

TOSOH SMD, INC.

PURCHASE TERMS & CONDITIONS
(PRODUCTS)

IF THE SELLER HAS A SIGNED SUPPLY AGREEMENT WITH TOSOH SMD, INC., THE TERMS OF THAT SIGNED SUPPLY AGREEMENT SHALL SUPERSEDE THE BELOW TERMS AND CONDITIONS.

1. **ORDERS.** (a) The Purchase Order issued by Tosoh SMD, Inc. ("Buyer") constitutes an offer by Buyer to purchase the products, and if applicable, related services, specified therein (the "Items") from the seller identified in Buyer's Purchase Order ("Seller") upon the Terms and Conditions stated below. Buyer's offer may be revoked at any time prior to Seller's acceptance of Buyer's Purchase Order. In addition, if Buyer has not previously revoked the offer, it will automatically terminate at 5:00 p.m. Eastern time on the tenth day following the date Buyer's Purchase Order is sent by Buyer to Seller, if Buyer has not received Seller's acceptance by that time.

(b) These Terms and Conditions and Buyer's Purchase Order may be amended only with Buyer's prior consent in the form of a change order, which shall be given at Buyer's sole option. Seller is hereby notified of Buyer's rejection of any additional, contrary or different terms of Seller (whether or not they would materially alter these Terms and Conditions). By accepting Buyer's Purchase Order and/or delivering the Items covered by Buyer's Purchase Order, Seller accepts Buyer's Purchase Order and all of the below Terms and Conditions, to the exclusion of any additional, contrary or different terms of Seller.

(c) In case of any conflict between the provisions of these Terms and Conditions and the provisions of Buyer's Purchase Order, the provisions of Buyer's Purchase Order will prevail.

2. **PAYMENT & PRICING.** Payment in immediately available funds shall be made by Buyer at the time stated in Buyer's Purchase Order. Seller will give Buyer the benefit of any Seller's price reduction that occurs before the shipping date specified on Buyer's Purchase Order or the actual shipping date, whichever is later. Seller agrees to grant Buyer its most favored customer pricing, which is the lowest price committed to any of Seller's customers for items of similar specifications, similar quantities and to be delivered in the same time period, during the 90 days prior to Seller's acceptance of Buyer's Purchase Order. If Seller's prices to Buyer are higher than other suppliers, Buyer may terminate Buyer's Purchase Order without liability provided Seller is first given the right of first refusal to meet such competitive prices. In the event a mutual agreement for such adjustment cannot be reached, Buyer may terminate Buyer's Purchase Order without further liability other than for accepted Items for which payment has not been made. Buyer shall have the right to set-off any amounts due to Buyer by Seller under these Terms and Conditions against amounts due from Buyer to Seller pursuant to Buyer's Purchase Order.

3. **SHIPMENT.** Unless otherwise specified on Buyer's Purchase Order, Items will be tendered for delivery to Buyer DDP (Incoterms 2020) point of tender of delivery specified on Buyer's Purchase Order and title and risk of loss of or damage to Items shall pass to Buyer upon such tender of delivery. Seller will not charge Buyer for packaging unless authorized by Buyer. Except when otherwise specified by Buyer, Items shipped by freight or express shall be packed, marked and described so as to obtain the lowest rate possible under freight or express classifications or regulations and Seller shall be responsible for any penalties or increased charges due to any failure to do so. The foregoing notwithstanding, Seller shall comply with all instructions of Buyer as to packaging, marking, shipping and insurance. Buyer reserves the right to return any or all Items in their unopened original packaging to Seller if the Items are delivered to Buyer more than five days after the delivery date shown on Buyer's Purchase Order. Acceptance of late deliveries by Buyer shall not be deemed a waiver of Buyer's right to hold Seller liable for any loss or damage resulting therefrom. If Buyer extends the delivery date by written notification to Seller, then such five day period shall not commence to run until the extended delivery date. Buyer reserves the right to refuse Items delivered contrary to instructions or not in recognized standard containers. Unless specified in Buyer's Purchase Order Buyer will not accept a C.O.D. shipment.

4. **INSPECTION.** Buyer shall be under no duty to inspect the Items prior to Buyer's use or resale, and neither retention, use or resale of the Items shall be construed to constitute an acceptance of Items that are not in compliance with the requirements of Buyer's Purchase Order or these Terms and Conditions. With respect to non-conforming Items, Buyer may return them or hold them at Seller's risk and expense, and may in either event charge Seller with the cost of transportation, shipping, unpacking, examining, repacking, reshipping and other like expense. Upon Buyer's written request, and without expense to Buyer, Seller agrees to promptly (and in no event later than five days unless otherwise agreed by Buyer) replace or correct non-conforming Items. In the event Seller fails to so replace or correct non-conforming Items, Buyer, after reasonable notice to Seller, may make such corrections or replace such Items and charge Seller for the costs incurred by Buyer in doing so. The Items must conform exactly to the Specifications (as defined in Section 5). Any failure of the Items to conform exactly to the Specifications shall constitute grounds for their rejection by Buyer.

5. **WARRANTY.** (a) Seller warrants to Buyer that the Items shall be in merchantable condition, free from defects in material and workmanship and shall conform exactly to the specifications (including any drawings, samples and descriptions referred to in such specifications) set forth in Buyer's Purchase Order and, if no specifications are stated in Buyer's Purchase Order, those specifications stated in Seller's materials and brochures regarding the Items (the "Specifications"). Seller warrants that the Items shall be fit for such particular purposes and uses as indicated by the Specifications. Seller warrants that the Items shall be free and clear of any lien or other adverse claim against title and, to the extent not manufactured to detailed designs or specifications furnished by Buyer, shall be free from defects in design. All warranties contained herein shall survive payment, inspection, testing, acceptance and use by Buyer. Seller's warranties shall be enforceable by Buyer's customers and any subsequent owner, user or operator of the Items as well as by Buyer.

(b) Seller shall reimburse Buyer for any and all losses, damages, liabilities, costs and expenses that are incurred by Buyer as a result of (i) any Item failing to meet the warranties stated in Section 5(a), including but not limited to damages and liabilities arising out of damage or destruction of property and injury or death to persons, or (ii) any claim, lawsuit or other legal proceeding asserted or brought against Buyer based upon, relating to, or arising out of any claimed failure of an Item to meet the warranties stated in Section 5(a), including but not limited to claim, lawsuit or other legal proceeding brought by Buyer's customers for defective products and Buyer's legal fees and other costs to defend itself in any such claim, lawsuit or other legal

proceeding. Seller shall reimburse Buyer's legal fees and costs promptly following Buyer's demand, which demand Buyer shall have the right to make from time to time during Buyer's defense.

6. **IP INDEMNIFICATION.** (a) Should a third person allege that the Items or Buyer's use or resale of the Items infringe any IP Rights (with "IP Right" to mean patent, trademark, copyright, trade secret or other intellectual property right) of such third person, Seller shall reimburse Buyer for any and all losses, damages, liabilities, costs and expenses that are incurred by Buyer based on such allegation, including but not limited to Buyer's legal fees and other costs to defend itself in any claim, lawsuit or other legal proceeding brought against Buyer. Seller shall cooperate with Buyer in Buyer's defense of such claim, lawsuit or other legal proceeding. Seller shall reimburse Buyer's legal fees and costs promptly following Buyer's demand, which demand Buyer shall have the right to make from time to time during Buyer's defense. In addition, Seller shall pursuant to the mutual agreement of Seller and Buyer but at Seller's expense, (a) procure for Buyer the right to continue using the allegedly infringing Items, or (b) substitute non-infringing Items for the allegedly infringing Items, so long as the non-infringing Items are the same in form, fit and function, or (c) refund to Buyer the full purchase price of the allegedly infringing Items.

(b) Should a third person bring a claim, lawsuit or other legal proceeding alleging that a feature of the Items that was designed wholly by Buyer without involvement by Seller infringes any IP Right of such third person, Buyer shall indemnify and defend Seller against such claim, lawsuit or other legal proceeding, and Buyer shall be responsible for any and all losses, damages, liabilities, costs and expenses arising out of such claim, lawsuit or other legal proceeding. Seller shall have the right to participate at Seller's costs in such defense. Seller's advance written consent shall be required should a settlement of such Buyer IP Right infringement claim, lawsuit or other legal proceeding does not result in absence of liability of Seller.

7. **CANCELLATION.** Buyer reserves the right to cancel Buyer's Purchase Order, in whole or in part, due to (a) suspension of business, insolvency, the filing of a voluntary or involuntary petition of bankruptcy, assignment for the benefit of creditors, or the appointment of a receiver by, of or for Seller or Seller's property; (b) Buyer's reasonable belief that Seller will be unable to perform a material obligation under Buyer's Purchase Order or these Terms and Conditions; (c) Seller's failure to timely deliver the Items; (d) a Force Majeure Event (as defined below) has caused a delay of more than five days in the originally scheduled delivery date of any Item; or (e) failure of an Item to conform to the Specifications. Cancellation by Buyer shall be free of liability other than for accepted Items for which payment has not been made. In the event of cancellation, Buyer has the right to (i) refuse to accept delivery of Items; (ii) return to Seller any Items already accepted, recover any payments made for the same and for freight, storage, handling and other expenses incurred, and be relieved of any future payments to Seller; (iii) recover any payments made to Seller for undelivered or returned Items; and/or (iv) purchase elsewhere and charge Seller with any resultant losses. The provisions of this Section 7 are in addition to any right or remedy available to Buyer under applicable law.

8. **TERMINATION FOR CONVENIENCE.** Buyer may terminate Buyer's Purchase Order, in whole or in part, at any time for convenience, by giving written notice to Seller. Upon receipt of Buyer's notice of termination for convenience, Seller shall immediately cease all work and, if applicable, cease all further purchases of materials, supplies or other items being procured to provide the Items. As requested by Buyer, Seller shall take all commercially reasonable actions to (a) re-direct the sale of any completed Items to Seller's other customers, (b) re-direct the use of any work in progress, and any material, supply or other item procured to provide the Items, including use of same to provide similar items to Seller's other customers, and (c) cancel any pending purchase order for such material, supply or other item. Thereafter Seller and Buyer shall agree on a reasonable amount to be paid to Seller for any completed Items, any work in progress, and any material, supply or other item procured to provide the Items which cannot be re-directed or cancelled as described above. Upon payment by Buyer of the agreed amount, Seller shall deliver to Buyer's designated facility the paid for Items, work in progress, material, supply or other procured item.

9. **HAZARDOUS MATERIALS.** If Items provided hereunder include hazardous materials, Seller represents and warrants that Seller and its personnel involved in the manufacturing and/or processing of the Items have been properly trained and understand the nature of and hazards associated therewith, including handling, transportation and use of such hazardous materials. Prior to causing hazardous materials to be on Buyer's facility, including but not limited to through the presence of hazardous materials in the Items provided hereunder, Seller shall disclose to Buyer the nature and extent of such hazardous materials, provide to Buyer appropriate material safety data sheets for same and obtain written approval of same from Buyer. Seller certifies that Items provided hereunder shall comply with applicable requirements of Buyer's environmental and safety policies and procedures. Seller shall be responsible for and shall reimburse Buyer for any and all losses, damages, liabilities, costs and expenses incurred by Buyer due to Seller's actions in providing the hazardous materials to Buyer (including but not limited to through the presence of hazardous materials in Items provided hereunder) or in the use of hazardous materials in Seller's manufacturing and/or processing of the Items.

10. **FORCE MAJEURE.** Neither party shall be liable to the other party for failure or delay in performance when such delay or failure results from any cause not within such party's reasonable control including, but not limited to, labor shortages, riot, war, acts of God, acts of a public enemy, any governmental acts which shall cause delay or prevent performance, epidemic, pandemic, flood, storm or fire (each, a "Force Majeure Event"), provided the party claiming the benefit of this clause (a) uses reasonable diligence to fulfill the obligations required under Buyer's Purchase Order; and (b) notifies the other party in writing within forty-eight (48) hours after the commencement of the Force Majeure Event and attempts in good faith to minimize the effects thereof. Subject to Buyer's right to cancel the Purchase Order by reason of a Force Majeure Event as set forth in Section 7, the time for a party's performance shall be extended for a period equal to the duration of any such Force Majeure Event.

11. **CONFIDENTIALITY.** The receiving party agrees to disclose the disclosing party's Confidential Information (defined below) only to its employees, affiliates, contractors and suppliers ("Representatives") who need to know that information to enable receiving party to manufacture, produce, sell, use, consume or resell the Items and who are legally required, by contract or otherwise, to maintain the confidentiality of the information in accordance with these Terms and Conditions. Notwithstanding the foregoing, Seller may not disclose any Confidential Information received or derived from Buyer to affiliates, contractors or suppliers of Seller that are in the business of designing, making or selling products competitive with Buyer's products. Receiving party shall protect disclosing party's Confidential Information with at least the care with which it protects its own confidential information of a similar nature but in any event, not less than a reasonable standard of care, and shall be liable for any disclosure of disclosing party's Confidential Information by receiving party's Representatives that breaches these Terms and Conditions. Disclosing party's "Confidential Information" means any information or materials disclosed or made available by a

party to the other party, that (a) in the case of a written or other tangible disclosure, disclosing party affixes a "Proprietary", "Confidential" or similar legend indicating the confidential nature of the information, (b) in the case of an oral or visual disclosure, disclosing party makes an oral statement at the time of disclosure to identify the information as confidential and delivers to receiving party a written summary of the information confirming that disclosing party regards the same as Confidential Information within 30 days of disclosure, and (c) if given the nature of the information disclosed and the circumstances of the disclosure, a reasonable person would believe such information to be the confidential information of disclosing party, such information shall be "Confidential Information" for purposes of these Terms and Conditions, regardless of whether any identification, marking, or summarization of such information set forth in clauses (a) and (b) were made. Buyer's Purchase Order and the activities contemplated thereby are considered Confidential Information of the parties. Confidential Information excludes information that receiving party can demonstrate (i) is generally available to the public through no breach of these terms by receiving party; (ii) was already known to receiving party prior to its disclosure by disclosing party; (iii) was rightfully disclosed to receiving party by a third party, subject to no restrictions of confidentiality or restricted use; or (iv) was developed by receiving party without reference to or use of disclosing party's Confidential Information. Confidential Information may be disclosed by receiving party to the extent disclosure is required by law or by the order of a tribunal with jurisdiction, provided: (A) receiving party notifies disclosing party of such mandatory disclosure as soon as reasonably possible; (B) disclosing party is provided a reasonable opportunity to contest such disclosure or to seek a protective order; and (C) receiving party reasonably cooperates (at disclosing party's expense) with disclosing party's efforts to do so. Disclosing party remains the owner of the Confidential Information and disclosure only provides receiving party with the limited right to use stated above. Receiving party acknowledges that disclosure or use of Confidential Information in breach of these terms may cause irreparable harm to disclosing party, monetary damages may be an inadequate remedy for such breach, and disclosing party will have the right, in addition to all other rights and remedies, to seek injunctive relief for any breach of these terms. In the event the parties have or will enter into a non-disclosure agreement, the terms of that non-disclosure agreement shall supplement, be in addition to these terms.

12. **INSURANCE.** Seller shall maintain commercial general liability and/or such other insurance in such amounts, with such waivers of subrogation and with such insurance companies as Buyer shall reasonably require, and Buyer shall be named an additional named insured and/or loss payee on such policies of insurance. Seller shall furnish Buyer with certificates of insurance evidencing same.

13. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable laws and regulations in the manufacture and sale of the Items and in connection with the transactions contemplated hereunder. Without limiting the generality of the foregoing, Seller shall at all times comply with applicable laws and regulations concerning bribery and kickbacks, including but not limited to the U.S. Foreign Corrupt Practices Act and Travel Act, the U.K. Bribery Act and the People's Republic of China's Anti Unfair Competition Law and criminal law (to the extent any one or more of such laws apply to Seller and/or the transactions contemplated hereunder).

14. **MISCELLANEOUS.**

(a) Buyer shall pay all sales, consumer, use and other similar taxes due on the sale of the Items hereunder.

(b) All notices given hereunder shall be effective on the date transmitted if given by 5:00 p.m. Eastern Time by facsimile transmission, on the business day after the date of delivery to the courier or mail if given by overnight courier or overnight mail, and on the third day after the date of delivery to the mail if given by first class mail. Notices shall be given to the parties at their respective addresses set forth on Buyer's Purchase Order.

(c) Seller may not assign or otherwise transfer Buyer's Purchase Order or these Terms and Conditions without the prior written consent of Buyer, provided the foregoing shall not prohibit Seller from subcontracting with other parties in connection with the performance of its obligations hereunder so long as such subcontracting complies with Buyer's change notification procedure and any other applicable written requirements issued by Buyer concerning the Items.

(d) Neither party shall be, nor represent in any manner, express or implied, that it is an employee, agent, partner, legal representative, or joint venturer of the other party.

(e) The transactions covered by Buyer's Purchase Order and these Terms and Conditions shall be governed by the laws of the State of Ohio, excluding principles of conflict of laws, and the 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any dispute or controversy arising in connection with the transactions covered by Buyer's Purchase Order shall be resolved in a state court located in Franklin County, Ohio or the United States District Court for the Southern District of Ohio located in Columbus, Ohio, to which jurisdiction the parties hereto submit.

(f) Buyer's Purchase Order, these Terms and Conditions, and any confidentiality agreements executed by the parties constitute the entire agreement between Seller and Buyer with respect to the Items and supersede any and all previous agreements between them, whether written or oral, with respect to such subject matter. Buyer's Purchase Order, these Terms and Conditions and all such confidentiality agreements shall be construed together. Any headings preceding the text of the Sections hereof are inserted solely for convenience of reference, shall not constitute a part of these Terms and Conditions, and shall not otherwise affect the meaning or effect of the provisions hereof. If any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions, which shall remain in full force and effect. The prevailing party in any dispute arising out of or relating to the transactions covered by Buyer's Purchase Order and these Terms and Conditions shall be entitled to recover its costs and expenses incurred in connection with such dispute, including but not limited to reasonable attorneys' fees.

(g) Seller will not export, directly or indirectly, any technical data acquired from Buyer pursuant to Buyer's Purchase Order or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

(h) Waiver by Buyer of any provision of these Terms and Conditions or Buyer's Purchase Order shall not be construed as a waiver of any other provision of these Terms and Conditions or Buyer's Purchase Order, nor of any subsequent breach of the same provision.

(i) Time is of the essence in this transaction.

TOSOH SMD, INC.

PURCHASE TERMS & CONDITIONS
(SERVICES)

IF THE VENDOR HAS A SIGNED SERVICE AGREEMENT WITH TOSOH SMD, INC., THE TERMS OF THAT SIGNED SERVICE AGREEMENT SHALL SUPERSEDE THE BELOW TERMS AND CONDITIONS.

1. **ORDERS.** (a) The Purchase Order issued by Tosoh SMD, Inc. ("Buyer") constitutes an offer by Buyer to obtain the services specified therein (the "Services") from the vendor identified in Buyer's Purchase Order ("Vendor") upon the Terms and Conditions stated below. Buyer's offer may be revoked at any time prior to Vendor's acceptance of Buyer's Purchase Order. In addition, if Buyer has not previously revoked the offer, it will automatically terminate at 5:00 p.m. Eastern time on the tenth day following the date Buyer's Purchase Order is sent by Buyer to Vendor, if Buyer has not received Vendor's acceptance by that time.

(b) These Terms and Conditions and Buyer's Purchase Order may be amended only with Buyer's prior consent in the form of a change order, which shall be given at Buyer's sole option. Vendor is hereby notified of Buyer's rejection of any additional, contrary or different terms (whether or not they would materially alter these Terms and Conditions). By accepting Buyer's Purchase Order and/or providing the Services covered by Buyer's Purchase Order, Vendor accepts Buyer's Purchase Order and all of the below Terms and Conditions, to the exclusion of any additional, contrary or different terms of Vendor.

(c) In case of any conflict between the provisions of these Terms and Conditions and the provisions of Buyer's Purchase Order, the provisions of Buyer's Purchase Order will prevail.

2. **PAYMENT & PRICING.** Payment in immediately available funds shall be made by Buyer at the time stated in Buyer's Purchase Order. Vendor will give Buyer the benefit of any Vendor's price reduction that occurs before the service completion date specified on Buyer's Purchase Order or the actual service completion date, whichever is later. Vendor agrees to grant Buyer its most favored customer pricing, which is the lowest price committed to any of Vendor's customers for services of similar nature, scope and duration, during the 90 days prior to Vendor's acceptance of Buyer's Purchase Order. If Vendor's prices to Buyer are higher than other service providers, Buyer may terminate Buyer's Purchase Order without liability provided Vendor is first given the right of first refusal to meet such competitive prices. In the event a mutual agreement for such adjustment cannot be reached, Buyer may terminate Buyer's Purchase Order without further liability other than for accepted Services for which payment has not been made. Buyer shall have the right to set-off any amounts due to Buyer by Vendor under these Terms and Conditions against amounts due from Buyer to Vendor pursuant to Buyer's Purchase Order.

3. **BUYER'S PROPERTY.** If in order for Vendor to perform the Services, Buyer shall release to Vendor Buyer's products, equipment and/or other items ("Buyer's Property"), Buyer shall be responsible for delivering Buyer's Property to Vendor's designated facility, at Buyer's cost and expense. Title in and to Buyer's Property shall remain at all times in Buyer, and Vendor shall not take any action that would impair or otherwise dispute Buyer's title thereto. Risk of loss or damage to Buyer's Property shall pass to Vendor upon delivery of Buyer's Property to Vendor's designated facility and shall only pass back to Buyer upon re-delivery of same to Buyer's designated facility. While Buyer's Property remains in Vendor's possession, Vendor shall properly store, handle and safeguard Buyer's Property and shall maintain adequate insurance to cover any loss or damage that may occur to Buyer's Property, including loss that may result from casualties such as fire, storm and explosion. Vendor shall furnish Buyer with certificates of insurance evidencing appropriate insurance coverages on Buyer's Property. When returning Buyer's Property to Buyer, Vendor will not charge Buyer for packaging unless authorized by Buyer. Except when otherwise specified by Buyer, Buyer's Property shipped by freight or express shall be packed, marked and described so as to obtain the lowest rate possible under freight or express classifications or regulations and Vendor shall be responsible for any penalties or increased charges due to any failure to do so. The foregoing notwithstanding, Vendor shall comply with all instructions of Buyer as to packaging, marking, shipping and insurance.

4. **WORK PRODUCT.** If the Services entail the creation of work product, including but not limited to an analysis, report or other writing, to be delivered to Buyer ("Work Product"), the Work Product shall be deemed work made for hire and title thereto shall vest in Buyer upon payment to Vendor of the price therefor. Vendor agrees to maintain the Work Product confidential and shall not disclose it to any third party other than upon the written instruction of Buyer. Vendor represents, warrants and agrees that Vendor will not incorporate any third party intellectual property into any Work Product without first notifying Buyer and obtaining Buyer's written agreement thereto. Vendor hereby waives any and all moral rights, including the right to identification of authorship or limitation on subsequent modification, that Vendor or its employees and/or contractors may have in any Work Product. Vendor warrants that all of its employees and contractors who perform work to create the Work Product have entered into written agreements with Vendor which ensure that the work they perform is subject to the terms and conditions of this Section. Vendor will not incorporate the Work Product, or any part thereof, into any other work product or deliverable provided by Vendor to a third party, including Vendor's other customers. Buyer shall have the right to use, modify, prepare derivatives of, publish, reproduce, display, sell and/or distribute the Work Product or any part thereof.

5. **DELAY IN COMPLETION.** Unless otherwise specified on Buyer's Purchase Order, Vendor shall complete all Services and shall deliver to Buyer's facility designated on Buyer's Purchase Order, Buyer's Property or the Work Product, as applicable, on or before the date specified in Buyer's Purchase Order. Any extension of the completion/delivery date must be made by Buyer in writing and if Buyer accepts a late completion/delivery, same shall not be deemed a waiver of Buyer's right to hold Vendor liable for any loss or damage resulting therefrom.

6. **WARRANTY.** Vendor represents and warrants to Buyer that: (a) Vendor possesses expertise, knowledge and skills in the area of the Services; (b) the Services shall be performed in a good and workmanlike manner, by appropriately qualified and trained personnel, and shall meet or exceed industry standard; and (c) the Services shall be in accordance with and, if applicable, intended to accomplish the requirements and specifications set forth in Buyer's Purchase Order and/or other documentation between Buyer and Vendor ("Buyer's Requirements"). All warranties contained herein shall survive payment, inspection, testing, acceptance and use by Buyer.

7. **DEFECTIVE SERVICES.** (a) Buyer shall be under no duty to inspect the Services prior to Buyer's use of the Services, Buyer's Property or the Work Product, as applicable, and neither retention, use or resale of the Services, Buyer's Property or the Work Product, as applicable, shall be construed to constitute an acceptance of Services that are not in compliance with Buyer's Requirements or otherwise not meeting the warranties stated in Section 6.

(b) With respect to non-conforming Services, upon Buyer's written request, and without expense to Buyer, Vendor agrees to promptly (and in no event later than five days unless otherwise agreed by Buyer) re-work non-conforming Services to make them conform to Buyer's Requirements. In the event Vendor fails to so correct non-conforming Services, Buyer, after reasonable notice to Vendor, may make such corrections or obtain replacement services and charge Vendor for the costs incurred by Buyer in doing so.

(c) Vendor shall reimburse Buyer for any and all losses, damages, liabilities, costs and expenses that are incurred by Buyer as a result of (i) any Service failing to meet the warranties stated in Section 6, including but not limited to damages and liabilities arising out of damage or destruction of property and injury or death to persons, or (ii) any claim, lawsuit or other legal proceeding asserted or brought against Buyer based upon, relating to, or arising out of any claimed defect in the Services, including but not limited to claim, lawsuit or other legal proceeding brought by Buyer's customers for defective products and Buyer's legal fees and other costs to defend itself in any such claim, lawsuit or other legal proceeding. Vendor shall reimburse Buyer's legal fees and costs promptly following Buyer's demand, which demand Buyer shall have the right to make from time to time during Buyer's defense of such claim, lawsuit or other legal proceeding.

8. **IP INDEMNIFICATION.** (a) Should a third person allege that the Services infringe any patent, trademark, copyright or other intellectual property right ("IP Rights") of such third person, Vendor shall reimburse Buyer for any and all losses, damages, liabilities, costs and expenses that are incurred by Buyer based on such allegation, including but not limited to Buyer's legal fees and other costs to defend itself in any claim, lawsuit or other legal proceeding brought against Buyer. Vendor shall cooperate with Buyer in Buyer's defense of such claim, lawsuit or other legal proceeding. Vendor shall reimburse Buyer's legal fees and costs promptly following Buyer's demand, which demand Buyer shall have the right to make from time to time during Buyer's defense of such claim, lawsuit or other legal proceeding. In the event of any such claim, lawsuit or other legal proceeding, Vendor shall pursuant to the mutual agreement of Vendor and Buyer but at Vendor's expense, (i) procure for Buyer the right to continue using the Services, or (ii) substitute non-infringing Services for the infringing Services, so long as the non-infringing Services provide the same function and achieve the same results, or (iii) refund to Buyer the full price paid for the infringing Services.

(b) Should a third person bring a claim, lawsuit or other legal proceeding alleging that a feature of the Services that was designed or required wholly by Buyer without involvement by Vendor infringes any IP Right of such third person, Buyer shall indemnify and defend Vendor against such claim, lawsuit or other legal proceeding, and Buyer shall be responsible for any and all losses, damages, liabilities, costs and expenses arising out of such claim, lawsuit or other legal proceeding. Vendor shall have the right to participate at Vendor's costs in such defense. Vendor's advance written consent shall be required should a settlement of such Buyer IP Right infringement claim, lawsuit or other legal proceeding does not result in absence of liability of Vendor.

9. **CANCELLATION.** Buyer reserves the right to cancel Buyer's Purchase Order, in whole or in part, due to (a) suspension of business, insolvency, the filing of a voluntary or involuntary petition of bankruptcy, assignment for the benefit of creditors, or the appointment of a receiver by, of or for Vendor or Vendor's property; (b) Buyer's reasonable belief that Vendor will be unable to perform a material obligation under Buyer's Purchase Order or these Terms and Conditions; (c) Vendor's failure to timely complete the Services and deliver Buyer's Property or the Work Product, as applicable, to Buyer's designated facility; (d) a Force Majeure Event (as defined below) has caused a delay of more than five days in the originally scheduled completion/delivery date; or (e) failure of a Service to conform to Buyer's Requirements. Cancellation by Buyer shall be free of liability other than for accepted Services for which payment has not been made. In the event of cancellation, Buyer has the right to (i) refuse to pay for any Services (other than those accepted by Buyer); (ii) recover from Vendor Buyer's Property that remains in Vendor's possession; (iii) recover any payments made to Vendor for rejected or not yet completed Services; and/or (iv) obtain the Services elsewhere and charge Vendor with any resultant losses. The provisions of this Section are in addition to any right or remedy available to Buyer under applicable law.

10. **TERMINATION FOR CONVENIENCE.** Buyer may terminate Buyer's Purchase Order, in whole or in part, at any time for convenience, by giving written notice to Vendor. Upon receipt of Buyer's notice of termination for convenience, Vendor shall immediately cease all work and, if applicable, cease all further purchases of materials, supplies or other items being procured to provide the Services. As requested by Buyer, Vendor shall take all commercially reasonable actions to (a) re-direct the use of any material, supply or other item procured to provide the Services, including use of same to provide similar services to Vendor's other customers, and (b) cancel any pending purchase order for such material, supply or other item. Thereafter Vendor and Buyer shall agree on a reasonable amount to be paid to Vendor for the partially completed Services and any material, supply or other item procured to provide the Services which cannot be re-directed or cancelled as described above. Upon payment by Buyer of the agreed amount, Vendor shall deliver to Buyer's designated facility the paid for Services, material, supply or other procured item.

11. **FORCE MAJEURE.** Neither party shall be liable to the other party for failure or delay in performance when such delay or failure results from any cause not within such party's reasonable control including, but not limited to, labor shortages, riot, war, acts of God, acts of a public enemy, any governmental acts which shall cause delay or prevent performance, epidemic, pandemic, flood, storm or fire (each, a "Force Majeure Event"), provided the party claiming the benefit of this clause (a) uses reasonable diligence to fulfill the obligations required under Buyer's Purchase Order; and (b) notifies the other party in writing within forty-eight (48) hours after the commencement of the Force Majeure Event and attempts in good faith to minimize the effects thereof. Subject to the provisions of Section 9, the time for a party's performance shall be extended for a period equal to the duration of any such Force Majeure Event.

12. **HAZARDOUS MATERIALS.** If Services provided hereunder involve the use, application or incorporation of any hazardous materials, Vendor represents and warrants that Vendor and its personnel providing the Services have been properly trained and understand the nature of and hazards associated therewith, including handling, transportation and use of such hazardous materials. Prior to causing hazardous materials to be on Buyer's facility, including but not limited to through the incorporation or

addition of hazardous materials in or to Buyer's Property, Vendor shall obtain written approval from Buyer. Vendor represents and warrants that Buyer's Property, when returned to Buyer following the completion of Services, shall comply with applicable requirements of Buyer's environmental and safety policies and procedures. Vendor shall be responsible for and shall reimburse Buyer for any and all losses, damages, liabilities, costs and expenses incurred by Buyer due to Vendor's actions in providing the hazardous materials to Buyer (including but not limited to through the incorporation or addition of hazardous materials in or to Buyer's Property) or in Vendor's use of hazardous materials in providing the Services.

13. **LIMITATION OF LIABILITY.** In the event it is determined that Buyer's Property, independent and not by reason in whole or in part of any action or inaction on the part of Vendor, caused property damage or personal injury while such Buyer's Property is in the possession of Vendor, Buyer's liability for any such property damage or personal injury shall be limited to (a) the actual and reasonable out of pocket costs and expenses incurred by Vendor due to such damage or injury, and shall not include any and all consequential, indirect, special or incidental damages, costs or expenses and (b) a maximum amount of three times the price due to Vendor for the Services to be performed on such Buyer's Property which caused the property damage or personal injury.

14. **CONFIDENTIALITY.** The receiving party agrees to disclose the disclosing party's Confidential Information (defined below) only to its employees, affiliates, contractors and suppliers ("Representatives") who need to know that information to enable receiving party to perform or use the Services and who are legally required, by contract or otherwise, to maintain the confidentiality of the information in accordance with these Terms and Conditions. Notwithstanding the foregoing, Vendor may not disclose any Confidential Information received or derived from Buyer to affiliates, contractors or suppliers of Vendor that are in the business of designing, making or selling products competitive with Buyer's products. Receiving party shall protect disclosing party's Confidential Information with at least the care with which it protects its own confidential information of a similar nature but in any event, not less than a reasonable standard of care, and shall be liable for any disclosure of disclosing party's Confidential Information by receiving party's Representatives that breaches these Terms and Conditions. Disclosing party's "Confidential Information" means any information or materials disclosed or made available by a party to the other party, that (a) in the case of a written or other tangible disclosure, disclosing party affixes a "Proprietary", "Confidential" or similar legend indicating the confidential nature of the information, (b) in the case of an oral or visual disclosure, disclosing party makes an oral statement at the time of disclosure to identify the information as confidential and delivers to receiving party a written summary of the information confirming that disclosing party regards the same as Confidential Information within 30 days of disclosure, and (c) if given the nature of the information disclosed and the circumstances of the disclosure, a reasonable person would believe such information to be the confidential information of disclosing party, such information shall be "Confidential Information" for purposes of these Terms and Conditions, regardless of whether any identification, marking, or summarization of such information set forth in clauses (a) and (b) were made. Buyer's Purchase Order and the activities contemplated thereby are considered Confidential Information of the parties. Confidential Information excludes information that receiving party can demonstrate (i) is generally available to the public through no breach of these terms by receiving party; (ii) was already known to receiving party prior to its disclosure by disclosing party; (iii) was rightfully disclosed to receiving party by a third party, subject to no restrictions of confidentiality or restricted use; or (iv) was developed by receiving party without reference to or use of disclosing party's Confidential Information. Confidential Information may be disclosed by receiving party to the extent disclosure is required by law or by the order of a tribunal with jurisdiction, provided: (A) receiving party notifies disclosing party of such mandatory disclosure as soon as reasonably possible; (B) disclosing party is provided a reasonable opportunity to contest such disclosure or to seek a protective order; and (C) receiving party reasonably cooperates (at disclosing party's expense) with disclosing party's efforts to do so. Disclosing party remains the owner of the Confidential Information and disclosure only provides receiving party with the limited right to use stated above. Receiving party acknowledges that disclosure or use of Confidential Information in breach of these terms may cause irreparable harm to disclosing party, monetary damages may be an inadequate remedy for such breach, and disclosing party will have the right, in addition to all other rights and remedies, to seek injunctive relief for any breach of these terms. In the event the parties have or will enter into a non-disclosure agreement, the terms of that non-disclosure agreement shall supplement, be in addition to these terms.

15. **INSURANCE.** Vendor shall maintain professional liability, errors and omissions, property damage and/or such other insurance in such amounts, with such waivers of subrogation and with such insurance companies as Buyer shall reasonably require, and Buyer shall be named an additional named insured and/or loss payee on such policies of insurance. Vendor shall furnish Buyer with certificates of insurance evidencing same.

16. **COMPLIANCE WITH LAWS.** Vendor shall comply with all applicable laws and regulations in the provision of the Services and in connection with the transactions contemplated hereunder. Without limiting the generality of the foregoing, Vendor shall at all times comply with applicable laws and regulations concerning bribery and kickbacks, including but not limited to the U.S. Foreign Corrupt Practices Act and Travel Act, the U.K. Bribery Act and the People's Republic of China's Anti Unfair Competition Law and criminal law (to the extent any one or more of such laws apply to Vendor and/or the transactions contemplated hereunder).

17. **MISCELLANEOUS.**

(a) Buyer shall pay all sales, consumer, use and other similar taxes due on the sale of the Services hereunder.

(b) All notices given hereunder shall be effective on the date transmitted if given by 5:00 p.m. Eastern Time by facsimile transmission, on the business day after the date of delivery to the courier or mail if given by overnight courier or overnight mail, and on the third day after the date of delivery to the mail if given by first class mail. Notices shall be given to the parties at their respective addresses set forth on Buyer's Purchase Order.

(c) Vendor may not assign or otherwise transfer Buyer's Purchase Order or these Terms and Conditions without the prior written consent of Buyer, provided the foregoing shall not prohibit Vendor from subcontracting with other parties in connection with the performance of its obligations hereunder so long as such subcontracting complies with Buyer's change notification procedure and any other applicable written requirements issued by Buyer concerning the Services.

(d) Neither party shall be, nor represent in any manner, express or implied, that it is an employee, agent, partner, legal representative, or joint venturer of the other party.

(e) The transactions covered by Buyer's Purchase Order and these Terms and Conditions shall be governed by the laws of the State of Ohio, excluding principles of conflict of laws. Any dispute or controversy arising in connection with the transactions

covered by Buyer's Purchase Order shall be resolved in a state court located in Franklin County, Ohio or the United States District Court for the Southern District of Ohio located in Columbus, Ohio, to which jurisdiction the parties hereto submit.

(f) Buyer's Purchase Order, these Terms and Conditions, and any confidentiality agreements executed by the parties constitute the entire agreement between Vendor and Buyer with respect to the Services and supersede any and all previous agreements between them, whether written or oral, with respect to such subject matter. Buyer's Purchase Order, these Terms and Conditions and all such confidentiality agreements shall be construed together. Any headings preceding the text of the Sections hereof are inserted solely for convenience of reference, shall not constitute a part of these Terms and Conditions, and shall not otherwise affect the meaning or effect of the provisions hereof. If any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions, which shall remain in full force and effect. The prevailing party in any dispute arising out of or relating to the transactions covered by Buyer's Purchase Order and these Terms and Conditions shall be entitled to recover its costs and expenses incurred in connection with such dispute, including but not limited to reasonable attorneys' fees.

(g) Vendor will not export, directly or indirectly, any technical data acquired from Buyer pursuant to Buyer's Purchase Order or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

(h) Waiver by Buyer of any provision of these Terms and Conditions or Buyer's Purchase Order shall not be construed as a waiver of any other provision of these Terms and Conditions or Buyer's Purchase Order, nor of any subsequent breach of the same provision.

(i) Time is of the essence in this transaction.