

BECKMAN COULTER, INC.
STANDARD TERMS AND CONDITIONS OF PURCHASE

Revised March 24, 2014

I. ORDERING AND PRICES

- A. **SCOPE.** These Standard Terms and Conditions of Purchase apply to the purchase by Beckman Coulter, Inc. ("Buyer") of any goods or services (the "Products") described on Buyer's Purchase Order ("Purchase Order"). By accepting any Purchase Order of Buyer, Supplier agrees to comply fully with these terms and conditions of purchase (which, along with Buyer's Purchase Order and any attachments, specifications or instructions attached to or incorporated by reference in the Purchase Order, is the "Agreement"). The Agreement is effective on the earlier of Supplier's written or verbal acceptance or commencement of performance of the Purchase Order. The Purchase Order is expressly conditioned on Supplier's acceptance of these terms and conditions.
- B. **PRICES.** Unless otherwise stated on the Purchase Order, the price for the Products includes all charges, including packaging, shipping and delivery charges and all taxes, duties and tariffs, except for excise, sale, use, value-added and similar taxes that Supplier is required by law to collect from Buyer. Supplier will separately state such taxes in Supplier's invoices. Sales and use taxes shall not be added to the purchase price of items designated as nontaxable by Buyer.
- C. **NATURE OF PRODUCTS.** Unless otherwise stated on the Purchase Order, all Products must meet original manufacturer's specification for form, fit and function and be new and unused and in good condition.
- D. **CANCELLATION/RESCHEDULES.** Buyer may cancel or reschedule the delivery of all or any part of a Purchase Order at any time. If Buyer cancels a Purchase Order and Supplier has ordered or bought raw materials and components to manufacture the cancelled Products which are unique to those Products and which Supplier cannot cancel, return, or use elsewhere, then Buyer will purchase the raw materials and components from Supplier at Supplier's actual cost, provided that except as otherwise expressly agreed to in writing, Buyer shall not be responsible for any raw materials or components purchased or ordered by Supplier in anticipation of orders, based on Buyer's forecasts, or which are for Products to be delivered more than ninety (90) days from the date of Buyer's notice of cancellation. If Supplier cancels an order for or returns the raw materials and components, Buyer will pay any reasonable restocking and cancellation fees actually incurred by Supplier with prior written approval of Buyer. Buyer reserves the right to verify the amount of any cancellation and restocking fees and the quantity, price, and condition of any raw materials and components it is obligated to buy.

II. MANUFACTURING, QUALITY, AND CHANGES

- A. **QUALITY.** Supplier understands that Buyer's goal is to receive defect-free Products. Accordingly, Supplier agrees to use its best efforts to deliver defect-free Products to Buyer at the lowest possible cost as defined and measured by Buyer's system for measuring supplier performance. Supplier agrees to promptly notify Buyer if Supplier has information that reasonably suggests one or more Products do not meet or will not continue to meet the Specifications. Supplier agrees to communicate openly and work together with Buyer to achieve the quality objectives expressed above.
- B. **MANUFACTURING.** If any of the Products covered by this Agreement are to be manufactured in accordance with drawings and/or specifications agreed on by the parties or provided by Buyer (the "Specifications"), Supplier shall manufacture the Products strictly in accordance with the Specifications. Buyer may make changes in the Specifications at any time upon reasonable advance notice to Supplier. If such changes result in delay or additional expense to Supplier, Supplier and Buyer will negotiate an equitable adjustment of price and delivery schedules.
- C. **AUDIT.** Supplier agrees to provide Buyer, its customers and regulatory authorities (including National Competent Authorities and Notified Bodies) with access to all sites and to all applicable records for the purpose of conducting quality and ISO audits and inspecting the Products and work in process for production of the Products. However, regardless of any inspections conducted by Buyer, all Products are subject to final inspection and approval at Buyer's plant or other place designated by Buyer.
- D. **MANUFACTURING CHANGES.** Supplier shall notify Buyer in writing of any changes it plans to make that may affect the stability or performance of any of the Products or of its plans to discontinue manufacturing or distribution of products at least 180 days before making the changes. These changes include, but are not limited to, changes in raw materials or their suppliers, or in manufacturing procedures, location or processes, or published

specifications. Buyer will have the right, but not the obligation, to review and approve the proposed changes; however, Buyer's review and approval shall not relieve Supplier of the obligation to deliver Products that meet the Specifications.

III. PACKAGING, SHIPPING, AND DELIVERY

- A. **PACKAGING.** Supplier shall, at its cost, prepare all Products purchased under this Agreement and package them for shipment using good commercial practices customary in the industry, provided that Buyer may specify specific shipping instructions and requirements for any Purchase Order. Supplier shall mark the applicable order number, production lot and Buyer Part Number (including revision level, if any) on each container and enclose a packing slip with the same information. Supplier shall include appropriate documentation to conform to applicable export, import and customs requirements, including country of origin.
- B. **SHIPMENT.** Supplier shall ship the Products purchased under this Agreement to Buyer for delivery at the location and on the schedule specified on the Purchase Order or any subsequent releases or instructions Buyer issues under this Agreement. Unless otherwise expressly stated on the Purchase Order, all shipments will be DDP (INCOTERMS 2010) to the Buyer's designated location. Transfer of title to the Products occurs only at the time the Products are physically received by Buyer at the Buyer's designated location. If a method of shipment and carrier are specified on the Purchase Order or at the time an order is placed, Supplier shall utilize the method and carrier specified. If Supplier fails to comply with Buyer's shipping instructions, then Buyer may deduct from Supplier's invoice any costs incurred by Buyer over the amount it would have paid had the specified method been used.
- C. **DELIVERY.** Supplier shall follow the delivery schedule shown on the Purchase Order or any subsequent releases or instructions Buyer issues under this Agreement and shall not make deliveries later or substantially earlier than the dates shown. Time is of the essence of this Agreement. If items are received by Buyer more than five days before the date specified by Buyer, Buyer may return them at Supplier's expense. If Supplier does not adhere to the delivery schedule, Buyer may terminate this Agreement without liability to Supplier. Failure to meet agreed upon delivery dates will be considered breach of this Agreement and Supplier agrees to pay Buyer damages imposed upon or incurred by Buyer for failure of Supplier to deliver Products on such delivery dates.
- D. **INSPECTION AND RETURNS.** Buyer will inspect the Products within a reasonable time after delivery at Buyer's facility. In the event Products are non-conforming, Buyer may return rejected Products at Supplier's expense and may charge Supplier a reasonable handling charge. Supplier shall, at Buyer's option, either replace Products returned as defective or refund to Buyer the price paid for such Products. The initial inspection performed by Buyer upon receipt of the Products is a conditional acceptance and shall not waive the right of Buyer to return Products with latent defects within a reasonable time after the defect has become apparent.
- E. **NOTIFICATION OF LATE DELIVERIES.** Supplier shall notify Buyer promptly if it has reason to believe that it may not be able to meet one or more delivery dates. The notification does not excuse Supplier from the late delivery; rather, it is intended to give Buyer and Supplier an opportunity to work together to resolve the problems. Upon Supplier's notification to Buyer of late delivery, Buyer may elect to expedite shipment of the Product(s) affected by the delayed delivery so as to minimize costs incurred by Buyer as a result of the late delivery. If Supplier had previously agreed to the delivery date, then Buyer may opt to bill Supplier or take a credit for the difference between the original shipping fee and the cost for the expedited shipping service. This alternative is in addition to any other available relief or remedy to which Buyer may be entitled.

IV. SUPPLIER INFORMATION

- A. **PRODUCT COMPOSITION.** When requested by Buyer, Supplier shall disclose to Buyer the chemical composition of any Product sold to Buyer. Supplier hereby authorizes Buyer to use the information disclosed to investigate the performance of the Product and to disclose the information provided by Supplier in response to inquiries by governmental agencies and Buyer's customers about the composition and formulation of the Products.
- B. **MATERIAL SAFETY DATA SHEETS.** Supplier shall provide Buyer with complete and accurate Material Safety Data Sheets ("MSDS") for the Products where these are required or available and such additional information as is necessary for the safe handling and use of the Products. Supplier agrees that Buyer may rely upon the information provided by Supplier when informing its employees and customers about the risks associated with the Products and the safe handling and use of the Products.

V. SUPPLIER'S EMPLOYEES ON BUYER'S PROPERTY

- A. **PERFORMANCE OF WORK.** All services incidental to the purchases covered by this Agreement (such as installation, adjustment, testing or repair) provided on Buyer's premises by Supplier's employees, agents, or contractors shall be performed by properly qualified, trained, and supervised personnel. Supplier shall instruct all of its employees, agents, and contractors that they shall (i) enter and leave Buyer's premises in compliance with Buyer's site entry and exit procedures, (ii) conduct themselves on Buyer's premises in a professional and workmanlike manner and in full compliance with Buyer's rules for site security, environmental compliance, and health and safety, and (iii) that they shall not engage in any activities that could be deemed harassing (including sexual harassment) or discriminatory.
- B. **INSURANCE.** Supplier shall maintain worker's compensation, automobile, and general liability insurance in effect and shall provide evidence that it has obtained such insurance to Buyer upon request by Buyer. Buyer may, at its sole option, specify minimum levels of insurance and require Supplier to name Buyer as an additional insured. Supplier waives any right of subrogation that it or its insurance carriers may have against Buyer with respect to claims submitted by Supplier's employees under Supplier's worker's compensation insurance.
- C. **SERVICES INDEMNITY.** Supplier agrees to defend, indemnify and hold Buyer harmless from and against all claims, liabilities, demands, causes of action, and expenses (including reasonable attorney's fees) suffered or incurred by Buyer (i) because any of Supplier's employees, agents, or contractors failed to enter and leave Buyer's premises in compliance with Buyer's site entry and exit procedures, failed to conduct themselves on Buyer's premises in a professional and workmanlike manner and in full compliance with Buyer's rules for site security, environmental compliance, and health and safety, or engaged in any activities that could be deemed harassing (including sexual harassment) or discriminatory, or (ii) as a result of personal injury or property damage suffered or incurred by any person or entity to the extent such personal injury or property damage is caused by or results from the acts or omissions of Supplier or its agents, employees, or contractors while performing work on Buyer's premises.

VI. WARRANTIES AND INDEMNITY

- A. **GENERAL WARRANTY.** Supplier confirms any warranties or representations (oral or written) previously made as to the goods or services to be provided by Supplier, including, but not limited to, warranties and representations contained in any proposal, quotation, or bid provided by Supplier. Unless a different period is stated in Buyer's Purchase Order, Supplier warrants that for a period of at least 90 days from the date of Buyer's acceptance of the Products, all Products shall be free from defects in material or workmanship, shall conform to drawings and specifications and any samples previously delivered, shall be of merchantable quality, and shall be fit for the purpose for which proposed. Such warranties, together with all other service warranties and guarantees of Supplier, not including any disclaimers, shall run in favor of Buyer, its employees and its customers. Supplier agrees to indemnify and hold Buyer harmless from any and all liability of Buyer arising out of or in any way connected with a breach of this warranty or the negligence of Supplier in the manufacture or design of the Products.
- B. **GENERAL INDEMNITY.** Supplier agrees to defend, indemnify and hold Buyer and its directors, officers, employees, and insurance carriers harmless from and against all claims, liabilities, demands, causes of action, and expenses (including reasonable attorney's fees) suffered or incurred by Buyer as a result of personal injury or property damage suffered or incurred by any person or entity to the extent such personal injury or property damage is caused by or results from (1) Supplier's failure to manufacture any Product in accordance with Buyer's specifications and requirements or Supplier's published specifications, (2) failure of any Product to perform in accordance with Supplier's published specifications, (3) Supplier's failure to provide complete and accurate information regarding any Product, the hazards and risks associated with its use, or the steps necessary to use the Product safely, (4) any act or omission on the part of Supplier and its employees, agents, subcontractors, or vendors in performing pursuant to this Agreement, or (5) use by Buyer or its direct or indirect customers of Supplier's Products.
- C. **PATENTS, TRADEMARKS, AND COPYRIGHTS.** Supplier agrees to assume full responsibility for the defense of any suit or proceeding brought against Buyer, which alleges in whole or in part that any Product violates or infringes any patent, trademark, copyright, or trade secret. Supplier agrees that Buyer, at its sole option, may actively participate in the suit or proceedings through counsel of its own choosing. Supplier further agrees to indemnify Buyer against any and all costs (including reasonable attorneys' fees), expenses, losses, liabilities, royalties, loss of profits, damages, settlement, and judgment suffered or incurred by Buyer as a result of the claim of infringement and, if requested by Buyer, to use its best efforts to procure for Buyer the right to continue using the infringing Products. Supplier's obligations under this Paragraph shall survive acceptance of the

Products or termination of this Agreement. The obligations created by this paragraph shall not apply to Products whose Specifications were developed solely by Buyer.

- D. **PRODUCT CORRECTIVE ACTIONS.** Supplier shall provide at no charge such technical and engineering assistance and such information as Buyer may request in order to enable Buyer to investigate problems with Buyer's products which Buyer reasonably believes are related to, caused by, or involve the Products. If Buyer is required to recall or conduct a field correction of any of its products due to the failure of any Product to meet its specifications, Supplier will cooperate fully with Buyer in planning and conducting the corrective actions and manufacturing any necessary replacement Products. If the corrective action was required because Supplier failed to manufacture a Product in accordance with its Specifications or to properly package or ship the Product Supplier will provide replacement Products at no cost to Buyer and will reimburse Buyer for all costs incurred by Buyer in shipping the replacement Products to Buyer's customers and installing them, if necessary.

VII. BUYER'S PROPERTY

- A. **MANUFACTURING ITEMS.** All tools, dies, jigs, patterns, test fixtures, equipment, materials, and other items purchased, furnished, charged to, or paid for by Buyer, in whole or in part, and any replacements for them, shall remain Buyer's property. Supplier shall mark these items to clearly show that they are Buyer's property, shall not substitute other property for Buyer's property, and shall only use Buyer's property to fill Buyer's orders unless authorized by Buyer in writing. Supplier shall hold and use Buyer's property at Supplier's own risk and, upon Buyer's written request, shall redeliver the property to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted. Supplier shall not dispose of any of Buyer's property without Buyer's prior written approval. Buyer may file any UCC statements and other documents with governmental agencies that Buyer determines to be appropriate and necessary to protect Buyer's right, title, and interest in these materials. Supplier will cooperate with Buyer by promptly signing and returning to Buyer any such documents that Buyer may reasonably request Supplier to sign.
- B. **DRAWINGS, SPECIFICATIONS, AND TECHNICAL INFORMATION.** Any ideas, information and designs contained in or shown upon, and any drawings, specifications, photographs, samples and other engineering and manufacturing information supplied by Buyer shall remain Buyer's property. They shall be retained in confidence by Supplier and not disclosed to any other person or entity. Supplier shall not use them to provide goods or services to any other person or entity and shall not use or incorporate them into any product or item later manufactured or assembled by Supplier for anyone other than Buyer. Supplier agrees to return to Buyer all drawings, specifications, photographs and other engineering and manufacturing information supplied by Buyer promptly following Buyer's request. Any unpatented knowledge or information concerning Supplier's processes, present or contemplated, products or their uses which Supplier discloses to employees of Buyer in connection with the ordering, acquisition and use by Buyer of the goods or services covered by this Agreement shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as part of the consideration for this Agreement. Supplier agrees not to assert any claim (other than a claim for a patent infringement) against Buyer by reason of any use or alleged use to which any such information or knowledge may be put by Buyer.
- C. **PROPRIETARY RIGHTS.** This Agreement does not grant to Supplier any right, title, or interest in or to Buyer's proprietary rights or information, including, but not limited to, Buyer's name, trademarks, trade names, trade dress, trade symbols, copyrights, patents, patent applications, inventions, trade secrets, product names or designations, model names or numbers, processes, models, prototypes, designs, or formulas. Supplier shall not use Buyer's trade names or trademarks on any of its products or in conjunction with Supplier's business operations except as specifically authorized in writing by Buyer. In addition, all improvements to Buyer's existing products and all new inventions and designs for Buyer's products shall be Buyer's property. Supplier will not have any right, title or interest in or to them. As requested by Buyer, Supplier will execute any reasonable document confirming Buyer's ownership of these designs, products, and inventions and/or assigning to Buyer any interest that may have accrued to Supplier. Although Supplier shall own new product designs and improvements to products made by Supplier for Supplier's use. Buyer shall possess a non-exclusive, irrevocable, worldwide license to use such products for its business.
- D. **CONFIDENTIALITY.** Supplier agrees that all of the information which it obtains while performing the work required by this Agreement or which is disclosed to it by Buyer under this Agreement (including, but not limited to, information regarding design and specifications, Buyer's forecasts, Buyer's facilities, manufacturing processes, and existing or proposed products) is Buyer's confidential and proprietary information, regardless of the form of disclosure. Supplier agrees that it will maintain all of Buyer's confidential and proprietary information in confidence, will not disclose or disseminate the information to any third party, without Buyer's express, prior written consent, and will use the information only for the purpose of fulfilling its obligations under this Agreement. Supplier agrees that it will disclose the information provided by Buyer only to Supplier's employees,

officers, directors, and consultants who have signed agreements obligating them to keep the information in confidence, have been advised of the confidential and proprietary nature of the information, and have a need to know the information. The foregoing limitations shall not apply to information which Supplier can demonstrate was (1) in the public domain at the time of its disclosure by Supplier, (2) in Supplier's possession prior to the date of this Agreement and not acquired directly or indirectly from Buyer, (3) published or became part of the public domain through no act or failure on Supplier's part, or (4) obtained by Supplier from a third party not owing obligations of confidence to Buyer. Supplier agrees that the information disclosed shall not be deemed to be in the public domain or in Supplier's possession merely because it is embraced by more general information in the public domain or in Supplier's possession, or merely because individual items of the information are in the public domain or Supplier's possession. Supplier's obligations under this Paragraph shall survive termination of this Agreement and shall continue for 5 years after the date the last Product ordered by Buyer under this Agreement is shipped to Buyer.

VIII. COUNTERFEIT PRODUCT POLICY; REQUIREMENTS FOR ELECTRONICS

- A. **DEFINITION.** Buyer has adopted the definition of counterfeit part IDEA STD 1010-B as follows: Counterfeit Product: A counterfeit part is any part which has been fraudulently labeled or marked. Examples of counterfeit parts would include but are not limited to: Parts which do not contain the proper internal construction (die, manufacturer, wire bonding, etc.) consistent with the part ordered; Parts which have not successfully completed the Original Component Manufacturers full production and test flow, but are represented as completed product; Parts sold as up screened parts, which have not successfully completed up screening; Parts sold with labeling or markings intended to misrepresent the parts for, form fit, function or grade; Parts sold as new which have been (but not limited to) resurfaced and/or remarked (without legal right or authority to do so) to conceal their true manufacturer, revision, date code, lot code, or country of origin, etc.).
- B. **IDENTIFICATION AND HANDLING.** Buyer and Supplier agree and acknowledge that counterfeit product has no value. If product is determined counterfeit during Buyer inspection, Supplier can agree with the findings or verify Buyer findings by contracting with an ERAI or AS 6171 approved test laboratory for a sample quantity inspection within 10 days of the notification by Buyer. If findings confirm product is counterfeit Supplier shall be solely responsible for the fees incurred by the test laboratory. Buyer reserves the right to seize and quarantine counterfeit product. Said product may be sent to the IP (Intellectual Property) holder or appropriate Federal or State authorities for analysis and possible confiscation or destruction. Supplier shall reimburse Buyer the full purchase price in addition to any fines or fees incurred. No warranty period applies to counterfeit product.
- C. **ELECTRONICS.** The requirements of this Section VIII.C apply to all Products containing electronic parts. Product received with bent or oxidized leads, programmed, or damaged in any other way will not be accepted. All Products shall be stored, packaged and handled according to applicable requirements of JEDEC J-STD-033 and ANSI/ESD S20.20. All products will be inspected in accordance with applicable requirements of IDEA STD-1010B. If Product is determined by Buyer to be non-conforming product, Supplier may be required to complete the proper quality documentation such as a Supplier Corrective Action Report. Independent distributors (brokers) must meet all applicable AS6081 standards. If test laboratories are required to ensure authenticity of product, the independent distributor must use laboratories that meet applicable AS 6171 Standards.

IX. GENERAL PROVISIONS

- A. **RESTRICTION OF HAZARDOUS SUBSTANCES DIRECTIVE.** Supplier shall maintain an up-to-date certificate of compliance and other required documentation that shows RoHS compliance for all those parts shipped to Buyer that the supplier acknowledges as RoHS compliant. Supplier shall furnish copies of such documents to Buyer within twenty (20) calendar days of Buyer's written request of such documents. Supplier hereby assumes sole liability and indemnifies Buyer for any losses related to any part shipped to Buyer that has been acknowledged as RoHS compliant. If any such part is audited or identified as non-compliant, Supplier shall bear all costs related to any required corrective actions.
- B. **CONFLICT MINERALS.** Supplier acknowledges that Buyer is required to comply with Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act") and among other requirements must file disclosures and reports with the United States Securities and Exchange Commission related to the use of tin, tantalum, tungsten and gold ("Conflict Minerals"). At Buyer's reasonable request, Supplier must execute and deliver to Buyer declarations in the form of the EICC-GESI Conflict Minerals Reporting Template as adopted by EICC-GESI from time to time, or in any other form that Buyer reasonably requests. Unless the declarations provided by Supplier pursuant to the prior sentence document to Buyer's reasonable satisfaction that Supplier is "Conflict Free" (as defined in the Dodd-Frank Act) with respect to all items supplied by Buyer, Supplier agrees that it source, and track the chain of custody of, all Conflict Minerals

contained in any items provided by Supplier to Buyer in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (or such other internationally recognized due diligence standard as Buyer and Supplier may jointly agree upon).

- C. SUBCONTRACTS, ASSIGNMENT, AND SETOFF. Supplier shall not assign any of the rights granted by this Agreement, delegate any of its duties under this Agreement, or contract with any other person or entity to provide the Products or services covered by this Agreement without Buyer's prior written consent. Buyer may set off against any amount payable to Supplier under this Agreement any claim or charge it may have against Supplier.
- D. COMPLIANCE WITH LAWS AND SUPPLIER CODE OF CONDUCT. Supplier represents and warrants that the Products, any services provided pursuant to this Agreement, and the performance of this Agreement, comply with all applicable laws, rules, regulations, ordinances, and Executive Orders (collectively "Laws"). These Laws include, but are not limited to, the Fair Labor Standards Act of 1936, the Occupational Safety & Health Act of 1970, the Toxic Substances Control Act; all as amended. Supplier shall at all times act in a lawful manner and shall not use the proceeds realized from this Agreement to bribe government officials or as a kickback to any employee of Buyer or its affiliates or subsidiaries. Supplier agrees to provide Buyer with a written certification of its compliance with any or all of the foregoing upon receipt of a request by Buyer. In addition, Supplier agrees that it will comply in all respects with the Supplier Code of Conduct that may be found at www.danaher.com/suppliers.
- E. EQUAL EMPLOYMENT OPPORTUNITY. Supplier complies with the Equal Employment Opportunity clauses of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veteran's Readjustment Assistance Act of 1974 and implementing regulations, which are incorporated herein by reference, and those Applicable Laws relating to the utilization of small, disadvantaged, and women-owned business concerns, all as amended. **Unless exempt, this contractor and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** If applicable, the contractor and any subcontractors shall also abide by the requirements 41 CFR § 61-300.10 regarding veterans' employment reports and 29 CFR Part 471, Appendix A to Subpart A regarding posting a notice of employee rights. Supplier agrees to provide Buyer with a written certification of its compliance with any or all of the foregoing upon receipt of a request by Buyer.
- F. TERMINATION. If Supplier becomes insolvent, or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or with respect to Supplier, Buyer may by notice in writing, terminate this Agreement, in whole or in part, without liability to Supplier except for items already accepted by Buyer. Buyer may terminate this Agreement at any time by notice in writing to Supplier. In such event Buyer shall pay such termination charges as may be agreed upon and if agreement cannot be reached, Buyer will be liable for such sum as may lawfully be owing to Supplier on account of such termination, but in no event shall Buyer be liable for any indirect or consequential damages or loss of profits.
- G. NOTICES. All notices provided for in this Agreement will be directed to each party at the address set forth on the Purchase Order. All notices shall be in writing, and shall be sent by United States mail (if domestic delivery), commercial overnight delivery service, electronic mail, or facsimile transmission. Notices sent by United States Mail shall be sent by first class mail, registered or certified, postage prepaid, and shall be deemed to have been given on the date actually received or the fifth day after mailing, whichever is earlier. Notices sent by commercial overnight delivery service shall be sent using a service that provides traceability of packages and shall be deemed given on the date of receipt. Notices sent by electronic mail or facsimile transmission shall be deemed given on the first business day after the date they are transmitted, provided a confirming signed original is mailed within one business day. Buyer may change its address for notices or facsimile number at any time by sending written notice to Supplier.
- H. ATTORNEYS FEES. In the event either party to this Agreement brings suit to enforce or interpret any part of it, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, in addition to all other sums that either party may be called on to pay, a reasonable sum for attorney's fees.
- I. CHOICE OF LAW. This Agreement shall be construed and interpreted and the legal relations created hereby shall be determined in accordance with the laws of the State of California, excluding those laws relating to choice of law and as if this Agreement were performed entirely within California.

- J. SECTION AND PARAGRAPH HEADINGS. The section and paragraph headings used in this Agreement are for purposes of convenience or reference only. They shall not be used to explain, limit, or extend the meaning of any part of this Agreement.
- K. WAIVER. Buyer's failure to insist upon the performance of any or all of the terms, covenants, or conditions of this Agreement or failure to exercise any rights or remedies hereunder shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies unless otherwise provided for herein.
- L. SEVERABILITY. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.
- M. FORCE MAJEURE. Neither party shall be responsible for a delay or failure to perform its obligations under this Agreement where such delay or failure is due to one of the following events of force majeure (each, a "*Force Majeure Event*"): fire, earthquake, catastrophic weather, strike, government sanctioned embargo, flood, act of God, war, act of any public authority or sovereign government, civil disorder, delay or destruction caused by public carrier, terrorist event, or any other circumstance substantially beyond the control of such Party and that cannot be reasonably forecast or prevented. Each Party agrees to notify the other promptly upon discovery of a Force Majeure Event and, to the extent possible, to work around the Force Majeure Event so as to minimize any delays or losses. Notwithstanding the provisions of this Section, a delay in performance due to a Force Majeure Event will be excused only so long as such event continues or until a commercially reasonable alternative method of performance can be implemented. If performance by Supplier hereunder is delayed more than 45 days due to a Force Majeure Event, then Buyer may terminate this Agreement without liability to Supplier.
- N. BINDING EFFECT. This Agreement will be a binding obligation of the successors and permitted assigns of each party.
- O. ENTIRE AGREEMENT. The Agreement between the parties consists of the Purchase Order, these Standard Terms and Conditions of Purchase, and any other attachments, exhibits and documents identified on the Purchase Order. This Agreement represents the entire agreement between the parties relating to the subject matter hereof, and shall supersede any other agreements, whether written or oral. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. If there is a conflict between the terms and conditions set forth in the Purchase Order or in these Standard Terms and Conditions of Purchase and the terms and conditions contained in any exhibit or attachment, the documents will be controlling in the following order: (a) the Purchase Order; (b) these Standard Terms and Conditions of Purchase; and (c) the exhibit/attachment. Any terms and conditions set forth in any Supplier form, or any other correspondence from Supplier, that are in addition to, inconsistent with, or in conflict with, this Agreement will be of no force or effect.