Buyer. If deemed necessary by Buyer, Seller shall provide without charge, all reasonable facilities and assistance for such inspection and test. No inspection (including source inspection) test, approval (including design approval) or acceptance of Goods or Services shall relieve Seller from responsibility for defects or other failures to meet the requirements of these Terms and Conditions and the Purchase Order.

Shipment, in whole or in part, of Goods or rendering, in total or in part, of Services ordered herein shall constitute acceptance of the Purchase Order and these Terms and Conditions. The Terms and Conditions and Purchase Order shall not in any way be changed, limited, controlled, or restricted by any oral statement or the provisions of the Seller's forms, letters, or papers which are inconsistent herewith, unless specifically authorized in writing by the Buyer.

RISK OF LOSS AND TITLE: Seller assumes all risk of loss of or damage to all Goods or Services ordered and all work in progress and other items related to the Purchase Order until the Goods or Services are Accepted by Buyer. Upon Acceptance, Seller hereby sells, assigns, grants and transfers to Buyer all rights, title and interest in any and all Goods or Services, including without limitation, all proprietary rights of Seller embedded in the Goods or Services; provided however, the term "Goods or Services" shall not include any verifiably pre-existing materials, information or products of Seller including, but not limited to software, schematics, prototypes, artwork, literature, signage, photography, videography, documentation, displays, and exhibits (collectively, "Seller Materials"). Seller Materials shall be owned by and remain the sole and exclusive property of Seller (or Seller's suppliers, as applicable) at all times. Seller has the power to and hereby grants to Buyer a non-revocable, transferable, fully-paid up license without conflict with rights of any third party to use such Seller Materials in connection with the Goods or Services and the parties acknowledge that the purchase price set forth in the Purchase Order has been priced accordingly. This Section shall survive termination, cancellation, or expiration of the Purchase Order and these Terms and Conditions.

WARRANTIES: Seller warrants that any Goods or Services supplied hereunder shall conform to the generally recognized manufacturing and safety standards of Seller's industry in the United States and shall meet or exceed Seller's specifications on performance as detailed in Seller's brochures, sales literature and other specifications as provided to Buyer. Seller shall perform all Services to the reasonable satisfaction of Buyer. In addition to any other express or implied warranties, Seller warrants that the Goods or Services furnished pursuant to the Purchase Order:

- a. is free from defects in title, workmanship and materials;
- b. is free from defects in design except to the extent that such items comply with detailed designs provided by Buyer;
- c. is of merchantable quality and suitable for the purposes, if any, which are stated on the Purchase Order;
- d. shall conform to all specifications or other descriptions furnished to and approved by the Buyer;
- e. shall comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety and environmental standards) which bear upon the Goods or Services;
- f. shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Buyer; and
- g. shall not be not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual right of any third party.

In addition, Seller warrants that Buyer shall have good and marketable title to all Goods or Services (including components thereof) purchased pursuant to the transactions contemplated under the Purchase Order, free of all liens and encumbrances and that no licenses are required for Buyer to use such Goods or Services. If any Goods or Services covered by the Purchase Order is found not to be as warranted, Buyer may, by written notice to Seller:

- a. rescind the Purchase Order as to such non-conforming Goods or Services;
- b. accept such Goods or Services at an equitable reduction in purchase price; or
- c. reject such non-conforming Goods or Services and require the delivery of suitable replacements at no additional charge to Buyer. If Seller fails to deliver suitable replacements promptly, Buyer, with notice of five (5) business days, may replace or correct such Goods or Services and charge Seller the additional cost incurred by Buyer thereby, or terminate the Purchase Order for Goods or Services breach. Any items corrected or furnished in replacement are subject to all the provisions of this section to the same extent as items initially furnished or originally ordered. Cost of replacement, rework, inspection, repackaging and transportation of such corrected Goods or Services shall be at Seller's expense. This warranty provision shall survive any inspection, delivery, acceptance, payment, expiration or earlier termination of the Purchase Order and such warranties shall run to Buyer, its successors, assigns, trustees, faculty, employees, students, agents and users of the Goods or Services. Nothing herein, however, shall limit Buyer's rights in law or equity for damages resulting from delivery of defective Goods or Services or provision of services. Rights granted to Buyer in this section are in addition to any other rights or remedies provided elsewhere in these Terms and Conditions or in a court of law.

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USE OF NAME AND LOGO: Seller shall not cause or allow the name of "Endicott College" (or any variation thereof) or any Buyer logo or mark, or that of any of its schools, departments or employees to be used in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever, without prior written approval of Buyer. Seller shall not implement any marketing, advertising, promotional, or media activity, including press releases, utilizing any of Buyer's trademarks, copyrights, logos, slogans, or any other proprietary interests, or make any mention of Buyer's involvement in the Purchase Order or the terms or subject matter of the Purchase Order without first obtaining Buyer's prior written approval in each instance. When permission is granted, Seller must adhere to Buyer's branding guidelines provided by the Buyer.

REPRODUCTION OF DOCUMENTATION: Buyer shall have the right at no additional charge to use or incorporate all or portions of information found in Seller's literature and/or reproduce Seller's applicable literature such as operating and maintenance manuals, technical publications, prints, drawings, training manuals and other similar supporting documentation and sales literature. Seller agrees to advise Buyer of any updated information relative to the foregoing literature and documentation with timely written notice.

BUYER'S PROPERTY IN SELLER'S POSSESSION: All tools, special dies, molds, patterns, jigs and any other property furnished to Seller by Buyer or specifically paid for by Buyer for use in the performance of the Purchase Order, shall be the property of Buyer; subject to removal at any time upon Buyer's demand; used only in filling orders for Buyer; maintained in good order and condition; and clearly identified as the property of Buyer. Seller assumes all liability for loss or damage to such property.

CONFIDENTIAL INFORMATION: Seller shall preserve in strict confidence all confidential, sensitive or proprietary information of Buyer received from Buyer or its agents ("Confidential Information"), whether or not marked "Proprietary" or "Confidential," and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care.) Confidential Information shall not include information that Seller can demonstrate by written evidence that was publicly available at the time of disclosure or was independently developed by Seller without reference to or use of Confidential Information. Seller will not:

- a. disclose or cause to be disclosed at any time any Confidential Information obtained from Buyer.
- b. use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the Services required by the Purchase Order. Seller represents, warrants and covenants that it shall maintain physical, electronic and procedural safeguards designed to insure the security, integrity and confidentiality of all Confidential Information, protect against any anticipated threats or hazards to the security, integrity or confidentiality of Confidential Information, and protect against unauthorized access to or use or disclosure of Confidential Information.

This section shall survive termination, cancellation, or expiration of the Purchase Order and these Terms and Conditions.

DATA PRIVACY LAWS: Seller shall comply in all respects with any applicable laws relating to data privacy, data security, or personal data, including but not limited to: (i) the Family Educational Rights and Privacy Act ("FERPA"); (ii) the Health Insurance Portability and Accountability Act ("HIPAA"), as amended by Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), including all pertinent regulations issued by the Department of Health and Human Services; (iii) the Payment Card Industry Data Security Standard ("PCI-DSS"); (iv) the federal Fair Credit Reporting Act, 15 U.S.C. §§1681 et. seq.; (v) the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth, 201 C.M.R. §§ 17.00 et seq.; (vi) Title V of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. §§6801, or any successor federal statute to the Gramm-Leach-Bliley Act, and the rules and regulations thereunder, all as may be amended or supplemented from time to time; (vii) the U.S. Federal Information Security Management Act ("FISM") and/or (viii) any state Laws governing data privacy or data security including, but not limited to, M.G.L. 93H and 201 CMR 17 (Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth).

NOTIFICATION OF HAZARDOUS PRODUCT: Seller hereby agrees to notify Buyer of any inherent hazard related to the Goods or Services being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to Buyer's Director of Procurement and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by Buyer or others and any additional information that Buyer should reasonably expect to know to protect its interest. All shipments of hazardous materials under the Purchase Order shall comply with current U.S. Department of Transportation ("DOT") regulations including but not limited to those published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration ("OSHA") regulations, including but not limited to those published in 29 CFR 1910.1200, for the transporting and labeling of hazardous materials or such successor regulations as the case may be. Materials Safety Data Sheets ("MSDS") shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made. A second copy must be sent to Buyer's representative for Environmental Health and Safety.

ASSIGNMENT/SUBCONTRACTING: Seller shall not assign the Purchase Order, any rights or obligations under the Purchase Order or Terms and Conditions or any monies due or to become due hereunder nor delegate or subcontract any obligations or work hereunder without the prior written consent of Buyer. No purported assignment or delegation by Seller shall be binding on Buyer without such written consent.



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INDEPENDENT CONTRACTOR: Seller shall perform the obligations of the Purchase Order and these Terms and Conditions as an independent contractor and under no circumstances shall it be considered an agent, employee, partner, or joint venture of Buyer, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor. Neither the Purchase Order nor the Terms and Conditions shall, in any way, be construed as to create a partnership or any other kind of joint undertaking or venture between the parties hereto. Seller expressly waives any and all rights which may or may not exist to claim any relief under Buyer's comprehensive insurance policy, worker's compensation or unemployment benefits. Seller is solely and personally responsible for all federal, state and local taxes, contributions and other liabilities with regard to payments by Buyer to Seller.

CANCELLATIONS: In addition to the rights set forth herein, Buyer may for any reason and at any time, cancel any unshipped Goods or undelivered Services. To the extent the Purchase Order covers stock Goods, Buyer's only obligation is to pay for Accepted Goods or Services prior to such cancellation. To the extent the Purchase Order covers Goods manufactured or fabricated to Buyer's specifications, Seller shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Seller is not in default of the Purchase Order, Buyer shall reimburse Seller for the actual, direct cost to Seller of such Goods which have, at the time of such cancellation, been wholly or partially manufactured. In the case of Goods manufactured or fabricated to Buyer's specifications, upon payment of the reimbursement by Buyer, title to all such work in progress or completed Goods or Services shall pass to Buyer. Unless Buyer shall have otherwise instructed Seller, Seller agrees that it shall not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to Buyer at any one time. Buyer may cancel the Purchase Order in whole or in part at any time for cause by written (including facsimile) to Seller, effective when sent, in the event Seller:

- a. fails to comply with any term or condition of the Purchase Order or these Terms and Conditions including, but not limited to, delivery terms;
- b. appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets;
- c. files a voluntary petition in bankruptcy;
- d. has had filed against it an involuntary petition in bankruptcy which remains in effect for sixty (60) days;
- e. voluntarily ceases trading;
- f. merges with or is acquired by a third party; or
- g. assigns any of its rights or obligations under the Purchase Order to a third party without Buyer's advance written consent.

Upon the occasion of any one of the aforesaid and in addition to any remedies which Buyer may have in law or in equity, Buyer may also cancel the Purchase Order or any outstanding deliveries hereunder by notifying Seller in writing of such cancellation and Seller shall thereupon transfer title and deliver to Buyer such work in progress or completed Goods or Services as may be requested by Buyer. Buyer shall have no liability to Seller beyond payment of any balance owing for Goods or Services purchased hereunder and delivered to and Accepted by Buyer prior to Seller's receipt of the notice of termination, and for work performed prior to such termination.

RESCHEDULING: Seller may without liability at least fourteen (14) days prior to the scheduled Delivery Date appearing on the Purchase Order defer delivery on any or all Goods or Services under the Purchase Order by giving oral notice to Seller (confirmed in writing within ten (10) working days) of any necessary rescheduling.

STANDARDS OF CONDUCT: Seller must reassign its employees, agents and subcontractors working on Buyer's premises if any such personnel are deemed to be disruptive, dangerous, incompetent, or otherwise non-compliant with reasonable conduct guidelines and Buyer policies and procedures. At Buyer's request, Seller shall distribute publications supplied by Buyer regarding Buyer's policies, practices, and procedures, including, but not limited to, Equal Opportunity and Anti-Sexual Harassment policies.

INSURANCE: Seller shall procure and maintain at its own expense, the policies of insurance listed in this section, to protect both Seller and Buyer against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance of the Purchase Order.

These insurance requirements do not convey a limit of liability or serve to reduce or limit any indemnification obligations of the Seller. Any insurance limits or coverages maintained by Seller or in excess of the below requirements will be available and applicable to all claims for additional insureds to the extent permitted by law and these Terms and Conditions will be deemed to require such broader coverages and higher limits. All insurance required of the Seller shall be in a form and written with companies reasonably acceptable to Buyer. Coverage shall be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 on an "occurrence" basis, with limits not less than \$1,000,000 for each occurrence, \$1,000,000 personal and advertising injury, \$1,000,000 products-completed operations aggregate, and \$1,000,000 annual aggregate. Buyer, its trustees, officers, employees, agents, and representatives are to be listed as additional insureds and shall waive the insurer's rights to recover any insurance payments from Buyer.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering any auto (SYMBOL 1), or Seller has no owned autos, hired (SYMBOL 8) and non-owned (SYMBOL 9) autos, with a policy combined single limit no less than \$1,000,000 bodily injury and



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property damage. Buyer, its trustees, officers, employees, agents, and representatives are required to be additional insureds and shall waive the insurer's rights to recover any insurance payments from Buyer.

- c. Workers' Compensation and Employer's Liability: Insurance as required by State and Federal Law with Statutory Limits (Coverage A), and Employer's Liability (Coverage B) Insurance with limits of no less than \$100,000 per accident for bodily injury by accident, \$500,000 policy limit for bodily injury by disease and \$100,000 each employee for bodily injury by disease. Insurer shall waive its rights to recover any insurance payments from Buyer.

VERIFICATION OF COVERAGE: Seller shall furnish Buyer with original certificates and applicable endorsements, or copies of the applicable insurance language, effecting coverage set forth above. If Buyer accepts a certificate of insurance or does not receive a certificate or identify a deficiency in coverage, Seller shall not be relieved from its insurance obligations.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best rating of A-VIII or higher and that are admitted in the Commonwealth of Massachusetts. If any required coverages are not available from an admitted insurer, the coverage may be written by a non-admitted insurance company. Any non-admitted company from which coverage is purchased must have an A.M. Best rating of A X or higher. An exception may be made for the State Workers' Compensation Insurance Fund if not rated.

INDEMNITY: To the fullest extent permitted by law, Seller shall indemnify, defend, protect, and hold harmless Buyer, its corporations, trustees, officers, employees, students, representatives and agents (each an "Indemnitee", and collectively, the "Indemnitees") from and against all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("Indemnified Claims") arising from Seller's: (i) performance of its obligations under the Purchase Order and/or these Terms and Conditions or (ii) misrepresentation or breach of any representation, warranty, obligation, or covenant of the Purchase Order and/or these Terms and Conditions. Such Indemnified Claims shall include, without limitation, all direct, actual, general, special, and consequential damages. This Section shall survive termination, cancellation, or expiration of the Purchase Order and these Terms and Conditions.

WAIVER; SEVERABILITY: Except as otherwise provided in the Purchase Order, the failure of Buyer to insist in any instance upon the strict performance of any provision of the Purchase Order or these Terms and Conditions, or to exercise any right or privilege granted to Buyer under the Purchase Order and/or these Terms and Conditions shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force. If any part of the Purchase Order and/or these Terms and Conditions is found to be illegal or unenforceable then that part shall be severed from the Purchase Order and/or these Terms and Conditions the remaining provisions shall be enforceable as written.

COMPLIANCE WITH LAWS: Seller warrants that in performance of work under the Purchase Order, if any such performances are required or permitted, it has complied with or will comply with all applicable Federal, State and local laws and ordinances, and all lawful order, rules and regulations thereunder. At the request of Buyer, Seller will furnish certificates to the effect that it has complied with the same.

MANDATORY CLAUSES REQUIRED UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS: If a U.S. Government contract number is shown on the face of the Purchase Order, clauses contained in the current issue of the Federal Acquisition Regulations ("FAR") and supplements thereto, which the U.S. Government makes mandatory for a contractor under a U.S. Government contract to include in its subcontracts thereunder, shall apply to the Purchase Order.

EXPORT CONTROLS: Seller shall notify Buyer if Seller is or becomes listed in any denied party list or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in any part by any U.S. Government entity or agency. Seller shall provide prior written notice to Buyer of all Goods and Services under this Purchase Order that are export-controlled under the U.S. International Traffic in Arms ("ITAR") or listed in an Export Control Classification Number ("ECCN") entry on the U.S. Commerce Control List of the Export Administration Regulations ("EAR") or similar U.S. Government export control list covering the Goods and Services. The notice shall be sent to Buyer's Director of Purchasing (at the address specified in these Terms and Conditions) and shall specify the proper ECCN or United States Munitions List ("USML") Category, as appropriate, of such Goods and Services. Seller shall not provide any such export-controlled Goods and Services to Buyer without the prior written consent of Buyer. Seller shall promptly notify Buyer in writing of any future changes to the export classification information of the Goods and Services.

FORCE MAJEURE: No party shall be considered in breach of the Purchase order or these Terms and Conditions, and it shall not be considered in default under the Purchase Order or these Terms and Conditions, if and to the extent that any failure or delay in such party's performance of one or more of its obligations is attributable to the occurrence of a Force Majeure Event; provided, that the party claiming a Force Majeure Event shall (a) notify the other party in writing of the existence of the Force Majeure Event; (b) promptly exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event; (c) notify the other party in writing of the cessation or termination of said Force Majeure Event; and (d) resume performance of its obligations hereunder as soon as practicable thereafter. A "Force Majeure Event" shall be defined as one of the following events, occurrences, or circumstances, or combination thereof, beyond the reasonable control of a party, which wholly or partially prevents or delays the performance of any obligation of such party: (a) acts of God, terrorism, war, blockade, riot, civil disturbance or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes,



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unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) explosion, accident, epidemic, pandemic or disease (human or animal); (d) governmental action or inaction; or (e) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties. In the event a Force Majeure Event persists for one hundred and eighty (180) days or more, then the party not claiming the Force Majeure Event may terminate the Purchase Order upon written notice to the other party.

INTERPRETATION: In these Terms and Conditions, unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, and words denoting any gender shall include all genders, and words denoting natural persons shall include corporations and partnerships and vice versa. Whenever the words "include," "includes," or "including" are used in these Terms and Conditions, they shall be understood to be followed by the words "without limitation." The words "hereof," "herein," and "hereunder," and words of similar import, when used in these Terms and Conditions refer to these Terms and Conditions as a whole and not to any particular provision of these Terms and Conditions unless otherwise specified. All terms used herein with initial capital letters have the meanings ascribed to them herein, and all terms defined in the Purchase Order and these Terms and Conditions shall have such defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. The definitions contained in the Purchase Order and these Terms and Conditions are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument, or statute defined or referred to herein, or in any agreement or instrument that is referred to herein, means such agreement, instrument, or statute as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. If any ambiguity or question of intent or interpretation arises, the Purchase Order and these Terms and Conditions must be construed as if drafted by all the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of the Purchase Order and/or these Terms and Conditions.

NOTICES: Formal notices between the parties shall be in writing, in the English language, and shall be transmitted by registered mail, or by personal delivery to the other party at the address indicated in the Purchase Order or these Terms and Conditions. Other communications between the parties will be in the same language, and transmitted by email, fax, or other means of electronic transmission, available to both the parties. Either party may change its address by giving notice thereof to the other party.

ENTIRE AGREEMENT: The Purchase Order and these Terms and Conditions represent the entire agreement between the parties and, except as provided above in the section titled "Change", no modification, amendment, rescission, waiver or other change shall be binding on either party unless agreed to in writing by their authorized representatives. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in the Purchase Order and these Terms and Conditions.