

Apex Tool Group, LLC. - North America and South America Purchase Order Terms and Conditions

As used herein, "Seller" includes seller and its subsidiaries and affiliates and "Buyer" includes Apex Tool Group, LLC. and its subsidiaries and affiliates. Seller hereby agrees as follows:

1. Acceptance of Purchase Order.

(a) The Terms and Conditions contained herein shall govern the purchase of products and services (collectively, the "Products") pursuant to a purchase order issued to Seller by Buyer ("Order"), subject to any additional terms and conditions appearing on the face of the Order. In the event there is a conflict between the terms and conditions appearing on the face of an Order and the terms and conditions herein, the terms and conditions on the face of an Order shall prevail. Buyer reserves the right to change these terms and conditions at any time. The most current version of these Terms and Conditions in effect as of the date of an Order may be found at http://www.apextoolgroup.com/about_us/tandc.cfm. Notwithstanding the foregoing, in such case where a master supply agreement or contract exists between Seller and Buyer for the procurement of Products set forth on the face of the Order, the terms of such master supply agreement or contract shall prevail and govern all Orders placed pursuant thereto. If the Seller objects to these Terms and Conditions, it must so notify Buyer immediately prior to acknowledgement of fulfillment of an Order. Any acknowledgment or fulfillment of an Order by Seller shall represent Seller's acceptance of these Terms and Conditions.

(b) If the Order is construed as an offer by Buyer, Seller's acceptance is strictly limited to the terms of this offer and Buyer hereby expressly notifies Seller of its objection to any different or additional terms in Seller's acceptance. Acceptance of the Products delivered under the Order shall not constitute acceptance of any terms additional to or different from Seller's offer contained herein or on the face of an Order unless Buyer's additional written consent has been provided.

2. Prices and Payment Terms.

(a) Seller's price shall be as stated in the Order. If price is not stated in the Order, the price will be Seller's lowest market price. Seller warrants that the purchase price for the Products shall not be less favorable than those currently extended by Seller to any other customer for the same or similar Products in equal or lesser quantities. Seller shall provide Buyer with written notification of any price increases at least sixty (60) days in advance of the effective date of increase and any price increase shall not apply unless Buyer provides written approval of such price increases.

(b) The purchase price for each Product shall be all-inclusive and represents the sole and exclusive consideration to Seller hereunder for the Product, except for taxes that are calculated directly on the purchase price payments made by Buyer hereunder and which Seller is legally required to collect and pay over to tax authorities. The taxes for which Buyer is responsible shall include sales and use taxes, but shall exclude, without limitation, Seller's franchise or business taxes, taxes based on Seller's income or gross receipts and taxes for which Buyer is exempt by law as shown by a valid tax exemption certificate, when such a certificate is required.

(c) Terms of payment are either (a) PCard net sixty (60) days or (b) net ninety (90) days, either after receipt of Seller's valid invoice or after receipt of the Products, whichever is later. At Buyer's option, all invoiced amounts shall be subject to a two percent (2%) early payment discount for all payments remitted by Buyer within twenty (20) days of Buyer's receipt of such invoice or other Buyer agreed payment terms which may be set forth on the face of the Order.

(d) Buyer may withhold and apply any moneys payable by it under the Order to the payment of any obligations of Seller to any subcontractors or suppliers.

3. Title, Delivery and Risk of Loss.

(a) For domestic Orders, all Products are to be shipped FOB Seller's Shipping Point, unless otherwise agreed between the parties. For international Orders all Products are to be shipped FOB Ocean Port/FCA Airport. Seller will comply with all country of origin marking instructions and all instructions for exports to Buyer. Title to the Products shall pass upon Buyer's receipt at the destination.

(b) All shipments must be made in accordance with shipping and routing instructions as specified by Buyer, but in any event, in compliance with all applicable government or freight company regulations and Seller shall assume full responsibility for failure to comply with such instructions, including liability for a release of hazardous materials into the environment prior to Buyer's receipt of Products. Seller shall be held liable for any loss or damage incurred prior to passage of title to Buyer.

(c) Each delivery of Products to Buyer shall include a packing list, which contains at least the following items: i) the Buyer's Order number; ii) Seller's part number; iii) Buyer's part number; iv) quantity shipped; and v) the date of shipment.

(d) Seller shall give Buyer written notice promptly upon determining that any or all Products under an Order will not arrive by the required delivery date and will take all reasonable steps at Seller's own cost to expedite delivery. If only a portion of the Products is available for shipment to meet the required delivery date, Seller shall ship the available Products unless directed by Buyer to reschedule shipment.

(e) Time is of the essence. If Seller fails to deliver on time, Buyer may purchase replacement products elsewhere and Seller will be liable for costs and damages that Buyer incurs over and above the costs Buyer would have otherwise paid to Seller for the same or comparable Products hereunder.

(f) Buyer reserves the right to suspend shipment of all or part of the Order in the event of strikes, lockouts, or other labor disturbances, or other contingencies beyond Buyer's control.

4. Inspection.

All material, workmanship and Products shall be subject to inspection and test at all reasonable times and places by Buyer or Buyer's representative before, during and after performance and delivery. Buyer may require Seller to repair, replace or reimburse the purchase price of rejected materials or Buyer may accept any Products and, upon discovery of nonconformance, may reject or keep and rework any such Products not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging and/or re-inspection by Buyer shall be at Seller's expense. Buyer's acceptance of Products shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud or misrepresentation on the part of Seller exists. If inspection and testing are made on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable

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facilities, information and assistance necessary for the safe and convenient inspection and test required by the inspectors in the performance of their duty. Buyer's failure to inspect shall not relieve Seller of any responsibility to perform according to the terms of the Order.

5. Warranty.

(a) Seller hereby warrants to Buyer and Buyer's customers that, for a period of five (5) years following Buyer's acceptance of the Products hereunder (the "Warranty Period"), such Product shall: i) be fit for its intended purpose and be of merchantable quality; ii) be free from defects in materials, workmanship, and design; iii) conform strictly to the performance, functionality and other specifications and descriptions set forth in Seller's catalogs, product brochures, or other representations, depictions, samples or models; and iv) conform strictly to all specifications, drawings and descriptions referenced or set forth in the Order (collectively, the "Performance Warranty"). The Performance Warranty shall survive the termination and expiration of the Warranty Period with respect to any claim made by Buyer prior to such termination or expiration. Seller agrees that Buyer's customers may enforce such Performance Warranty against Seller on, in and for such customer's own behalf, name and benefit, and that Buyer may enforce such Performance Warranty against Seller on, in and for Buyer's or such customer's behalf, name or benefit.

(b) During the Warranty Period, Seller shall, at no additional cost to Buyer, credit or replace at Buyer's option any Product that fails to conform to its Performance Warranty in any respect whatsoever (each, a "Defective Product"). If Buyer's option is for credit, Seller shall grant Buyer a credit equal to the full amount of the purchase price originally paid by Buyer for the Product plus any applicable taxes paid. If Buyer's option is to replace such Product, the replacement Product must conform to the Performance Warranty in all respects ("Conforming Product(s)"). Replacement Products must be new product; no repaired or remanufactured product will be accepted. Seller shall replace, at Buyer's option, each Defective Product and re-deliver a Conforming Product to Buyer as soon as possible, and in all events no later than five (5) days after notice that a Product is a Defective Product. In the event that Seller fails to do so, Buyer shall be entitled to an immediate and full refund of the purchase price paid to Seller for such Defective Product. All return shipments of Defective Products to Seller shall be at Seller's sole cost, risk, and expense. Seller shall bear all shipping costs for warranty returns and replacements. Seller shall bear all reasonable direct and indirect costs and expenses incurred by Buyer to replace a Defective Product with a Conforming Product, including, but not limited to, labor and travel expenses. Buyer has the right to return Product on a per occurrence basis. No minimum quantity shall be required for returns.

(c) Seller shall be responsible for all direct, indirect and consequential damages incurred by Buyer resulting from the provision of a Defective Product or from the late delivery of a Product.

(d) After the end of the Warranty Period, Seller shall continue to offer Product support to repair and/or provide service parts for a period of ten (10) years beginning with the date the Product is discontinued or no longer offered for sale by Seller. In the event that Seller cannot, or chooses not to, offer such Product support, then Seller shall provide one (1) year's notice before discontinuing such Product support and shall provide all of the necessary technical drawings and documentation, as well as a royalty-free, non-revocable license to all applicable intellectual property required for the continued repair or manufacturing of Products by Buyer or Buyer's designee.

6. Compliance with Laws.

(a) Seller represents, warrants and covenants that all of the Products, merchandise, and materials delivered and/or services rendered hereunder will be, and will have been produced and/or provided, in compliance with all applicable laws, rules, regulations, orders, treaties and other requirements of respective U.S. and/or Canadian federal, national, state, provincial and local/municipal governments and agencies thereof, and that Seller does and will comply with all applicable laws, rules, regulations, orders, treaties and other requirements of U.S. and/or Canadian federal, national, state, provincial and local/municipal governments and agencies thereof.

(b) Seller shall, in the performance of an Order, comply with all applicable laws and regulations in effect on the date the Order is issued and as such may be amended from time to time. All sales of Products must be in conformance with U.S., Canadian, and other applicable export control laws, U.S. Foreign Assets Control and the U.S. Foreign Corrupt Practices Act ("FCPA") laws and regulations and similar anti-corruption laws and regulations that may be in effect in the countries of export and import.

(c) Seller acknowledges that it is familiar with the FCPA and its prohibitions regarding the payment or giving of anything of value either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in their official capacity or inducing the official to use their or their party's influence with that government, to obtain or retain business involving the goods. Seller agrees that it cannot cooperate with or cause Products to be delivered to any destination or entity that is restricted by U.S. or Canadian law. Further, Seller recognizes that Buyer cannot cooperate with, agree to, or comply with any terms or requests, including documentary requests, which are prohibited or are penalized under U.S. and/or Canadian Anti-boycott laws or regulations.

(d) Seller represents, warrants and covenants that neither it nor any of its owners or customers are or will be on any of the prohibited parties lists maintained by various agencies of the U.S. government, including, without limitation, the denied persons list, the unverified list, the entity list, the debarred list or the specially designated nationals list (including, without limitation, those persons and entities listed pursuant to the diamond trading, narcotics trafficking, nonproliferation and terrorist sanctions programs administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury).

(e) If any of the Products are imported by Seller for delivery to a Buyer facility in any other country other than the U.S. or Canada, Seller will be responsible for all legal, regulatory and administrative requirements associated with any importation and the payment of all associated duties, taxes and fees. Upon Buyer's request, Seller shall provide Buyer with an appropriate certification stating the country of origin for Products, sufficient to satisfy the requirements of: i) the customs authorities of the country of receipt; and ii) any applicable export licensing regulations.

(f) Seller shall, at its sole cost, secure and maintain all necessary licenses, permits, authorizations or other approvals required for the operation of Seller's business or any property used therein, or as necessary for Seller's performance hereunder. Seller shall immediately notify Buyer in the event that Seller is not in compliance with any provision of this Section.

(g) If Seller is a Company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, then Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls

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and/or the applicable Canadian agency and understands its obligation to comply with U.S International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and their applicable Canadian counterparts. Seller shall control the disclosure of and access to technical data information and other items received under outstanding Orders in accordance with U.S. and Canadian export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by the Buyer in connection with an Order shall be provided to any foreign national or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of Buyer and the Seller's obtaining the appropriate export license, technical assistance, agreement or other requisite documentation for ITAR-controlled technical data or items. Seller agrees to notify Buyer if Seller is listed on the Denied Parties List published by the U.S. Department of Commerce, or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part. Seller shall indemnify Buyer for all liabilities penalties, losses, damages, costs or expenses that may be imposed on or incurred by Buyer in connection with any violation of import or export laws or regulations by Seller.

(h) Seller agrees to provide Buyer with information required to timely file the Importer Security Filing ("ISF") with U.S. Customs and Border Protection. Buyer will provide Seller with access to a web-based portal by which to transmit such ISF data to Buyer. Seller agrees that use of this portal is mandatory. Seller agrees that it will transmit its ISF data to Buyer via the web-based portal no later than 72 hours prior to vessel load date. Further, Seller agrees that it will indemnify and hold Buyer harmless for All Losses Buyer incurs as a result of Seller's failure to provide ISF data or Seller's inaccurate or incomplete ISF data.

(i) If any of the Products are purchased for incorporation into products sold under a government contract or subcontract, the terms required to be inserted by that contract or subcontract shall be deemed to apply to the applicable Order. All rating or certification requirements specified in such government contract or subcontract or of which Seller has knowledge shall be complied with. Seller agrees to furnish Buyer a certificate of compliance with any such laws and certification requirements in such form as may be requested by Buyer.

Applicable only to Sellers based in the U.S. who are necessary to the performance of Buyer's federal contracts or subcontracts: Without limiting the foregoing, Seller shall: (i) comply with 48 C.F.R. 52.219-8, Utilization of Small Business Concerns (Oct 2014) and include this clause in lower-tier subcontracts if the Order offers further subcontracting opportunities; (ii) comply with FAR 52.219-9, Small Business Subcontracting Plan (Oct 2014) and include this clause in lower-tier subcontracts if Seller is a large business, Seller is not providing a commercial item (as defined in 48 C.F.R. 2.101), and the Order or lower-tier subcontract, as applicable, exceeds \$650,000 (or \$1.5 million for construction); and (iii) comply with all reasonable requests of Buyer for documentation and other information to substantiate Seller's compliance with these clauses. **ATG is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.** Where applicable, Seller hereby agrees to comply with the U.S. Fair Labor Standards Act of 1938. Seller also agrees to comply with any equivalent applicable Canadian federal, national, state, provincial or municipal orders and regulations, all of which are incorporated herein by reference.

(j) Seller is and remains solely responsible for the full compliance of delivered Products or parts of Products with any applicable rules and regulations ("Legislation") on restriction of hazardous substances ("RoHS") such as, without limitation, Restriction of Hazardous Substances (RoHS) Directive 2002/95/EC as of 27 January 2003, the Administrative Measures on the Control of Pollution Caused by Electronic Information Products as of 28 February 2006, the RoHS Recast Directive 2011/65/EU ("RoHS-2") as of 21 July 2011, etc. and all further releases as well as all national or local regulations issued in execution of the aforesaid RoHS Legislation or any equivalent applicable U.S. or Canadian federal, provincial or municipal laws, rules, regulations, orders, treaties and other requirements. All delivered Products or parts of Products must be suitable and fit for RoHS compliant production and sale. Seller will complete and sign Buyer's standard Declaration of RoHS Compliance at the part number level, use appropriate systems and processes to ensure the accuracy of these determinations and maintain appropriate records to allow traceability of all Products or parts of Products. Insofar as Products or parts of Products are not supplied in accordance with the aforementioned requirements, Buyer reserves the right to cancel blanket or single Orders. Seller undertakes to duly and immediately inform Buyer of any changes affecting RoHS compliance. In case of cancellation of blanket or single Orders or proven violations of national or international RoHS compliance by the Seller, Seller undertakes to indemnify and hold Buyer harmless from any claim, liability, loss, damage, judgment and external responsibility, irrespective of their jurisdiction and/or legal ground, and to bear any and all harm, loss or damage arising to Buyer's disadvantage.

(k) To the extent required by applicable law, Seller shall be responsible for the collection, treatment, recovery or disposal of: (i) the Products or any part thereof when they are deemed by law to be 'waste'; and (ii) any items for which the Products or any part thereof are replacements. If Seller is required by applicable law, including, without limitation, waste electrical and electronic equipment Legislations, European Directive 2002/96/EC ("WEEE"), European Directive 2012/19/EU ("Recast WEEE") adopted by

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Council 7 June 2012, and related Legislations in EU Member States, to dispose of 'waste' Products or any part thereof, Seller shall dispose of such Products entirely at its own cost (including all handling and transportation costs).

(l) Seller is and remains solely responsible for the full compliance of delivered Products, parts of Products or substances with the requirements of Regulation (EC) No. 1907/2006 ("REACH") as of 18 December 2006 as amended or varied and all further releases as well as any national regulations issued in execution of this regulation. Seller guarantees that all obligations under REACH, in particular all information requirements vis-à-vis Buyer, have been fulfilled. This includes in particular the provision of a comprehensive safety data sheet in accordance with Regulation (EC) No. 1272/2008 ("CLP" Regulation on Classification, Labeling and Packaging) as of 20 January 2009, and subsequent Adaptations to Technical Progress by Commission Regulations. Insofar as Products, parts of Products or substances are not supplied in accordance with the aforementioned requirements, Buyer reserves the right to cancel any Order. Seller undertakes to duly and immediately inform Buyer of any changes affecting REACH compliance. In case of cancellation of blanket or single Orders or proven violations of national or international REACH compliance regulations by Seller, Seller undertakes to indemnify and hold Buyer harmless from any claim, liability, loss, damage, judgment and external responsibility, irrespective of their jurisdiction and/or legal ground, and to bear any and all harm, loss or damage arising to Buyer's disadvantage.

(m) Seller acknowledges that Buyer is required to comply with Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act") and inter alia must file disclosures and reports with the United States Securities and Exchange Commission related to the use of tin, tantalum, tungsten and gold ("Conflict Minerals"). Seller represents and warrants that it will source, and track the chain of custody of, all Conflict Minerals contained in any products or materials provided by Seller to Buyer in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (or such other internationally recognized due diligence standard as Buyer and Seller may jointly agree upon). At Buyer's request (which may be as frequently as quarterly at Buyer's discretion), Seller must execute and deliver to Buyer declarations in the form of the EICC-GESI Conflict Minerals Reporting Template as adopted by EICC-GESI from time to time, or (at Buyer's discretion) in any other form that Buyer reasonably requests. Seller agrees and represents that all products and materials provided by Seller to Buyer after December 31, 2014 shall be "Conflict Free" (as defined in the Dodd-Frank Act) and at Buyer's request from time to time Seller shall execute and deliver to Buyer a written declaration to the same effect.

7. Indemnification.

(a) SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT BUYER'S REQUEST, DEFEND BUYER, ITS OFFICERS, DIRECTORS, CUSTOMERS, AGENTS AND EMPLOYEES, AGAINST ALL CLAIMS, SUITS, LIABILITIES, DAMAGES, LOSSES AND EXPENSES, INCLUDING ATTORNEYS' FEES AND COSTS OF SUIT ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION: i) ANY CLAIM BASED ON THE DEATH OR BODILY INJURY TO ANY PERSON, DESTRUCTION OR DAMAGE TO PROPERTY, FOR COMMERCIAL DAMAGES INCLUDING LOST PROFITS, OR FOR CONTAMINATION OF THE ENVIRONMENT AND ANY ASSOCIATED CLEAN UP COSTS, REGARDLESS OF WHETHER A CLAIM IS BASED IN WHOLE OR IN PART ON THE ALLEGED OR ACTUAL NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY, OR OTHER ACTIONABLE CONDUCT OR OMISSION OF BUYER; ii) ANY CLAIM BY A THIRD PARTY AGAINST BUYER ALLEGING THAT THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, INFRINGE A PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF A THIRD PARTY, WHETHER SUCH ARE PROVIDED ALONE OR IN COMBINATION WITH OTHER PRODUCTS, SOFTWARE OR PROCESSES, EXCEPT WHERE SUCH CLAIMS ARE BASED SOLELY ON THE SPECIFICATIONS, IF ANY, AS PROVIDED BY BUYER FOR CUSTOM OR SPECIAL PRODUCTS. SELLER SHALL NOT SETTLE ANY SUCH SUIT OR CLAIM WITHOUT BUYER'S PRIOR WRITTEN APPROVAL. SELLER AGREES TO PAY OR REIMBURSE ALL COSTS THAT MAY BE INCURRED BY BUYER IN ENFORCING THIS INDEMNITY, INCLUDING ATTORNEY'S FEES.

(b) Without limiting the generality of section (a) above, if the use by Buyer of any Product is enjoined (the "Infringing Product"), Seller shall at its expense use its best efforts to procure the right for Buyer to continue using the Infringing Product. If Seller is unable to do so, Seller shall at its expense: (i) replace the Infringing Product with a non-infringing product; (ii) modify the Infringing Product to be non-infringing; or (iii) if unable to replace or modify the Infringing Product, refund in full all amounts paid by Buyer for the Infringing Product.

8. Insurance.

Seller agrees to obtain and maintain the following insurance policies at Seller's sole cost and expense (collectively, "Insurance Policies"): (a) Commercial General Liability Insurance covering liability for property damage, personal injury and death arising out of operations, products-completed operations, contractual liability, with minimum limits of \$5 million per occurrence (the "CGL Policy"); (b) Automobile Liability Insurance covering liability arising out of any auto (including owned, hired, leased, operated and non-owned autos) with minimum limits of \$1 million per occurrence combined single limit (the "Auto Liability Policy"); (c) Statutory Workers' Compensation insurance as required by applicable law (the "Workers' Compensation Policy"). Buyer shall be named as an additional insured on the CGL Policy for all operations of Seller hereunder and for all liability for which Seller is responsible under the Order. The CGL Policy Shall contain standard cross liability clauses, and Seller shall cause such policies to be endorsed to provide contractual liability coverage specifically covering this Agreement as an insured contract, if necessary, to obtain coverage of this Order thereunder. Except for insurance policies which are operative within Canada, the Workers Compensation Policy shall be endorsed to waive any right of subrogation against Buyer. All Insurance Policies shall require that Buyer be given at least thirty (30) days written notice of cancellation, non-renewal, or any material change therein.

9. Cancellation of Purchase Orders.

Buyer may cancel any Order, in whole or in part, without further obligation or liability to Seller, at any time prior to Seller's shipment of the Product(s) covered by such Order by providing Seller written or electronic notice of such cancellation.

10. Termination.

Buyer may at any time terminate all or part of Seller's performance hereunder by written notice to Seller. Upon receipt of such notice, Seller shall eliminate its performance and all orders and subcontracts to the extent they relate to such performance. Seller shall promptly advise Buyer of the quantities of Products and raw material on hand or purchased prior to termination and of the most

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favorable disposition thereof. Seller shall comply with Buyer's instructions regarding disposition of Products and raw materials. Seller shall submit to Buyer written notice of its intent to submit claims based on such termination within fifteen (15) days from the date of notice of termination and detail and substantiate such claims within thirty (30) days thereafter, or Seller waives such claims in their entirety. Buyer shall pay Seller the Order price of finished Products accepted by Buyer, and the cost to Seller excluding profits and losses, of work in process and raw materials relating hereto, less the agreed value of any Products used or sold by Seller with Buyer's consent. Buyer may verify such claims at any reasonable time(s) by any reasonable method. Buyer will not pay for finished work, work in process, or raw materials fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's delivery requirements hereunder. Notwithstanding the above, payments under this paragraph shall not exceed the aggregate price specified in the Order, less any payments made or to be made. Payment under this paragraph is Buyer's only liability if the Order is terminated. To the extent the Order covers Products normally carried in Seller's inventory, Buyer shall have no liability for any termination of the Order, in whole or in part, prior to shipment. If Buyer sends notice of termination after receipt of Products, liability is limited to returning such Products and reimbursing Seller the direct cost of handling and transportation.

11. Special Tooling.

"Special Tooling" means all patterns, dies, fixtures, molds, jigs, models, gauges, inspection devices, special cutting tools, special test devices, drawings, templates and any replacements thereof, which, before the date hereof, Seller did not own or use and which Seller has been or will be required to acquire and use solely for purposes of furnishing Products hereunder, but excludes tools, capital items or property owned or furnished by Buyer. Prior written approval for purchase of any Special Tooling is required, and such request shall detail each item and its price. Seller shall use all Special Tooling solely for performance of the Order or as Buyer directs in writing, maintain Special Tooling in good condition, fully covered by insurance, and replace it at Seller's cost if lost, stolen, destroyed, or otherwise rendered unfit for use. Seller shall permit inspection and supply Buyer with detailed statements of Special Tooling upon request. Upon completion, cancellation, or termination of work for which Special Tooling is required, Seller shall list Products and the Special Tooling used in connection therewith, including the unamortized cost and fair market value of each item, and shall in writing if Buyer so elects, transfer possession and title of the Special Tooling to Buyer, free and clear of liens and encumbrances, in exchange for the lesser of the unamortized cost or fair market value of the tooling. Buyer may dispose of Special Tooling without taking possession thereof and receive any resulting salvage or resale revenues and may enter Seller's premises to obtain possession of any Special Tooling.

12. Ownership of Work Product.

(a) For purposes of this Order, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, Special Tooling, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the services performed or Products delivered hereunder. Standard Products manufactured by Seller and sold to Buyer without having been designed, customized or modified in any way for Buyer do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of Buyer. Seller hereby agrees to irrevocably assign and transfer to Buyer and does hereby assign and transfer to Buyer all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Seller hereby waives any and all moral and other rights in any Work Product or any other intellectual property created, developed or acquired in respect of the Products. Buyer will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Buyer deems appropriate. Seller agrees: i) to disclose promptly in writing to Buyer all Work Product in its possession; ii) to assist Buyer in every reasonable way, at Buyer's expense, to secure, perfect, register, apply for, maintain, and defend for Buyer's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Buyer's name as it deems appropriate; and iii) to otherwise treat all Work Product as Buyer Confidential Information as defined herein. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by Buyer to Seller shall remain the sole property of Buyer.

(b) Seller will ensure that Seller's subcontractors appropriately waive any and all claims and assign to Buyer any and all rights or any interests in any Work Product or original works created in connection with this Order. Seller irrevocably agrees not to assert against Buyer or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Buyer affecting the Work Product.

(c) Buyer will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or Buyer Confidential Information, unless: i) such works relate to Buyer's business, or Buyer's actual or demonstrably anticipated research or development; or ii) such works result from any services performed by Seller for Buyer.

13. Confidentiality.

(a) Seller will acquire knowledge of Buyer Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Buyer Confidential Information in confidence during and following termination or expiration of this Order. "Buyer Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by Buyer relating to the current or anticipated business or affairs of Buyer which is disclosed directly or indirectly to Seller. In addition, Buyer Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Products to Buyer. Buyer Confidential Information does not include any information: i) which Seller lawfully knew without restriction on disclosure before Buyer disclosed it to Seller; ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller; iii) which Seller developed independently without use of the Buyer Confidential Information, as evidenced by appropriate documentation; or iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant

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to a requirement of a government agency or law but only after Seller provides prompt notice to Buyer of such requirement and gives Buyer the opportunity to challenge or limit the scope of the disclosure.

(b) Seller agrees not to copy, alter or directly or indirectly disclose any Buyer Confidential Information. Additionally, Seller agrees to limit its internal distribution of Buyer Confidential Information to Seller's employees who have a need to know, and to take steps to ensure that the dissemination is so limited. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Buyer Confidential Information.

(c) Seller further agrees not to use Buyer Confidential Information except in the course of performing hereunder and will not use such Buyer Confidential Information for its own benefit or for the benefit of any third party. The mingling of Buyer Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same as stated hereunder. Seller agrees not to design or manufacture any products which incorporate Buyer Confidential Information except as authorized by the Order. All Buyer Confidential Information is and shall remain the property of Buyer. Upon Buyer's written request or the termination of this Agreement, Seller shall return, transfer or assign to Buyer all Buyer Confidential Information, including all Work Product, as defined herein, and all copies thereof.

14. Blanket Purchase Orders.

If Products purchased are covered under a blanket Order, no shipment can be made, or invoice issued, until a release Order is issued. Unauthorized shipments will be held at Seller's risk and expense. A blanket Order authorizes Seller to procure raw materials sufficient to meet delivery of the quantity of a release Order, but only to manufacture and deliver such respective quantities at such respective times as is indicated on the release Order provided by Buyer. Buyer will not assume any liability in the event Seller engages in any manufacture before the time specified, or in excess of the quantity required to meet such respective deliveries.

15. Changes in Process or Method of Manufacturing.

Seller agrees that it will not invoke any changes in process or method or location of manufacturing without Buyer's prior written consent. Seller further agrees that any contemplated changes in process or method of manufacturing will be submitted to Buyer in sufficient time to enable Buyer a reasonable opportunity in which to evaluate such changes.

16. Non-Interference With Business.

During and for a period of two years immediately after the termination or expiration of this Agreement, Seller agrees not to unlawfully interfere with the business of Buyer in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with Buyer.

17. Non-Exclusive Agreement.

This is not an exclusive agreement. Buyer is free to engage others to perform services or provide Products the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's services and/or goods to others; provided however, that Seller does not breach this Agreement.

18. Limitation of Liability.

IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR SELLER'S AGENTS, SUBCONTRACTORS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, REGARDLESS OF WHETHER BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE CAUSED BY BUYER'S NEGLIGENCE, BREACH OF CONTRACT, OR OTHER ACTIONABLE CONDUCT OR OMISSION.

19. Publicity.

Seller shall not, without the prior written consent of Buyer, advertise or otherwise disclose that Seller has entered into the Order with Buyer. Seller shall not use Buyer's name or trademark in any press release, marketing or advertising materials without Buyer's prior written consent.

20. Waiver.

No waiver of any provision of these terms and conditions (or any right or default hereunder) shall be effective unless in writing and signed by Buyer. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under the Order or applicable law in connection with any other instances or circumstances.

21. Entire Agreement.

These terms and conditions, together with the terms on the face of any Order issued hereunder, constitute the final and entire agreement between Buyer and Seller with respect to the purchase of Products and supersede any terms and conditions in any acknowledgement form, invoice or other document of Seller. These terms and conditions may be amended only by a written instrument duly executed by both parties, and may not be amended orally or by course of performance.

22. Language.

The parties have expressly required that these terms and conditions and the Order be prepared in the English language. Les parties aux présentes ont expressément exigé que les présents termes et les bons de commandes émis aux termes des présentes soient rédigés en langue anglaise.

23. Choice of Law.

Except if issued by an affiliate of Buyer incorporated under the laws of Canada or a province of Canada, the Order shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its choice of law rules and any claim or litigation brought under or relating to this Order shall be brought exclusively in a court of competent jurisdiction located in Baltimore, Maryland. With respect to an Order issued by an affiliate of Buyer, incorporated under the laws of Canada or a province of Canada, such Order shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and any claim or litigation brought under or relating to such Order shall be brought exclusively in a court of competent jurisdiction located in metropolitan Toronto, Ontario, Canada. Seller hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection to the jurisdiction of any such court or to venue therein or any claim of inconvenient

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forum of such court or of sovereign immunity. Seller waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement or an Order.

FOR PURCHASES BY A BUYER ENTITY INCORPORATED IN THE UNITED STATES OR CANADA: Except if issued by an affiliate of Buyer incorporated under the laws of Canada or a province of Canada, this Agreement shall be governed by the laws of the State of Maryland without regard to the conflict of laws provisions thereof. Each party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in the County of Baltimore in any legal suit, action or proceeding arising out of or based upon this Agreement or the Services provided hereunder. With respect to an Order issued by an affiliate of Buyer, incorporated under the laws of Canada or a province of Canada, such Order shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and any claim or litigation brought under or relating to such Order shall be brought exclusively in a court of competent jurisdiction located in metropolitan Toronto, Ontario, Canada. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

FOR PURCHASES BY A BUYER ENTITY INCORPORATED THE U.S.: This Agreement shall be governed by the laws of the State of New York without giving effect to any choice or conflict of law provision or rule. All disputes arising out of or in connection with this contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. For Buyer affiliate(s) incorporated in Mexico, Brazil or other Latin American countries, the place of arbitration shall be city of Sorocaba, in the State of São Paulo, Brazil. For Services rendered in European countries, the place of arbitration shall be Westhausen, Germany. For Services rendered in China or other countries in Asia, the place of arbitration shall be Shanghai. The language(s) to be used in the arbitral proceedings shall be English.

FOR ALL PURCHASES, the Parties expressly exclude from application the United Nations Convention on Contracts for the International Sale of Goods.

24. Assignment.

Seller may not assign, transfer or subcontract the performance of its services, or any of its rights and/or obligations hereunder, without Buyer's prior written consent.

25. Survival.

The terms of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 herein shall survive the termination, cancellation or expiration of this Order

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