

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

As used herein, (i) “Buyer” means Cyclonaire Corp.; (ii) “Seller” means the entity identified on Buyer’s Order from which Buyer is purchasing Goods and/or Services; (iii) “Goods” means the products, materials, and equipment purchased by Buyer; (iv) “Services” means services purchased by Buyer and performed by Seller; (v) “Offer” means any quotation, bid, or proposal for Goods and/or Services made by Seller to Buyer; (vi) “Statement of Work” means the specification(s), requirements, and details related to the Goods and/or Services; and (vii) “Order” means Buyer’s purchase order, or similar procurement instrument. All references to “terms and conditions” herein mean and include (i) these “General Terms and Conditions of Purchase”; (ii) Buyer’s Special Terms and Conditions of Purchase (when incorporated in Buyer’s Order); and (iii) any other terms and conditions mutually agreed upon by the Parties in writing in accordance with Section 2 herein. Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

2. ACCEPTANCE OF ORDER

These terms and conditions apply to all Orders issued by Buyer to Seller and are the only terms which govern the Buyer’s purchase of Goods and Services. Seller’s acceptance of Buyer’s Order, and any changes or amendments thereto, is expressly conditioned upon and strictly limited to Seller’s acceptance of Buyer’s terms and conditions. Unless otherwise agreed upon in writing by a duly authorized representative of Buyer, Buyer objects to and is not bound by any terms or conditions that differ from, add to, or modify these terms and conditions including, but not limited to, any terms proposed by Seller whether contained in any Offers, invoices, forms, acknowledgements, or Seller’s website. Buyer’s failure to object to any terms and conditions or any other provisions contained in any communication from Seller does not waive any of Buyer’s terms and conditions. Buyer’s Order shall be binding upon the Parties upon the earlier of Seller (i) returning an Order acknowledgement to Buyer; (ii) commencing performance of Buyer’s Order; or (iii) delivering any of the Goods or performing any Services under Buyer’s Order. These terms and conditions prevail over and supercede any of Seller’s terms of sale for Goods or Services, regardless of the manner or timing of Seller’s submission, delivery or publication of such terms.

3. SCOPE OF WORK AND PERFORMANCE

(a) Seller is responsible for delivery of Goods and/or performance of Services under Buyer’s Order, as applicable.

(b) If Buyer’s Order includes a Statement of Work, (i) Seller is responsible for meeting all requirements specified therein and (ii) Seller is strictly prohibited from subcontracting any part of the Statement of Work to third parties without Buyer’s prior written authorization. In the event Buyer provides such authorization, the subcontractor will be bound by all obligations herein, including adherence to all export control requirements, and Seller shall remain liable for subcontractor’s performance and compliance with these terms and conditions.

(c) Seller shall give Buyer not less than ninety (90) days’ prior written notice in the event of any changes which may affect the performance of Buyer’s Order, including, but not limit to, any (i) organizational, operational, or other changes which may affect Seller’s performance of Buyer’s Order; (ii) relocation of any of Seller’s facilities involved in performance of Buyer’s Order; (iii); transfer of any significant part of the Seller’s relevant process or manufacturing operations from one facility to another; (iv) significant changes to Seller’s workforce; or (v) refusal, suspension, withdrawal, or revocation of a relevant quality or capabilities, systems, or approvals.

(d) Seller shall maintain, and shall cause its subcontractors to maintain, complete and accurate records relating to the provision of Goods and Services, including records of the time spent and materials used by Seller in providing the Goods or Services. Upon Buyer’s written request Seller and its subcontractors shall provide Buyer copies of, or allow Buyer to inspect and make copies of, such records and/or interview Seller and subcontractor personnel in connection with the provision of Goods or Services.

4. PRICES

(a) Unless stated otherwise in Buyer’s Order or otherwise agreed in writing by a duly authorized representative of Buyer, all prices stated in Buyer’s Order are firm and stated in United States Dollars, and include all packaging, transportation, insurance, fees and taxes. All invoices issued by Seller and payments made by Buyer shall be in United States Dollars. Seller shall not charge Buyer prices higher than those stated in Buyer’s Order unless authorized by a written change order or notice issued and signed by a duly authorized representative of Buyer.

(b) Seller warrants that the prices charged for Goods and/or Services under Buyer’s Order are the lowest prices charged by Seller to any other customer for substantially similar goods and services under similar conditions. If Seller charges any other customer a lower price for such similar goods and/or services, Seller shall notify Buyer and apply that price to the Goods and Services under Buyer’s Order. If Seller fails to apply the lower price, Buyer may elect to terminate the Buyer’s Order without further liability to Seller.

5. INVOICES AND PAYMENT

(a) Unless stated otherwise in Buyer's Order, Seller shall not issue invoices and Buyer shall not make any payments to Seller prior to delivery of Goods or completion of Services. Seller invoices shall identify Buyer's Order number, line item number(s), part number(s), description(s), and quantity invoiced. If Buyer has agreed in its Order to pay for shipping charges, applicable sales taxes, or other charges, and has not furnished Seller an exemption certificate for any such charges or taxes, then such charges and taxes must be itemized separately on Seller's invoices. Unless such charges are itemized, Buyer may take any applicable discount based on the full amount of each invoice. Seller agrees that its books and records, or such parts thereof as may relate to the performance hereunder, shall at all reasonable times be subject to inspection and audit by Buyer's employees or representatives.

(b) Buyer shall make payment to Seller within sixty (60) days of receipt of a correct invoice for Goods delivered to and accepted by Buyer, or Services completed and accepted by Buyer, unless Buyer's Order specifies different payment terms, in which case the payment terms specified in Buyer's Order shall apply. Unless otherwise authorized by Buyer, the payment due date for Goods delivered or Services performed early by Seller shall be calculated based on the delivery or performance schedule specified in Buyer's Order. Any payment discount offered by Seller shall be computed from the later of (i) the date of delivery, or (ii) the date a correct invoice is received by Buyer. For purposes of earning the discount, payment shall be deemed to have been made on the date Buyer's check is mailed, or the date funds are electronically transferred to Seller's account. Without prejudice to any other right or remedy Buyer may have, the Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

6. TAXES

Except as otherwise specified in Buyer's Order or unless prohibited by law, Seller shall timely pay all federal, state and local sales, use, excise, or other taxes that may be levied upon any of the Goods and/or Services or the Parties hereto, by reason of the sale, delivery, or use of the Goods and/or Services. All taxes of any nature invoiced to Buyer must be specifically identified and itemized separately. If any tax, or portion thereof, included or added to the price paid by Buyer to Seller is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund.

7. PACKAGING AND MARKING

If stated in Buyer's Order, Seller shall comply with any special packaging and marking requirements; otherwise, Seller shall package and mark all Goods in accordance with best commercial practices and adequately protect Goods against damage and deterioration during transit or storage, including during long distance transportation, and from change of climate. Packaging must adequately protect against rough handling, moisture, rain, corrosion, and shocks. Packing or marking charges are not allowed unless specifically authorized in Buyer's Order. Seller's packing list must include, at a minimum, Buyer's Order number, line item number(s), part number(s), description(s), and quantity shipped.

8. DELIVERY, SHIPPING TERMS, TITLE, AND RISK OF LOSS

(a) Buyer's production schedules and warranties to its customers are dependent upon Seller meeting the required delivery dates stated in Buyer's Order. Accordingly, time of performance and delivery is of the essence. Seller shall be responsible for all damages of any kind incurred or suffered by Buyer that arise as a result of any delay of Seller in making deliveries of conforming Goods or in performance of Services. Seller agrees to notify Buyer in writing immediately if at any time it appears that Seller may not be able to comply with the Order's delivery or performance schedule. Such notification shall include the actual or potential reasons for the delay, the actions being taken to remedy the delay, and the anticipated revised delivery or performance schedule. Such notice, and any assistance furnished by Buyer to overcome delays, shall not waive Buyer's remedies for delay and resulting default, including termination rights, if Seller fails to meet the Order delivery or performance schedule.

(b) All domestic shipments shall be delivered F.O.B. at the point of delivery stated in Buyer's Order in accordance with the Uniform Commercial Code (UCC). All international shipments shall be delivered DAP at the point of delivery stated in Buyer's Order in accordance with the version of Incoterms in effect as of the date of Buyer's Order. Seller shall bear risk of loss or damage to Goods during transit, and title to Goods shall not pass to Buyer until received at Buyer's designated location in accordance with the terms of Buyer's Order. For the avoidance of any doubt, under no circumstance shall Buyer be the importer of record for any shipment. Delivery shall not be deemed complete until the Goods have been actually received by Buyer at the delivery location identified on Buyer's Order. Unauthorized advance shipments and shipments of excess quantities may be returned at Buyer's sole option and Seller's sole risk and expense.

9. FORCE MAJEURE

Any delay or failure of either Party to perform its obligations under Buyer's Order shall be excused if such delay or failure is the result of an unforeseeable event or occurrence beyond the reasonable control of such Party, and without such Party's fault or negligence including, but not limited to, acts of God, acts of government, terrorism, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, or court injunction (each a "Force Majeure Event"). Seller's economic hardship or changes in market conditions are not considered a Force Majeure Event. Seller shall use all diligent efforts to end the delay or failure of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance of its obligations under Buyer's Order. If such delays exceeds thirty (30) calendar days, Buyer may, at its option, terminate Buyer's Order without further liability to Seller except for Goods already delivered by Seller and accepted by Buyer prior to the date of such termination.

10. QUALITY CONTROL SYSTEM

Seller shall provide and maintain a quality control system to an industry recognized quality standard and in compliance with any other specific quality requirements identified in Buyer's Order. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers for a minimum of seven (7) years or such longer time period as may be stated in Buyer's Order.

11. INSPECTION

Buyer reserves the right to inspect all Goods prior to shipment by Seller, and in furtherance thereof, Seller shall permit employees and/or representatives of Buyer and Buyer's customer and regulatory authorities to have access to Seller's facilities at all reasonable hours. Notwithstanding such inspection, all Goods shall be subject to final inspection and acceptance by Buyer upon receipt. Buyer's inspection, or its lack of inspection, shall not affect any express or implied warranties. Where work is subcontracted to third parties, Seller shall secure rights for Buyer or its customer, or either of their employees or representatives, to inspect, test, and review work at any subcontractor's premises. If Buyer's Order specifies that Goods shall be subject to inspection at Seller's facilities, Seller shall provide reasonable space and assistance for the safety and convenience of Buyer's and Buyer's customer's employees and/or representatives. At the time of inspection, Seller shall make available to such employees and representatives copies of all specifications, drawings, and other technical data applicable to the Goods ordered. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under Buyer's Order or impair any rights or remedies of Buyer, including revocation of acceptance. Seller shall provide a Certificate of Conformity with all deliveries certifying that Goods delivered and/or Services performed meet all requirements of Buyer's Order and any Statement of Work thereunder. All nonconforming Goods and materials designated as scrap shall be permanently marked and controlled as such until physically rendered unusable.

12. ACCEPTANCE

Payment for any Goods and Services under Buyer's Order shall not constitute acceptance thereof. Buyer reserves the right to reject and refuse acceptance of Goods that do not conform to the requirements, instructions, specifications, drawings, data, or warranties stated or referenced in Buyer's Order. Nonconforming Goods shall be returned to Seller for full credit, repair, or replacement at Seller's sole risk and expense, including transportation charges and Buyer will suspend payment of any invoice relating such nonconforming Goods. Buyer's acceptance of Goods is not a waiver of Buyer's right to reject and/or return Goods which are subsequently found to not conform to Buyer's Order, or by reason of patent or latent defect, or other breach of warranty, or to make a claim for damages, including but not limited to manufacturing costs. Such rights and remedies shall be in addition to any other remedies provided by law or equity.

13. WARRANTIES

(a) All warranties of Seller, whether created expressly by law or in fact, are incorporated herein by reference, apply to Buyer's Order, and are supplemented by the following express warranties. For a period of twelve (12) months from Buyer's acceptance, or such other period as may be agreed by the Parties in writing or specified in Buyer's Order (the "Warranty Period"), all Goods and/or Services shall (i) conform with any and all specifications, drawings, samples, requirements or other descriptions referenced in and/or furnished with Buyer's Order or any Statement of Work; (ii) be merchantable, of good design, material, and workmanship; (iii) be new and not contain used or reconditioned material; (iv) be free from defects; (v) be suitable for their intended purpose; (vi) not infringe upon or violate the legal or equitable rights of any third party or out of any license, franchise, patent, trademark, or other proprietary right, now or hereafter in effect; (vii) be free and clear of any security interests, liens or other encumbrances; and (viii) comply with all applicable laws and regulations.

(b) If Buyer determines there is a defect in the Goods at any time during the Warranty Period, Seller shall, at its sole expense and without delay, repair or replace the defective Goods or, at Buyer's sole option, refund to Buyer the price of the defective Goods. In the event that it is impractical to return the rejected Goods to Seller, Buyer may require Seller to carry out, where the Goods are located, the necessary re-design, repair, modification or replacement as appropriate at Seller's expense.

(c) Any and all repaired or replaced Goods shall be covered by the warranties in these terms and conditions for a new period equal to the original Warranty Period. All obligations of Seller hereunder shall survive acceptance of and/or payment for the Goods. Seller shall indemnify and hold Buyer harmless from and against all liability, loss, direct, indirect, consequential and incidental damages, and expenses resulting from the breach of any warranty, or resulting from any other act or omission by Seller, its agents, or employees, while in the performance of the Order.

(d) If at any time the Goods and/or Services become non-conforming for any reason, Seller must immediately notify Buyer in writing. In addition, if required by Buyer, Seller shall provide Buyer a report identifying the cause of the non-conformance and any additional Goods or Services that may be affected by the defect, and/or the repair action to be taken.

(e) The forgoing warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance and payment and shall extend to Buyer's customers at whatever tier.

(f) The rights and remedies granted to Buyer under this Section are in addition to any other rights or remedies provided elsewhere in Buyer's Order or under law or equity.

14. COUNTERFEIT PARTS

(a) As used herein, "Part" means any material, product, component, device, module, assembly, subassembly, or the like sold or delivered by Seller to Buyer either as Goods or as a constituent part of a Goods. "Counterfeit Part" means a Part that is (i) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the Part's legally authorized source and/or has been misrepresented to be an authorized item of the legally authorized source, and/or (ii) previously used parts provided or represented as "new." A Part is a "Suspect Counterfeit Part" if visual inspection, testing, or other information provides reason to believe that the Part may be a Counterfeit Part. As used herein, "authentic" means (i) genuine; (ii) from the legitimate source claimed or implied by the marking and design of the Part offered; and (iii) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the Part.

(b) Seller represents and warrants that only new and authentic Parts and materials are used in Goods ordered by Buyer and that such Goods contain no Counterfeit Parts. No other Part other than a new and authentic Part shall be used unless approved in advance in writing by Buyer's duly authorized representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from original equipment manufacturers ("OEMs") and original component manufacturers ("OCMs") or through the OEM's/OCM's authorized distributors. Seller shall make available to Buyer, at Buyer's request, OEM/OCM documentation that authenticates traceability of the Parts to the applicable OEM/OCM. Purchase of Parts from independent distributors is not authorized unless first approved in writing by Buyer's duly authorized representative.

(c) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to Buyer and Buyer's written approval before Parts are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distributors. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request. Seller's system shall be consistent with applicable industry standards including, as a minimum, AS5553 for the detection and avoidance of Counterfeit Parts and Suspect Counterfeit Parts.

(d) Acceptance of Buyer's Order constitutes confirmation by Seller that it is the OEM, OCM, or a franchised or authorized distributor of the OEM/OCM for the Goods procured under Buyer's Order. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the Parts is available upon request. Should Seller become aware of a confirmed or Suspect Counterfeit Part that, by any means, has been delivered to Buyer or acquired for Buyer's Order whether or not delivered to Buyer, Seller shall notify Buyer in writing as soon as possible but not later than five (5) days of such discovery. Seller shall verify receipt of this notification by Buyer. This requirement shall survive expiration or completion of Buyer's Order. Seller shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required by Buyer to remedy the use or inclusion of such Parts. Seller shall quarantine remaining Suspect Counterfeit Parts and Counterfeit Parts, in inventory and make them available for investigation by appropriate government authorities.

(e) Seller shall flow the requirements of this Section to its subcontractors and suppliers at any tier for the performance of Buyer's Order.

15. DATA AND SOFTWARE

(a) For data other than computer software delivered pursuant to or in connection with Buyer's Order, Seller grants to Buyer, and all others acting on its behalf, a paid-up, non-exclusive, irrevocable, worldwide right and license, including a right to sublicense to its subcontractors, customers and their end-users, to use, reproduce, and prepare derivative works of such data.

(b) For computer software delivered pursuant to or in connection with Buyer's Order, Seller grants to Buyer, a paid-up, non-exclusive, irrevocable, worldwide right and license, including a right to sublicense to its subcontractors, customers and their end-users, to use, reproduce, and prepare derivative works of such software.

16. CHANGES

(a) Buyer may at any time, by a written change order or similar instrument issued by a duly authorized representative of Buyer, make changes within the general scope of Buyer's Order including, but not limited to, changes to (i) specifications, drawings, designs, or description of Services; (ii) method of shipment or packaging; (iii) reasonable adjustments in quantities or delivery schedules or both; and (iv) place of delivery. Seller shall comply promptly with such direction.

(b) If Buyer's change order causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment may be made to the Order price and/or delivery schedule and Buyer's Order shall be modified in writing accordingly. Any claim for adjustment under this Section shall be deemed waived unless asserted in writing within twenty (20) days from the date of receipt by Seller of the change order, provided, however, that Buyer in its sole discretion may receive and act upon such claim submitted at any time prior to final payment under Buyer's Order. Any such claim must set forth the amount of any increase or decrease in the cost of performance resulting from the change in the format and detail reasonably specified by Buyer. Failure to agree upon an equitable adjustment shall not relieve Seller from proceeding without any delay in performance of Buyer's Order as changed. Where the cost of property made obsolete or excess as a result of a change order is included in Seller's claim for adjustment pursuant to this Section, Buyer shall have the right to prescribe the manner of disposition of such property.

(c) Buyer's engineering and technical personnel may from time to time render assistance, give technical advice, or exchange information with Seller's personnel in relation to Buyer's Order. Such assistance, advice, and/or exchange of information shall not be construed as Buyer's consent or authority to effect any changes to Buyer's Order or the Goods and/or Services provided thereunder. Under no circumstances shall any resulting change in Goods and/or Services or provisions of Buyer's Order be binding upon Buyer unless incorporated as a change in accordance with paragraph (a) above.

(d) Seller shall provide Buyer not less than sixty (60) days' prior written notice of any organizational, operational, or other changes that may affect Seller's performance of Buyer's Order including, but not limited to (i) the relocation of any of Seller's facilities involved in the manufacture of Goods under Buyer's Order; (ii) any significant changes in Seller's processes or manufacturing operations affecting the Goods; (iii) any significant changes to Seller's workforce that impacts Buyer's Order; (iv) any changes to suppliers or subcontractors; and (v) the refusal, suspension, withdrawal, or revocation of a relevant quality or capability, or manufacturing approvals or certifications.

17. PRODUCT SUPPORT OBLIGATIONS

Seller shall maintain the ability to provide, and shall provide, product support for the Goods which shall include, without limitation; (i) assuring that subcomponents and materials are available; (ii) maintaining tooling and other production capability; and (iii) reengineering components or systems to address obsolescence for a period of not less than seven (7) years after the last delivery under Buyer's Order. If Seller discontinues the production of any Goods at any time within two (2) years after the final delivery of such Goods under Buyer's Order, Seller shall give Buyer at least one hundred and eighty (180) days' prior written notice of such discontinuance. Seller shall accept Orders from Buyer for such quantity of Goods as required by Buyer, at the prevailing quality and at no more than the prevailing price until Buyer has secured an acceptable alternative source of supply.

18. STOP WORK

Buyer may direct Seller to stop work on Buyer's Order for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the Parties may agree in writing. In such event, Seller shall take all reasonable steps to minimize the incurrence of costs allocable to Buyer's Order during the period of work stoppage. At any time within such work stoppage period, Buyer may, at its option, upon written notice to Seller elect to terminate Buyer's Order in accordance with the termination provisions herein or direct Seller to resume performance of Buyer's Order. In the event a stop work continues beyond the ninety (90) day period, an equitable adjustment to the price, delivery schedule, or other provision(s) to the extent impacted by the stop work shall be made in accordance with the principles of the "Changes" Section herein.

19. CANCELLATION; TERMINATION FOR CONVENIENCE

(a) At any time Buyer may cancel or terminate performance or work under Buyer's Order in whole or in part for any reason by providing written notice to Seller. Upon receipt of such notice, Seller shall (i) stop work on the date and to the extent specified in the notice; (ii) terminate all lower-tier purchase orders and subcontracts to the extent they relate to the terminated work; (iii) promptly advise Buyer of the quantities of materials and work-in-process on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof; (iv) comply with Buyer's instructions regarding transfer and disposition of title of such material and work-in-process; and (v) within sixty (60) days of the date of the notice of termination, submit to Buyer all Seller's claims for out-of-pocket expenses incurred which directly result from such termination.

(b) Buyer shall have the right to check such claims at any reasonable times by inspecting and auditing the records, facilities, work-in-process, and materials of Seller relating to Buyer's Order. Buyer shall pay the Order price for completed Goods accepted by Buyer and the substantiated cost to Seller of raw materials and work-in-process allocable to the terminated work based on any audit Buyer may conduct under generally accepted accounting principles, less (i) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (ii) the agreed value of any items used or sold by Seller with Buyer's consent; and (iii) the cost of any defective, damaged, or destroyed work or material.

(c) Buyer shall make no payment for finished work, work in process, or raw material fabricated or procured by Seller in excess of Buyer's Order. Payments made under this Section shall not exceed the aggregate price specified in Buyer's Order, less payments otherwise made or to be made, and downward adjustments shall be made for costs of raw materials and work-in-process to reflect any indicated loss on the entire Order had it been completed. Payment made under this Section constitutes Buyer's sole liability in the event Buyer's Order is terminated pursuant to this Section.

20. TERMINATION FOR DEFAULT

(a) Buyer may, by written notice to Seller, terminate Buyer's Order in whole or in part for Seller's default in whole or in part if (i) Seller fails deliver the Goods or to perform the Services within the time specified in Buyer's Order or any extension authorized by Buyer unless such failure is the result of a Force Majeure Event as defined above; (ii) Seller fails to make progress so as to endanger performance of Buyer's Order; (iii) Seller fails to perform any of the provisions of Buyer's Order; (iv) Seller makes any significant change to its processes or manufacturing operations which, in the sole opinion of Buyer, adversely affects the Goods or Services; (v) Seller experiences any refusal, suspension, withdrawal, or revocation of a relevant quality or manufacturing approvals or certifications; or (vi) Seller is adjudicated bankrupt, files a petition for bankruptcy, makes an assignment for the benefit of creditors, or if an action under any law for the relief of debtors is taken.

(b) Buyer's right to terminate Buyer's Order under subparagraphs (a)(ii) and (a)(iii) above may be exercised if Seller does not cure such failure within ten (10) days (or more if authorized in writing by Buyer) after receipt of Buyer's notice specifying the failure, except Seller shall only be afforded only

one (1) opportunity to cure a failure under subparagraphs (a)(ii) and (a)(iii) above in a period of 12 consecutive months and the next failure under either such subparagraph within 12 months of the prior failure shall afford Buyer the right to immediately terminate Buyer's Order in whole or part upon written notice to Seller. If Buyer terminates Buyer's Order in whole or in part, Buyer may acquire Goods or Services similar to those terminated from a third party, and Seller shall be liable to Buyer for any excess costs for those Goods or Services. However, Seller shall continue any portion of the work not terminated by Buyer.

(c) Except for defaults of vendors or subcontractors at any tier, Seller shall not be liable for any excess costs if the failure to perform Buyer's Order arises as a result of a Force Majeure Event, as defined above.

(d) In connection with any termination of Buyer's Order in whole or in part, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any completed Goods, partially completed Goods, and materials, parts, tools, dies, fixtures, plans, drawing, information, and contract rights (collectively referred to as "Manufacturing Materials" in this Section) that Seller has specifically produced or acquired for the terminated portion of Buyer's Order. At any time upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. Buyer shall pay the Order price for completed Goods delivered and accepted. Seller and Buyer shall agree on the amount of payment for the partially completed Goods and Manufacturing Materials delivered and accepted and for the protection and preservation of the property. Buyer may withhold from these amounts any sum that Buyer determines to be necessary to protect Buyer against loss because of outstanding or threatened liens or claims of former lien holders. If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer. The rights and remedies of Buyer in this Section are in addition to any other rights and remedies provided by law or in equity, or under Buyer's Order.

21. CONFIDENTIALITY

(a) Buyer may disclose to Seller certain Confidential Information, as defined herein, to facilitate Seller's performance of Buyer's Order. All Confidential Information and any other technical information provided by Buyer to Seller shall at all times be and remain the property of Buyer and shall only be used by Seller in connection with Seller's performance of Buyer's Order. Unless agreed otherwise in writing, Seller shall return all copies of Confidential Information provided by Buyer upon completion of Buyer's Order, and at any time upon Buyer's request. "Confidential Information", as used herein, includes, but is not limited to, specifications, drawings, designs, technical data, data sheets, schematics, diagrams, configurations, business, financial, statistical, and commercial information, formulae, analyses, trade secrets, ideas, methods, processes, know-how, software, and computer programs.

(b) Seller hereby agrees that any Confidential Information disclosed by Buyer (i) shall be maintained in a secure location; (ii) shall not be copied without the prior written approval of Buyer; (iii) shall be used by Seller solely to facilitate performance of Buyer's Order; and (iv) shall only be disclosed to Seller's employees on a need-to-know basis. Seller shall not disclose Buyer's Confidential Information to any third parties including, but not limited to, Seller's agents, consultants, vendors, suppliers, or subcontractors, without the prior written approval of Buyer. In the event Buyer provides Seller with written approval to disclose Confidential Information to a third party, Seller shall ensure all third parties are bound by terms and conditions consistent with this Section prior to receiving such information. If it becomes necessary for Seller to disclose Buyer's Confidential Information to a third party as a result of a requirement of law or regulation, such Confidential Information may be disclosed only to the extent required by law or regulation and, if so permitted, no earlier than five (5) business days after Seller provides Buyer with written notification of the requirement for such disclosure.

(c) The obligations of confidentiality and restrictions on the use and disclosure of Confidential Information specified in these terms and conditions do not apply to any information that Seller can prove (i) is lawfully and rightfully already in the possession of Seller without obligation of confidentiality at the time of receipt from Buyer; (ii) is independently developed by Seller without use or reference to the Confidential Information as evidenced by tangible evidence; (iii) is in the public domain, except as a result of a breach by Seller of these terms and conditions or any obligation or duty of confidentiality owed by Seller to any third party; or (iv) was, prior to receipt of such information from Buyer, lawfully and rightfully received, free of restrictions, from a third party who is not under any nondisclosure or confidentiality duty or obligation and has not misappropriated or otherwise unlawfully obtained such information.

(d) Except as required by law or regulation, no news releases, public announcements, or advertising materials regarding Buyer's Order or that reference the sale or portion of Goods or Services to Buyer, shall be issued by Seller without the prior written consent of Buyer. Seller shall extend this restriction to all lower-tier vendors and subcontractors involved in the performance of Buyer's Order.

22. INTELLECTUAL PROPERTY INDEMNITY

Seller shall, upon receipt of notification, promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer, its parent, subsidiaries or affiliates, constituent companies, agents, customers, subcontractors, or suppliers for alleged infringement of any United States or foreign patent, copyright, or trademark, as well as for the alleged unfair competition resulting from similarity in design, trademark, or appearance of Goods, by reason of the use or sale of any Goods, Services or processes furnished under Buyer's Order. Seller further agrees to indemnify, defend and hold harmless Buyer against any and all losses and damages, including but not limited to court costs and attorney's fees, resulting from the bringing of such suit or proceeding, including but not limited to any settlement or decree of judgment entered therein. Buyer may

be represented by and actively participate through its own counsel in any such suit or proceeding, if it so desires. Seller's obligation hereunder shall survive acceptance of the Goods, Services or processes and payment by Buyer and expiration or completion of Buyer's Order.

23. PROPRIETARY RIGHTS

(a) Unless otherwise agreed in writing, all tangible and intangible property including, but not limited to, information or data of any description, drawings, computer software, know-how, documents, trademarks, or copyrights provided by Buyer to Seller, or paid for by Buyer under Buyer's Order (collectively, "Buyer's Intellectual Property"), shall be and remain the sole and exclusive property of Buyer. Buyer hereby grants a limited license to Seller to use any such Buyer's Intellectual Property solely for the purposes of performing Buyer's Order. This license is non-assignable, and may be terminated with or without cause by Buyer at any time.

(b) Seller hereby assigns to Buyer any invention, improvement, discovery, ideas, works of authorship, or data, whether or not patentable, conceived or reduced to practice in the performance Buyer's Order by any person employed or engaged by, or working under the direction of Seller or its subcontractors, and Buyer shall own exclusively all rights thereto, including but not limited to all patent rights, copyrights, moral rights, rights in proprietary information, trademark rights, and other intellectual property rights. All such intellectual property that is protectable by copyright (i) shall be considered work(s) made for hire for Buyer; or (ii) Seller shall grant Buyer "first owner" status related to the work(s) under local copyright law where the work(s) was created, or (iii) if the Governing Law, as defined herein, does not allow Buyer to gain ownership of such intellectual property, Seller agrees to grant to Buyer an exclusive, worldwide, perpetual, royalty-free, irrevocable, transferable license for such intellectual property. Upon request Seller shall execute any additional documents furnished by Buyer to confirm or record the Buyer's ownership of __ intellectual property and rights as described in this Section.

(c) Buyer recognizes and agrees that, unless otherwise agreed in writing between the Parties, the above rights and ownership of such rights shall not extend to or encompass any intellectual property owned, developed, or conceived by Seller prior to, or not in connection with, Buyer's Order.

24. BUYER-OWNED PROPERTY

(a) If Buyer furnishes Seller with material or equipment including, but not limited to, tools, jigs, designs, dies, molds, fixtures, test equipment, or other property owned or paid for or agreed to be paid for by Buyer ("Buyer-Owned Property"), title thereto shall remain or vest in Buyer, and Seller shall label and identify all Buyer-Owned Property as Buyer's property. Seller must examine all Buyer-Owned Property furnished by Buyer to ascertain its suitability for the purpose. All Buyer-Owned Property shall (i) be used only for performance of Buyer's Order; (ii) at all times be properly protected and maintained by Seller to ensure it is kept free from damage, deterioration, contamination and misuse; (iii) be covered, at Seller's expense, by adequate liability, damage, and fire insurance for the replacement cost; (iv) not be commingled with the property of Seller or others; (v) not be moved from Seller's premises without prior written authorization of Buyer; and (vi) upon Buyer's request, be immediately returned to Buyer at Seller's expense in good condition, reasonable wear and tear excepted. Seller shall assume all risk of loss or damage to Buyer-Owned Property while they are in the custody of Seller. Seller shall be responsible for any loss, damage, or destruction to such Buyer-Owned Property. All Buyer-Owned Property shall be held where Buyer instructs. Buyer reserves the right to enter any premises, upon prior notice, where Buyer-Owned Property is located in order to inspect, stock check, or obtain the return to Buyer such Buyer-Owned Property.

(b) In the event that materials and/or equipment have only been partly funded by Buyer, Buyer and Seller shall jointly own the material and/or equipment in proportion to their respective funding. In circumstances where Buyer terminates the Order, Buyer, at its sole option, may become the sole owner of the partly funded material and/or equipment upon payment of a reasonable sum taking into account Seller's investment in the material and/or equipment tooling and its current condition.

25. INDEMNIFICATION

Seller shall indemnify, defend, and hold harmless Buyer, its officers, directors, employees, and representatives (the "Buyer Parties") from and against any and all liabilities, damages (including death, personal injury or property damage), losses, expenses (including attorneys' fees), liens, claims, demands, and causes of action arising from or relating to any negligent act or omission of Seller in the performance of Buyer's Order, or breach of these terms and conditions.

26. INSURANCE

(a) Seller shall procure and maintain insurance coverage with carriers reasonably satisfactory to Buyer, including (i) Workers Compensation insurance with statutory limits, as required by the state in which the Services or work are to be performed; (ii) Employer's Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence; (iii) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence covering liability for bodily injury and property damage; (iv) Automobile Liability insurance coverage with a limit of no less than one million dollars (\$1,000,000.00) per accident; and (v) Excess or Umbrella Liability insurance coverage with a limit of no less than two million dollars (\$2,000,000.00) per occurrence in excess of each of the above mentioned policies.

(b) All liability insurance policies shall name Buyer, its officers, directors, employees, affiliates, successors, and assigns, as additional insureds. Seller shall provide evidence of the required insurance coverages and file with Buyer a Certificate of Insurance reasonably acceptable to Buyer prior to

commencement of Services or work. The insurance policies and coverages required by this Section shall contain a provision that any such policies shall not be cancelled, allowed to expire, or reduce the coverages or limits in any manner unless at least thirty (30) days' prior written notice has been given to Buyer. Seller hereby waives all rights of subrogation and contribution against Buyer under the foregoing policies and under applicable law and equity. All insurance coverages shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificate of Insurance referred to herein).

(c) Failure to obtain and maintain the required insurance shall constitute a material breach of Buyer's Order and Seller shall be liable to Buyer for any and all costs, liabilities, damages, and penalties (including but not limited to attorneys' fees, court, and settlement expenses) resulting from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by Buyer.

27. LIMITATION OF LIABILITY

Under no circumstances shall Buyer be liable for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under Buyer's Order including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of Claim, and whether grounded in tort, contract, civil law, or other theories of liability, including but not limited to strict liability, even if advised in advance of the possibility of such damages. Buyer's total liability arising from or related to Buyer's Order is limited to no more than the amount paid by Buyer to Seller under Buyer's Order.

28. NOTICE TO BUYER OF LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of Buyer's Order, Seller shall immediately give notice to Buyer thereof, including all relevant information with respect thereto.

29. ETHICS AND VALUES

Buyer is committed to uncompromising ethical standards, strict adherence to laws and regulations, and customer satisfaction. Seller is encouraged to communicate any concerns or questions regarding the ethics and values of Buyer via email to ethics@cyclonaire.com.

30. ORDER OF PRECEDENCE

The following order of precedence shall apply in the event of an inconsistency within Buyer's Order and its related documents, as applicable: (i) Buyer's Order; (ii) Buyer's Special Terms and Conditions of Purchase; (iii) Buyer's General Terms and Conditions of Purchase; (iv) the Specification; and (v) the Statement of Work or Scope of Services. Any inconsistencies between any documents must be clarified and agreed in writing with Buyer.

31. COMPLIANCE WITH LAW

(a) Seller warrants and represents that the provision and shipment of Goods and/or the provision of Services or work to be performed by Seller under Buyer's Order are in compliance with all applicable federal, state, and local laws, orders, rules, ordinances, and regulations including, but not limited to, (i) the Equal Employment Act of 1972 and regulations thereunder; (ii) the Fair Labor Standards Act of 1938, as amended; (iii) orders of the U.S. Department of Labor, as applicable; (iv) all U.S. and international prohibitions on child labor, forced labor, slavery, and human trafficking; and (v) all laws and regulations of Seller's place of performance.

(b) With respect to any materials identified on any governmental agency's list of hazardous substances Seller must furnish Buyer a Material Safety Data Sheet (MSDS) with the delivery of the material in a form and manner that conforms with the requirements of such governmental agency.

(c) Seller warrants and represents that it has and shall maintain all registrations, licenses and permits required for the performance of Buyer's Order.

(d) Seller shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) to any employee of Buyer for the purpose of obtaining or rewarding favorable treatment. By accepting Buyer's Order, Seller warrants and represents that it has not made or solicited, and shall not make or solicit, kickbacks in violation of the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd1 through 78dd3, as amended, the Anti-Kickback Act of 1986 (41 USC 51-58), the anticorruption laws, regulations and policies of the home country of Seller, and/or the anticorruption laws, regulations and policies of any other country with jurisdiction over the activities in the performance of Buyer's Order.

(e) All of the provisions stated in subparagraphs (a) through (c) of this Section are incorporated by reference as part of Buyer's Order. Any modification or amendment to Buyer's Order shall be deemed a recertification of the accuracy and truthfulness of the foregoing representations and warranties herein. If at any time Seller becomes aware of information or circumstances that suggest any of the representations, warranties, and covenants referenced in this Section may not be accurate, it shall notify Buyer immediately in writing, but not more than five (5) days after becoming aware of such circumstances. Seller shall indemnify, defend and hold harmless Buyer against any loss, cost, liability, or damage whatsoever, including but not limited to attorney's fees, which may result from Seller's violation of this Section.

32. CONFLICT MINERALS

Upon request of Buyer, Seller shall determine whether any Goods contain tin, tantalum, tungsten, gold or any other materials that are designated under applicable rules of the United States Securities and Exchange Commission ("SEC") as a "conflict mineral". If no Goods contain one or more conflict minerals that are necessary to the functionality or production of such Goods within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify same to Buyer. If any Goods contain one or more conflict minerals, Seller shall certify to Buyer the country of origin of any such conflict mineral(s) or that the conflict mineral(s) came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict mineral(s), and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict mineral(s) that are necessary to the functionality or production of any Goods originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publically available, and to provide written documentation of such determination. Seller shall also take such additional actions and provide such additional information requested by Buyer as may be necessary in order for Buyer to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.

33. SUPPLY CHAIN SECURITY

Buyer supports internationally recognized initiatives to secure the commercial supply chain (e.g., C-TPAT, WCO SAFE Framework of Standards, or relevant equivalent standards) so as to assure freight and/or merchandise is not compromised contrary to applicable laws. Upon Buyer's request, Seller agrees to inform Buyer of Seller's status regarding any such initiatives. Seller shall use reasonable commercial efforts to (i) implement reasonable security control standards to ensure the integrity and correctness of merchandise and accompanying commercial documentation related to relative to Buyer's Order; (ii) implement procedures to protect against un-manifested material being introduced into the supply chain; (iii) implement safeguards to resist unlawful entry to Seller's facilities and to protect against outside intrusion; (iv) implement measures for positively identifying employees, visitors, and vendors and to prevent unauthorized access to information technology systems; (v) to the extent required by applicable laws, conduct employment screening of prospective employees to include periodic background checks and application verifications; (vi) provide security awareness education and training for employees covering cargo integrity and determining and addressing unauthorized access and communications protocols for notifying policing agencies when suspected or known illegal activities are present; and (vii) implement reasonable steps to protect against the introduction of unauthorized personnel and material in conveyance (e.g., containers, trucks, drums, etc.) destined to Buyer. If, as a result of facilitating a shipment to Buyer, Seller suspects a supply chain security breach or concern after dispatch from its facility, Seller is obligated to notify Buyer immediately. Buyer shall cooperate with Seller's assessment of its supply chain security and review of security measures.

34. EXPORT COMPLIANCE

(a) The shipment of Goods, provision of Services, and delivery and use of technical information under Buyer's Order is subject to all decrees, statutes, laws, legislation, rules, and regulations which govern export, reexport, or otherwise pertain to the export controls of the United States and any other country in which the Goods are manufactured, transferred, sold, shipped, or exported, including, but not limited to, (i) the U.S. Department of Commerce Export Administration Regulations (EAR) and (ii) the U.S. Department of State International Traffic in Arms Regulations (ITAR). Seller shall indemnify, defend and hold harmless Buyer against all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

(b) Information furnished to Seller under Buyer's Order may contain technical data, as defined in ITAR Section 120.10. Seller is advised and hereby acknowledges that such technical data, relating to export controlled items appearing on the U.S. Munitions List (USML) at ITAR Section 121, may not be exported, disclosed, or transferred, as defined in ITAR Section 120.17, to any foreign person (whether in the United States or abroad), as defined in ITAR Section 120.16, without first complying with all relevant requirements of ITAR Sections 120-130 (22 CFR 120-130), including the requirement for obtaining any written export authorization from the United States Department of State, Directorate of Defense Trade Controls (DDTC), or otherwise make and document the determination that an ITAR licensing exemption applies, as the case may be. A downloadable copy of the ITAR is accessible at the DDTC web site at www.pmdtdc.state.gov.

(c) If performance under Buyer's Order requires Seller to export, as defined in ITAR Section 120.17, temporarily import into the United States, as defined in ITAR Section 120.18, or re-export or retransfer, as defined in ITAR Section 120.19, defense articles, as defined in ITAR Section 120.6, or to export defense services, as defined in ITAR Section 120.9, relating to items appearing on the USML in ITAR Section 121, to a foreign person (whether in the United States or abroad), as defined in ITAR Section 120.16, Seller is advised and hereby acknowledges that such defense articles may not be exported, temporarily imported, re-exported, or retransferred, and such defense services may not be exported to a foreign person in the United States or abroad, without complying with all relevant requirements of ITAR Sections 120-130, including the requirements to obtain any written export, temporary import, or re-export or retransfer authorization from the DDTC, or otherwise make and document the determination that an ITAR licensing exemption applies, as the case may be.

(d) Seller is further advised that if it engages in the United States in the business of either manufacturing or exporting defense articles as defined in ITAR Section 120.6 or defense services as defined in ITAR Section 120.9, then Seller is required by ITAR Section 122 to register with the DDTC using

forms accessible at the DDTC website at www.pmdtcc.state.gov. Manufacturers of defense articles who do not engage in exporting of same must nevertheless register with the DDTC. Registration does not by itself confer export rights or privileges, but is generally a precondition to the issuance of any license or other approval by the DDTC.

(e) Information furnished to Seller under Buyer's Order, if not regulated by the ITAR, may contain technical data, as defined in the United States Department of Commerce, Bureau of Industry and Security (BIS), Export Administration Regulations (EAR) Part 772 (15 CFR 772) relating to export controlled items appearing on the Commerce Control List (CCL) at EAR Part 774 (15 CFR 774). Seller is advised and acknowledges that such technical data may not be exported out of the United States, or to a foreign person in the United States, as defined in EAR Part 772, without complying with all relevant requirements of EAR Parts 730-774 (15 CFR 730-774), including the requirement to obtain any written export authorization from BIS, or to otherwise make and document the determination that a license exception applies, as the case may be. A downloadable copy of the EAR is accessible at the BIS website at www.bis.doc.gov.

(f) If performance under Buyer's Order requires Seller to export or re-export, as defined in EAR Part 772, commodities, technology, or software as defined in EAR Part 772, that do not relate to items appearing on the USML, but do relate to items appearing on the CCL, Seller is advised and hereby acknowledges that such commodities, technology, or software may not be exported out of the United States, re-exported from one foreign country to another foreign country, or to a foreign person outside of the United States without complying with all relevant requirements of EAR Parts 730-774, including the requirement to obtain any written export authorization from BIS, or to otherwise make and document the determination that a license exception applies, as the case may be.

(g) Seller shall provide Buyer with applicable Export Control Classification Number(s) (ECCN) agrees to provide ECCN, Harmonized Tariff Code, country of origin, and, upon Buyer's request, eligibility for The United States-Mexico-Canada Agreement or other trade agreements.

(h) Seller shall indemnify, defend and hold harmless Buyer against all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Buyer in connection with any violations of such laws and regulations by Seller.

35. GOVERNING LAW

The performance of the Parties, and any judicial or arbitration proceedings, shall be construed and governed in accordance with the laws of the State of Nebraska, United States of America, excepting its laws and rules relating to conflict of law. Neither (i) the United Nations Convention on Contracts for the International Sale of Goods; (ii) the 1974 Convention on the Limitation Period in Contracts for the International Sale of Goods (hereinafter referred to as the "1974 Convention"); nor (iii) the Protocol Amending the 1974 Convention held at Vienna, Austria, on April 11, 1980, apply in any manner to the interpretation or enforcement of Buyer's Order.

36. DISPUTES AND ARBITRATION

The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to Buyer's Order, or to a material breach, including its interpretation, performance, or termination. If the Parties are unable to resolve such dispute, either Party may refer the dispute to arbitration. The arbitration shall be conducted in English, and in accordance with the Commercial Rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in Douglas County, Nebraska, United States of America, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. Examination of witnesses by the Parties and by the arbitrator shall be permitted. A written transcript of the hearing shall be made and furnished to the Parties. The cost of this transcript shall be borne equally by the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based, and shall be final and binding upon the Parties. The prevailing Party shall be entitled to compensation for the expense of the arbitration including, but not limited to, the award of attorneys' fees, at the discretion of the arbitrator. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall have no authority to award any of the types of damages excluded by herein, and shall be so instructed by the Parties. .

37. NOTICES

All notices given by the Parties shall be made in writing and delivered personally or sent by prepaid mail, facsimile, or email, addressed to the intended recipient at its address or at its electronic address. Regardless of the method of transmittal, the sending Party is responsible for obtaining a return receipt for the notice.

38. ASSIGNMENT AND SUBCONTRACTING

(a) Seller shall not assign, delegate, sublicense, transfer Buyer's Order or any of its obligations thereunder, whether by operation of law or otherwise, without Buyer's written consent, and any assignment, delegation, sublicense, or transfer (i) without such written consent is void and of no effect and (ii) if consent is given, shall be binding upon, and inure to the benefit of the successors and assigns of Seller. Buyer may, without Seller's consent, assign Buyer's Order to a parent, subsidiary, or affiliate company of Buyer, and shall have the right to assign Buyer's Order to any successor, by way

of merger or consolidation, or the acquisition of substantially all of the entire business and assets of Buyer relating to the subject matter of Buyer's Order, provided that such successor shall expressly assume all of Buyer's obligations and liabilities under Buyer's Order.

(b) Seller shall not subcontract any portion of Buyer's Order or the performance thereof to any third party without Buyer's written consent.

39. REMEDIES

The remedies herein reserved or created for Buyer shall be cumulative and in addition to any other or further remedies provided by law or equity. Failure of Buyer to insist upon the performance of any of the terms, conditions, or provisions of Buyer's Order, or to enforce any right or remedy hereunder, shall not be construed as a waiver or relinquishment of the future performance or exercise of such right or remedy; rather, the same shall continue in full force and effect. Nothing herein shall be waived by any act or knowledge on the part of Buyer, except by written instrument signed by a duly authorized representative of Buyer. In the event a waiver is granted by Buyer, it is not a continuing waiver or a waiver of any other rights or of any material breach or failure of performance of Seller. Seller shall pay all Buyer's costs and expenses, including attorney's fees, incurred by Buyer in exercising any of its rights or remedies hereunder or enforcing any of the terms or conditions hereof.

40. HEADINGS; MODIFICATIONS; SEVERABILITY

The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of any term, condition, or provision herein. Buyer's Order may only be modified by a written instrument, signed by a duly authorized representative of Buyer. If any term, condition, or provision herein is invalid, ineffective, or unenforceable under present or future laws, then the remainder of the terms, conditions, and provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

41. PARTIES; RELATIONSHIP OF THE PARTIES

The Parties to any Offer, Order, or associated transaction are Buyer and Seller as identified above and no other persons, parties, or entities have any rights, or receive any benefits hereunder; provided, however, for the purposes of calculating volume discounts or rebates, if any, purchases made by Buyer's affiliated companies, shall count towards Buyer's aggregate purchases. Each Party is an independent contractor. Neither Party shall have authority to bind the other. Buyer's Order is not intended by the Parties to constitute or create a joint venture, partnership, or formal business organization of any kind between the Parties. The Parties shall act as independent contractors at all times, and neither Party shall act as the agent for the other, and the employees of one shall not be deemed employees of the other.

42. ENTIRE AGREEMENT

These terms and conditions (including Buyer's Special Terms and Conditions, as applicable) and Buyer's Order, including any applicable specifications, Statement of Work, or other applicable documents, constitute the entire agreement between the Parties with respect to the subject matter therein, and supersede any prior oral or written agreements, commitments, understandings, or communications with respect to such subject matter.

43. SURVIVAL

Any Section or provision herein which contemplates performance or observance subsequent to any termination or expiration of Buyer's Order, or which by its nature should survive, shall survive any termination or expiration of Buyer's Order and continue in full force and effect.