



By supplying or agreeing to supply the items, either in whole or in part, described in the attached Purchase Order ("PO"), Seller hereby consents to and accepts the following terms and conditions:

(1) **Payment Terms.** Buyer will pay Seller the amounts listed on the PO (the "Purchase Price") for the items listed on the PO (the "Goods") after Seller delivers to Buyer (1) the commercial invoice for the Goods; (2) 3 original copies of the Bill of Lading; (3) the packing slip for the Goods; and (4) the Certificate of Marine Insurance. The Purchase Price shall include shipping, freight, transportation, packaging, insurance, labels, labor, materials, production costs, meetings, testing, technical consulting, and all taxes imposed or levied except for import taxes imposed by the United States. Buyer may abate, set off, or deduct any amount or damages from or reduce any amounts due under the PO for Seller's default under this agreement. Any payment by Buyer to Seller shall not constitute Buyer's acceptance of the Goods.

(2) **Shipment & Transportation.** Unless otherwise specified in the PO, the Goods shall be transported CIF Destination. Title to the Goods shall pass to Buyer upon loading of the goods with the carrier. Seller assumes and shall be responsible for all risk of loss of, **damage to, and liability for the Goods until delivery has been accomplished and accepted by Buyer.**

(3) **Delivery.** TIME IS OF THE ESSENCE WITH RESPECT TO SELLER'S OBLIGATIONS HEREUNDER. Seller's failure to deliver the Goods that in all respects materially conform to the terms set forth in the PO, then, at Buyer's sole discretion, without waiver of any right it has, Buyer may be relieved of the obligation to accept the Goods or any undelivered installment thereof. Before Buyer's acceptance, the Goods are subject to Buyer's inspection and approval. Buyer may reject and/or return, at Seller's expense, any Goods not conforming to the specifications set forth in the PO or these terms. Seller shall bear all risks after notice of rejection and shall be liable for all consequential damages flowing from the non-conforming Goods. No substitutions of materials or Goods shall be made without Buyer's prior written permission.

(4) **No Subcontracting.** Seller shall not subcontract any work to be performed or any aspect of such work, or any Goods to be delivered, raw materials to be sourced, or any other aspect of the production, distribution or sale of the Goods under this Agreement ("Subcontracting"), without the prior express written consent of Buyer provided specifically for each instance of Subcontracting. Any authorized subcontracted party shall agree in writing to be bound by the terms of this Agreement as if it were Seller under this Agreement. Seller shall be responsible to Buyer for any failure by any subcontracted party to comply with the terms of this Agreement. Seller shall be responsible to Buyer for any obligations, liabilities, costs (including attorney's fees), expenses, damages and losses incurred by Buyer or any of its affiliates and their respective directors, officers, shareholders, managers, members, partners, employees, agents, successors heirs and assigns, and/or the Indemnified Parties (as defined below), in connection with any Subcontracting, including, but not limited to, any fines and/or penalties assessed resulting from any Subcontracting taking place outside of the subject country of this Agreement.

(5) **Warranty.** Seller warrants that the Goods and all parts thereof and the operation thereof shall (a) conform to the PO and any other descriptions provided by Buyer; (b) be in merchantable condition and free from all contaminants and defects in material, parts and workmanship and free from all defects in design; (c) be fit for their intended purpose; (d) be new and of established commercial operability and good quality; (e) not infringe any patent, trademark, copyright or other intellectual property right of another party; and (f) comply with all safety, health and environmental laws and regulations applicable thereto. Seller's warranties (and any consumer warranties, service policies or similar undertakings of Seller) shall be enforceable by Buyer's customers and any subsequent owner or user of the Goods or products produced from or containing the Goods as well as by Buyer. Such warranties shall survive Buyer's inspection, testing, acceptance and payment for such Goods. If the Goods are defective or otherwise fail to conform, Buyer shall have the right to perform corrective work by the most expeditious means available (including finding substitute goods from a different vendor) and charge Seller for all costs incurred.

(6) **Indemnity.** TO THE FULLEST EXTENT ALLOWED BY LAW, SELLER SHALL BE RESPONSIBLE FOR ANY AND ALL LOSSES, CLAIMS AND DAMAGES TO BUYER AND/OR BUYER'S CUSTOMERS (THE "INDEMNIFIED

PARTIES") CAUSED BY ACTS OR OMISSIONS OF SELLER, SELLER'S SUPPLIERS, SUBCONTRACTORS, AGENTS OR REPRESENTATIVES, WHETHER NEGLIGENT OR OTHERWISE. SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES) OF WHATEVER KIND OR NATURE, WHETHER ARISING BEFORE OR AFTER COMPLETION OF SELLER'S OBLIGATIONS HEREUNDER, IN ANY MANNER DIRECTLY OR INDIRECTLY RESULTING, IN WHOLE OR IN PART, FROM OR IN CONNECTION WITH THE FOLLOWING: (1) SELLER'S BREACH OF ANY OF THE REPRESENTATIONS, WARRANTIES OR OBLIGATIONS UNDER THIS AGREEMENT; (2) THIRD PARTY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND ECONOMIC LOSS CAUSED BY, ARISING FROM, OR IN ANY WAY RELATING TO THE GOODS (SUCH CLAIMS INCLUDE BUT ARE NOT LIMITED TO CLAIMS BASED ON THEORIES OF NEGLIGENCE, WARRANTY AND STRICT PRODUCT LIABILITY); AND (3) ANY LOSS, CLAIM OR DAMAGE TO BUYER OR BUYER'S CUSTOMERS RELATING TO THE QUALITY, TIMELY DELIVERY OR FITNESS OF THE GOODS. THE AFORESAID DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS SHALL APPLY EVEN IN THE EVENT OF THE FAULT OR NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTIES TO THE FULLEST EXTENT PERMITTED BY LAW, BUT IN NO EVENT SHALL SUCH OBLIGATIONS APPLY TO LIABILITY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF THE INDEMNIFIED PARTIES. BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY OR ARISING OUT OF ANYTHING RELATED TO THIS AGREEMENT.

(7) **Insurance.** Without limiting Seller's liability under this Agreement or otherwise, Seller shall maintain Commercial General Liability Insurance and Product Liability Insurance covering the Goods (including coverage for completed operations), in amounts acceptable to Buyer. Seller shall provide Buyer with a certificate of insurance showing that the foregoing insurance has been effected.

(8) **Force Majeure.** Seller and Buyer shall not be responsible for delays caused by an event of force majeure. If any delay exceeds thirty (30) days from the originally scheduled delivery date, Buyer may cancel this order without liability.

(9) **Governing Law.** This Agreement shall be governed by California laws. Any dispute under this Agreement shall be resolved by binding arbitration under the rules of JAMS/Endispute located in San Francisco. The parties shall mutually select one arbitrator to preside over the arbitration who is a retired judge from the Superior Court or Federal Court from a list of 7 provided to the parties by JAMS/Endispute. **Each party shall "rank" the 7 arbitrators and the single arbitrator to be selected shall be determined by JAMS/Endispute based on the ranking from each party.** The arbitration shall be governed by the rules of JAMS/Endispute. The prevailing party in any such arbitration shall be entitled to reasonable attorneys' fees and costs and the arbitrator shall determine which party is the prevailing party. The parties agree that venue for any such arbitration shall be San Francisco County, California. The parties agree to submit to the personal jurisdiction of the arbitrator or the superior court of the State of California for the County San Francisco for purposes of arbitrating any dispute.

(10) **Changes.** This Agreement may not be modified and none of its terms may be waived, except in writing signed by both parties.

(11) **Compliance.** If any provision of this Agreement is found to be illegal or unenforceable, such provision shall be deemed not to be a part of this Agreement, and the remaining provisions of this Agreement shall continue in full force and effect, but shall be interpreted to give effect to the extent feasible to the original written intent of the parties.

(12) **Entire Agreement.** This Agreement together with the PO is intended by the parties as a final and complete expression of their agreement with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous agreements, representations and understandings relating to it.