

INTELLITEC COLLEGE
TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions (the “Terms”) are applicable to each purchase order (a “Purchase Order”) issued by Technical Trades Institute, Inc. (“Company”), regardless of whether the Terms are attached to the Purchase Order, posted on Company’s website, or delivered separately, and shall be deemed to have been irrevocably accepted by Supplier upon the earliest of Supplier’s (a) delivery of notice of acceptance of the Purchase Order, (b) shipment or delivery of a Good or performance of a Service, or (c) acceptance of any payment made by Company for Goods or Services. Notwithstanding the foregoing, if Company and Supplier have entered into a master agreement governing the purchase and sale of the Goods or provision of the Services (the “Master Agreement”), the Master Agreement shall govern in lieu of the Terms.

1. Definitions; No Conflicting Terms; Interpretation. As used herein: “**Applicable Law**” means all applicable federal, state, and local laws, codes, rules, regulations, and orders of any governmental authority; “**Deliverable**” means any work product or deliverable to be developed, created, or prepared by Supplier and delivered to Company in connection with the performance of Services, together with all inventions, improvements, discoveries, software, firmware, and other forms of technology or intellectual property made, conceived, or actually reduced to practice during the term of the PO, whether independently or jointly with others, and that are suggested by, or derive or result from, the Services or from any information obtained by Supplier from Company; “**Delivery Dates**” means the delivery dates and times (if any) set forth in the Specific Details; “**Goods**” means the materials, equipment, systems, and goods (a) described under “Description” in the Specific Details, (b) used by Supplier in connection with Supplier’s performance of Services, or (c) otherwise delivered to Company in connection with the PO; “**Group**” means, with respect to a party, such party, its affiliates, and its and their respective officers, directors, shareholders, members, partners, and employees, and the successors and assigns of all of the foregoing; “**Lien**” means a lien or encumbrance of any kind, whether or not filed, recorded, or otherwise perfected, and any interest of a supplier or lessor under any conditional sales agreement, capital lease, or other title retention agreement; “**Manufacturer**” means a manufacturer or fabricator of Goods not manufactured or fabricated by Supplier; “**Permits**” means all federal, state, and local permits, licenses, and approvals; “**Person**” means an individual or entity; “**Personnel**” of a party means such party’s employees, contractors, subcontractors, vendors, agents, and invitees, and their respective employees, contractors, subcontractors, vendors, agents, and invitees, as applicable, excluding, in the case of Company’s Personnel, Supplier and Supplier’s Personnel; “**Prices**” means the prices for the Goods and Services set forth in the Specific Details; “**PO**” means the Terms together with the details (the “**Specific Details**”) contained on the face of the Purchase Order; “**Company’s Policies**” means all policies, procedures, and regulations of Company delivered to Supplier by Company or otherwise made available to Supplier by Company; “**Company’s Site**” means the location specified by Company for the delivery of Goods or performance of Services; “**Services**” means the services described under “Description” in the Specific Details; “**Supplier**” means the supplier identified in the Specific Details; “**Third Party**” means any Person other than Company, Supplier, or their affiliates; and “**Warranty Period**” means the period commencing on the date of delivery of the Good and ending on the date set forth in the Specific Details, or if no date is set forth therein, the earlier of (i) 12 months after the Good is placed in service or (ii) 18 months after delivery of the Good to Company.

If a conflict exists among the terms and conditions contained in the Terms, the Specific Details, and Company’s Policies, the terms and conditions shall control in the following order of priority: (A) the Specific Details, (B) the Terms, and (C) Company’s Policies. If a conflict exists between the Terms attached to a Purchase Order and the Terms available on Company’s website as of the date of the PO, the Terms available on Company’s website shall control. If any additional or different terms or conditions are contained in any documentation provided by Supplier (“**Supplier’s Proposed Terms**”), the PO shall control regardless of when Supplier’s Proposed Terms are received by Company unless Company agrees in writing to any of Supplier’s Proposed Terms; otherwise, Company rejects Supplier’s Proposed Terms.

As used herein: (1) the singular includes the plural and vice versa; (2) reference to a document, Applicable Law, or Company’s Policy means such document, Applicable Law, or Company’s Policy as amended from time to time; (3) the term “or” is not exclusive; (4) “include” or “including” means including, without limitation; (5) headings do not constitute a part of the PO; (6) references to money refers to United States currency; (7) references to Company include its affiliates, successors, and assigns; and (8) the terms “hereof,” “hereunder,” “herein,” “hereby,” and derivatives or similar words refer to the entire PO. If the provision of Services under the PO includes the delivery of any Deliverables, all such Deliverables shall be deemed Goods hereunder and all provisions in the PO applicable to Goods shall be applicable to such Deliverables, except that (x) Sections 2.2 shall only apply to Deliverables provided in written, hard-copy form, and (y) Section 2.3 shall not apply to Deliverables.

2. Goods

2.1. Warranties.

(a) **Warranty on Goods.** In addition to any warranties contained in the Specific Details, Supplier warrants to Company that, (i) until the expiration of the Warranty Period, Goods will (A) conform to Company’s specifications and metrics, or if none are given, to samples thereof, (B) be free of defects in material and workmanship and without variation and of even kind, quality, and quantity within each unit and among all units,

(C) be fit for the purpose for which such Goods are ordinarily used, and (D) comply with Applicable Laws; (ii) Goods do not infringe upon or violate the intellectual property rights of a Third Party; and (iii) upon delivery, Goods are free and clear of Liens, except as provided in the Subsection entitled "Purchase Money Security Interest." The foregoing warranties shall survive any inspection, delivery, acceptance, or payment by Company, but shall not apply to consumable items attached to or used in conjunction with Goods.

- (b) **Corrective Work.** Supplier shall promptly repair, modify, or replace, at Supplier's election, Goods that do not comply fully with the warranties set forth in the foregoing Subsection ("**Defective Goods**") at no cost to Company, except that if Supplier cannot repair, modify, or replace the Defective Goods such that the Defective Goods comply with the warranties within a reasonable time after Company's or Supplier's discovery of noncompliance, Supplier (i) shall refund all payments made by Company for the Defective Goods, and (ii) arrange and pay for the removal of the Defective Goods or pay Company the reasonable costs incurred by Company to remove the Defective Goods, including shipping costs.
- (c) **EXCLUSIVE WARRANTIES.** EXCEPT FOR THE FOREGOING WARRANTIES AND ANY WARRANTIES CONTAINED IN THE SPECIFIC DETAILS, NO OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS, OR IMPLIED, SHALL APPLY TO GOODS.
- (d) **Manufacturer Warranties.** If Supplier is not the Manufacturer of a Good, Supplier (i) shall secure the warranties and remedies set forth in the Subsections entitled "Warranty on Goods" and "Corrective Work" from the Manufacturer, (ii) assigns the warranties and remedies to Company effective upon delivery of the Good, and (iii) upon Company's request, shall serve as Company's agent for purposes of administering the warranties and remedies provided by the Manufacturer and otherwise assist Company in obtaining warranty service from the Manufacturer.

2.2. Delivery; Risk of Loss. Unless otherwise specified in the Specific Details, Supplier shall (a) pack, mark, label, document, and ship Goods to the location specified in the Specific Details in accordance with Applicable Law and using labels and tags containing adequate and accurate information with respect to use, safety, and treatment of Goods, (b) deliver Goods F.O.B. Company's Site, and (c) ship and deliver Goods in accordance with Delivery Dates. If Goods are delivered F.O.B. Supplier's facility, title and risk of loss and damage to Goods shall transfer to Company upon the earlier of delivery of Goods to Company's designated carrier or Company taking possession of the Goods, in each case, at Supplier's facility. If Goods are delivered F.O.B. Company's Site, title and risk of loss and damage to Goods shall transfer to Company upon Supplier's or its carrier's delivery of the Goods to Company's designated location.

2.3. Manuals. Concurrently with delivery of each Good, Supplier shall deliver to Company all installation, erection, operation, and maintenance manuals, material test reports, and material certificates (or other Supplier supplied information relating to the integrity of the Good) available for the Good not previously delivered to Company.

3. Services

3.1. Performance Standards. Supplier shall perform Services (a) in compliance with Applicable Laws, Company's Policies, and all applicable Permits held by Supplier or Company, (b) in a professional manner with the standard of care, skill, and diligence normally provided by a professional Person in the performance of services similar to the Services, (c) in compliance with all final written descriptions, specifications, drawings, metrics, and representations agreed upon by Company or otherwise provided by Company, including those specified in the Specific Details, (d) using qualified, competent, experienced, and if applicable, licensed Personnel, (e) in a manner that does not infringe upon or violate the intellectual property rights of a Third Party, and (f) in accordance with the Delivery Dates.

3.2. Ownership.

- (a) Supplier shall disclose all Deliverables to Company promptly following the development, creation, or preparation thereof. Company owns and shall continue to own all right, title, and interest in and to any Deliverables, including all copyrights and renewals and extensions of copyright therein. Supplier shall, and hereby does, exclusively and irrevocably assign, transfer, and convey to Company all right, title, and interest in and to the Deliverables, including all rights of copyright or other intellectual property rights pertaining thereto. To the extent applicable and to the fullest extent allowed by Applicable Law, each Deliverable is a "work made for hire," as that phrase is defined in the Copyright Act of 1976 (17 U.S.C. § 101), in that such Deliverables and the results, proceeds, and product thereof have been and will be specifically ordered or commissioned for use as set forth in the Copyright Act of 1976. Company shall own in perpetuity throughout the universe all now or hereafter existing rights of every kind and character in and to the Deliverables, free of any claims whatsoever by Supplier or any person deriving any rights or interest from or through Supplier and may exploit the Deliverables in any and all media and channels now known or hereafter devised. If a court of competent jurisdiction determines that any Deliverable is not owned by Company pursuant to this Agreement and has not been assigned to Company pursuant to this Section, Supplier hereby grants to Company a perpetual, worldwide, transferable, sublicensable, irrevocable, royalty-free, fully paid-up, exclusive, unlimited license to use the Deliverable for any purpose and in any manner.

Any assignment of copyright under this Agreement includes all rights of paternity, integrity, disclosure, and withdrawal and any other rights that may be known or referred to as “moral rights” (collectively, “Moral Rights”). To the extent that such Moral Rights cannot be assigned under Applicable Law and to the extent permitted by the Applicable Law of such jurisdictions where Moral Rights exist, Supplier hereby waives all such Moral Rights and consents to any action of Company that would violate such Moral Rights in the absence of such consent. Supplier shall confirm any such waivers and consents as requested by Company.

- (b) Company, as the owner of all intellectual property rights in the Deliverables, may, in its sole discretion, apply for copyright registration or file any other intellectual property right on any Deliverable under this Agreement. Both during and after the term of the PO, Supplier shall cooperate fully with Company and execute and deliver to Company any documents that Company requests to effectuate the purposes of this Agreement and to enable Company to secure and maintain the rights described herein with respect to the Deliverables. If Supplier fails to timely execute or deliver any such document, Supplier hereby irrevocably constitutes and appoints Company and any officer, employee, or agent thereof, with full power of substitution, as Supplier’s true and lawful attorney-in-fact with fully irrevocable power and authority to take all appropriate action and to execute any such document. Company may, in its sole discretion, publish or use, or not publish or use, the Deliverables, in whole or part.
 - (c) To the extent that any materials owned by or licensed by Supplier from third parties (the “**Third Party Materials**”) are included in the Deliverables, Supplier shall obtain for Company at Supplier’s sole cost and expense (and Supplier hereby grants to Company) a perpetual, worldwide, transferable, sublicensable, irrevocable, royalty-free, fully paid-up, nonexclusive, unlimited license to such Third Party Materials. Any materials developed by Supplier prior to entering into the PO and any other patent, trade secret, or proprietary rights in techniques and concepts that were not conceived or first produced by Supplier in the performance of the Services or in connection with the PO (collectively, “**Supplier IP**”) shall be proprietary to Supplier and shall remain Supplier’s exclusive property. Supplier hereby grants to Company a perpetual, worldwide, transferable, sublicensable, irrevocable, royalty-free, fully paid-up, nonexclusive, unlimited license to the Supplier IP to the extent it is incorporated in any Deliverable delivered to Company by Supplier hereunder.
- 3.3. Permits.** Supplier shall (a) obtain all Permits necessary or desirable for the performance of Services prior to the commencement of the applicable Services, and (b) maintain the Permits in full force and effect until completion of the applicable Services.
- 3.4. Safety and Security.** Supplier shall be solely responsible for the work safety and industrial hygiene of its Personnel. Prior to performing Services on Company’s Site, Supplier shall inspect the condition of, the ingress and egress to and from, and Company’s operations at, Company’s Site. While on Company’s Site, Supplier shall, and shall cause its Personnel to, (a) comply fully with all United States Occupational Safety and Health Administration rules and regulations and other Applicable Laws, and (b) use its best efforts to protect the security of Company’s property, including by securing all facility entry ways during and after the performance of Services and safely storing access passwords, access codes, and access keys.
- 3.5. Hazardous Substances.** At least 10 business days before Services are performed on Company’s Site requiring the use of hazardous chemicals or substances, or as soon as reasonably practicable, Supplier shall deliver to Company a proposal setting forth (a) a copy of Supplier’s hazard communication program, (b) a list of all hazardous chemicals and other substances Supplier proposes to bring onto Company’s Site and the quantities of each, and (c) material safety data sheets for each chemical and substance on the list. Company shall notify Supplier of any objections to the proposal within 5 business days after receipt thereof. If Company fails to timely object, the proposal shall be deemed approved, and Supplier may bring the listed hazardous chemicals and substances onto Company’s Site in accordance with the proposal. As soon as practicable after Supplier’s completion of Services on Company’s Site, Supplier shall dispose of all hazardous chemicals and substances used during the performance of Services in accordance with all Applicable Laws and Company’s Policies.
- 3.6. Damage to a Site.** Supplier shall not damage Company’s Site or the material, machinery, equipment, or other property of Company or third parties located or used thereon. Supplier shall repair or replace such damaged property with like-kind property at Supplier’s sole cost and expense.
- 3.7. Liens.** Except to the extent caused by Company’s failure to make undisputed payments hereunder when due, Supplier shall not assume or create, and shall not permit any Supplier Personnel to assume or create, any Lien on Company’s Site, any of Company’s property, or any of the Goods in connection with the performance of Services.
- 3.8. Independent Contractor.** Supplier and Supplier’s Personnel shall be deemed independent contractors for all purposes, and not employees, agents, or representatives of Company, Company being interested only in the results of the Services performed. Company shall not be liable to Supplier for any expenses paid or incurred by Supplier unless agreed to in writing by Company. Supplier shall not hold Supplier out as an employee or agent of Company and shall not enter into any contract that purports to bind Company without prior consent of Company’s supply chain Personnel, and any such contract shall be void. Supplier shall report as income for federal and state income tax purposes all amounts received by

Supplier under the PO, and shall not be entitled to any employment benefits of any kind provided by Company to its employees.

4. Terms and Conditions Applicable to Goods and Services

- 4.1. Prices/Change Orders.** The Prices specified in the Specific Details are the total Prices of the Goods and Services to Company without adjustment for any prompt payment or other discount offered by Supplier (unless otherwise stated in the Specific Details), and Company shall not be responsible to Supplier for any other charges, fees, or expenses. Supplier shall include sales and use taxes applicable to the Goods and Services on the invoices and shall pay such taxes to the applicable governmental authorities when due. If applicable, Supplier shall cooperate with Company in obtaining exemption certificates for the tax jurisdictions of Goods or Services and shall not include any sales or use taxes on the invoices to the extent Company has provided Supplier with an exemption certificate. Company may modify or cancel all or a part of the PO by the issuance of a change order or notice of cancellation if the change order or notice is made in advance of shipment of Goods or completion of Services. If modifications contained in a change order can reasonably be expected to necessitate an adjustment to the Prices or Delivery Dates, the parties shall endeavor to reach an equitable adjustment as soon as practicable so as not to adversely affect the Prices or Delivery Dates. If Company cancels any Goods included in a PO, Company shall pay any applicable cancellation charges included in the Specific Details, or if none are included therein, an amount equal to (i) the direct costs for labor and parts expended by Supplier for the cancelled Goods before Company's delivery of notice of cancellation, minus (ii) the reasonable salvage amount that Supplier can realize by selling or using any cancelled Goods.
- 4.2. Records.** Supplier shall, and shall require its subcontractors to, maintain true, correct, and complete books and records relating to the Goods and Services and the amounts billed to Company (collectively, "**Records**") in accordance with generally accepted accounting principles and Company's Policies for at least four years after Supplier receives the final payment under the PO. Supplier shall permit any representative authorized by Company to audit any and all Records of Supplier and its subcontractors at any reasonable time during the term of the PO and during the four-year period after Supplier receives the final payment under the PO.
- 4.3. Invoice Submission, Disputes, and Discounts.** Supplier's invoices shall (a) contain the PO number and such other information as may be reasonably requested by Company, and (b) be due 30 days after delivery thereof. If Company disputes amounts set forth in an invoice, Company may withhold and offset payment of the disputed amount, and the parties shall promptly use commercially reasonable efforts to resolve the dispute. Company shall not be obligated to pay any amount set forth in an invoice delivered more than 90 days after the date on which the Services or Goods referenced in the invoice were performed or delivered, as applicable. The Specific Details shall set forth any discount available to Company for early payment of invoiced amounts. If Company fails to pay any invoiced amount within five days after the date such amount was due (other than disputed amounts), such unpaid amount shall accrue interest at a rate of one percent per month (simple interest) until Company's payment in full. Company's payment of an invoice does not constitute acceptance of Goods or Services.
- 4.4. Purchase Money Security Interest.** To the extent Company pays all or a portion of the Price for Goods prior to Supplier's delivery of the Goods to Company, Supplier grants to Company a purchase money security interest in such Goods. If Supplier delivers Goods prior to Company's payment in full for such Goods, Company grants to Supplier a purchase money security interest in such Goods. Each party authorizes the secured party to file, and shall provide the secured party reasonable assistance in the filing of, Uniform Commercial Code financing statements, continuation statements, and such other documents as the secured party deems desirable or necessary to perfect, maintain, and protect the security interest granted to such Party herein.
- 4.5. Default.** Supplier shall be in default under the PO if Supplier breaches any Specific Detail or Term and, if such breach is capable of being cured, does not cure such breach (a) within 15 days after Company gives Supplier notice of such breach, or (b) within 30 days if such breach is not capable of being cured within such 15-day period and Supplier is diligently working to effect a cure as of the expiration of such 15-day period, except that no cure period or notice from Company shall be required if (i) the default involves a (A) breach of an Applicable Section (defined below), (B) violation of Applicable Law, or (C) failure to comply with the Delivery Dates; or (ii) Supplier commits the same or similar breach more than one time during any six-month period. Upon a default under the PO, Company shall be entitled to (1) suspend some or all of its performance under the PO, (2) cancel the affected Goods or Services without paying cancellation charges, (3) terminate the PO and have no further obligation under the PO to Supplier, and (4) declare all or part of Supplier's obligations to Company under the PO immediately due.
- 4.6. Liquidated Damages.** Damages to Company caused by Supplier's failure to comply with the Delivery Dates are difficult to ascertain. Accordingly, liquidated damages may be set forth in the Specific Details, and such liquidated damages (a) represent a fair, reasonable, and proportionate approximation of Company's damages caused thereby and do not constitute a penalty, and (b) shall be the sole damages available to Company for Supplier's failure to comply with the Delivery Dates, but the liquidated damages shall not preclude Company's exercise of (i) other non-monetary

remedies that may be available for such default, including termination of the PO or equitable relief, or (ii) any remedies (monetary or otherwise) available for other defaults that occur concurrently with, before, or after such default.

4.7. Indemnification.

- (a) **Clarifications.** The obligations of this Section shall apply regardless of the amount of insurance coverage held by Supplier, including coverage under a workers' compensation act, disability act, or other employee benefit act, or any other Applicable Law that would limit the amount or type of damages, compensation, or benefits payable by or for Supplier, and shall be both independent of and not limited by or to any insurance carried or provided by Supplier.
- (b) **Mutual Indemnification.** Each party (the "**Indemnifying Party**") shall indemnify and hold harmless the other party's Group (such other party, the "**Indemnified Party**") from and against losses, costs, expenses, liabilities, damages, fines, and penalties, including court costs, reasonable attorneys' and professionals' fees and expenses, and other litigation or settlement expenses ("**Losses**") sustained or incurred by a member of the Indemnified Party's Group, including as a result of a claim, demand, or action made by a Third Party or an employee of the Indemnifying Party (a "**Third Party Claim**"), to the extent the Losses arise out of a negligent or wrongful act or omission of, or a breach of the representations, warranties, or covenants of the PO by, the Indemnifying Party's Group or Personnel.
- (c) **Intellectual Property Indemnification.** Supplier shall indemnify and hold harmless Company's Group from and against Losses sustained or incurred by a member of Company's Group to the extent the Losses arise out of infringement of the intellectual property rights of a Third Party by a Service or Good or otherwise directly or indirectly caused by Supplier's Group or Personnel.
- (d) **Indemnification Procedure.** If a Third Party Claim is made against a member of the Indemnified Party's Group that could reasonably be expected to result in a Loss that is subject to the indemnification obligations of this Section, or if the Indemnified Party discovers any inquiry or investigation that it believes may involve or expect to lead to a Third Party Claim that could reasonably be expected to result in such a Loss, the Indemnified Party shall promptly notify the Indemnifying Party, and the Indemnifying Party and the Indemnified Party or the applicable member of the Indemnified Party's Group shall cooperate to defend or settle such Third Party Claim.
- (e) **Additional Procedure for Infringement.** If a Third Party Claim has been made that a Service or Good has infringed any trademarks, patents, copyrights, trade secrets, trade names, or other Third Party rights, or if, in either party's judgment, any Service or Good is likely to be infringing (in each case, an "**Infringing Item**"), then in addition to Supplier's obligation elsewhere in this Section, Supplier may, at its option (i) procure for Company the right to continue using the Infringing Item, or (ii) replace or modify the Infringing Item to make its use non-infringing while yielding substantially equivalent results. If neither of the above options are or would be available on a basis that Supplier finds commercially reasonable, then Supplier shall terminate the PO, Company shall return the Infringing Item to Supplier (if the Infringing Item is a Good), and Supplier shall refund to Company the Prices paid for the Infringing Item.
- (f) **Manufacturers' Indemnities.** Supplier assigns to Company all of Supplier's right, title, and interest in each applicable indemnification commitment owed to Supplier by any Manufacturer of Goods for the applicable term, including any Manufacturer's indemnification obligations in the event of patent, copyright, trade secret, or other intellectual property right infringements or violations. Supplier shall execute and deliver such further instruments and take such further acts as may be reasonably requested to enable Company to exercise and enforce in Supplier's name all of such rights.

4.8. **Confidentiality.** Supplier shall keep confidential and not disclose to any Person any (a) non-public documents and information designated by Company (orally or in writing) as "proprietary" or "confidential" or that Supplier knows or has reason to know Company treats as confidential, (b) business and investment opportunities disclosed by Company, (c) business plans and methods, customer information, and financial data of Company, (d) all data, in any form, that is generated, entered, accessed, transmitted, stored, or processed by Supplier on Company's behalf, and (e) any information concerning students, applicants, faculty, or Personnel of Company. Supplier's obligation to keep the foregoing confidential is perpetual and survives the expiration or termination of the PO and the Terms, except to the extent any such confidential information is disclosed to the public and such disclosure is not a result of the breach by Supplier of its obligations hereunder. Company may be subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C §1232g ("**FERPA**"). Supplier shall not, and shall cause Supplier's Group and Personnel not to, act in a way that could cause Company to violate FERPA.

4.9. **Company Right of Inspections and Tests.** Company and its Personnel may inspect and test (a) the Goods and any quality assurance or other records related to the Goods during their design, manufacture, processing, construction, preparation, delivery, and completion, at reasonable times upon reasonable advance notice and in a manner that does not unreasonably interfere with Supplier's operations, and (b) all Services at any reasonable time and place, including the

facilities of Supplier or any of its Personnel, and Supplier shall assist Company and its Personnel in carrying out such inspections and tests of the Goods and Services. Company's performance of (or failure to perform) any inspection or test shall not be deemed (i) an assumption of risk, liability, or control over Supplier or its Personnel, (ii) an acceptance or approval of the Goods or Services, or (iii) a waiver of (A) Supplier's obligation to deliver the Goods or perform the Services or (B) Company's right to make a claim for Losses hereunder.

- 4.10. Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EXCEPT TO THE EXTENT THAT ANY SUCH DAMAGES ARISE FROM A PARTY'S (A) INDEMNIFICATION OBLIGATIONS HEREUNDER IN CONNECTION WITH THIRD PARTY CLAIMS, (B) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (C) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (D) IN THE CASE OF SUPPLIER AS LIABLE PARTY, INTELLECTUAL PROPERTY INFRINGEMENT BY THE GOODS OR SERVICES.
- 4.11. Insurance.** Supplier shall, at its sole expense, obtain and maintain insurance that is typically obtained and maintained in Supplier's industry for the Goods or Services that are being provided to Company for at least the Warranty Period (the "**Required Insurance**"). If at any time Company requests proof of insurance, Supplier shall provide to Company certificates of insurance evidencing Supplier's maintenance of the Required Insurance. Supplier shall ensure that the Required Insurance is (a) endorsed to name Company, its affiliates, and their respective officers, directors, shareholders, members, partners, and employees, and the successors and assigns of all of the foregoing (the "**Additional Insured Persons**") as additional insureds or provide blanket additional insured status that covers the Additional Insured Persons as additional insureds, except in the case of workers' compensation, (b) the primary coverage without any right of contribution from any other insurance held by any Additional Insured Person, in each case, to the extent of the indemnification obligations assumed by Supplier hereunder, and (c) so written or endorsed to include waivers of all subrogation rights of the insurers against the Additional Insured Persons to the extent of the indemnification obligations assumed by Supplier hereunder. Supplier shall notify Company at least 30 days prior to any cancellation or expiration of any insurance policy provided hereunder.
- 4.12. No Assignment.** Supplier shall not assign, delegate, or subcontract all or any portion of the PO, including assignments of any interests in revenues or fees paid by Company under the PO, without the prior consent of Company. Any attempted assignment, delegation, or subcontracting without such prior consent shall be void. If Company consents to an assignment, Supplier shall ensure that such assignee complies with the PO, and Supplier shall be liable for any Losses arising out of such assignee's non-compliance.
- 4.13. No Publication.** Supplier shall not use Company's name or the fact that Supplier is selling Goods or performing Services for Company in any press releases, media statements, or public communications without Company's prior written consent. Supplier shall not use Company's name, logos, copyrights, trademarks, service marks, trade names, or trade secrets in any way without Company's prior consent, and Company shall not be deemed to have granted Supplier a license of, or granted Supplier any rights in, any of the foregoing by entering into this Agreement. Any artwork, tooling, or plating supplied by Company shall be and remain the property of Company.
- 4.14. Injunctive Relief.** If Supplier violates, or threatens to violate, the Subsection entitled "Independent Contractor," the Subsection entitled "Confidentiality," or the Subsection entitled "No Publication" (each, an "**Applicable Section**"), Company shall be entitled to immediate and permanent injunctive relief in addition to all other rights and remedies Company has at law or in equity, and Supplier acknowledges that the damages that Company would sustain upon such violation are difficult or impossible to ascertain in advance. If Company is required to take legal action to enforce the covenants contained in an Applicable Section, or to enjoin Supplier from violating an Applicable Section: (a) Company shall be entitled to recover, as part of its damages, its reasonable legal costs and expenses for bringing and maintaining any such action; and (b) posting of a bond or cash shall not be required as a pre-condition to the issuance of the relief sought.
- 4.15. Governing Law; Venue.** The PO shall be governed by the Applicable Laws of Colorado, other than such laws, rules, regulations, and case law that would result in the application of the laws of a jurisdiction other than Colorado. Any litigation under the PO shall be brought and maintained solely in the appropriate courts located in Colorado, and the parties consent to personal jurisdiction in Colorado. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- 4.16. Attorneys' Fees.** Except as otherwise provided herein, if a party shall commence any action or proceeding against the other party in order to enforce any provision of the PO or to recover damages as a result of the alleged breach thereof, the substantially prevailing party shall be entitled to recover all reasonable costs in connection therewith, including reasonable attorneys' fees.
- 4.17. Cumulative Remedies; No Waiver.** Except as set forth herein with respect to Defective Goods and failure to comply with the Delivery Dates, the remedies of the parties hereunder are cumulative and in addition to all rights and remedies at law and in equity. No delay in exercising or failure to exercise a right or remedy shall impair that or any other right or remedy or be construed as a waiver of any such right or remedy. Acceptance of late delivery of Goods shall not be

deemed a waiver of Company's right to hold Supplier liable for loss or damage resulting therefrom, nor shall it act as a modification of any of Supplier's performance obligations hereunder.

4.18. Notices. All change orders, consents, notices, or other communications that are required or permitted to be given to the parties under the PO shall be (a) sufficient in all respects if given in writing and delivered in person or by email, overnight courier, or certified mail, postage prepaid, return receipt requested, to the receiving party at the address or email address shown in the Specific Details, or to such other address or email address as such party may have given to the other by notice pursuant to this Section; and (b) deemed delivered, given, and received (i) on the date of delivery, in the case of delivery via personal delivery or email, (ii) on the delivery or refusal date, as specified on the return receipt in the case of certified mail, or (iii) on the tracking report, in the case of overnight courier.

4.19. Entire Agreement; Amendment; Severability. The PO contains the entire agreement of the parties relating to the subject matter of the PO and supersedes all prior and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral, except for any terms and conditions contained in a Master Agreement. The PO may be altered, amended, or revoked only by issuance of a new PO or written change order issued by Company. If any provision of the PO shall for be held void or unenforceable, the remaining provisions shall remain in full force and effect.

4.20. Counterparts. If signatures are required by the Specific Details, (a) the PO may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one document, and (b) a signature in "PDF" format or an electronic signature on the PO shall be deemed an original and be binding upon the party against whom enforcement is sought.

8902672_5