1. ACCEPTANCE: Vendor’s promise of shipment or shipment of the Goods or Vendor’s promise of performance or undertaking of performance of the Services, as applicable, shall constitute a binding agreement that it will sell the Goods in accordance with the Purchase Order and at the price mutually agreed upon by Buyer and Vendor. Vendor agrees to follow the shipping and invoicing instructions issued by Buyer, which instructions are incorporated by reference. Acceptance of the Purchase Order and any related Confidentiality Agreement executed by the parties shall constitute an entire agreement between the parties and any previous discussions and negotiations concerning the contract terms and conditions are hereby rendered inadmissible in evidence. The PURCHASE ORDER AND ANY RELATED CONFIDENTIALITY AGREEMENT EXECUTED BY THE PARTIES SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND ANY PREVIOUS DISCUSSIONS AND NEGOTIATIONS CONCERNING THE TERMS AND CONDITIONS OF THE PURCHASE ORDER OR MODIFICATIONS SHALL BE MADE EXCEPT IN WRITING SIGNED BY BUYER AND VENDOR.

2. INSPECTION AND REJECTION: (a) Final inspection of the Goods shall be made by Buyer in accordance with the Purchase Order and at the expense, shall elect, with the approval of Buyer (which approval shall not be unreasonably withheld). Buyer may reject for nonconformity to the specifications or the terms and conditions of the Purchase Order or if the Goods are defective or unsuitable, or do not conform to all warranties implied by law, Buyer may at its option reject all the Goods, accept all of them, or accept any commercial unit and reject the remainder, and Vendor shall either give to Buyer a full credit or refund of the purchase price of the rejected whole or portion of the Goods or Vendor, at its expense, shall repair or replace the nonconforming Goods in accordance with Buyer’s instructions. Buyer’s expenses for inspection of the Goods found to be nonconforming shall be charged to Vendor or deducted from amounts due Vendor. Buyer’s failure to detect nonconformities in the Goods or partial inspection shall not affect Buyer’s remedies as to such nonconformities. Regardless of its actions, Buyer will retain all of its rights against Vendor as to such nonconformities.

(b) If the Services or the tender of delivery fail in any respect to conform to specifications, the terms and conditions of the Purchase Order or applicable industry standards, Buyer may at its expense, shall elect, with the approval of Buyer (which approval shall not be unreasonably withheld). Vendor shall, at its expense, perform the Services over again in accordance with Buyer’s instructions. Buyer’s expenses for inspection of the Services found to be nonconforming or deficient Services or, at its expense, shall remedy or perform the Services again in accordance with Buyer’s instructions. Buyer’s expenses for inspection of the Services found to be nonconforming or deficient shall be charged to Vendor or deducted from amounts due Vendor. Buyer’s failure to detect nonconformities or deficiencies in the Services shall not affect Buyer’s remedies as to such nonconformities and/or deficiencies. Regardless of its actions, Buyer will retain all of its rights against Vendor as to such nonconformities and/or deficiencies.

3. TITLE AND RISK OF LOSS: Unless otherwise provided to the contrary in writing by Buyer in or to the Purchase Order, and in the absence of loss pass to Buyer from Vendor upon acceptance of the Goods by Buyer, subject to paragraph 2(a).

4. EXCESS OR PARTIAL SHIPMENTS OR PARTIAL PERFORMANCE: (a) Buyer may, but is not obligated to, accept shipments that are in excess of or less than the quantity ordered. Such shipment may be returned at Buyer’s option to Vendor at Vendor’s expense and risk. (B) Buyer shall have the option to call for delivery of the Goods in two or more lots, on 15 days prior written notice thereof, which shall include a schedule of deliveries.)

(b) Buyer may, but is not obligated to, accept or pay for partial performance of any of the Services.

5. WARRANTIES: Vendor warrants that all the Goods are of merchantable quality and fit for the ordinary purposes for which such Goods are used and Buyer’s intended use thereof. Vendor expressly warrants, in addition to all warranties implied by law, that the Goods and/or the Services shall conform to the specifications and other requirements set forth in all related packaging, labeling, and/or other material furnished by Vendor: (a) shall be free from defects in workmanship and materials (and from spoilage, in the case of perishable Goods), including, without limitation, so the defect will not create a hazard to life or property; (b) shall meet all applicable specifications, instructions, drawings, data, samples and federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health and (c) shall not infringe on the intellectual property, including inventions, copyrights, trademarks or trade names, and/or receive the Services harmless against and from all claims, liabilities, costs, damages and assessments, including reasonable attorney’s fees, caused by or arising out of any use, possession, consumption, or sale of the Goods and/or any performance of the Services, including in each case, defense, settlement, judgment, loss, property, or other damage, regardless of whether such claims, liabilities, costs, damages or assessments arise out of, relate to or are imposed by reason of negligence, strict liability, tort, contract, statute, ordinance, regulation, code, principle of equity or common law, or any other theory or remedy. Vendor shall obtain and maintain adequate insurance to cover its liability under the Purchase Order in amounts no less than the limit set forth below and shall provide copies of the applicable certificate of insurance and/or endorsement to Buyer prior to the first sale of Goods or prior to the commencement of the Services, as applicable.

6. PENALTIES, TRADEMARK, TRADE NAME: If the Goods or the tender of delivery fails in any respect to conform to specifications or the conditions and terms of the Purchase Order or if the Goods are defective or unsuitable, or do not conform to all warranties implied by law, Buyer may at its option reject all the Goods, accept all of them, or accept any commercial unit and reject the remainder, and Vendor shall either give to Buyer a full credit or refund of the purchase price of the rejected whole or portion of the Goods or Vendor, at its expense, shall repair or replace the nonconforming Goods in accordance with Buyer’s instructions. Buyer’s expenses for inspection of the Goods found to be nonconforming shall be charged to Vendor or deducted from amounts due Vendor. Buyer’s failure to detect nonconformities in the Goods or partial inspection shall not affect Buyer’s remedies as to such nonconformities. Regardless of its actions, Buyer will retain all of its rights against Vendor as to such nonconformities.

7. TERMINATION: (a) Buyer, subject to the provisions of paragraph 7(c), by written notice to Vendor, may terminate immediately all or any part of the Purchase Order in any one of the following circumstances:

i. If Vendor fails to perform any of its obligations under the Purchase Order and does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after Buyer gives Vendor notice specifying such failure; or

ii. If a petition is filed by or against Buyer under the bankruptcy laws applicable to Vendor, Vendor makes a general assignment for the benefit of its creditors, or a receiver or other similar fiduciary is appointed or other order similar to bankruptcy is entered with respect to Buyer.

Vendor also expressly agrees that time is of the essence to the Purchase Order and Buyer’s failure to meet any delivery date in the quantity or quantities specified or failure to timely perform any of the Services shall constitute material breach of the Purchase Order for the purpose of this paragraph. Vendor shall be deemed to have terminated the Purchase Order.

(b) In the event that Buyer terminates the Purchase Order in whole or in part, as provided in paragraph 7(a), Buyer may procure replacements for the Goods or the Services from other sources upon such terms and in such manner as Buyer may consider appropriate. Buyer shall remit to Vendor any amounts exceeding the contract price, of, and charges included in, the Purchase Order incurred by the exercise of Buyer’s rights under this paragraph, and Vendor shall continue the performance of the Purchase Order to the extent not terminated.

(c) If the Purchase Order is terminated as provided in paragraph 7(a), Buyer, in addition to any other rights provided herein, may require Vendor to transfer title and deliver in Buyer in the manner and to the extent directed by Buyer any completed Goods and such partially completed Goods and materials acquired for the performance of such part of the Purchase Order as has been terminated, and Vendor, upon Buyer’s direction, shall protect and preserve property in the possession of Vendor in which Buyer has an interest. Payment for completed Goods delivered to and accepted by Buyer shall be at the applicable contract price.

8. INDEMNIFICATION; INSURANCE: In addition to the provisions of paragraph 6, Vendor shall defend, indemnify, hold harmless and pay for any and all export and import licenses or permits necessary for performance of the Services as applicable to the purchase of Goods or prior to the commencement of the Services, as applicable.

Vendor shall at Vendor’s sole cost and expense, throughout the period of the Goods and/or the period of performance of the Services governed by a Purchase Order, provide that if any required insurance coverage(s) is written on a “claims-made basis” and the applicable Purchase Order is fulfilled, expires or terminates, “tail coverage” must be purchased thereafter for a minimum of 3 years with a retroactive date before the date of the applicable Purchase Order or the beginning of performance under the Purchase Order, whichever is earlier:

(a) Commercial General Liability, including Contractual, Personal & Advertising Injury. Products and Completed Operations coverage with minimum limits of $5,000,000 per occurrence and $10,000,000 aggregate.

(b) Worker’s compensation coverage sufficient to meet all applicable statutory requirements and Employer’s liability with minimum limits of $1,000,000.

(c) Errors & Omissions/Professional Liability insurance, appropriate to Vendor's profession and if applicable, in an amount of not less than $5,000,000 per wrongful act; and

(d) Automobile Liability: $5,000,000 combined single limit per accident.

Vendor shall provide Buyer with at least thirty (30) days’ written notice prior to any cancellation of any policies of insurance maintained hereunder, and each such policy shall obligate the insurer to provide at least thirty (30) days’ written notice to Buyer in advance of any contemplated cancellation, reduction or termination thereof. Buyer and its officers, directors and employees shall be named as Additional Insureds as evidenced by an attached endorsement or blanket additional insured coverage provided by the policy. At least thirty (30) days prior to each renewal period, Vendor shall furnish to Buyer with new certificates evidencing the policies of insurance required hereunder are in full force and effect and, excepting worker’s compensation, naming Buyer and its officers, directors and employees as Additional Insureds.

All insurance shall be placed with carriers having an A.M. Best Rating of “A-; Class X or better. The required coverage limits can be exceeded only by primary and/or umbrella insurance policies. The maximum deductible or self-insured retention on the CGL policies shall be $25,000. Vendor’s insurance shall be considered primary, non-contributory and not excess coverage. Excess insurance shall be considered primary, non-contributory and not excess coverage and, without limiting Vendor’s liability hereunder, Vendor shall maintain, and shall cause all of its subcontractors to maintain, the following insurance coverages in full force and effect, at the Buyer’s sole cost and expense, throughout the period of the Goods and/or the period of performance of the Services governed by a Purchase Order, provided that if any required insurance coverage(s) is written on a “claims-made basis” and the applicable Purchase Order is fulfilled, expires or terminates, “tail coverage” must be purchased thereafter for a minimum of 3 years with a retroactive date before the date of the applicable Purchase Order or the beginning of performance under the Purchase Order, whichever is earlier:

(a) Commercial General Liability, including Contractual, Personal & Advertising Injury. Products and Completed Operations coverage with minimum limits of $5,000,000 per occurrence and $10,000,000 aggregate.

(b) Worker’s compensation coverage sufficient to meet all applicable statutory requirements and Employer’s liability with minimum limits of $1,000,000.

(c) Errors & Omissions/Professional Liability insurance, appropriate to Vendor's profession and if applicable, in an amount of not less than $5,000,000 per wrongful act; and

(d) Automobile Liability: $5,000,000 combined single limit per accident.

Vendor shall provide Buyer with at least thirty (30) days’ written notice prior to any cancellation of any policies of insurance maintained hereunder, and each such policy shall obligate the insurer to provide at least thirty (30) days’ written notice to Buyer in advance of any contemplated cancellation, reduction or termination thereof. Buyer and its officers, directors and employees shall be named as Additional Insureds as evidenced by an attached endorsement or blanket additional insured coverage provided by the policy. At least thirty (30) days prior to each renewal period, Vendor shall furnish to Buyer with new certificates evidencing the policies of insurance required hereunder are in full force and effect and, excepting worker’s compensation, naming Buyer and its officers, directors and employees as Additional Insureds.
surcharge, import fee, or any exaction on the Goods hereunder, resale of the Goods, any component thereof, any process or labor involved therein, or any of the Services to be rendered by Vendor, Buyer, at its option, may cancel the Purchase Order as to any and all undelivered Goods or unperformed Services unless Vendor shall reimburse Buyer for the amount of the increase in any such tax, duty, surcharge, import fee, or other exaction.

10. **NOTICES:** Any notice, request, consent, or demand on Buyer shall be given in writing by overnight courier service, or by facsimile or e-mail, promptly confirmed by overnight courier service, to the street address designated by Buyer.

11. **ASSIGNMENT:** Neither the Purchase Order nor any rights or obligations hereunder shall be assigned or delegated by Vendor without the prior written consent of Buyer and any attempted assignment or delegation without such consent shall in no event relieve Vendor in whole or in part of its obligations hereunder.

12. **FORCE MAJEURE:** Buyer shall have the right to terminate the Purchase Order, without any liability of any kind to Vendor, at any time upon written notice to Vendor in the event that the Purchase Order is suspended for more than 30 days by reason of force majeure.

13. **APPLICABLE LAW AND JURISDICTION:** The Purchase Order and the rights of the parties hereunder shall be governed by and construed under the laws of the State of Delaware.

14. **NONWAIVER:** A failure by either party to enforce at any time any provision hereof shall not constitute a waiver of such provision or of the right of such party thereafter to enforce such provision.

15. **DEDUCTION AND SET-OFF:** Any sums payable to Vendor arising from any transaction or occurrence hereunder shall be subject to all claims and defenses of Buyer and Buyer may set-off and deduct against any such sums all present and future indebtedness of Vendor to Buyer. Buyer shall provide a copy of the deduction voucher(s) for debits taken by Buyer against Vendor’s account as a result of any returns or adjustments. Vendor shall be deemed to have accepted each such deduction unless Vendor, within 30 days following receipt of the deduction voucher, notifies Buyer in writing as to why a deduction should not be made and provides documentation of the reasons given.

16. **MISCELLANEOUS:** All rights granted to Buyer under the Purchase Order shall be in addition to and not in lieu of Buyer’s rights arising by operation of law. Any provisions of the Purchase Order which are typewritten or handwritten by Buyer shall supersede any contrary or inconsistent printed provisions. All the terms of the Purchase Order shall apply to additional quantities of the Goods and/or additional Services ordered by Buyer except to the extent covered by a new written agreement. The price set forth in the Purchase Order includes the cost of manufacturing, packaging, labeling, storage, cartage and shipping, unless otherwise specified therein. (Buyer specifically rejects any interest, service or late charges.) Vendor will not use Buyer’s name, trademarks, logos or service marks or refer to Buyer or any of its affiliates directly or indirectly in any customer list, advertising, sales presentation, news release, release to any professional or trade publication or for any other purposes without Buyer’s prior written approval of such use and of the form and substance of the reference.

17. **VENDOR’S EQUAL OPPORTUNITY COMPLIANCE CERTIFICATE:** In accepting the Purchase Order, Vendor certifies its compliance with all relevant EEO/AA laws, orders and regulations, the pertinent language of which is hereby incorporated by reference. Vendor certifies specific compliance with E. O. 11246; Section 503 of the Rehabilitation Act of 1973; and Section 402 of the Vietnam Era Veterans’ Readjustment Assistance Act of 1974.