

PURCHASE ORDER TERMS & CONDITIONS



Welcome to the web site (the Site) hosted by Profounda, Inc. Thank you for reviewing the purchase order (the PO) that has been transmitted (via facsimile, e-mail or other electronic means) to you (Supplier) by Profounda, Inc. (Buyer). Notwithstanding any prior dealings between Buyer and Supplier, the PO is expressly made conditional upon, and Buyer expressly limits Supplier's provision of any goods or services set forth in the PO to, the terms and conditions in the PO and herein.

By accepting the PO and/or starting performance, shipping any goods or furnishing any services (or providing any deliverable arising therefrom) in connection with the PO, Supplier acknowledges that Supplier has read, understands, and agrees to be bound by the terms and conditions set forth in the PO and herein. If Supplier objects to any such terms and conditions, Supplier shall (a) notify Buyer in writing within seven days after its receipt of the PO and (b) withhold acceptance of the PO and not start any performance, ship any goods or furnish any services (or provide any deliverable arising therefrom) in connection with the PO until/unless such objection is settled by written agreement by both parties.

These terms and conditions are specific to the PO and may hereafter be revised, from time to time, by Buyer. If revised, the revised terms and conditions will be posted on the Site and will thereafter be immediately effective for purchase orders issued thereafter. Supplier should read the terms and conditions referenced in each subsequently issued purchase order that Supplier receives. By accepting such purchase order and/or starting performance, shipping any goods or furnishing any services (or providing any deliverable arising therefrom) after a revised version of the terms and conditions on the Site has been posted, Supplier will be deemed to have accepted the revised version.

1. Complete Agreement. If the PO references that an agreement signed by Buyer and Supplier is to govern the PO, the PO and such agreement shall govern the entire understanding between the parties with respect to the PO, and these terms and conditions (except this section) shall have no effect; provided such agreement is in effect at the time the PO was issued by Buyer, such agreement includes the scope of the goods and services of the PO and such agreement contains a provision indicating that such agreement is the entire agreement between the parties with respect to the subject matter covered therein. Subject to the foregoing, it is the mutual desire and intent of both parties to provide certainty as to their respective rights and remedies against each other by defining the extent of their mutual undertakings as provided in the PO and these terms and conditions. Accordingly, the PO and these terms and conditions (a) constitute the entire agreement between the parties with respect to the subject matter of the PO and incorporate all representations, warranties, covenants, commitments and understandings on which both parties have relied, and, except as provided for herein, neither party makes any covenant or other commitment to the other concerning its future action; and (b) supersede all previous understandings, agreements and representations between the parties, written or

oral, including any terms in an estimate, an offer or other similar document. In the event of any conflict between the PO and these terms and conditions, the PO shall govern. No modification, amendment or waiver of any term or condition in the PO or herein shall be effective, nor shall any additional or different terms or conditions, whether transmitted hereafter in an invoice, confirmation, acceptance or any other similar document in connection with the PO or pursuant to any course of dealing, usage of the trade or Buyer's acceptance of any goods or services, be effective, unless set forth in a writing signed by Buyer and Supplier.

2. Notices. All communications from Supplier to Buyer relating to the PO and these terms and conditions shall be addressed to the Buyer's representative identified on the PO. Any communications transmitted via facsimile or electronically (e.g., via the Internet (including but not limited to EDI, cXML, e-mail)) (a) shall be considered a writing or in writing, (b) shall be deemed signed if a signature is affixed that is valid in accordance with applicable law (including a valid electronic signature) and (c) will constitute an original when printed. Communications introduced as evidence on paper will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form and admissibility shall not be contested on the basis that the communication was not originated or maintained in documentary form.

3. Goods and Services set forth in the PO. Supplier shall (a) provide to Buyer the goods and services set forth in the PO; (b) keep Buyer advised of the status of the PO; (c) permit Buyer or its representatives to review and observe, from time to time upon reasonable notice, Supplier's progress under or performance in connection with the PO; and (d) provide Buyer with such reports as are appropriate to the nature of the goods and services set forth in the PO and as may be reasonably requested by Buyer from time to time.

4. Inspection. All goods and deliverables are subject to final review, inspection and acceptance by Buyer notwithstanding any payment or initial inspection. Final inspection will be made by Buyer within a reasonable time after receipt of goods or deliverables.

5. Non-Conforming Goods or Services; Late Delivery.

(a) Buyer reserves the right to refuse any goods or services and to cancel all or any part of the PO if Supplier does not, or goods or services provided by Supplier to Buyer do not, conform to any applicable industry standards or practices, any applicable specifications, drawings, samples, descriptions or any other similar criteria in the PO or otherwise provided to Supplier by Buyer (the "Specifications") or any terms and conditions set forth in the PO and herein. Acceptance of any part of the shipment of goods or any part of the services shall not bind Buyer to accept any non-conforming goods or non-conforming services simultaneously provided by Supplier, nor deprive Buyer of the right to reject any previous or future non-conforming goods or services. Buyer may, if it rejects any non-conforming goods, return such goods to Supplier at Supplier's expense for transportation both ways, and Supplier shall not deliver to Buyer any replacement or substitution goods for such rejected goods unless so expressly authorized by Buyer.

(b) The delivery of goods and services shall strictly comply with the delivery date or delivery schedule, if any, provided to Supplier by Buyer. If at any time it appears Supplier will not meet such delivery date or schedule, Supplier shall promptly notify Buyer in writing of reasons for, and the estimated duration of, the delay. If requested by Buyer, Supplier shall ship such delayed goods by means to avoid or minimize delay to the maximum extent possible, including rerouting any shipment if appropriate and the use of a dedicated motor carrier or air freight, and any added costs shall be borne by Supplier.

(c) Notwithstanding the foregoing, Buyer may cancel the PO and seek any other remedies available in accordance with applicable law, including cover and incidental and consequential damages from Supplier, if Supplier does not, or goods or services provided by Supplier to Buyer do not, conform to the PO and these terms and conditions, including delivery of goods or services that do not strictly comply with the Specifications of the delivery date or schedule, if any, provided to Supplier by Buyer.

6. Cancellation. Buyer may cancel the PO at any time and for any reason upon written notice to Supplier. In the event of such cancellation, Supplier shall comply with any directions given by Buyer in such notice with respect to the goods and services in the PO and cease all other shipment of goods and all other work with respect to the PO. Within 45 days from the effective date of such cancellation, Supplier shall provide to Buyer all material, drawings, work-in-progress and co-developed intellectual property and submit an invoice to Buyer for all work done by Supplier in accordance with the PO prior to cancellation. Buyer agrees to pay all undisputed amounts in accordance with the PO and these terms and conditions. In no event shall Buyer be responsible for any amounts in the aggregate greater than (a) the total that would have been due under the PO or (b) the value of the work done by Supplier in accordance with the PO prior to cancellations, whichever is less.

7. Invoice. Unless Buyer otherwise informs Supplier, Supplier shall issue a separate invoice for each shipment of goods delivered by Supplier and, for services, each set of completed services. Supplier shall not issue any invoices before the goods or services are delivered to Buyer. Payment due dates, including discount periods, will be computed from the date the invoice is received by Buyer to the date Buyer's check is mailed (or payment is otherwise transmitted by Buyer). Buyer shall be entitled to take any available discount on the full amount of invoice.

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8. Payments. Unless Buyer otherwise informs Supplier, payment terms shall be net 30 days after the receipt by Buyer of an undisputed invoice. Buyer may withhold payment of any amounts which are disputed in good faith by Buyer. Except for amounts expressly set forth in the PO, Buyer shall not be responsible for any (i) other charges, including charges for delivery, parts or services and (ii) expenses of Supplier or any mark-ups on any expenses of Supplier.

9. Warranty. (a) Notwithstanding any other representation, warranty or agreement to the contrary, Supplier unconditionally represents and warrants the following: (i) the goods and

services supplied pursuant to the PO shall be of merchantable quality, conform to applicable industry standards and practices and the Specifications, be suitable for Buyer's intended uses and purposes in the ordinary course of its business and be free from defects in design, material and workmanship; (ii) all services provided by Supplier shall be provided by qualified personnel reasonably skilled and trained in the performance of the services and in a workmanlike and professional manner; (iii) any documentation provided to Buyer by Supplier shall meet reasonable standards of clarity and detail; (iv) Supplier, the goods and services provided to Buyer and the use thereof by Buyer shall not infringe on any party's intellectual property rights, including any party's confidential information, trade secrets, copyrights or patents; (v) Supplier is currently under no obligation to any party, nor will Supplier enter into any obligation to any party, that could interfere with Supplier delivering the good or services in the PO; and (vi) Supplier shall comply with, and the goods and services provided by Supplier shall be in compliance with, all federal, state and municipal statutes, laws, ordinances and regulations, including those relating to the environment, occupational safety and health, labor standards, assembly and supply of the Products, United States Food and Drug Administration (including compliance with good manufacturing practices), International Standards Organization Rules 9,000 et seq. and any permits, licenses and certifications Supplier is required to have. (b) If Supplier, the goods and services provided to Buyer or the use thereof by Buyer infringes on any party's intellectual property rights, including any party's confidential information, trade secrets, copyrights or patents, the sale or use of such goods or services is enjoined, Supplier shall, at its expense and option, either procure for Buyer the right to continue to use such goods or services, replace such goods or services with equivalent non-infringing goods or services or modify such goods or services so they become equivalent non-infringing goods or services. The foregoing, however, shall not be construed to limit or exclude any other claims or remedies that Buyer may assert. (c) All representations and warranties shall run to Buyer, its customers and the users of the goods or services or products into which such goods or services may be incorporated. All third party warranties and representations obtained by or applicable to Supplier in connection with any good and services in the PO are hereby deemed provided, in addition, for the benefit of Buyer, its affiliates and their users and customers. Nothing in this clause shall be construed as limiting in any way Supplier's other warranties to Buyer.

10. Indemnification. Supplier agrees to indemnify and hold harmless Buyer, its affiliates (and its and their respective directors, employees and agents) from any losses, liabilities, damages and expenses (including without limitation reasonable counsel fees) arising, directly or indirectly, from the following: (a) Supplier's breach of any provision hereof, including without limitation the confidentiality obligations and the warranties made herein; or (b) any negligent or wrongful act or omission of Supplier, its agents, consultants or subcontractors.

11. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL BUYER OR ITS AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, MULTIPLIED OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, OR PREJUDGMENT INTEREST OR ATTORNEYS FEES OR COSTS BASED ON CLAIMS OF SUPPLIER

OR ANY OTHER PARTY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. NOTWITHSTANDING THE FORM (e.g., CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL BUYER OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE GREATER OF (a) THE AMOUNT DUE FROM BUYER AS SET FORTH IN THE PO BUT NOT ALREADY PAID TO SUPPLIER FOR THE GOODS OR SERVICES PROVIDED BY SUPPLIER IN ACCORDANCE WITH THE PO AND THESE TERMS AND CONDITIONS OR (b) \$1000. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

12. Insurance. For the period beginning when Supplier accepts the PO and/or starts performance, ships any goods or furnishes any services (or provides any deliverable arising therefrom) in connection with the PO and ending at least 4 years after Supplier completes the PO in full or the PO was cancelled by Buyer, Supplier shall, at its own expense, maintain with a reputable insurer (and provide written certificate(s) of insurance to Buyer if and when requested) reasonable and customary insurance coverage, including, but not limited to, (a) worker s compensation statutory coverage as required by the laws of the applicable jurisdiction, and (b) commercial general liability insurance including coverage for product liability in the minimum amount of \$5 million per occurrence in respect of claims for any losses, costs and expenses arising out of or relating to Supplier furnishing the goods, deliverables and/or services under the PO. The commercial general liability insurance shall include worldwide coverage and include Buyer and its affiliates, and their directors, officers and employees, as Additional Named Insureds. The certificate(s) of insurance will include the agreement for the insurer to give Buyer written notice at least 30 days prior to the effective date of any cancellation, lapse or material change in the policy, and will contain a waiver of subrogation in favor of Buyer and its affiliates, and their directors, officers and employees.

13. Rights to Inventions; Copyrights. (a) Buyer will be the exclusive owner of all deliverables created by Supplier in connection with or during the performance of the PO, any works based on or derived from such deliverables (Derivatives), and any ideas, concepts, inventions or techniques that Supplier may conceive or first reduce to practice in connection with or during the performance of the PO (Deliverable Concepts) (the deliverables, Derivatives, and Deliverable Concepts are collectively referred to as, Buyer Materials) and all intellectual property rights therein, including patents, copyrights, trade secrets, trademarks, moral rights, and similar rights of any type under the laws of any governmental authority (collectively, Intellectual Property Rights). (b) All copyrightable Buyer Materials created by Supplier in connection with or during the performance of the PO shall be considered a work made for hire for Buyer to the fullest extent permitted by law. Buyer shall be considered the author of the Buyer Materials for purposes of copyright and all worldwide right, title and interest therein, shall be the property of Buyer as the party

specially commissioning said work. (c) To the extent that the Buyer does not acquire ownership of any copyrights as a work made for hire in accordance with the foregoing, and with respect to all other Intellectual Property Rights, Supplier hereby assigns and agrees to assign upon creation to Buyer all right, title and interest in and to the Buyer Materials and all Intellectual Property Rights therein. To the extent such assignment of rights and ownership is invalid or any of the foregoing rights, including so-called moral rights or rights of droit moral, may be inalienable, Supplier agrees to waive and agrees not to exercise such rights, and if such waiver and agreement are deemed invalid, to grant to Buyer and its designees the exclusive, transferable, perpetual, irrevocable, worldwide and royalty free right to make, use, market, modify, distribute, transmit, copy, sell, practice, and offer for sale and import the Buyer Materials and any process, technology, software, article, equipment, system, unit, product or component part covered by the Deliverable Concepts or a claim of any patent in any part of the Deliverable Concepts. At Buyer's request, Supplier will execute any instrument, or obtain the execution of any instrument, including from any employee or contractor, that may be appropriate to assign the rights to Buyer in accordance with this section or perfect such rights in Buyer's name. If Supplier fails to execute any assignment in accordance with this section within fifteen calendar days after a request by Buyer, Supplier hereby appoints Buyer as Supplier's attorney in fact for the sole purpose of executing any such assignment on behalf of Supplier to Buyer and Supplier agrees to be bound thereby. (d) Supplier shall include on the face of all copyrightable material prepared for Buyer a copyright notice identifying Buyer and the year of publication in legible form. Supplier shall provide Buyer with all relevant or necessary design drawings, source code and other documents detailing the Intellectual Property Rights with respect to the Buyer Materials. Except in connection with the PO to provide the goods or services to Buyer, Supplier shall not use any Intellectual Property Rights with respect to the Buyer Materials in any manner or for any reason. Without limiting the foregoing, Supplier agrees that neither Supplier nor any of its affiliates shall sell or distribute, or authorize the sale or distribution by any third party of, any goods or services using the Intellectual Property Rights with respect to the Buyer Materials to any party other than Buyer.

14. Government Contracting. Supplier represents that the price it is charging is not in excess of the ceiling prices, if any, established by any government agency. If Supplier is notified that the services or goods covered by the PO are ordered by Buyer under a United States government contract, Supplier agrees that federal statutes and regulations applicable to Buyer as a government contractor are accepted and binding on Supplier insofar as required by statute, regulation or the provisions of the government contract.

15. Force Majeure. Supplier and Buyer, as the case may be, shall be excused for delays in performance or failure of performance to the extent arising from causes beyond such party's reasonable control, including without limitation strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused hereunder shall notify the other party promptly thereof and shall make diligent efforts to perform at its earliest opportunity. If Supplier's performance is excused hereunder, Buyer may cancel the PO and Supplier agrees to

provide to Buyer the assistance and information necessary for Buyer to make, have made, or otherwise procure replacement goods and services.

16. Shipping Terms. Unless Buyer otherwise informs Supplier, delivery of goods is to be F.O.B. Buyer's plant and all amounts in the PO include all delivery charges thereto. If both parties mutually agree that goods are to be shipped F.O.B. shipping point, and Buyer has not designated routing, Supplier shall ship goods via the most economical method that will meet the delivery date provided to Supplier by Buyer. Supplier shall provide a packing list to Buyer for all shipments referencing the appropriate order number. Bills of lading, if any, shall also reference the appropriate order number.

17. Transportation Liability. Supplier agrees that in any case where freight regulations covering goods transported by common carrier establish a maximum limit on the carrier's liability for loss or damage suffered in transit, Supplier will be liable to Buyer for any loss or damage in excess of such maximum limit.

18. Confidentiality; No Publicity. Supplier shall keep in confidence and shall not, without securing the prior written consent of Buyer, originate any publicity (including any news release or public announcement) or disclose to any third party information relating to the following (collectively, Confidential Information"): the existence of the relationship with Buyer; Buyer's purchasing systems or practices (including, without limitation, descriptions of purchased items, quantities purchased and prices paid); the nature of the services performed or deliverables or goods delivered under the PO; or any data, designs or any other information relating to Buyer or its affiliates or their businesses. Notwithstanding the foregoing, Supplier may disclose Confidential Information (a) to Supplier's employees having a need to know such information in connection with Supplier's performance of the PO or (b) to comply with applicable laws, court orders or government regulations, provided, in such case Supplier promptly provides notice thereof to Buyer prior to any disclosure to allow Buyer to comment thereon and to seek a protective order or similar relief. Supplier shall not use or reproduce the Confidential Information for any purpose other than in connection with the PO. Supplier agrees that it will take appropriate action by instruction, agreement or otherwise with its employees who are permitted access to the aforementioned information to notify them of the obligations hereunder. No right, title, interest or license to Supplier is either granted or implied under any trademark, patent, copyright or any other intellectual property right by the disclosure of the Confidential Information hereunder. Upon Buyer's request at any time, all documents and other material containing Confidential Information, and any other data, designs, or other information furnished to Supplier (and copies thereof), shall be returned to Buyer.

19. Buyer's Property. All tools, equipment and materials of every description furnished to Supplier by, or paid for by, Buyer, and any replacement thereof, and any materials affixed or attached thereto, shall be and remain the personal property of Buyer, and shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's purchase orders. Such property while in Supplier's custody or control shall be held at Supplier's risk, shall be kept insured by Supplier at Supplier's expense in an amount equal

to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Supplier shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted.

20. Material Safety Data Sheets. An appropriate material safety data sheet (MSDS) and labeling, as and if required by law, will precede or accompany each shipment by Supplier. Further, Supplier shall send to Buyer updated MSDS s and labeling as required by law.

21. Environmental, Safety and Industrial Hygiene Matters. Supplier agrees to use commercially reasonable efforts to implement a policy of environmental responsibility concerning its products and processes, including where applicable, pollution prevention and waste reduction programs. With respect to all environmental, safety and industrial hygiene matters related to Supplier's activities in providing goods and/or services to Buyer, Supplier shall: (a) comply with all applicable laws and regulations issued by federal, state and local authorities; (b) inform Buyer promptly of any significant adverse event (e.g., fires, explosions, accidental discharges) that have the potential of affecting the quality of the goods and/or services to be delivered; (c) inform Buyer promptly of any allegations or findings of violations of applicable laws or regulations that have the potential of affecting the quality of the goods and/or services to be delivered; (d) allow Buyer's representatives to inspect Supplier's facilities, such inspections to be at reasonable times and upon reasonable notice; and (e) implement promptly any corrective action which may be reasonably requested by Buyer, including (without limitation) adhering to reasonable and significant elements of the environmental, safety and industrial hygiene program adhered to by Buyer in its own operations. Supplier shall provide Buyer accurate information concerning ozone depleting chemicals used in its products or processes when required by any applicable regulations or laws.

22. Compliance. (a) Any provisions, representations or agreements required by any law or regulation to be included in the contract resulting from acceptance of the PO are hereby incorporated by reference into these terms and conditions, including, but not limited to, those prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin, or physical or mental handicap and those providing for the employment of disabled veterans and veterans of the Vietnam era. (b) Supplier guarantees that no article shipped pursuant to this PO is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or is an article which may not under the provisions of §404 or §505 of that Act be introduced into interstate commerce. (c) If (a) any good shipped pursuant to the PO is produced using any human blood, blood component, tissue from a living or cadaveric donor, or from material derived therefrom (collectively, Tissue); or (b) any good contains Tissue; or (c) delivery of any deliverables that pursuant to the PO include results generated using Tissue, Supplier warrants and agrees that any such Tissue was collected or will be collected pursuant to a legally effective informed consent under the common rule and patient authorization under regulations implementing the Health Insurance Portability and Accountability Act in effect at the time of collection and subject to approval by an institutional review board, and Buyer or its affiliate(s) may review the consent form used in collection of any such Tissue, as well

as any subsequent revisions thereof, but Supplier is solely responsible for obtaining the appropriate patient consent and authorization.

23. Wood Pallets. This clause applies to all products and/or materials shipped to Buyer or its affiliates or authorized locations on wooden pallets. Wooden pallets shall be made from wood that is certified to be free of 2, 4, 6-tribromophenol (TBP) and any other form of phenol-based fungicide treatment, and shall comply with the International Standards for Phytosanitary Measures Publication No. 15, 2009 Revision (ISPM 15) for heat treatment only. While ISPM 15 currently provides for the use of Methyl Bromide (MB), the use of pallets fumigated with Methyl Bromide is also prohibited. All wooden pallets shall properly display that they meet the requirements with a specified mark as shown in ISPM 15 Annex II. Failure to meet this requirement may lead to rejection of shipments at Supplier's expense.

24. Dispute Resolution. (a) Governing Law. The laws of the State of Delaware, USA, without regard to principles of conflict of laws or Buyer's place of residence, will govern these terms and conditions and the PO. (b) Arbitration. Subject to subsection (c) below, any dispute that might arise between Supplier and Buyer relating to or arising from use of the Site or from the PO or these terms and conditions shall be settled by binding arbitration in accordance with the then prevailing Commercial Arbitration Rules of the American Arbitration Association (AAA), except where those rules conflict with this provision, in which case this provision controls. Arbitration shall be conducted before a single arbitrator selected from the AAA's National Roster of Arbitrators. The arbitration shall be held, and Supplier and Buyer irrevocably consent to arbitrate, in New York, NY unless they mutually agree upon an alternative location. The arbitration shall be conducted in English. In rendering the award the arbitrator must apply the substantive law of Delaware (except where that law conflicts with this clause), except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Under no circumstances shall the arbitrator award damages in excess of or inconsistent with the limitations contained in the Limitation of Liability section of these terms and conditions. Any court with jurisdiction shall enforce this clause and enter judgment on any award. Supplier and Buyer will agree upon, within 45 days after arbitration is initiated or, if they fail to agree, the AAA will design, procedures that they will follow to assure that the arbitration will be concluded and the award rendered within no more than eight months from selection of the arbitrator. Supplier and Buyer each have the right before or during the mediation or arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, an injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration. (c) Mediation. Prior to initiation of arbitration, Supplier and Buyer must attempt to mediate, within a period of 45 days after the request for mediation, the dispute using a professional mediator from the AAA or like organization selected by agreement or, absent agreement, through selection procedures administered by the AAA. In no event will mediation delay commencement of the arbitration for more than 45 days or interfere with the availability of emergency relief. (d) No Publicity. The arbitration and mediation proceedings shall be confidential and neither party shall publicize the nature of any dispute or the outcome of any mediation or arbitration proceedings except to the extent required by law, provided in such case the party

required to make any disclosure informs the other party of such requirement to allow the other party to seek a protective order. The mediator or arbitrator, as the case may be, shall issue appropriate protective orders to safeguard each party's confidential information.

25. Audit. For the period beginning when Supplier accepts the PO and/or starts performance, ships any goods or furnishes any services (or provides any deliverable arising therefrom) in connection with the PO and ending at least 4 years after Supplier completes the PO in full or the PO was cancelled by Buyer, Supplier agrees to make, keep and maintain, in accordance with generally accepted accounting principles and practices, consistently applied from year to year, complete books, invoices, records of payments, correspondence, instructions, specifications, plans, drawings, receipts, manuals, contracts, purchase orders, tax returns, memoranda and other records relating to the PO, including the goods and/or services provided thereunder and if applicable, cost of materials used, expenses incurred, hours worked. Buyer shall have the right to audit and/or examine all such items, either directly or through its authorized representative or agents, during regular business hours and upon reasonable prior notice. If any audit or examination reveals that Supplier collected more from Buyer than it was entitled to collect under the PO, Supplier shall promptly reimburse such Buyer for the amount of any overcharges. Supplier shall also pay Buyer interest at the rate of one percent (1%) per month on such amount, but in no event to exceed the highest lawful rate of interest, calculated from the date the amount was paid to Supplier until the date of actual reimbursement to Buyer. In the event that any such audit or examination reveals that Supplier collected more than five percent (5%) than what it was entitled to collect under the PO, Supplier shall also reimburse Buyer for the cost of such audit in addition to the other amount owed pursuant to this section.

26. Assignment. The PO and the rights and duties under the PO and these terms and condition shall not be assignable by either party without the prior written consent of the other party, which consent may be withheld in such other party's sole discretion; provided however, Buyer may assign its rights and obligations to any one or more of its affiliates. The PO and these terms and conditions shall inure to the benefit of and be binding upon Buyer and Supplier and their respective successors and permitted assigns. Nothing contained in the PO or herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

27. Relationship. (a) The relationship of Buyer and Supplier is that of independent contractors, and nothing contained herein shall be construed to (i) give either party any right or authority to create or assume any obligation of any kind on behalf of the other or (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking. (b) Buyer shall not be liable for any of its affiliates under any circumstances (c) The relationship between Buyer and Supplier is not one of exclusivity.

28. Miscellaneous. Headings used herein are for convenience only and shall not be used for interpretive purpose. A party's failure to act with respect to another party's breach of any provision contained herein does not constitute a waiver. If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, or

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otherwise deemed ineffective and the remaining provisions shall not be affected. The terms and conditions in the PO and herein will survive the fulfillment of the PO.