

**RAYOTEK SCIENTIFIC, INC**  
**TERMS AND CONDITIONS OF PURCHASE**

Rev 2018.06.22

**1. DEFINITIONS.**

- (i) "Buyer" means Rayotek Scientific, Inc., acting through Buyer's authorized purchasing representative.
- (ii) "Seller" means the party with whom Buyer is contracting.
- (iii) "DFARS" means the Defense Federal Acquisition Regulation Supplement.
- (iv) "FAR" means the Federal Acquisition Regulation.
- (v) "Order" means the purchase order and all documents it references (including but not limited to these Terms and Conditions of Purchase ("Terms"), plans, specifications, drawings and regulations).
- (vi) "Parties" means Buyer and Seller collectively.
- (vii) "Product" means goods, supplies, reports, computer software, parts list, data, materials, articles, items, parts, components or assemblies, drawings, procedures, manuals, forms, test reports, and any and services described in the Order. Services include, but are not limited to Seller's time and effort, including any Products, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of the Service.

**2. APPLICABILITY.** The Order is an offer by Buyer to purchase Product(s) described in the Order. Except for any additional terms given by Seller that Buyer deems to be in its benefit, Buyer objects to any additional or different terms than those contained in the Order. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of the Order is hereby deemed material and objected to and rejected. The Order is conditioned upon Seller's complete and irrevocable acceptance of the Order without modifications or additions. The Order supersedes all prior understandings, agreements, negotiations, representations, warranties, and communications, both written and oral, regarding the Order. Buyer is not obligated to any minimum purchase or future purchase obligations under the Order. Buyer objects to any additional or different terms contained in Seller's acceptance.

**3. ACCEPTANCE.** Seller's written acknowledgement, acceptance of payment, or commencement of performance shall constitute acceptance of the Order. If Seller does not accept an Order within a reasonable time, at Buyer's option, the Order may lapse. Buyer may withdraw any Order at any time before it is accepted by Seller. Seller must strictly comply with the Order, notwithstanding any usage of trade or course of dealing to the contrary. Any sales forecasts, purchase estimates or similar projections received from Buyer are not purchase commitments of Buyer, but rather represent estimates for planning purposes only. Buyer has no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, work-in-process or raw materials, not covered by an Order.

**4. ORDER OF PRECEDENCE.** In the event of any inconsistency between any parts of the Order, the inconsistency shall be resolved by giving precedence in the following order: (i) the Order and any modifications or changes (exclusive of items (ii) through (vi)); (ii) specifications/drawings; (iii) the Terms including referenced FAR and DFARS clauses; (iv) statement of work; and (v) other documents referenced in the Order. Seller shall immediately bring any inconsistencies to the attention of Buyer in writing. Any inconsistencies in the Order shall not be the basis for a breach of contract claim.

**5. MODIFICATIONS/CHANGES.** Seller may not change or modify an Order without Buyer's written consent. Seller must notify Buyer in writing of any changes to processes, specifications, methods of manufacture, supply chain providers and locations of manufacture. Buyer's written approval must be granted prior to change.

Buyer may, at any time, change the Order including, but not limited to: (i) drawings, designs, specifications, planning, and/or other technical documents; (ii) method of shipment, packaging, or packing; (iii) place of delivery; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) place of inspection; and (vi) place of acceptance.

If a change results in an increase in cost or time of performance, an equitable adjustment will be made by mutual agreement. Claims for equitable adjustment shall be unconditionally waived unless asserted in writing by Seller and delivered to Buyer within ten (10) business days of the change to the Order. Mutual acceptance of change to the Order shall be by way of Buyer written revision to the Order. Seller shall immediately proceed with performance of the Order as changed. If the Parties are unable to agree on an equitable adjustment, Buyer may, at its option, determine a reasonable adjustment and continue with the Order (with such final adjustment to be determined at a later time by mutual agreement) or terminate all or any portion of the Order, without liability. Seller shall not be entitled to any claim for changes unless authorized in writing by Buyer.

Buyer's authorized purchasing representative(s) has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order. Buyer's engineering personnel, technical personnel and other representatives may from time to time render assistance, give technical advice or discuss or affect an exchange of information with Seller's personnel concerning Products. No such action shall be deemed to be a change to the Order and shall not be the basis for an equitable adjustment.

**6. DELIVERY & SHIPPING.** Time is of the essence. If Seller fails or refuses to proceed with the Order, or if Seller fails to deliver the Product on or before the committed due date, Buyer may reject all or any part of the Order. Buyer may also require Seller to expedite performance or ship via the fastest method possible to avoid or minimize delay. Any added cost shall be paid by Seller.

Any delay in providing Product on time must be reported to Buyer with a written report providing pertinent details, as well as a plan of action to meet prescribed delivery dates

Title and risk of loss passes to Buyer upon delivery terms as defined in the Order and if not set forth therein, shall be FOB Buyer's facility. Unless otherwise agreed to in writing by Seller (i) all shipments will be made using a carrier of Buyer's choice; and (ii) any Product which is shipped consigned to Buyer shall be insured at the replacement value of the Product. All Product shall be delivered during Buyer's normal business hours to the address specified in the Order or as otherwise instructed by Buyer. Buyer shall not be liable for failure to take delivery of the Product if such failure is due to causes beyond Buyer's control. Buyer assumes no liabilities for delays resulting from, but not limited to, acts of God, fire, explosion, flood, war, terrorism or threats of terrorism, act of or as authorized by any government, accident, labor trouble or shortage, inability to obtain equipment, material, transportation, acts of Seller or any acts beyond the control of Buyer.

Seller shall package all Product to ensure safe shipment to Buyer in accordance with Buyer and carrier's requirements. Any special packing, crating, shipping or unloading requirements of Buyer will be designated in the Order to Seller.

**7. DEPARTMENT OF DEFENSE (DOD) RATED ORDERS.** If an Order indicates that a DoD rating is in effect, then the Order supports Buyer's work directly with or under a Prime Contract with the U.S. Government and Order is certified for national defense use. Applicable priority rating defaults to "DO," unless otherwise stated on the face of the Order. This is a rated Order certified for national defense use. Seller is required to follow the requirements of the defense priorities and allocation system regulation (15 CFR Part 700) and all other applicable regulations for obtaining controlled Products and other Products and Services needed to fill the Order.

**8. DELIVERY OF SELLER DATA.** All drawings, procedures, manuals, forms, test reports, software (including documentation) and other data that is required to be delivered to Buyer under the Order ("Seller Data") shall comply with the terms of the Order. Seller Data required for commencement of the

job shall be delivered to Buyer on or before the time specified in the Order, or if no time is specified, no more than 30 days after receipt of the Order. Seller shall submit Seller Data to the Buyer's address or email shown on the first page of the Order unless otherwise specified in the Order. If no delivery information is specified or Seller is unsure of where to send the Seller Data, Seller shall contact Buyer's authorized purchasing representative for further instructions. Buyer may withhold payment if Seller fails to deliver any Seller Data in accordance with the terms of the Order. When furnished with the shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark, certificates and/or test reports enclosed.

**9. FLOW DOWN REQUIREMENTS.** Seller must flow down in writing all contractual requirements of the Order, including these Terms, to all of its Subcontractors and supply chain engaged in performance of this Order. Seller must communicate to its staff the importance of Product conformity, ethical sourcing of materials and services, workplace safety and ethical behavior involved in the design and manufacture of Product.

**10. RECORD & EQUIPMENT RETENTION.** Seller shall maintain complete and legible records in electronic or written form for a minimum of 10 years after completion of the Order. All tooling, molds, fixtures and any other equipment made for the purpose of the Order must be retained by the Seller for a minimum of 10 years after completion of the Order or can be delivered by Seller to Buyer before this time. Tooling, molds and fixtures made specifically for Buyer cannot be used in the testing or manufacturing for any person or entity other than Buyer.

**11. PRICING & PAYMENT.** Unless otherwise designated by Buyer in the Order: (i) all prices are firm; and (ii) payment terms are as stated on the Order or, if not stated, shall be Net 60. Invoices shall be considered received and allowable cash discounts will be calculated from the later of the following: (a) date of receipt of a complete invoice; or (b) Buyer's receipt of Product. If price is not stated in the Order, the Product shall be billed at the price last quoted.

Seller authorizes Buyer to set-off and deduct all liabilities, debts and claims of Seller or its affiliates owe to Buyer or its affiliates, liquidated or unliquidated, against payments due to Seller under this or any other Order. At any time, Buyer or its customer may audit Seller's invoices to verify their accuracy, completeness and compliance with the terms of the Order. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. For progress payments, the Seller shall note "Final Invoice" on the final billing documents sent to Buyer.

**12. FACTORING.** Seller shall not assign, transfer or factor all or any portion of its accounts receivable arising under any Order without at least fifteen (15) days prior written notice to and written authorization of Buyer's accounting department. Should Seller have signed a factoring arrangement and have notified Buyer, all invoices shall be paid to the factoring company and Buyer shall not owe Seller.

**13. INSPECTION & QUALITY REQUIREMENTS.** Buyer, at its sole option, may inspect all or a sample of the Product, and may reject all or any portion of the Product if it determines that the Product is nonconforming, defective, of inferior quality or workmanship, not as warranted or guaranteed, or fails to meet any other requirements of the Order ("Nonconforming"). Buyer may reject Nonconforming Product with or without disposition instructions. Seller, at its own expense, shall promptly rectify any defects discovered during any inspection or test, before or after delivery. If Seller fails to promptly remove, replace, or correct rejected Products that are required to be removed, replaced or corrected, Buyer may do one or more of the following: (i) Remove, replace, or correct the Product(s) and charge the cost to the Seller; or (ii) terminate the Order for breach.

Seller shall maintain an inspection and quality control system acceptable to Buyer to be performed on Products delivered under the Order. Seller shall prepare records evidencing and recording the outcome of all inspections. Buyer and/or Buyer's customer has the right to perform reviews and evaluations as reasonably necessary to ascertain Seller compliance with an inspection and quality control system.

Buyer, Buyer's Customer and regulatory authorities have the right to inspect and test Products and all applicable documents onsite at Seller's or Seller's subcontractors' facilities ("Onsite"). For Onsite inspection and testing, Buyer will give prior written notice of intent to come Onsite and a mutually agreed date and time must be established within 7 business days of notice. Buyer assumes no obligation to perform any inspection or test for the benefit of Seller. If Buyer performs an inspection or test on Onsite Seller shall furnish, and shall require its subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of such inspection and test. Buyer has no obligation to perform any inspection or test. No payment, inspection, test, delay or failure to inspect / test or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under the Order or impair any rights or remedies of Buyer.

If Buyer or Buyer's customer performs an inspection or test on the premises of Seller or a subcontractor of Seller, Seller shall furnish, and shall require its subcontractors to furnish, at no increase in Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspection and test.

Neither Buyer's in-process inspection nor Buyer's approval of any of Seller's drawings, procedures or other submittals shall: (i) constitute acceptance of any work; or (ii) relieve Seller of complying fully with all of the requirements of the Order.

**14. DEFECTIVE & NONCONFORMING PRODUCT.** Buyer maintains the right to choose replacement, rework or refund as a remedy for Nonconforming Product. If Buyer rejects any portion of the Product, Buyer has the right to: (i) rescind the Order in whole or in part; (ii) accept the Product at a reduced price; or (iii) reject the Product and require replacement of the rejected Product. If Buyer requires replacement of the Product, Seller shall, at its expense, promptly replace the Nonconforming Product and pay for all related damages and expenses, including, transportation charges for the return of the Nonconforming Product and the delivery of replacement Product. If a Nonconformance is discovered by Seller and/or Buyer at any time, Seller must provide written notification of identified Nonconformance, root cause, corrective action and disposition within 14 business days

If Seller fails to correct and/or replace the Product(s) within the delivery schedule, Buyer may require delivery with an equitable price reduction in both Product and shipping costs. Failure to agree to a price reduction shall be considered a breach by Seller. If Seller fails to deliver replacement Product within the delivery date of the Order, Buyer may purchase replacement Product from any other person or entity and charge Seller the cost of such Product, including shipping, and terminate the Order.

Products that have been reworked or repaired by Seller after having been rejected by Buyer shall be identified as "Resubmitted." Seller must include on the packing slip "Resubmitted Material" and the reason for the previous rejection and include an inspection Report and discrepancy report with the shipment. If the Products were inspected at source and rejected, such information shall also be annotated on the packing slip. If Buyer elects to rework or otherwise correct defective Product, Seller will pay Buyer's actual costs including Buyer's fully-burdened hourly rates utilizing the then-current market or Government-approved rate set for change-order activity.

Nonconforming Product that is returned to Seller shall be at Seller's cost. Rejected Product may be held by Buyer at Seller's risk and expense. Seller shall be liable to Buyer for all expenses, including

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attorneys' fees incurred by Buyer or its customers in enforcing the Order and its rights. Seller shall assume all risk of loss or damage in transit to Product returned by Buyer to Seller and shipped from Seller to Buyer.

**15. STORAGE.** Stored and unclaimed Product, Buyer provided materials and Buyer equipment shall not be subject to storage fees or penalties if delivery delays are due to, but not limited to, acts of God, fire, explosion, flood, war, terrorism or threats of terrorism, act of or as authorized by any government, accident, labor trouble or shortage, inability to obtain equipment, material, transportation, acts of Buyer or any acts beyond the control of Seller.

**16. SUSPECT/COUNTERFEIT PARTS.** Suspect/Counterfeit Parts are parts that may be of new manufacture or refurbishment, but are misleadingly labeled to provide the impression they are of a different class, brand or quality or from a different source than is actually the case. Suspect/Counterfeit Parts also include refurbished parts, with or without false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, including but not limited to parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). This includes a Suspect/Counterfeit Parts being provided either as an end item deliverable or as a component or subcomponent of an end item deliverable under the Order. The intentional or unintentional use, incorporation, or delivery of Suspect/Counterfeit Parts is strictly prohibited. Seller represents, warrants and covenants that (i) Suspect/Counterfeit Parts are not and will not be incorporated into any Products, (ii) it has policies and procedures in place to ensure that none of the Products furnished to Buyer under the Order are or contain Suspect/Counterfeit Parts; and (iii) that no Suspect/Counterfeit Parts have been or will be furnished to Buyer by Seller under the Order.

If Seller becomes aware or suspects that it has furnished Suspect/Counterfeit Parts or if Buyer determines, including as a result of alerts from the U.S. Government, that Seller has supplied Suspect/Counterfeit Parts to Buyer and so notifies Seller, Seller shall immediately replace the Suspect/Counterfeit Parts with parts acceptable to Buyer and conforming to the requirements of the Order. Notwithstanding any other provision of the Order, Seller shall be liable for all costs, expenses and damages incurred by Buyer to remove and replace the Suspect/Counterfeit Parts, including without limitation all costs incurred by Buyer relating to the removal of Suspect/Counterfeit Parts, the reinsertion of replacement parts and any testing necessitated by the reinstallation of Seller's Products after Suspect/Counterfeit Parts have been exchanged. All such costs and expenses shall be deemed direct damages.

Buyer may, at its discretion: (i) remove and/or retain all Products supplied by Seller that are suspected of being or containing Suspect/Counterfeit Parts pending reporting to the appropriate law enforcement authorities and final disposition of the Products. Seller shall be liable for all costs relating to Buyer's removal and retention of the Suspect/Counterfeit Parts; (ii) turn over to the appropriate authorities (e.g., without limitation, the Defense Criminal Investigative Service, Naval Criminal Investigative Service, Federal Bureau of Investigation, Offices of the Inspector General, etc.) any Products suspected of being or containing Suspect/Counterfeit Parts and reserves the right to withhold payment for the Products pending the results of any investigation or proceedings related to the matter; (iii) Seller's warranty against Suspect/Counterfeit Parts shall survive any termination or expiration of this Order; and (iv) Seller shall insert a clause containing all of the terms of this Section 16 in all subcontracts under the Order.

**17. SITE CONDITIONS.** If Seller is required to install or supervise the installation of equipment or to perform services at Buyer's or Buyer's customer's site, Seller shall inspect the location of the work and be familiar with the site condition at the time of award of the Order. In no event shall either Seller's failure to inspect the site prior to the award of the Order, or any circumstance that Seller should reasonably have discovered through such site inspection, constitute a basis for any claim for increased cost or additional time for performance.

**18. TOXIC SUBSTANCES/HAZARDOUS MATERIAL.** Buyer will not accept, store or dispose of any toxic substances or hazardous material except if expressly provided for in the Order. Products containing, treated with or having been in contact with the following constituents shall not be used in the production of Product or shipped without prior written Seller identification and subsequent Buyer approval: arsenic, mercury, methylene chloride, methyl ethyl ketone (MEK), lead, cadmium, beryllium, hexavalent chromium, their compounds, or organo-metallic material, asbestos, polychlorinated biphenyls (PCBs), mercury and mercury containing compounds. If specifications and standards permit, other materials in lieu of these materials shall be used.

**19. CONFLICT MINERALS.** Seller represents and warrants that: (i) the Product(s) do not contain any Conflict Minerals pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and associated rules and if the Product contains Conflict Minerals, Seller shall provide a written report to Buyer and provide direction on how to proceed; (ii) the Product(s) are in compliance with the European Union directive on the restriction of the use of hazardous substances (RoHS), Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) and the California Safe Drinking Water and Toxic Enforcement Act (Prop 65). If the status of any Product changes during performance of the Order so that the representations and certification contained in this clause are no longer accurate, then Seller must complete and submit a written report to Buyer.

**20. PROGRAM MANAGEMENT.** When requested by Buyer, Seller will develop and maintain in a form acceptable to Buyer, a comprehensive Program Management Plan ("PMP"). At its election, Buyer may provide at no cost to Seller assistance in the development of the PMP. The PMP will contain a comprehensive activity-based schedule for all major software/hardware deliverables required by the Order. Seller shall update the PMP at regular intervals but no less than monthly to ensure its accuracy. Seller will make its PMP available to Buyer in a format specified by Buyer for review at reasonable times and places.

**21. CANCELLATION.** Buyer reserves the right to cancel Order at any time upon notice to Seller. Buyer shall not be responsible for any costs, expenses or liabilities if an Order is cancelled (i) prior to commencement of manufacture (if custom) or shipment (if non-custom), or (ii) due to any default or breach of the Order by Seller.

**22. BUYER SUPPLIED MATERIALS & EQUIPMENT.** All materials and equipment provided by Buyer to Seller (Buyer Owned Goods) is provided at the sole risk and responsibility of the Seller. Damage and/or destruction to Buyer Owned Goods while in the possession of Seller or Seller's subcontractors at any location is at the sole cost of Seller. Seller shall carry appropriate amounts of commercial general liability insurance, including property of others and in-transit, to cover replacement of Buyer Owned Goods and all other related costs. Buyer Owned Goods shall be handled and stored to maintain them in the same state in which they were accepted. If Buyer has provided Seller with Order specific handling and storage instructions they must be strictly conformed to at all times.

**23. INSURANCE.** Seller and sellers subcontractors shall acquire and maintain, at their own cost and expense, insurance with carriers having an AM Best rating of "A- VII" or better. Insurance coverage must be sufficient to adequately protect the respective interests of the Parties, but no less than the following minimum types and amounts of insurance on an occurrence basis: (i) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence, \$1,000,000 products/completed operations aggregate and \$2,000,000 general aggregate, with coverage to include independent contractor, products/completed operations liability, contractual liability, personal injury, cross liability or

severability of interests and broad form property damage, (ii) product recall insurance, regardless of when such claims are made or when the underlying damages or injuries occur or manifest themselves, and regardless of when any recall takes place, (iii) professional liability/errors & omissions insurance in the minimum limit of \$1,000,000 each claim and \$2,000,000 general aggregate to protect Buyer and (iv) statutory workers' compensation insurance and employer's liability insurance in the minimum amount of \$1,000,000 each employee by accident, \$1,000,000 each employee by disease and \$1,000,000 aggregate by disease with benefits afforded under the laws of the applicable state or country.

Insurance must be primary to, and non-contributory with, any similar insurance placed by or on behalf of Buyer, shall contain a waiver of subrogation in favor of Buyer, and shall include a worldwide coverage territory. Seller shall provide Buyer thirty (30) days written notice of any cancellation, non-renewal or termination. Seller shall, and shall cause its insurance companies to, waive its respective rights to recovery, subrogation or contribution from Buyer. Prior to the start of work under the Order, Seller shall provide certificates of insurance to Buyer and other documentation as may be required by Buyer demonstrate the insurance coverages required herein. The stipulated limits of coverage set forth above will not be construed as a limitation of any potential liability to Buyer, and failure to request evidence of this insurance will in no way be construed as a waiver of Seller's obligation to provide the insurance coverage specified.

**24. WARRANTIES.** Seller represents and warrants that all Products delivered under this Order will: (i) be merchantable and free from defects in materials, workmanship, and manufacturing processes, (ii) conform to all requirements of the Order including samples, descriptions, quality requirements, performance requirements and all applicable laws, regulations and directives, (iii) be free of all liens, claims and encumbrances; (iv) not infringe upon, violate or misappropriate the IP Rights of any person or entity. The above (a) is in addition to all other warranties, express, implied, statutory and common law, (b) survives Seller's delivery of the Products, Buyer's receipt, inspection, acceptance, use of the Products and payment for the Products, and the termination or expiration of the Order, (c) inures to the benefit of Buyer and its successors and assigns and (d) may not be limited or disclaimed by Seller. Any applicable statute of limitations on Buyer's claims for breach of warranty will commence no earlier than the date on which Buyer discovers the breach.

The warranty period shall begin upon Buyer's acceptance of the Product and end 12 months after final acceptance by Buyer's customer of the end product incorporating the Product provided by Seller under the Order. In computing the warranty period, there shall be excluded any time that a Product delivered under this Order is prevented from entering service or is taken out of service on account of any Product deficiency.

A deficiency is defined as Product that fails to meet any of the performance obligations set forth of this section. Seller's notice shall in no way affect the rights and remedies to Buyer. For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may, at its option, purchase replacement Product from any other person or entity and charge Seller the cost of such Product. Seller shall be liable to Buyer for all expenses, including attorneys' fees incurred by Buyer or its customers in enforcing the Order and its rights. Seller shall assume all risk of loss or damage in transit to Product returned by Buyer to Seller and shipped from Seller to Buyer.

If Buyer elects to correct the deficiencies in the Product, then the parties agree that Seller will pay Buyer's actual costs and Buyer's labor at Buyer's fully-burdened hourly rates (as appropriate).

Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.

Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by Buyer's successors and customers.

Seller shall immediately notify Buyer of any deficiencies during the performance of the Order and the warranty period. Seller shall promptly provide a written notice to the Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the defect.

The rights of Buyer set forth in this provision shall be in addition to, and not in lieu of, any other right Buyer has under the Order.

**25. FAR/DFARS CLAUSES/PROVISIONS.** The Order may require compliance to FAR/DFAR. If invoked, specific provisions applicable will be provided via addendum to Order. If FAR/DFAR is invoked the terms "Contractor" means "Seller", "Contracting Officer" means "Buyer", "Contract" means the Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.

**26. EXPORT COMPLIANCE.** Any Technology or Technical Data provided by Buyer to Seller under this contract must be controlled in accordance with U.S. Export Control Laws. It is the sole responsibility of Seller to flow down verbatim to its subcontractors and disseminate to its employees, principals and any other related third party, any legends, markings, destination control statement or contract clause provided by Buyer in any communication, document, specification, structure, material, instruction, software, design or other Technology or Technical Data provided by Buyer to Seller that fall under the jurisdiction of US Export Laws ("Controlled Items"), US Export Laws include, but are not limited to: the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act, the Export Administration Regulations and any other statute(s) or regulation(s) governing the sale, export, disclosure or exchange of any item by a U.S. Person with, or to, another country or a person who is a citizen of another country and all successor and supplemental laws and regulations to the above. The terms Technology and Technical Data shall have the meanings provided for in the US Export Laws. Seller will either (i) represent and warrant that it is a U.S. Person as that term is defined in the US Export Laws, or (ii) if Seller is a non-U.S. business entity, it must disclose to Buyer in writing the country in which it is incorporated or otherwise organized to do business. Seller must also disclose the citizenships and U.S. immigration status of all persons involved in this sales transaction. If Seller is a natural person, Seller must disclose to Buyer in writing all citizenships and U.S. immigration status. Seller further covenants that it shall comply with any and all US Export Laws, and any license(s) required in regard to the items provided to Buyer pursuant to this sale.

**27. CONFIDENTIALITY.** Neither party shall disclose any information regarding any subject matter or proprietary technical information received from the other party, except to the extent that disclosure is required by law or is otherwise agreed to in writing by the parties. Any current and executed confidentiality and/or non-disclosure agreements that exist between Buyer and Seller shall supersede this section.

**28. INTELLECTUAL PROPERTY.** Each party owns or has a license to use its respective patents, copyrights, trademarks, design rights, trade secrets, know-how and other intellectual property and proprietary rights ("IP Rights") created or developed prior to entering into the Order including all

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modifications, improvements or changes in or to such pre-existing IP Rights. Seller acknowledges and agrees that all discoveries, inventions, technologies, procedures, processes, techniques, formulae, methods, improvements, designs, works of authorship, software, trade names, slogans, service marks, mask work rights, IP Rights and other intellectual property and proprietary rights and derivative works invented, conceived, created, discovered, developed, authored or devised, individually or in collaboration with any other person or entity in the course of performing work pursuant to the Order (collectively, "Inventions") are "works made for hire" and shall be the sole and exclusive property of Buyer. Seller shall defend, indemnify and hold the Buyer harmless against any and all Claims, which they may sustain or incur as arising from or relating to the Pre-existing IP or of a breach of this Section.

**29. INDEMNIFICATION.** Seller shall defend, indemnify and hold Buyer, its agents and employees harmless from and against all claims, suits, damages, expenses (including reasonable attorneys' fees), including death or injury, arising out of or relating to (i) provided specifications, structure, operation, material, or method of making Product, including, without limitation, any resulting violation of intellectual or proprietary rights, (ii) use, misuse or disposal of Product, (iii) violation of US Export Laws, and (iv) breach of the Order.

**30. LIMITATION OF LIABILITY.** Under no circumstances shall Buyer be liable to Seller or any other person or entity for incidental, consequential, exemplary, punitive or special damages or any other losses or expenses, including without limitation, for injuries or death to persons or damage to property, loss of profit or revenues, cost of substitute products, loss of use, downtime costs, or claims. Buyer's aggregate liability arising out of or relating to any Product purchased shall not exceed the purchase price of the Order.

**31. APPLICABLE LAW.** The laws of the State of California shall govern the Order and the courts of the State of California, County of San Diego shall be the exclusive venue and jurisdiction.

**32. ARBITRATION.** Buyer may, at Buyer's sole option, require Seller to arbitrate any controversy, claim or dispute arising out of or relating to the Order or any other issue. If Buyer chooses arbitration, such arbitration shall be conducted before the American Arbitration Association in the English language, and shall take place in San Diego, California. One arbitrator shall preside, and there shall be no discovery rights in the event that the claims at issue do not exceed \$150,000. Otherwise, discovery shall be limited to (per Claimant side or Respondent side): 20 interrogatories, 25 document requests, 30 requests to admit, 12 hours of deposition time and each party may call no more than one expert to provide opinions and/or to testify. The arbitration shall be completed no longer than 90 days after receipt of the initial demand by the respondent.

**33. GOVERNANCE.** Buyer and Seller each agree that these terms and conditions shall govern and control with respect to all Orders issued by Buyer to Seller and no term, condition, warranty or representation appearing in any documentation of Seller will govern unless agreed to in writing by Buyer.

**34. SEVERABILITY.** In the event that any provision herein shall be found to be void or unenforceable, this shall not be construed to render any other provisions void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by the parties.

**35. ENTIRETY.** The Order embodies the entire understanding between Buyer and Seller and there are no agreements, understandings, conditions, warranties, or representations, oral or written, express or implied, with reference to the subject matter hereof which are not merged herein. Any changes or revisions to these terms and conditions by Seller must be authorized in writing by an authorized officer of Buyer. All waivers by Buyer must be in writing and signed by an authorized signatory. All of Buyer's rights and remedies are cumulative and not exclusive and in addition to its rights and remedies in the Order, at law, in equity and otherwise.

**36. MISCELLANEOUS.** These Terms may be modified by Buyer from time to time. The headings are for convenience of reference only and are not intended to influence the construction of any provisions of the Order. Unless a particular context clearly provides otherwise, the word "including" will mean "including but not limited to".