

TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions of Purchase (the “**Terms**”) dated May 2, 2019 (the “**Effective Date**”) shall govern all Purchase Orders (as defined below) submitted by Performance Plastics, Inc., a California corporation located at 7919 St. Andrews Ave., San Diego, CA 92154 U.S.A. (“**Buyer**”) to the seller named in the Purchase Order (“**Seller**,” together with Buyer, each a “**Party**” and together the “**Parties**”). By accepting a Purchase Order issued by Buyer and dated on or after the Effective Date, Seller agrees that it has read, understands and agrees to be bound by these Terms and the terms of the Purchase Order.

1. Purchase Orders. The Parties hereby acknowledge and agree that each Purchase Order issued is deemed to incorporate and be governed by these Terms. All orders are void and of no effect unless given in writing by Buyer on Buyer’s purchase order form (each a “**Purchase Order**”). Seller may ship only against such written Purchase Orders. If Buyer is not notified by Seller of rejection of the Purchase Order or provided with a written request by Seller to modify any of the Purchase Order terms or these Terms within five (5) days of the date of the Purchase Order then the Purchase Order shall be deemed accepted by Seller as is and without modification. In the event of any inconsistency between these Terms and the terms of a particular Purchase Order, the terms of such Purchase Order shall govern. These Terms (or the Purchase Order, when applicable) shall control regardless of whether or when Seller has submitted its own offer, counteroffer, contract, confirmation, acknowledgement, purchase order or other writing. These Terms expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with the Purchase Order. No course of delaying or usage of trade or course of performance may be used to supplement or explain these Terms or the obligations and rights of the Parties to these Terms. All Purchase Orders must be accepted according to these Terms.

2. Price, Delivery and Due Date of Product. Any and all products shall be ordered at the price and for the delivery date set forth in the Purchase Order (the “**Delivery Date**”). Timely delivery of the products to be purchased under the Purchase Order (the “**Goods**”) is of the essence. In the event Seller encounters difficulty in meeting performance requirements, Seller shall promptly inform Buyer in writing giving pertinent details of such difficulty. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Purchase Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses (including attorney’s fees) directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. Any and all

transportation costs resulting from any deviation of shipping instructions, any returns to Seller, and any other costs incurred by Buyer because of Seller’s non-compliance with a Purchase Order shall be borne solely by Seller and charged to Seller’s account. Unless otherwise stated in the Purchase Order, Buyer and Seller agree that if any Goods are not delivered to and accepted by Buyer by the specified Delivery Date, Seller shall incur liquidated damages in the amount of no less than five percent (5%) of the value of the Goods (as set forth in the Purchase Order). Seller acknowledges that the actual damages likely to result from such late shipment and/or delivery are difficult to estimate as of the date of such Purchase Order. Therefore, Buyer and Seller intend that Seller’s payment of the liquidated damages set forth herein serves to compensate Buyer for the actual damages it will incur for such breach and is not a penalty or punishment for such breach.

3. Quality of Goods. All Goods furnished may, at Buyer’s discretion, be subject to count, inspection, and acceptance by Buyer after actual receipt pursuant to Section 5. If the Goods are of inferior or improper workmanship, defective, or do not strictly adhere to the specifications or standards of the Purchase Order or the samples accepted by Buyer (as determined in Buyer’s reasonable discretion), Buyer has the right, pursuant to Section 5, to: (a) rescind the Purchase Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require the replacement or refund of the rejected Goods.

4. Quantity of Goods. If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the price of the Goods shall be adjusted on a pro-rata basis.

5. Inspection and Rejection of Nonconforming Goods. Buyer, at its sole option, may inspect all or a sample of the Goods on or after the Delivery Date, and may reject all or any portion of the Goods if it determines the Goods are (a) non-conforming in any manner or vary in any manner from any sample from

which the order was placed, (b) are not in compliance with Buyer's billing instructions, (c) are not shipped in compliance with Buyer's specifications and instructions as provided in the Purchase Order or as otherwise may be provided to Seller, (d) are in excess of the quantities covered by the Purchase Order, (e) contain (in Buyer's reasonable discretion) defects of materials, color, size, workmanship or otherwise, (f) include Goods that violate or threaten to violate (in Buyer's reasonable discretion) any applicable law, rule, statute or regulation (whether local, domestic, federal or international), (g) infringe any alleged patent, design, trade name, trademark, copyright or any other intellectual property rights of a third party, and (h) any other reason in Buyer's reasonable discretion. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Purchase Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require the replacement or, at its option, the refund of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. The return of any defective Goods shall not relieve Seller from liability for such defects or any chargebacks as requested by Buyer. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Purchase Order pursuant to Section 25. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Purchase Order and these Terms, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6. Price. The price of the Goods is the price stated in the Purchase Order. Unless otherwise specified in the order, the price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. If, prior to shipment of the relevant Goods, there is a price increase to a Good from the price specified in the Purchase Order, the price in the Purchase Order will take precedence and govern such order. Seller warrants that prices set forth on any Purchase Order are complete and that no additional charges shall be added without Buyer's prior written consent, which may be withheld in its sole discretion.

7. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery

and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. If Seller is registered for value added tax (or any equivalent tax in any other jurisdiction), it must issue a proper tax invoice in accordance with the relevant legislation before Buyer shall be required to make payment for any Goods supplied in accordance with the Purchase Order.

8. Delivery Location. All Goods shall be delivered to the address specified in the Purchase Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer.

9. Shipping Terms. Delivery shall be made in accordance with the terms on the face of the Purchase Order. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. The order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Purchase Order. Unless otherwise stated in the Purchase Order, title passes to Buyer upon delivery of the Goods to the Delivery Location and Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

10. Packaging. All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. No charges for boxing, packing or cartage shall be charged to Buyer unless agreed to by Buyer and included in the Purchase Order. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

11. No Reliance. Except as expressly set forth in a written Purchase Order, any projections, past purchasing history, or representations about quantities to be purchased by Buyer are not binding upon Buyer, and Buyer shall not be liable for any act or expenditure by Seller in reliance on them.

12. Representations and Warranties.

a. Seller expressly represents and warrants

that: (a) ALL GOODS ARE MERCHANTABLE AND FIT FOR THE USE AND PURPOSE FOR WHICH THEY ARE INTENDED, ARE OF THE BEST MATERIAL, QUALITY AND WORKMANSHIP, AND THAT THEY ARE FREE FROM ANY DEFECTS OR MATTER INJURIOUS TO PERSONS OR PROPERTY; (b) all Goods conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer and are free and clear of all liens, security interests or other encumbrances; (c) it has timely, fully and accurately applied for, completed and provided all necessary export licenses, certificates of origin, and other documentation required by law or by Buyer in its reasonable discretion; (d) it will not disclose, nor has it disclosed in the past to any third party, nor has it used nor will use for its own benefit, any of Buyer's trade secrets or information which may be reasonably believed to be confidential to Buyer (included but not limited to designs, styles, patterns, colors, specification, components, etc.); (e) all Goods shipped will clear customs at the country of importation; (f) all Goods shipped meet all industry and Buyer's requirements and quality standards; (g) any Goods, product design, or methods used to create the Goods, which are presented and/or sold to Buyer by Seller are Seller's original creations and will not infringe or violate any intellectual or other property right (including but not limited to trademark, copyright or patent rights), United States or foreign, of any third party; and (h) it does not and will not participate in any payment or authorization practices in violation of the Federal Foreign Corrupt Practices Act and will monitor compliance with these laws.

b. Seller uses best practices with regard to production, sale and shipping of such merchandise and goods, including, but not limited to, compliance with applicable employment laws and regulations regarding minimum age of employment, slavery, human trafficking, health and safety in the workplace, discrimination, work hours and conditions, rates of pay, and other terms of employment. Seller represents and warrants that is in compliance with the Federal Trafficking Victims Protection Act and will continue to monitor compliance with these laws.

c. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties.

13. Compliance with Law. Seller represents and

warrants that it, its suppliers, contractors and subcontractors, and the practices of each in relation to the production, sale and shipping of the Goods are in compliance with all applicable federal, state, local and international laws, ordinances, codes, and regulations. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Purchase Order. Without limiting the foregoing, Seller shall comply with all export and import laws of all countries involved in the sale of Goods subject to the Purchase Order, including but not limited to the U.S. export control laws (15 C.F.R. Parts 730 et seq), International Traffic in Arms Regulations (22 C.F.R. Parts 120-130), trade laws, and customs laws. Seller assumes all responsibility for obtaining necessary government approvals for shipments of Goods requiring such approvals, including export and import shipments of Goods. Buyer may terminate the Purchase Order and these Terms if any government authority imposes antidumping duties, countervailing duties, safeguards, or any other tariffs, quotas, taxes, fees, or other import or export restrictions on the Goods.

14. Defense Priorities and Allocations System Compliance. Seller acknowledges that Buyer may, from time to time, be required to place orders subject to the Defense Priorities and Allocations System of the United States ("DPAS") and the regulations at 15 C.F.R. Part 700. Seller shall comply with all such DPAS requirements as required by U.S. law and as specified in the Purchase Order, including but not limited to the applicable priority rating, required delivery date(s) and certification requirements.

15. Tooling. All tools, patterns, materials, drawings, specifications, programs and other data (including all programs and data in machine readable form) provided by Buyer or Buyer's customer (as the case may be) in connection with the Purchase Order will at all times remain the property of Buyer or Buyer's customer (as the case may be). All such tooling and materials shall be kept in good condition and Seller shall be fully liable for such items whilst they are in Seller's possession. Such items shall be marked by Seller as the property of Buyer or Buyer's customer (as the case may be) and shall be delivered to Buyer forthwith on request. All such items shall only be used by Seller for the purpose of completing the Purchase Order unless Buyer gives its prior written consent to any other use. Any tools (such as jigs, dies etc.) that Seller may construct or acquire specifically in connection with the Goods and for which Seller makes any charges shall be and remain Buyer's sole and unencumbered property and Seller shall deliver

all such tools to Buyer upon receipt of a request from Buyer.

16. Free-Issue Materials. Where Buyer or Buyer's customer issues materials to Seller for use in connection with the Purchase Order, such materials shall be and remain the property of Buyer or Buyer's customer (as the case may be). Seller shall maintain such materials in good order and condition and at its risk and shall use them only in connection with the Purchase Order. Seller acknowledges that there may be scrap materials or surplus materials arising in the ordinary course of supplying the Goods. In cases where the materials have been provided to Seller by Buyer or Buyer's customer (as the case may be), Seller acknowledges that it shall account to Buyer for all such scrap and surplus materials and shall carry out a reconciliation exercise of materials provided and used and provide evidence to Buyer in respect of all such scrap and surplus materials. Seller shall, in addition, account to Buyer for the value of all such scrap and surplus materials. Any materials wasted as a result of Seller's bad workmanship or negligence shall be replaced at Seller's expense. Seller shall at any time forthwith upon Buyer's request deliver to Buyer all materials issued by Buyer or Buyer's customer (as the case may be).

17. Intellectual Property. Buyer owns all worldwide right, title and interest (including all associated intellectual property rights) in and to Buyer's information, trademarks, trade names, logos, and other intellectual property. The Purchase Order and these Terms are not to be construed to grant and do not grant to Seller any right or license with respect to any invention, patent, copyright, trade secret, know-how, information, trademark, logo or other proprietary right of Customer. Such intellectual property is for Buyer's sole and exclusive use, and Seller may only use Buyer's trademarks, trade names, logos or other Buyer marks on Goods sold to and purchased by Buyer pursuant to Buyer's express written instruction in a Purchase Order. If the Purchase Order is cancelled or terminated for any reason, Seller shall cease all use of Buyer's intellectual property and agrees to not sell Goods with Buyer's trade names, logos, trademarks or other intellectual property to any other person or entity and shall immediately return to Buyer all intellectual property owned by Buyer.

18. Confidentiality. All non-public, confidential or proprietary information of Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or

accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Purchase Order is confidential, solely for the use of performing the Purchase Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

19. Records. Appropriate records shall be maintained by Seller or any subcontractors, as necessary, to provide evidence of conformity to the specifications and of the effective operation of the quality management system. The records shall be legible, readily identifiable and retrievable. Records shall be available for review by Buyer, Buyer's customers and regulatory authorities for a minima period of ten (10) years following the Delivery Date and Buyer shall ensure these are readily available on request. Seller shall inform Buyer when any such records are to be destroyed.

20. Indemnification. Seller shall indemnify, defend (with counsel reasonably acceptable to Buyer) and hold Buyer and its affiliates and agents, and their respective successors, assigns, officers, directors and employees harmless from and against all damage, loss, liability, costs and expenses of any kind (including reasonable attorney's fees), related to any and all claims, actions, liabilities, losses, fines, penalties, costs and expenses, and any other liability (collectively, "**Losses**") arising out of any actual or alleged: (a) infringement of any patent, trademark, trade name, copyright, design right or other intellectual property right relating to any Goods ordered, purchased and/or received from Seller; (b) injury to any person or damage to any property resulting from use of any Goods ordered, purchased and/or received from Seller; (c) failure to comply with any specifications set forth by in these Terms, any Purchase Order or otherwise; (d) violation of any applicable law, statute, rule or regulation (whether local, state, domestic or international) including, but not limited to, Seller's method of manufacturing, sale, packaging, labeling, shipment and import/export; and (e) any other Seller breach of these Terms or any Purchase Order. Except for Buyer's gross negligence or willful misconduct, such indemnification shall not be affected or limited in any way by Buyer's extension of warranties to its customers/consumers or by any act or omission of

Buyer.

21. Limitation on Liability. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES OR LOSS NOR FOR ANY HARM TO OR LOSS OF PROFITS, REVENUE, BUSINESS OR BUSINESS OPPORTUNITY, NOR FOR ANY DAMAGES IN EXCESS OF THE AMOUNT OF THE ACTUAL PURCHASE ORDER PRICE SET FORTH ON THE SAME. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBLE EXISTENCE OF DAMAGES OR LIABILITY OF THE KIND EXCLUDED OR LIMITED, AND REGARDLESS OF THE THEORY OF RELIEF ASSERTED (E.G., WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR BY STATUTE, OR OTHERWISE) AND WHETHER OR NOT ANY REMEDY OFFERED OR PERFORMED IS HELD TO HAVE FAILED ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL BUYER'S MAXIMUM LIABILITY TO SELLER EXCEED THE AGGREGATE AMOUNT ACTUALLY PAID OR PAYABLE UNDER THE APPLICABLE PURCHASE ORDER. THE TERMS OF THIS LIMITATION OF LIABILITY SECTION REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES AND EACH PARTY'S DECISION TO ENTER INTO THESE TERMS IS BASED IN SUBSTANTIAL PART UPON THE TERMS OF THIS SECTION.

22. Defense of Claims and Insurance. Seller agrees, upon Buyer's request, to immediately assume the handling, adjustment and defense of any claim, allegation, suit or action in connection with Section 17 without cost to Buyer. Without waiving any of its rights, Buyer specifically reserves the right to participate in the handling, adjustment and defense of any such claim, allegation, suit or action at Seller's sole cost and expense. Seller shall not enter into any settlement without Buyer's prior written consent. During the term of the Purchase Order and for a period of twenty-four (24) months thereafter, Seller shall procure and maintain adequate product liability insurance and any other insurance (in any form and amount as may be reasonably requested by Buyer) and shall furnish to Buyer certificates thereof in connection with a Purchase Order, including adding Buyer as an additional insured and providing any waivers of subrogation as may be reasonably requested by Buyer. A surety bond sufficient to protect Buyer's interests shall also be furnished upon

request.

23. Governing Law and Venue. All matters arising out of or relating to the Purchase Order and these Terms shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or relating to the Purchase Order or these Terms shall be instituted in the federal or state courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Purchase Order and these Terms, the construction and enforcement of either, or any disputes arising out of or relating to the Purchase Order and these Terms.

24. Term. These Terms shall commence upon Seller's acceptance of a Purchase Order and shall remain in effect until all relevant Purchase Orders are fulfilled.

25. Termination. Buyer may terminate any Purchase Order with or without cause upon written notice to Seller. If Buyer terminates a Purchase Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination. Upon termination, Seller shall, at its cost, immediately return to Buyer all tooling and materials. All specifications, drawings, data (including data in machine readable format) and other information, including Confidential Information, provided to Seller shall be immediately returned to Buyer (at Seller's cost) or, on the instructions of Buyer, be destroyed.

26. No Conflicts. Each Party hereto hereby represents and warrants, solely with respect to itself and not with respect to the other Party, that the consummation of the transactions contemplated herein shall not result, in any material respect in: (a) the breach of any term or provision of such Party's organizational or governance documents, as applicable; (b) the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under, any material agreement, loan or credit agreement or other instrument to which such Party is subject; or (c) a violation of any applicable laws, rules or regulations.

27. Inspection and Standards. Any inspector or

representative of Buyer and/or Buyer's customer or any regulatory authority shall be entitled to inspect Seller's facilities (and the facilities of any permitted subcontractor) at any time and to inspect the Goods either complete or in the process of manufacture. Buyer and Buyer's customer shall be entitled to require all defects or deficiencies of the Goods to be rectified and modifications made in the event of any failure in the opinion of Buyer to comply with the terms of the Purchase Order and these Terms, provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval of all or any part of the Goods. Seller shall maintain in force all quality standards and approvals and all such other standards and approvals (including, but not limited to environmental standards) which Buyer requires Seller to hold or which Seller has represented to Buyer that it holds. Seller shall immediately notify Buyer if it ceases to hold any such standards and approvals.

28. Publicity/Press Releases. All public announcements, press releases or other promotional materials relating to Buyer, these Terms or a Purchase Order shall be subject to the prior written approval of Buyer, which may be withheld in its sole discretion. By way of example and not limitation, Seller may not use Buyer's intellectual property (including trademarks, logos and trade names) in any marketing materials or customer lists.

29. Assignment and Subcontracting. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Purchase Order or these Terms without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Purchase Order and these Terms without Seller's prior written consent. Any authority given by Buyer for Seller to subcontract the Purchase Order or any part of it shall not impose any duty on Buyer to enquire as to the competency of any authorized subcontractor. Seller shall ensure that any authorized subcontractor is competent and that the work is properly done and Seller shall have liability for all acts or omissions of any such sub-contractors.

30. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in the Purchase Order or these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise,

employment or fiduciary relationship between the Parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Purchase Order or these Terms.

31. Third-Party Beneficiaries. Except as set forth in these Terms, the Parties do not confer any rights or remedies upon any person other than the Parties to this Agreement and their respective successors and permitted assigns.

32. Waiver. No waiver by any party of any of the provisions of the Purchase Order and these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. Failure of either Party to enforce any of the provisions of these Terms, or any rights with respect thereto, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights or elections, or in any way affect the validity of these Terms. The failure of either Party to enforce any of said provisions, rights or elections shall not prejudice such Party from later enforcing or exercising the same or any other provisions, right or elections which it may have under these Terms.

33. Severability. If any term or provision of the Purchase Order or these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Rather, such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.

34. Force Majeure. Buyer shall not be liable to Seller for any delay or failure in performing Buyer's obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of Buyer and which by its nature could not have been foreseen by Buyer or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy; government acts, omissions or restrictions; embargoes, sanctions, tariffs, quotas, duties, or other forms of trade, import, export control or sanctions measures; floods; fire; earthquakes; explosion;

epidemic; war, invasion, hostilities, or terrorist acts; riots; strikes or other labor disputes; embargoes or industrial disturbances. In the event of any strike, lock-out, government action or omission, fire, explosion or accident or of any stoppage of Buyer's business or work for reasons beyond its reasonable control that may prevent or hinder the delivery or use of the Goods, payment for them may be suspended or postponed at Buyer's option without any liability until such time as the circumstances preventing or hindering the delivery or use of the Goods have ceased or the relevant Purchase Order is terminated by Buyer.

35. Captions; Headings. Captions and headings appearing in these Terms are for convenience only and shall not be deemed to explain, limit or amplify the provisions hereof.

36. Counterparts. These Terms may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

37. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms and the applicable Purchase Order including, but not limited to, the following provisions: Representations and Warranties, Compliance with Law, Confidentiality, Warranties, Indemnification, Intellectual Property, Limitation on Liability, Defense of Claims and Insurance, Governing Law and Venue, and Survival.

38. Notices. Any notice required or permitted to be given hereunder shall be (a) in writing; (b) effective on the first business day following the date of receipt; and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package

delivery or courier service; (iii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid; (iv) by facsimile with return confirmation; or (v) by email with return email received by the other Party. All notices given under these Terms shall be addressed to the Parties at the address set forth in the Purchase Order or such other address that may be designated by the receiving party in writing.

39. Entire Agreement; Amendments. These Terms, together with the Purchase Order, constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof, and is intended as the Parties' final expression and complete and exclusive statement of the terms thereof, superseding any and all prior contemporaneous agreements, representations, promises and understandings, whether written or oral, and may be amended or modified only by an instrument in writing signed by both Parties. Buyer may at any time, by written notice to Seller, make changes to the Purchase Order and these Terms. If any such change causes an increase or decrease in the cost of or time required for performance of the Purchase Order, an equitable adjustment shall be made in price, delivery schedule or both, and the Purchase Order shall be modified in writing by agreement of Buyer and Seller accordingly.

40. Remedies. All remedies of Buyer contained herein are cumulative, and are in addition to, and not in lieu of any other remedy available to Buyer at law or in equity, including without limitation, Buyer's remedies under the Uniform Commercial Code.

41. Miscellaneous. No prior course of dealings between the Parties, or usage of trade shall be relevant to supplement or explain any term used in these Terms.