

Purchase Order Terms and Conditions

Document Number 70583986

1. GENERAL CONDITIONS

Each purchase order ("Order") which PAR Systems, LLC a Delaware limited liability company and/or its wholly owned subsidiaries Jered, LLC, PAR Marine Services, LLC, or OakRiver Technology, LLC (collectively "Buyer"), may place with you ("Seller") from time to time shall be subject to the provisions of the Order and to the following terms and conditions (the "Terms and Conditions").

A. ACCEPTANCE OF ORDER

Each Order is Buyer's offer to Seller. Acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically disclaims, and Seller waives, any term or condition whatsoever that is different from or in addition to the provisions of the Order or these Terms and Conditions, whether or not such term or condition will materially alter the Order. Seller's commencement of performance or acceptance or delivery of the Order's requirements, in any manner, shall conclusively evidence agreement to the Order and these Terms and Conditions as written. In the event of a conflict between these Terms and Conditions and the face of an Order and/or on additional pages attached to an Order, the Order and/or such additional pages shall control.

B. AMENDMENTS

The terms and conditions in any Order, and these Terms and Conditions, may not be added to, modified or amended, superseded, or otherwise altered except by a written amendment signed by authorized representatives of Buyer and Seller.

C. INSPECTION AND ACCEPTANCE

All goods or services provided under an Order by Seller or Seller's permitted subcontractors shall be subject to inspection and test at all reasonable times and places, including the period of manufacture, by Buyer and Buyer's customers. If any inspection or test is on Seller's or its subcontractor's premises, Seller or Seller's subcontractor, without additional charge, shall provide all reasonable facilities and assistance necessary for the safety and convenience of inspectors of Buyer and Buyer's customers. All technical and quality requirements of the Order shall apply to all Seller's subcontractors. All articles are also subject to final inspection and acceptance at Buyer's plant or other specified place of delivery notwithstanding any payments or other prior inspections. Notwithstanding any other provision of any Order, and without limiting the generality of any other provision of these Terms and Conditions, Seller shall be responsible to correct, at its expense, all latent defects which cannot be discovered by Buyer through reasonable inspection methods. Payment for all or any part of the goods or services purchased pursuant to any Order shall not constitute acceptance or such goods or services, or a waiver of any related warranty. Inspection or failure to inspect at destination will not affect any warranty.

D. EXPIRATION OF ORDER

Any Order will expire if not accepted by Seller within thirty (30) days of the date appearing on the face of the Order or if Buyer withdraws the Order by notice to Seller before Seller's acceptance thereof.

2. PRICES

Seller warrants that the prices of the goods or services set forth on any Order do not exceed Seller's lowest price(s) in effect, on date of such Order, to any other customer of Seller purchasing similar goods or services of like quality and quantity. Buyer shall receive the full benefit of any reduction in the cost of any goods or services, if that reduction is made subsequent to Seller's receipt of the Order.

3. DELIVERY

Time is of the essence with respect to Seller's performance under each Order. Deliveries pursuant to any Order shall be strictly in accordance with the specified quantities, schedules, and other requirements of the Order. If requested by Buyer, Seller shall, at Seller's expense, ship via air or other expedited transportation method to avoid or minimize any actual or potential delay to the maximum extent possible. Buyer's Traffic Department will direct Seller as to the method of shipment. However, if Buyer shall request Seller to determine the method of shipment, the Seller shall (a) describe shipments in accordance with the carrier's tariffs to obtain the lowest freight rate; (b) insure or declare value on shipment only to the point designated

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in the Order; (c) when a shipment is subject to freight rates dependent upon value, annotate the bill of lading, airbill or express receipt to show that the shipment has been released at the maximum value which applies to the lowest rate provided in applicable tariffs; and (d) consolidate all shipments to be forwarded on one day. Seller shall mail the original invoice to Buyer's Accounting Department when the articles are shipped. All invoices must state the shipping point. Each case or parcel and accompanying packing list of contents must show Buyer's Order number. If no packing list accompanies the shipment, Buyer's count will be conclusive on Seller. Goods furnished in excess of the quantities ordered may be retained by Buyer for no charge, unless Seller notifies Buyer within forty-five (45) days after shipment that it desires the return thereof. Seller shall reimburse Buyer for the full cost of returning such overshipment.

4. PACKING

Unless otherwise provided on the Order, Seller shall bear the expense of packing, boxing and/or crating the goods ordered. Seller shall provide such packing, boxing and/or crating in accordance with the highest industry standards, and shall be liable for any negligence or defect in the performance of this duty to Buyer and to those claiming through Buyer for loss or damage to the goods as a result of such negligence or defect.

5. RISK OF LOSS/TITLE TRANSFER

Unless otherwise provided on any Order, the expenses of shipping and the risk of loss of and title to the goods ordered shall be borne by Seller up to the F.O.B. point specified on the face thereof. At that F.O.B. point, risk of loss and title will pass to Buyer.

6. WARRANTIES

In addition to all other warranties, express or implied, Seller expressly warrants for eighteen (18) months after commencement of the warranty period, which shall begin upon Seller's receipt of Buyer's final payment under any Order, that all goods, materials, and services furnished under any Order in all respects:

- a) are fit and safe for the particular purpose for which they are manufactured and to the extent that Seller knows or has reason to know of the purpose for which the goods or services are intended, are fit and sufficient for that purpose;
- b) are free from defects in material, workmanship and design;
- c) are merchantable;
- d) conform to applicable specifications, drawings, samples and descriptions;
- e) do not contain and were not manufactured using (i) ozone depleting substances known as halons, chlorofluorocarbons, methyl chloroform and carbon tetrachloride, or (ii) asbestos;
- f) are new and do not contain used or reconditioned parts; and
- g) are in compliance with and have been manufactured and sold in accordance with all applicable domestic and international laws, rules and regulations.

No warranty will be deemed to have been waived by reason of Buyer's receipt of, or payment for, the goods or services. Goods or services not in accordance with these warranties may be returned to Seller at Seller's expense for full credit or replacement, at the price specified. Repairs and/or replacements shall be made by Seller without cost to Buyer and upon failure to do so within a reasonable time and with three (3) days prior written notice to Seller, Buyer may perform repairs or make replacements at Seller's expense. The foregoing are in addition to and not instead of all other rights, which Buyer may have by reason of any breach of Seller's warranties.

7. CHANGES

Buyer reserves the right from time to time to make changes by written notice, in drawings, designs, specifications, description to which the goods are to conform, in methods of shipment, packaging, place of delivery and/or instructions as to any material and or work covered by any Order. Seller will notify Buyer in writing, within five (5) days of receipt of any written change notice, and of any adjustment in price or time for performance based on those changes. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified accordingly, based on good faith negotiations between the parties. Nothing herein shall excuse Seller from proceeding without delay to perform the Order as changed. If the parties cannot agree on such changes, Buyer, in its sole discretion, may cancel the Order and pay pro rata for the portion of the Order performed by Seller or may

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require the Seller to perform the Order as changed and submit the issue of adjustments in price or delivery schedule to arbitration as provided below.

8. SUBSTITUTIONS: VARIATIONS IN QUANTITY

Unless otherwise specified in any Order, Seller shall not substitute components, materials, finished goods or accessories for those ordered without the written consent of Buyer. Goods shipped against any Order must not be in excess of the quantity ordered in total or for a particular delivery date. Overshipments, other than as specified herein, which are not accepted by Buyer may be returned to Seller at Seller's expense.

9. CANCELLATION AT BUYER'S OPTION

Buyer may cancel any Order at any time and for any reason by written notice to Seller. In such case, Seller shall immediately stop work on the Order and shall undertake all reasonable efforts to mitigate its costs of such cancellation and shall promptly advise Buyer of such costs. If the parties are able to agree in writing on cancellation costs, the Buyer shall promptly pay them or, if not, the issue shall be submitted to arbitration as provided below. Notwithstanding any provision of any Order to the contrary, Buyer's maximum liability for goods shall be limited to a sum no greater than the aggregate gross purchase price value of the goods scheduled for delivery under the Order issued. This does not limit or affect the right of Buyer to cancel this Order for cause. In no event shall Buyer be liable for punitive, indirect, special, incidental or consequential damages, or lost profits or any cancellation or termination fee, for cancellation of all or any portion of an Order. However, Buyer may at its option reschedule delivery of all or any part of any Order at no cost or cancellation charge by giving Seller written notice thirty (30) days prior to the scheduled delivery date.

10. CANCELLATION FOR DEFAULT/CAUSE OF SELLER

Buyer may, without payment or penalty of any kind, cancel all or any part of any Order, and at Buyer's option cancel all other open Orders, whether or not then delivered, if any of the following events occur:

- a) Seller fails to make deliveries or perform services strictly in accordance with the schedule set forth on any Order;
- b) Seller breaches any of these Terms and Conditions, including the warranties of Seller;
- c) Seller files or has filed against it any petition or other proceeding in receivership, bankruptcy or insolvency, or makes an assignment for benefit of creditors, or is unable to pay its debts in the ordinary course as they become due;
- d) Seller injures or removes the goods or sells or pledges or in any way transfers the goods or its interest in them, or suffers or permits any lien to be placed on them, or suffers or permits such goods to be seized by any writ or process of law; or
- e) Seller fails to perform any other terms of any Order, or so fails to make progress as to endanger the performance of any Order within its terms, and in either case or above cases, does not cure (if curable) such failure within ten (10) days or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure.

In case of any such cancellation, Buyer may advise Seller of the damages occasioned by the breach. If the parties are able to agree on cancellation damages resulting from Seller's default, Seller shall promptly pay them, or, if not, the issue shall be submitted to arbitration as provided below. The rights and remedies given Buyer hereunder are cumulative and are in addition to any other remedies Buyer may have hereunder or by law.

11. INTELLECTUAL PROPERTY INDEMNITY

Seller warrants that the goods delivered under each Order do not infringe on any patent, copyright, trademark, service mark or trade name, or other intellectual property right owned or controlled by any other corporation, firm or person, and agrees, at its sole cost and expense, to defend and indemnify Buyer and its customers and their respective officers, directors, employees, agents, successors, assigns, and users of the goods against and hold all of them harmless from any and all liability, damages, loss and expense of any kind (including attorneys' fees and expenses) by reason of any claim, action or litigation of any kind arising out of any alleged or actual direct, indirect or contributory infringement of any patent, copyright, trademark, service mark or trade name, foreign or domestic, resulting from the possession or use or resale or manufacture of said goods or any parts thereof, in any form or media. If Buyer is enjoined from using the goods delivered under an Order, Buyer, in its sole discretion, may require Seller to procure for Buyer rights to continue using the infringing goods, to replace the infringing goods with non-infringing goods to the

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satisfaction of Buyer, to modify the infringing goods so that they become non-infringing, or to accept return of the goods for a full refund to Buyer of the amount paid for the goods. This indemnity shall survive the termination or expiration of any Order.

12. MATERIALS AND INFORMATION FURNISHED BY BUYER

All materials, drawings, specifications, photographs, tools, dies, and other engineering and manufacturing materials and information furnished by Buyer shall remain Buyer's property, shall not be copied by Seller without Buyer's prior written consent and shall, together with any and all copies thereof, be returned to Buyer upon request. All such items shall be subject to removal and inspection by Buyer at any time. All such items shall be identified and marked as Buyer's property, shall be used only for the purpose of filling Orders, and shall be adequately insured for Buyer's protection against risk of loss or damage for their replacement value at Seller's expense while they are in Seller's possession.

13. CONFIDENTIAL INFORMATION

All of the items described in Paragraph 12, and any information related to Buyer's business with Seller, and all other confidential information concerning the business affairs of Buyer, including without limitation lists of customers, trade secrets, know-how and information concerning the design or methods of manufacturing goods or any other information which Buyer may from time to time specify as being confidential, shall be treated by Seller as confidential. All such information will be furnished by Buyer to Seller only to assist Seller in providing the goods or services referred to in any Order and will not be disclosed to any party or used by Seller for any purpose other than filling the Order. Seller shall restrict access to such information to those of its employees who need to have knowledge thereof in connection with the performance of any Order. Seller shall inform its employees having access to such information of the confidential nature thereof, and shall be responsible for any unauthorized disclosure by any of its employees. Seller shall use the same degree of care to preserve the confidential nature of such information as it uses to preserve the confidential nature of Seller's most sensitive information, but in all events not less than a reasonable degree of care. To the extent that goods covered by an Order are produced in accordance with drawings or specifications that are proprietary to Buyer or to Buyer's customer, Seller shall not manufacture a greater quantity thereof than are required to be delivered under the Order.

14. PAYMENT DEFAULT BY BUYER; GROUNDS FOR NOT PAYING INVOICES

If payment terms are not set forth on an Order, Buyer shall make payment with respect to such Order in United States currency 2%/10, net sixty (60) days from delivery of the goods or performance of the services ordered pursuant to the Order, or receipt of the invoice, whichever is later. Buyer's failure to make such payment when due or to perform any other obligation under any Order shall not be deemed a breach unless such failure shall have continued for a period of thirty (30) days from receipt of written notice of default from Seller. Buyer further, in Buyer's sole discretion, may decline to pay invoices, in-whole or in-part, to the extent Buyer reasonably determines it is necessary to protect itself from any loss due to one or more of the following reasons: (a) a breach by Seller on any Seller obligation under any Order, including all reasonable costs that Buyer may incur to remedy the breach (whether by repairing or re-ordering the goods or re-performing the services, or otherwise) and all other costs directly attributable to other services that are required to be performed in connection with remedying such breach; (b) any third-party claims filed in connection with any Order, or any reasonable evidence indicating probable filing of such claims, or Seller's failure to fulfill its obligations to Seller's subcontractors or its suppliers, all in connection with any Order; (c) any damage to Buyer or to Buyer's customer that is not directly connected with an Order, where such damage arises out of the actual or alleged willful misconduct or negligent acts or omissions of Seller or a Seller's subcontractor, agent, employee, or any other person for whom, directly or indirectly, Seller or Seller's subcontractor may be liable; (d) any reasonable evidence that the goods will not be delivered and/or the services performed by the agreed upon date, as specified in an Order; or (e) any unsubstantiated or unsupported amounts invoiced by Seller.

15. WAIVER

No waiver by a party shall be effective unless in writing and signed by a duty authorized representative of that party. No waiver shall be inferred from a party's conduct.

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16. TAXES

Unless otherwise specifically provided in any Order or by law, the prices set forth in any Order include all applicable taxes and duties, and any present or future sales, use, privilege, occupation, excise, or other tax, custom, fee or charge imposed by any governmental authority on the purchase of the goods, and shall be paid or reimbursed by Seller or paid by Buyer and applied against the purchase price, as the case may be.

17. ARBITRATION

If a U.S.-based Seller, any dispute, claim, controversy or differences arising out of or relating to any aspect of any Order or any breach thereof or any default thereunder which cannot be resolved amicably by the parties, shall be resolved by one or more arbitrators in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be held in Minneapolis, Minnesota. The arbitrator sitting in any such proceedings shall have no power to alter or modify any express provisions hereof or to render any award which by its terms affects any such alterations or modifications. The expenses and fees, other than counsel fees, of any such arbitration proceedings shall be borne equally by Buyer and Seller. The parties acknowledge and agree that the prevailing party in any such proceedings shall be entitled to reasonable attorneys' fees and costs in enforcing its rights under any Order. The award of the arbitrator or arbitrators shall be final and binding upon the parties and judgment upon any such award may be entered in any court having competent jurisdiction. The parties shall continue to perform their obligations under the Order pending the outcome of any arbitration specified above.

If a foreign-based Seller, any dispute, claim, controversy or differences arising out of or relating to any aspect of any Order or any breach thereof or any default thereunder which cannot be resolved amicably by the parties, shall be referred to and finally resolved by arbitration administered by the International Centre for Dispute Resolution (ICDR), under its International Arbitration Rules. These Rules are deemed to be incorporated by reference into this section. The tribunal shall consist of a sole arbitrator, the place for arbitration shall be in the offices of the ICDR, in New York, New York. The proceedings shall be in the English language. Judgment upon award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such award shall be equally valid if the laws or regulations of the country in which enforcement is brought require that the judgment be translated into the specified language of that country. Both parties hereby waive the right to refer the case to any other jurisdiction. The expenses and fees, other than counsel fees, of any such arbitration proceeding shall be borne equally by Buyer and Seller. The parties acknowledge and agree that the prevailing party in any such proceedings shall be entitled to reasonable attorneys' fees and costs in enforcing its rights under any Order. The parties shall continue to perform their obligations under any Order pending the outcome of any arbitration specified above.

18. GOVERNING LAW

Each Order, and these Terms and Conditions, shall be governed and constituted according to the laws of the State of Delaware, without application of any conflict of laws principals. These Terms and Conditions, and each Order, specifically exclude the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods and the U. N. Convention on the Limitation Period in the International Sale of Goods, as amended by Protocol.

19. ASSIGNMENT

Buyer, in issuing any Order is relying on Seller's personal performance thereunder and Seller may not assign any Order or have any portion of any Order performed under subcontract without the written consent of Buyer, which consent may be withheld in the sole discretion of Buyer. Seller shall include the provisions contained in these Terms and Conditions in any of Seller's contracts or orders with all permitted subcontractors. Any unauthorized assignment or subcontract by Seller shall be deemed null and void. Buyer may freely assign any Order, in whole or in part, in its sole discretion.

20. NOTICES

All notices or other communications required or permitted to be given under any Order or these Terms and Conditions shall be in writing and addressed to the other party at the address provided on the Order, or as otherwise designated in writing, and shall be deemed effectively given on the earliest of: (a) when delivered, if personally delivered; (b) on the third (3rd) business day following the date of mailing if delivered by certified

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or registered mail, return receipt requested; (c) on the date of transmission, if delivered by facsimile or e-mail transmission; or (d) when received by the party to whom notice is intended or required to be given.

21. COMPLIANCE WITH LAWS, REGULATIONS AND POLICIES

All applicable domestic and international laws, ordinances, statutes, rules, treaties, codes, permits, guidelines, regulations, orders or decrees of any governmental authority (including binding interpretations of the foregoing, such as formal orders, administrative decisions, directives and the like); or any judgment, decision, decree, injunction, writ, order or the like action of any governmental authority as in effect at the time Seller's obligations under an Order are performed shall apply to Seller and its employees and representatives. Seller further will perform its obligations under each Order in accordance with Buyer's Supplier Code of Conduct as set forth at https://www.par.com/files/1713/6606/5238/PaR_Systems_Supplier_Code_of_Conduct_2010-08-17.pdf, and incorporated herein by reference. Without limiting the generality of the foregoing, Seller agrees not to make any false or misleading statements to or concerning Buyer, including, but not limited to, the Buyer's performance and commitments, or engage in any illegal, deceptive, unethical or improper acts in connection with performing Seller's obligations under any Order.

22. COUNTERFEIT PARTS AND MATERIAL

Seller agrees and shall ensure that Seller shall deliver no Counterfeit Parts (as defined below) to Buyer. Seller shall only purchase items to be delivered or incorporated as Parts directly from the original component manufacturer/original equipment manufacturer, or through an authorized distributor. Seller agrees and shall certify that any Part manufactured by Seller shall be produced to advertised or agreed specifications from materials and Parts that are not Counterfeit Parts.

The term "Part(s)" consists of those items delivered under the Order that are one level of separately identifiable items (e.g. raw materials, articles, components, goods, and assemblies).

The term "Counterfeit Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part or material from the original manufacturer, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used, refurbished, sample, or reclaimed parts or materials represented as new, or the false identification of grade, material properties, serial number, lot number, date code, or performance characteristics.

Notwithstanding any other provision herein, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including costs borne by Buyer, its customer, or subcontractors associated with removing Counterfeit Parts, of reinserting replacement Parts and of any testing necessitated by the need to identify the Counterfeit Parts and the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this Section are in addition to any remedies Buyer may have at law, equity or under other provisions of this Order.

23. CONFLICT MINERALS REPORTING

Seller shall report and certify annually, at a minimum, to Buyer the presence of Conflict Minerals (i.e. gold, tungsten, tin and tantalum) originating in the Democratic Republic of Congo or adjoining Covered Countries in the products sold to Buyer to support required compliance under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Buyer may from time to time require additional data reporting from the Seller to verify the aforementioned compliance.

24. GOVERNMENT CONTRACTS

If the articles, materials or services to be furnished under any Order are to be used in the performance of a government contract or subcontract of the Buyer, the Seller agrees to comply with all federal and state laws, and applicable federal regulations if furnished as an attachment, and agrees that the terms, conditions and requirements of the "equal opportunity clause" (41 C. F. R. X60-1. 4) and "affirmative action clause" (41 C. F. R. X60-250. 4 and 41 C. F. R. X60-741. 4) under Executive Order No. 11246 of September 24, 1965, as amended, Section 40Z of the Vietnam Era Veterans Readjustments Assistance Act of 1974 and Section 503 of the Rehabilitation Act of 1973, respectively, and any other clauses mandatorily required by federal or state law to be included in government contracts and subcontracts are herein incorporated by reference and expressly made a part of each Order as if fully set forth herein.

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25. LICENSES AND PERMITS

Seller shall obtain all permits, licenses, certifications; fulfill any other applicable governing authority requirement; and furnish any documentation, bonds, security or deposits required to permit performance of its obligations under each Order. Seller certifies that it and all associates and permitted subcontractors are licensed, certified and registered to perform Buyer's obligations under each Order. Such licenses, certifications and registrations shall be maintained throughout performance of each Order and failure to do so may be cause for default termination.

26. SET-OFF

Any amounts chargeable or payable by Seller to Buyer under the provisions of any Order or in connection with the goods and services referred to therein, may at Buyer's election, be set-off in whole or in part against any sums payable to Seller whether arising under that Order or otherwise, including under any other Order. Any such set-off shall be without prejudice to any claims of Buyer based on any loss, damage or expense not reflected in such set-off.

27. INDEMNIFICATION OF THIRD PARTY CLAIMS

Seller hereby agrees to indemnify and hold harmless Buyer, its affiliates and their respective successors and assigns, and its and their respective directors, officers, agents and employees, from and against any and all claims, liabilities, damages, losses, causes of action and judgments brought by any person, corporation, governmental entity or other entity not a party to an Order and relating to Seller's performance or non-performance under any such Order, any breach of these Terms and Conditions by Seller, and any breach of any warranty set forth in these Terms and Conditions. This indemnity applies whether such claims arise from injury or death to persons or loss or damage to property or otherwise (collectively "Third Party Claims"). In addition, this indemnity includes Buyer's reasonable attorneys' fees and costs and expenses incident to the defense of any Third Party Claim. The foregoing indemnification shall apply, without limitation, to the extent any Third Party Claims arise from (a) any defect in the design, workmanship or material of any product or associated software delivered by Seller to Buyer under any Order and/or (b) any negligence (whether active or passive) or willful misconduct of Seller, its contractors of any tier or its or their directors, officers, agents, or employees. This indemnity shall survive the termination or expiration of any Order.

28. FORCE MAJEURE

Neither party shall be liable for damages for delay in delivery under any Order arising out of causes beyond its reasonable control and without its fault or negligence. This includes, but is not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without the fault or negligence of either of them, then Seller shall not be liable to Buyer in damages unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any such delay.

29. CLAIMS

In the event Seller sustains a delay, damage or loss of any kind or encounters a change or unexpected condition during performance of an Order, Seller's sole remedy, if any, as applicable against Buyer, shall be an award of an extension of time for performance of the Order. In no event may Seller recover any monetary relief from Buyer, including, but not limited to, damages, whether consequential or otherwise.

30. RIGHT TO AUDIT

Seller shall establish and maintain a reasonable accounting system, which enables ready identification of Seller's cost of goods and overall performance under each Order. Any authorized representative of Buyer or Buyer's customer shall have reasonable access to all plants, facilities and records of Seller and any of Seller's subcontractor for the purpose of auditing records, procedures, policies, etc. Any such audit rights shall continue until the expiration of five (5) years after Seller's receipt of final payment from Buyer, or such extended period as required by applicable law or in connection with any arbitration or legal proceedings under an Order.

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31. INSURANCE

In addition to any other insurance that Buyer shall require under an Order, Seller shall maintain, at its own cost and expense, such insurance of the types and in the amounts (a) as is standard and reasonable in the applicable industry;

(b) as is necessary to insure all of Seller's obligations under any Order; and (c) that sufficiently will protect Buyer from all claims for damages to persons and property that may arise from any operations under an Order or permitted subcontracts related to an Order.

32. TERMINATION

Optional Termination and Suspension/Stop-Work Order. Seller's performance under this Purchase Order may be terminated, suspended or otherwise stopped by Buyer in whole or from time to time, in part, whenever Buyer shall determine that such termination, suspension or stoppage is in its best interest and/or as directed by Buyer's customer. Any such termination, suspension or stoppage shall be by written notice to Seller, specifying the extent to which performance under this Purchase Order is terminated, suspended or stopped, and the date upon which the termination, suspension or stoppage becomes effective. Upon receiving such written notice, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs allocable to such performance. In the event of suspension or other stoppage of performance under this Section, Seller shall be entitled to an adjustment (excluding profit) for any increase in the cost of performance of this Purchase Order caused by such suspension. Adjustment shall be made also in the delivery or performance dates. In the event of termination of this Purchase Order by Buyer as set forth above, Buyer shall compensate the Seller the reasonable and documented direct costs incurred by the Seller prior to the aforesaid termination of this Purchase Order which compensation shall not at any time exceed, when aggregated with the prior payments made by Buyer, the Purchase Order price. The rights of Buyer pursuant to this Section are in addition to any of its other rights under this Purchase Order.

Termination Due to Default. Buyer may, without payment or penalty of any kind, terminate all or any part of the Purchase Order whether or not then delivered, if any of the following events occur: the Seller fails to make deliveries or perform in accordance with the terms hereof; breaches any of the terms herein including the warranties and covenants of Seller; files or has filed against it any petition or other proceeding in receivership, bankruptcy or insolvency; or injures or removes the products or sells or pledges or in any way transfers the products or its interests in them, or suffers or permits any lien to be placed on them, or suffers or permits such products to be seized by writ or process or law. In the event of any such termination, Buyer shall advise the Seller of the damages occasioned by the breach. If the parties are able to agree on termination damages, the Seller shall promptly pay them, or, if not, the issue shall be submitted to arbitration as provided herein. So far as permitted by applicable law, the rights and remedies given Buyer herein are cumulative and are in addition to all other remedies Buyer may have herein or by applicable law.

Seller's Obligations. If the Seller ceases its operations in the usual course of business or is unable to meet its obligations, or if proceedings under any provision of the federal, state or local bankruptcy law are initiated against the Seller, or if a receiver, trustee, or liquidator is appointed or applied for, or if an assignment for the benefit of creditors is made by the Seller, or if the Seller fails to perform any of its obligations under the Purchase Order, including failure to comply with any of Buyer's instructions, regulations or procedures, or failure to meet the specified schedule of performance, then the Seller shall be in default. Buyer may suspend performance until the basis for the Seller's default has been corrected to Buyer's satisfaction or terminate this Purchase Order immediately for default. The Seller shall not be entitled to any compensation for costs incurred during such a suspension. In addition, the Seller shall be responsible for any damages suffered by Buyer, its successors and assigns, or Buyer's customer as a result of the suspension or termination for default. The foregoing shall be in addition to any other rights Buyer may have under the Purchase Order or applicable law.

Title Transfer and Delivery. If this Purchase Order is terminated for any of the foregoing, Buyer, in addition to any other rights provided herein, may require Seller to transfer title and deliver to Buyer or Buyer's customer (a) any completed supplies, and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and related products as Seller has specifically produced or specifically acquired for the performance of such part of this Purchase Order, and Seller shall protect and preserve property in possession of Seller in which Buyer or its customer have an interest.

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33. INDEPENDENT CONTRACTOR

Seller represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform its obligations under each Order. Seller shall act as an independent contractor and not as the agent of Buyer in performing each Order, maintaining complete control over its employees and all of its lower-tier associates, suppliers and permitted subcontractors. Nothing contained in any Order or these Terms and Conditions or any lower-tier purchase order or subcontract awarded by Seller shall create any contractual relationship between any lower-tier associate, supplier or subcontractor and Buyer.

34. HAZARDOUS MATERIALS

Seller shall notify Buyer of all goods ordered under any Order which contain material hazardous or injurious to the health or physical safety of persons or which may damage the environment, even though said hazard or injury may only occur due to mishandling or misuse of the goods. In addition, Seller shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result. For each good or product so identified, Seller shall supply Buyer with warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and their effects.

35. U.S. EXPORT CONTROL COMPLIANCE

Notwithstanding the generality of section 21 or any other provision of these Terms and Conditions, Seller shall comply with all, and shall not cause Buyer to violate any, applicable laws, regulations or ordinances of any governmental authority in any country, including but not limited to the United States, that regulate the import or export of goods (including software), technology, technical data, or services provided by Seller under any Order, and all reasonable requests from Buyer as to the form and manner of such compliance. Such compliance activities shall include, without limitation, proper marking of the country of origin of goods, proper labeling, provision of all documentation requested by Buyer or as otherwise needed for compliance (including, without limitation, certification of country of origin, complete product descriptions on invoices, export control jurisdiction and classification information as to goods and other items, Harmonized Tariff Schedule numbers on invoices for all goods, and supporting documentation related to any tooling or other assets provided by Seller) and other compliance measures. Seller shall be responsible for obtaining required export licenses or other approvals from the government of the country of origin and/or of export/re-export, as applicable. Should any government deny or otherwise fail to issue a license or approval necessary for the performance of any Order for reasons beyond the control of Seller, such Order may be canceled in accordance with the section entitled Cancellation at Buyer's Option, above. Furthermore, to the extent Seller receives technology, technical data, information, or any property under any Order, Seller acknowledges its obligations not to use, transfer, re-transfer, release, import, export, or re-export such items in violation of such applicable laws, regulations, or ordinances, and to strictly adhere to all terms and conditions of any licenses or other authorizations pursuant to which such items were supplied.

Seller represents that it is not (a) designated for export controls or sanctions restrictions under applicable export control and economic sanctions laws, regulations, orders, and requirements (including without limitation designated on the U.S. List of Specially Designated Nationals and Blocked Persons), (b) owned 50% or more or controlled by one or more such designated persons, or (c) organized under the laws of, ordinarily resident in, or owned or controlled by the government of a country or territory subject to comprehensive U.S. sanctions.

For the avoidance of doubt, nothing in these Terms and Conditions requires Buyer to take any action, or refrain from taking any action, that would be contrary to U.S. laws, regulations, or ordinances.

36. SEVERABILITY

If any portion or provision hereof or of any Order shall to any extent be held invalid or unenforceable, the remainder hereof or the application of such portion or provision in circumstances, other than those in which it is held invalid or unenforceable, shall not be affected thereby, and each portion or provision hereof and thereof shall be valid and enforceable, to the fullest extent permitted by law.

37. CAPTIONS/HEADINGS

The captions and headings in these Terms and Conditions are for convenience only and shall not be used to explain or modify its meaning.

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38. ENTIRE AGREEMENT

Each Order, together with documents specifically incorporated therein by reference, if any, and these Terms and Conditions, shall contain the entire agreement of the parties concerning the goods or services ordered. All prior oral and written communications concerning the goods or services ordered are thereby superseded.

39. ADVERTISING

Seller shall not use the Buyer's name and/or Buyer's customer's name or in any other way identify either in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.