



Standard Terms and Conditions of Sale - Domestic

1.0 DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the following meanings:

- 1.1 **"Buyer"** means the Party identified in the Purchase Order as the purchaser of Deliverable Items.
- 1.2 **"Deliverable Item(s)"**, means any of the equipment and/or services identified in Article 3.0, SCOPE, for delivery or provision to Buyer by Seller under the Purchase Order. Deliverable Items of Service are also referred to as **"Deliverable Services"** or **"Services"**.
- 1.3 **"Effective Date"** or **"Effective Date of Purchase Order"** means the date that the Purchase Order is entered into and becomes binding between the Buyer and Seller, and is the date that the Seller has acknowledged acceptance of the Purchase Order from the Buyer.
- 1.4 **"Equipment"** means the Deliverable Items of hardware to be delivered under the Purchase Order.
- 1.5 **"Intellectual Property"** means all designs, methods, concepts, layouts, software, inventions (whether or not patented or patentable), processes, technical data and documentation, confidential information, technical information and drawings, and any matter in which an Intellectual Property Right exists.
- 1.6 **"Intellectual Property Right(s)"** means any legally enforceable rights, worldwide, under statute or common law, in respect to inventive subject matter or original works of authorship, including, but not limited to patents and inventions, copyrights, mask works, designs, trademarks, trade secrets, confidential information, data, technology, technical information and other information, regardless of when conceived.
- 1.7 **"Party"** means either the Buyer or the Seller, and who collectively are referred to herein as the "Parties".
- 1.8 **"Price"** means, as to a Deliverable Item, the corresponding price set forth in the Price Schedule.
- 1.9 **"Price Schedule"** means that portion of the Seller acknowledged Purchase Order that sets out the Deliverable Items and the associated agreed-to Price(s).
- 1.10 **"Purchase Order"** or **"P.O."** means the contracting instrument by which the Buyer procures the Deliverable Items from Seller and consists of the ordering document issued by Buyer to committing to the purchase of the identified Deliverable Items (hereinafter referred to the "P.O. Ordering Schedule"), these Standard Terms and Conditions of Sale, the Specification, delivery schedule (which may be included in the P.O. Ordering Schedule or may be a separate attachment) and any other attachments identified in the Purchase Order as forming a part of the Purchase Order and which Seller has agreed in writing to include in the Purchase Order.
- 1.11 **"Quotation"** means the offer for sale of the Deliverable Items issued by Seller to Buyer and is the basis upon which the Buyer has issued the Purchase Order.
- 1.12 **"Seller"** means Trayer Electronics Corporation.
- 1.13 **"Specification"** means the statement of technical and/or performance requirements for a Deliverable Items incorporated into the Purchase Order.
- 1.14 **"Standard Terms and Conditions of Sale"** means the terms and conditions contained in this document number STC001.
- 1.15 **"Warranty"** shall have the meaning set forth in Article 8.0, LIMITED WARRANTY, hereof.

2.0 ACCEPTANCE OF TERMS AND CONDITIONS

- 2.1 Quotations and Purchase Orders. All Quotations made by Seller and Purchase Orders received by Seller are expressly conditioned on Buyer's acceptance of these Standard Terms and Conditions of Sale, which form a binding part of all Quotations and continue to form a binding part of any Purchase Order issued pursuant to such Quotations. Any acceptance by Buyer of a Quotation, or issuance of a Purchase Order in response to any Quotation, is expressly limited to acceptance of these Standard Terms and Conditions of Sale. Any additional or differing terms and conditions proposed by Buyer in its acceptance or issuance of a Purchase Order resulting from any Quotation shall not affect the validity of acceptance, but shall be deemed as proposals for modification of these Standard terms and Conditions of Sale, which shall be deemed rejected and of no effect unless expressly agreed-to in writing by an authorized representative of Seller in Seller's written acknowledgment of the Purchase Order. In no event shall the sale and/or provision of Deliverable Items hereunder be subject to any affirmation of fact or promise which relates to the application, performance, or description of the goods unless such affirmation or promise is expressly incorporated into the Purchase Order in writing. In the event of any conflict with any other document, term or condition forming part of the Purchase Order, these Standard Terms and Conditions of Sale shall prevail and take precedence.
- 2.2 Acceptance/Acknowledgment of Purchase Orders. All Purchase Orders for Deliverable Items from Buyer are subject to Seller's acceptance which shall consist of a written acknowledgment (notification by electronic means such as e-mail shall satisfy the requirement for written acknowledgment) by Seller and delivered to Buyer. The Effective Date of the Purchase Order shall be the date of Seller's written acknowledgment.

3.0 SCOPE

Subject to the terms and conditions of the Purchase Order, the Deliverable Items to be delivered under the Purchase Order and the corresponding Prices, delivery schedules and delivery locations as are stated in the Purchase Order as acknowledged and accepted in writing by Seller.

4.0 DELIVERY, TITLE TRANSFER AND TRANSFER OF RISK OF LOSS

- 4.1 Delivery Terms. Delivery terms for Deliverable Items of Equipment are FOB Seller's Dock.
 - a. Seller shall:
 - (i) package and prepare the Deliverable Item(s) of Equipment for shipment in accordance with Seller's standard commercial practices;
 - (ii) notify the Buyer in writing that the Deliverable Item(s) of Equipment are ready for delivery (notification by electronic means such as e-mail shall satisfy the requirement for written notification); and
 - (iii) make the Deliverable Item(s) of Equipment available for pick-up by Buyer's selected carrier.
 - b. Delivery as to each Deliverable Item of Equipment shall occur at the time that Seller completes actions (i) through (iii) described immediately above for each such Deliverable Item of Equipment. Deliverable Services are deemed delivered at the time Seller renders the Service.
 - c. Buyer shall be responsible, at Buyer's expense, for promptly arranging shipment and shipping each of the Deliverable Item(s), and for the cost of insurance covering loss or damage to the Deliverable Item(s) while in transit.
 - d. In the event that Buyer desires Seller to arrange for shipping, transportation and/or in-transit insurance covering loss or damage of the Deliverable Item(s) (the forgoing, the "Transportation Services"), unless such Transportation Services have been incorporated into the



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Purchase Order by written agreement of the Parties, the provision of Transportation Services shall be handled as a change to the Purchase Order and the provisions of Article 7.0, CHANGES, shall apply.

- 4.2 Risk of loss of Deliverable Items, or any part thereof shall pass to the Buyer upon delivery.
- 4.3 Title Transfer. Title to each Deliverable Item of Equipment shall transfer to Buyer upon receipt by Seller of payment in full of the Price set forth in the Purchase Order for such Deliverable Item of Equipment. Rights in Seller's data and Intellectual Property, including all associated Intellectual Property Rights, are set-forth in Article 9.0, INTELLECTUAL PROPERTY, herein.

5.0 ACCEPTANCE

- 5.1 Acceptance of Deliverable Items of Equipment. Deliverable Items of Equipment are deemed to be finally and irrevocably accepted fifteen (15) days after delivery (the Acceptance Period"), unless before the end of the Acceptance Period, Buyer provides a written notice of non-conformance to Seller advising Seller that a Deliverable Item of Equipment does not conform to the applicable requirements of the Specification (with reference to the specific provision(s) of the Specification deemed not met). In the event that Buyer provides a notice of non-conformance prior to the end of the Acceptance period, Seller shall correct or repair such non-conformance and resubmit the Deliverable Item for acceptance in accordance with the provisions of this Article 5.0, ACCEPTANCE. Non-conformances identified after the Acceptance Period are subject to the terms of the Warranty during the Warranty Period pursuant to Article 8.0, LIMITED WARRANTY, herein.
- 5.2 Acceptance of Deliverable Services. Deliverable Services are deemed to be finally and irrevocably accepted at the time Seller renders the Service. Non-conformances in Deliverable Services identified after acceptance are subject to the terms of the Warranty during the Warranty Period pursuant to Article 8.0, LIMITED WARRANTY, herein.

6.0 PRICE AND PAYMENT

- 6.1 Price. The Price to be paid by Buyer to Seller for the Deliverable Items shall be as set forth in the Price Schedule. Prices for Deliverable Items are exclusive of shipping/transportation costs, costs of transit insurance, sales, use or other taxes. In the event that Seller is required to pay shipping/transportation and/or transit insurance and/or pay/collect sales, use, or other taxes, the corresponding amount will be invoiced to Buyer as a separately identified item.
- 6.2 Payment. Payment terms are NET 30 DAYS from the date of issuance of the corresponding invoice.
- 6.3 Late Payment. In the event that any payment due under the Purchase Order is not made when due, without prejudice to its other rights and remedies, Seller shall be entitled to interest on unpaid invoices to accrue at the compound interest rate of 1-1/2 percent per month (or fraction thereof), or the maximum rate allowed by applicable law, whichever is lower, beginning on the 31st day following the date of invoice and continuing until such time as payment in full is received. These terms are an integral part of the Price of the Deliverable Items, which Price shall be deemed modified as required under the Purchase Order in the corresponding amount of accrued interest if necessary to accommodate this provision.
 - a. Stop Work. In addition to the right to collect late payment interest as provided above, if any payment is not made by Buyer by the date fifteen (15) days after the date due then, upon a five (5) day written notice provided to Buyer, and without prejudice to Seller's other rights and remedies, Seller may elect to either: (i) require full or partial payment in advance for all Deliverable Items remaining to be delivered as a condition of continued performance under the Purchase Order, or any other then existing Purchase Order between Buyer and Seller; or (ii) cease performance of its obligations under the Purchase Order, without prejudice or penalty. If Seller subsequently resumes performance, the Price, delivery schedule, and other affected terms of the Purchase Order shall be equitably adjusted to compensate Seller for all impacts on Seller associated with such work stoppage, including a reasonable profit.
 - b. Personal Property and Security Interest. Seller retains title to the each Deliverable Item of Equipment until receipt in full of the Price set forth in the Price Schedule for each such Deliverable Item of Equipment. If any payment is not made in full when due, without prejudice to Seller's other rights and remedies, Seller is entitled to recover possession of the Deliverable Items of Equipment shipped and subject to the delinquent payment, and if they are in Buyer's possession or control, the Buyer shall assemble them at a place to be designated by Seller. In addition to retaining title to such Deliverable Items of Equipment as set forth immediately above in this sub-Section b, Buyer hereby pledges and grants to Seller, and Seller shall have, a valid, binding, enforceable and perfected first priority lien on, and security interest in (collectively, the "Security Interest"), all of the rights, title and interest in, to and under such Deliverable Items, whether now existing or hereafter coming into existence (collectively, the "Collateral") in the possession of Buyer and for which Seller has not received full payment of the Price therefor from Buyer, and Buyer shall cooperate with Seller in doing whatever is reasonably required to perfect such security interest.

7.0 CHANGES

- 7.1 Change Process. Buyer may, in writing, request a change within the general scope of the Purchase Order, including Buyer requested changes to the delivery schedule of a Deliverable Item or postponement of work. Seller shall not be obligated to proceed with any change, but will respond to Buyer's request indicating whether and under what conditions Seller is willing to accept such change. If such requested change causes an increase or decrease in the cost or the time required for completion of the work to be provided herein, or otherwise affects any other provision of the Purchase Order, Buyer and Seller shall negotiate and agree in a timely manner to equitable adjustments in the Prices, delivery schedules and other affected provisions of the Purchase Order, and the Purchase Order shall be modified in writing accordingly. In no event shall Seller be obligated to proceed with the requested change until the Parties have agreed upon such changes and entered into a written amendment to the Purchase Order.
- 7.2 Buyer Caused Delays. Delivery dates are based upon Buyer's prompt performance of its obligations hereunder, including timely provision to Seller of all necessary information. If the performance of all or any part of the work required of Seller under the Purchase Order is delayed or interrupted by Buyer's failure to perform its obligations within the time specified in the Purchase Order or within a reasonable time if no time is specified, Seller shall be entitled to an equitable adjustment in the Prices, delivery schedules, and any other terms of the Purchase Order affected by such delay.

8.0 LIMITED WARRANTY

- 8.1 General.



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- a. Deliverable Items of Equipment. Seller warrants that for a period of one (1) year from the date of delivery pursuant to Article 4.0, DELIVERY, TITLE TRANSFER AND TRANSFER OF RISK OF LOSS, herein (the "Warranty Period for Equipment"), a Deliverable Item of Equipment will meet the requirements of the Specification and shall be free of defects in material and workmanship (the "Warranty"). Should any Deliverable Item of Equipment not meet the Warranty provided above during the Warranty Period for Equipment, upon prompt notification thereof by Buyer and confirmation that the Deliverable Item has been stored, installed, operated and maintained in accordance with the manuals, operating instructions and/or recommendation of the Seller, Seller shall correct any such defect either by repair or replacement, at Seller's option. The foregoing shall constitute Buyer's sole and exclusive remedy, and shall fulfill and discharge all of Seller's obligations and liabilities with respect to the Warranty for Deliverable Items of Hardware.
- b. Deliverable Services. For a period of one (1) year after delivery of a Deliverable Service (the "Warranty Period for Services"), in the event that any such Service provided hereunder fails to meet the applicable requirements of the Specification at the time of delivery pursuant to Article 4.0, DELIVERY, TITLE TRANSFER AND TRANSFER OF RISK OF LOSS, Seller shall re-perform such Service. The foregoing shall constitute Buyer's sole and exclusive remedy, and shall fulfill and discharge all of Seller's obligations and liabilities with respect to the Warranty for Deliverable Services.
- 8.2 Return Material Authorization. Deliverable Items of Equipment may not be returned by Buyer for repair or replacement under this Warranty without first securing a Return Material Authorization ("RMA") number from Seller. Where Seller authorizes Buyer to return Deliverable Items of Equipment for repair or replacement via an RMA, Seller shall also provide Buyer with any information necessary to ensure that the Deliverable Item of Equipment is properly received and accounted for by Seller. Unless otherwise notified by Seller in writing, all authorized returns shall be sent to the following address:
- Trayer Engineering Corporation
898 Pennsylvania Avenue
San Francisco, California 94107**
- 8.3 Exclusions. the Warranty provided under this Article 8.0, LIMITED WARRANTY, shall not apply if adjustment, repair or replacement is required as a result, directly or indirectly, of Buyer's operating, using and/or maintaining the Deliverable Item in a manner not in accordance with the manuals, operating instructions or recommendations provided by Seller, accident, unusual physical or electrical stress beyond the Deliverable Item's design tolerances, negligence, misuse, failure of environmental controls prescribed in operations and maintenance manuals, repair or alterations by any party other than Seller, or by causes other than normal and ordinary use. The Warranty provided pursuant to this Article 8.0, LIMITED WARRANTY is conditioned upon Seller being given access, if required, to Deliverable Items at Buyer's facility in order to effect any repair or replacement thereof. The Warranty does not apply to any items not supplied by Seller and does not include installation, de-installation or re-installation of the Deliverable Item, all of which are at the sole expense, and are the sole responsibility of the Buyer. If the defect repaired or remedied by Seller is not covered by the Warranty provided pursuant to this Article 8.0, LIMITED WARRANTY, Buyer and Seller shall negotiate an equitable adjustment to the Purchase Order for such repair/remedy. In addition, Buyer shall maintain accurate and up-to-date records of all use, maintenance, repairs, incident reports and analysis and handling of the Deliverable Items, which records shall be made available to Seller upon request.
- 8.4 DISCLAIMER. EXCEPT AND TO THE EXTENT EXPRESSLY PROVIDED IN SECTION 8.1 HEREOF, SELLER HAS NOT MADE NOR DOES IT HEREBY MAKE ANY REPRESENTATION OR WARRANTY, WHETHER OR ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR PURPOSE WITH REGARD TO ANY DELIVERABLE ITEM, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.
- 8.5 Voidance of Warranty. Any modification or unauthorized repair of Deliverable Item shall void warranty of such Deliverable Item. Buyer agrees to keep accurate and up to date records of Deliverable Item installation and maintenance and furnish to Seller with said records in the event of a dispute upon request.

9.0 INTELLECTUAL PROPERTY

Title to all Intellectual Property incorporated in or associated with Deliverable Items or any element thereof, and the Intellectual Property Rights contained therein, shall remain in Seller or its licensor ("Seller's Intellectual Property"). Subject to the terms of the Purchase Order, Buyer shall have a non-exclusive, non-transferrable, non-sublicensable, world-wide, irrevocable (except in the event of Buyer's breach of the Purchase Order), paid-up, royalty-free license and right to use the Seller's Intellectual Property for the sole purpose of testing, operating and maintaining Deliverable Items of Equipment and for no other purpose or use. Buyer's officers, directors, employees, consultants and representatives shall not disclose Seller's Intellectual Property to other companies, organizations or persons without the express prior written consent of Seller. Buyer shall have no rights in or to Seller's Intellectual Property other than as expressly stated in the Purchase Order, and title to Seller's Intellectual Property shall not pass to Buyer or any other entity pursuant to the terms of the Purchase Order.

10.0 PATENT CLAIMS/THIRD PARTY CLAIMS

- 10.1 Third Party Claims. Buyer shall not be entitled to, and may not claim, any recovery against Seller for any damages or other liabilities claimed or adjudicated (or provided in settlement of the matter) to be owing to a third party claimant including any costs, expenses and attorneys' fees (collectively "Losses") for any injury to, or damage to the property of, such third party, except: (i) to the extent caused by a negligent act, omission or willful misconduct of Seller or its employees or representatives; and (ii) Buyer's strict compliance with Section 10.3 below.
- 10.2 Intellectual Property Claims. Subject to Section 10.2 below, Seller shall defend any third party suit or proceeding brought against Buyer so far as based on a claim that any Deliverable Item, or any part thereof, delivered under the Purchase Order constitutes and infringement of any United States patent (a "Claim"). Seller shall pay all damages and costs ultimately awarded or provided in settlement thereof to a third party. In case the Deliverable Item, or any part thereof, furnished hereunder is in such suit held to constitute infringement and its use is enjoined, Seller shall, at its own expense and at its option, either (1) procure the right to continue using said Deliverable Item or part thereof; or (2) replace the same with a non-infringing item; or (3) modify it so that it becomes non-infringing; or (4) remove said Deliverable Item and refund Price thereof.



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The foregoing states the Buyer's sole and exclusive remedies, and shall fulfill and discharge all of Seller's obligations and liabilities with respect to a Claim and/or patent infringement by a Deliverable item or any part thereof.

a. Exclusions. Seller shall have no liability, and Buyer shall have no rights or remedies under Section 10.2 hereof as to any Claim or alleged infringement arising from: (i) any Deliverable Item, or any part thereof, manufactured to Buyer's design; (ii) the manufacture, use, or sale of said Deliverable Item or any part of parts thereof, in combination with equipment, apparatus or things not furnished by the Seller; (iii) a process or a product thereof; and/or (iv) modifications of any Deliverable Item after delivery by a person or entity other than Seller.

10.3 **Conditions.** Buyer's rights and remedies set forth in Section 10.1 and Section 10.2 are expressly conditioned on (i) Buyer promptly notifying Seller, in writing, of any Claim, including a third party claim under Section 10.1, and giving Seller the authority, information, and assistance for the defense of same, and further, that Buyer not make any admission nor reach a compromise or settlement without the prior written approval of the Seller; and (ii) Buyer obtaining a waiver of subrogation and release of any right of recovery against the Seller and its affiliates, contractors and subcontractors at any tier (including suppliers of any kind) and their respective directors, officers, employees, shareholders and agents, that are involved in the performance of the Purchase Order, from any insurer providing coverage for the risks subject to the rights and remedies of Section 10.1 and Section 10.2 hereof.

11.0 CONFIDENTIAL INFORMATION

All Seller's confidential information is subject to Article 9.0, INTELLECTUAL PROPERTY, hereof. Unless Buyer and Seller have entered into a separate confidentiality agreement for the protection of Buyer's confidential information, and the terms of which are incorporated into the Purchase Order, Buyer agrees that it has not provided Seller with any Buyer confidential information and that Seller has no confidentiality obligations in regard to Buyer's information.

12.0 DISPUTES

The Parties shall attempt in good faith to resolve any dispute(s) arising under the Purchase Order by negotiations between representatives of the Parties authorized to resolve such dispute(s), prior to submitting such dispute(s) for resolution by a court of competent jurisdiction or other resolution process. All negotiations pursuant to this Section 12 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and not as evidence or admission of liability.

13.0 TERMINATION

13.1 **Sellers Rights to Terminate.** Seller may terminate the Purchase Order for Buyer's breach, including Buyer's insolvency, or failure to give adequate assurances of payment within five (5) days of a written request by Seller, and Seller shall be entitled to payment for all Deliverable Items Delivered to Buyer prior to the termination and for partially completed items or Services and work-in-process that is subject to such termination: (i) at the actual cost incurred by Seller, including normal overheads and burdens; plus: (ii) for the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Purchase Order (excluding any actual costs of materials already included sub-Section (i) immediately above); plus (iii) and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory; plus (iv) a markup of twenty percent (20%) of such costs calculated pursuant to sub-Sections (i) through (iii) immediately above. In the event of default for non-payment by Buyer, Seller shall also have the remedy of repossession of the Deliverable Items subject to such termination, and shall also be entitled to recover from Buyer the difference in fair market value between the Price of the Deliverable Item repossessed and its then fair market value plus costs of repossession, shipping and handling.

13.2 **Buyer's Rights to Terminate.** Buyer may terminate the Purchase Order as to any Deliverable Item only if Seller has failed to correct a material breach thereof within forty-five (45) days after receipt of Buyer's written notice specifying the cause of the Breach. As Buyer's sole remedy in the event of such termination, Seller shall refund the Price or any portion thereof paid or received from Buyer for the terminated Deliverable Item(s).

13.3 **Other Termination Rights.** Except as provided in Sections 13.1 and 13.2 above, neither the Purchase Order nor any portion thereof is cancellable or terminable for any reason except with the written agreement of Parties, which agreement shall include an agreement on the compensation due to Seller in the event of such a mutually agreed termination. In the event that Buyer attempts to terminate this Agreement in violation of this Section 13.3, it shall be deemed a breach by Buyer and Seller shall be entitled to the rights and remedies contained in Section 13.1 hereof; provided that, in no event shall Seller's recovery against Buyer be less than fifteen percent (15%) of the Price of the terminated Deliverable Items.

14.0 ASSIGNMENT

The Purchase Order may not be assigned by Buyer without the express written consent of the Seller, which consent will not be unreasonably withheld.

15.0 LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL NOT BE LIABLE DIRECTLY OR INDIRECTLY TO THE BUYER, TO ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS AT ANY TIER (INCLUDING SUPPLIERS OF ANY KIND), AGENTS OR CUSTOMERS, TO ITS PERMITTED ASSIGNEES OR SUCCESSORS IN INTEREST OR ANY SUBSEQUENT OWNERS OF ANY DELIVERABLE ITEM OR TO ANY OTHER PERSON CLAIMING BY OR THROUGH BUYER, FOR ANY AMOUNTS REPRESENTING LOSS OF PROFITS, LOSS OF BUSINESS, LOST REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION COSTS OF EFFECTING COVER, ARISING FROM OR RELATING TO THE PERFORMANCE OR NONPERFORMANCE OF THE PURCHASE ORDER OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATED TO THE USE OF ANY ITEMS DELIVERED OR SERVICES FURNISHED UNDER THE PURCHASE ORDER, WHETHER THE BASIS OF SUCH LIABILITY IS BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OF ANY TYPE AND STRICT LIABILITY), STATUTE OR OTHER LEGAL OR EQUITABLE THEORY. IN NO EVENT SHALL SELLER'S MAXIMUM CUMULATIVE LIABILITY UNDER OR IN CONNECTION WITH THE PURCHASE ORDER EXCEED THE REFUND OF AMOUNTS PAID TO SELLER THEREUNDER, WHETHER THE BASIS OF SUCH LIABILITY IS BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OF ANY



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TYPE AND STRICT LIABILITY), STATUTE OR OTHER LEGAL OR EQUITABLE THEORY. ANY ACTION AGAINST SELLER MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTIONS ACCURES. THIS ARTICLE 15.0, LIMITATION OF LIABILITY, SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THE PURCHASE ORDER FOR WHATEVER CAUSE.

16.0 GENERAL

- 16.1 Remedies. Except as otherwise expressly set forth in the Purchase Order, the remedies provided herein are the sole and exclusive remedies and will be deemed to be an election of remedies exclusive or any other remedy at law or equity or otherwise.
- 16.2 Applicable Law. All Quotations and the Purchase Order shall be interpreted, construed and governed, and the rights of the Parties shall be determined, in all respects, according to the laws of the State of California, USA, without reference to its conflict of laws provisions. The State and Federal courts of competent jurisdiction of California shall have sole jurisdiction over any suit resulting from the Purchase Order, with venue in the County of San Francisco, CA. Buyer and Seller hereby consent to the exclusive jurisdiction of the aforesaid courts and the venue.
- 16.3 Entire Agreement. The Purchase Order, including all its exhibits, attachments and referenced and/or incorporated documents represents the entire understanding and complete agreement between the Parties with respect to the subject matter of the Purchase Order and supersedes all prior and contemporaneous negotiations, agreements, communications and understandings (both oral and written) with respect to the subject matter of the Purchase Order.
- 16.4 Force Majeure. Seller shall not be liable for any loss, damage or delay arising out of its failure (or that of its suppliers) to perform under the Purchase Order due to causes beyond its reasonable control, including, without limitation, acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation or transportation embargoes. In the event of a delay caused by a force majeure event, the delivery schedule of the Purchase Order shall be extended for such length of time as may be reasonably necessary to compensate for the delay.
- 16.5 Counterparts. The Purchase Order may be signed in any number of counterparts with the same effect as if the signature(s) on each counterpart were upon the same instrument.
- 16.6 Use of the Term "Including". Whenever the word, "including" is used in the Purchase Order, it shall not be interpreted as a term of limitation, but shall be deemed to include the phrase, "but not limited to".
- 16.7 Waiver and Amendment. Quotations, including all documents attached, incorporated or referenced therein, may not be modified except by a written instrument signed by an authorized representative of Seller. The Purchase Order, including any and all of its exhibits, attachments and referenced and/or incorporated documents may only be modified by a written instrument of subsequent date signed by authorized representatives of both the Seller and Buyer. Failure by either Party to enforce any provision of the Purchase Order will not be deemed a waiver of future enforcement of that or any other provision.
- 16.8 Interpretation. Whenever the Purchase Order provides for a decision to be made by either Party (including, without limitation, any consent, approval, acceptance, instruction, notice, opinion or direction), both Parties undertake that such decisions shall not be unreasonably made, withheld or delayed. Both Parties agree that when making any claim against the other, they will use all reasonable endeavors to mitigate losses arising from the same.
- 16.9 Survival. Termination or expiration of the Purchase Order for any reason shall not release either Party from any liability or obligations: (i) that the Parties have expressly agreed shall survive such termination or expiration; (ii) which remain to be performed; or (iii) by their nature would be intended to be applicable following any such termination or expiration.

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