

swisslog

Member of the KUKA Group

A photograph of two business professionals, a man and a woman, in a meeting. They are both wearing dark suits and light-colored shirts. They are looking down at a large document on a table. The woman is pointing at a specific section of the document with her right index finger. The man is holding a black pen over the document. The document appears to be a contract or a technical specification, with various lines of text and a grid-like structure. The background is slightly blurred, showing what might be a conference room setting.

SWISSLOG HEALTHCARE

North America Supplier Terms and Conditions

1. **PARTIES.**

Translogic corporation d/b/a Swisslog Healthcare Solutions, a Delaware corporation, will be referred to as “Purchaser” and the person, company, or entity indicated on the face of this purchase order or with whom these terms and conditions are intended to apply (including but not limited to any contractor or other provider of services of any kind whatsoever) are referred to as “Supplier.”

2. **ACCEPTANCE.**

This purchase order or any transaction to which these terms and conditions are applied by the Purchaser (in either case referred to herein as the “Order”) is Purchaser’s offer to Supplier and does not constitute an acceptance by Purchaser of any offer to sell, quotation, or proposal. Any reference to such offer to sell, quotation, or proposal is solely for specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specification on the face of this Order. This Order consists only of the terms contained herein and on the face of this order and any supplements, specifications, or other documents expressly incorporated herein by reference. By acknowledging receipt of this Order (or by shipping the goods or performing the services called for by this Order), Supplier agrees to these terms and conditions. Any additional or different terms or conditions contained in any acknowledgment of this order by Supplier shall be deemed objected to by Purchaser without need of further notice of objection and shall be of no effect nor in any circumstance binding upon Purchaser unless affirmatively accepted by Purchaser in writing. Acceptance or rejection by Purchaser of any such additional terms or conditions shall not constitute an acceptance of any other additional term or condition. Supplier will provide Acceptance to Purchase Order as outlined in Purchaser’s Terms and Condition section 2 within 48 hours from receipt.

3. **TERMINATION.**

- a) **Termination without Cause.** Purchaser may terminate this Order upon written notice to Supplier. In the event of such termination, Supplier may in writing make a claim for the cost of any work-in-process and finished stocks but not for any cost of design, engineering, or development, special tooling or general purpose equipment unless such items have been specifically ordered and separately priced in the Order. Other than as specified in the preceding sentence, Supplier shall not be entitled to any claim, remedy or damages from Purchaser. Any and all claims or requests by Supplier under this section shall be deemed waived unless made in writing and received by Purchaser within twenty (20) days from the date of termination.
- b) **Termination for Cause.** If Supplier fails to observe or comply with any of the instructions, terms, conditions, or warranties applicable to this Order or fails to make progress so as to endanger performance hereunder, Purchaser may, in addition to any other right or remedy provided by this Order or by law, terminate all or any part of this Order by written notice to Supplier without any liability by Purchaser to Supplier at any time during the term of this Order. In the event of termination for cause, Purchaser may produce, purchase, or otherwise acquire supplies or services elsewhere on such terms or in such manner as Purchaser may deem appropriate, and Supplier shall be liable to Purchaser for any excess cost or other expenses incurred by Purchaser.
- c) **Insolvency.** If Supplier shall cease to conduct its operations in the normal course of business (including its inability to meet its obligations as they mature), sells or transfers a substantial part of its assets or if any proceedings under the bankruptcy or

insolvency laws are brought by or against Supplier, or a receiver for Supplier for a substantial part of its assets is appointed or applied for or an assignment is made for the benefit of creditors of Supplier, Purchaser may terminate this order for cause without liability except for deliveries previously made. Notwithstanding anything herein to the contrary, Purchaser may also terminate this order for cause without liability in the event of fires, strikes, acts of God, any acts or demands of the U.S. Government, the non-occurrence of presupposed conditions, or any other reasons beyond Purchaser's control.

d) **Effect on Other Orders.** Termination of this Order for any reason shall not affect any other Order between Purchaser and Supplier.

4. **CONFIDENTIALITY.**

All specifications, documents, and prototype articles delivered by Purchaser to Supplier are the property of Purchaser. They are delivered solely for the purpose of Supplier's performance of this order and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this order without the prior express written consent of the Purchaser. Such specifications, documents, and articles are to be returned to Purchaser promptly upon its written request. Additionally, Supplier agrees to assign to the Purchaser and not otherwise to make use of any invention, improvement or discovery (whether or not patentable), conceived or reduced to practice in the performance of this contract by any employee of the Supplier or the other person working under Supplier's direction, and such assignment shall be considered as additional consideration for the making of this contract. Such request may be made at any time during or after completion of Supplier's performance. The obligations under this clause

will survive the cancellation, termination, or completion of this order.

5. **NON-COMPETE.**

During the term of this Agreement, and for a period of three (3) years following termination of this Agreement, neither Supplier nor any of its affiliates shall provide, market, sell or otherwise promote any products, materials, or consumables that may, in any manner, be competitive with or substantially similar to Purchaser's products, as it relates to any customers with relationship of good standing to Purchaser or within the geographic regions in which Purchaser conducts business. The provisions of this section shall survive the termination of this Agreement.

6. **PUBLIC RELEASE.**

No news release, advertisement, public announcement, denial or confirmation of same, of any kind regarding any part of the subject matter of this contract shall be made without the prior written approval of Purchaser.

7. **WARRANTY.**

In addition to any implied warranties, Supplier expressly warrants that all goods and services covered by this order shall conform to the specifications, drawings, samples, or other description upon which this Order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect, and that goods and services of Supplier's design will be free from defect and design. Inspection, test, acceptance, or use of the goods furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranties shall survive inspection, test, acceptance, and use. Supplier further warrants to Purchaser that the goods and services along with the production and packaging of the goods and services shall comply with all applicable national, regional and local laws, rules, regulations, ordinances and orders, and that Supplier has obtained the necessary approvals

from all certification bodies. Supplier represents and warrants that the products delivered hereunder do not infringe any United States or foreign patent, trademark, trade secret or copyright, or any proprietary, intellectual property, industrial property, contract or other right held by any third party. This warranty shall run to Purchaser, its successors, assigns, customers, and the users of its products. Supplier agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser. In the event of failure by Supplier to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Supplier, may make such corrections or replace such goods and services and charge Supplier for the cost incurred by the Purchaser thereby. Supplier will indemnify and hold harmless Purchaser, its directors and employees for any loss, damage, fine, liability, or expense resulting from Supplier's failure to furnish material or perform services that conform to any warranty contained herein.

8. QUALITY.

If Supplier consistently does not meet the quality standards as stated on the specifications, the Purchase will have the right to terminate this agreement. Purchaser will measure and track overall quality performance of Supplier based on adherence to all requirements and will use various tools (Audit Assessment scores, customer claims, surveys, test and inspection results, Correct Action results, on time delivery, etc.) to continually rate and score Supplier concerning overall quality performance during the term of this agreement. These scores and ratings will be used to evaluate Supplier's ongoing quality performance. As applicable, at each Supplier Performance Review, Quality representatives of Supplier and Purchaser shall meet for the purpose of reviewing overall

Product sold to Purchaser. Purchaser shall have the option of negotiating with Supplier reasonable quality goals based on its unique business needs.

9. ENGINEERING CHANGE ORDERS.

Written Engineering Change Orders ("ECN") will be provided as required. If ECN results in obsolete inventory, Supplier must provide part number, quantity and actual material cost within 48 business hours of receipt of ECN. Purchaser will advise implementation date of ECN based on review of obsolete inventory and advise Supplier in writing. Supplier agrees to use reasonable efforts to minimize obsolete inventory costs by returning unused raw-material inventory to vendors and canceling open orders. Supplier will document actual costs for reimbursement review.

10. DELIVERY.

The terms of delivery are as stated on the face hereof or on any ancillary document agreed by the parties in writing. If the delivery date is not set forth in this order, Supplier's written acceptance shall set forth Supplier's proposal with respect to such delivery date. In such event, Purchaser shall have sixty (60) days to confirm in writing the delivery date proposed by Supplier. TIME IS OF THE ESSENCE to Purchaser and the delivery schedule specified in this order or in Purchaser's written delivery date confirmation must be strictly observed, both as to time and quantities. Supplier will promptly notify Purchaser in writing of any and all events which could affect the obligation of Supplier to make deliveries at the specified times or in the specified quantities. The fact that such notice is given, however, shall not affect or diminish any obligation of Supplier. Purchaser is not obligated to accept early deliveries, late deliveries, partial deliveries, or excess deliveries. In addition to all other rights which Purchaser may have by reason thereof in the event of any actual or anticipated breach by reason of delay in delivery or no delivery of any goods, Purchaser may, at

its option, cancel and terminate this order in whole or in part without incurring any liability. Without any limitation or waiver of any such rights, Purchaser may require Supplier, at Supplier's expense, to ship the goods express by air or by any special method if Supplier fails to meet delivery requirements of this order.

- a) **Delivery.** Delivery will be as stated on Individual Purchase Orders. If Supplier fails to meet agreed Delivery, Supplier will be liable for up to 30% of the value of that Purchase Order provided there is a penalty incurred by Purchaser due to the delays. Up to 3 days prior to shipment date, Purchaser will have the right to: (i) reschedule shipment of Product(s); (ii) change the quantity of Product(s) ordered; or (iii) terminate or cancel all or any portion of the Purchase Order. Purchaser will incur no penalty for making any of the changes or terminating under this section.
- b) **Shipping.** If Supplier does not comply with the terms of this Section or Purchase Order, Supplier authorizes Purchaser to deduct from any invoice of Supplier (or to charge back to Supplier), an increased cost incurred by Purchaser as a result of Supplier's noncompliance. If Supplier exceeds delivery date, Supplier will ship premium overnight at Supplier's expense, if required to meet such delivery date. Supplier will immediately notify Purchaser as soon as it becomes apparent that Supplier is unable to meet the delivery date for a Purchase Order.
- c) **On time delivery.** Kanban: 1 day early and 0 days late; scheduled deliveries outside of Kanban requests: 3 days early and 1 day late. There will be zero tolerance rate for occurrences causing a stop ship at Purchaser's facility. If such an occurrence happens, each party will work together to determine the root cause. If Supplier consistently does not meet on time delivery

expectations, the Purchaser will have the right to terminate this Agreement.

- d) **Documentation.** Supplier to include Certificate of Compliance with delivery of Product(s).

11. RISK OF LOSS.

Unless otherwise agreed by the Parties in writing, title to all goods to be delivered under this order shall remain with the Supplier until such supplies are delivered to the destination specified by Purchaser. All risk of loss or of damage to goods to be delivered by Supplier hereunder shall be on Supplier until title to the supplies passes to the Purchaser, but the Supplier shall bear all risk of loss or damage to goods rejected by Purchaser after notice of rejection until such goods are redelivered to Purchaser except for the loss, destruction or damage to such rejected goods resulting from the gross negligence of officers, agents, or employees of Purchaser acting within the scope of their employment.

12. PACKAGING AND LABELING.

All goods must be packaged in the manner specified by Purchaser and shipped in the manner and by the route and carrier designated by Purchaser. If Purchaser does not specify the manner in which the goods must be packaged, Supplier shall package the goods so as to avoid any damage in transit. If Purchaser does not specify the manner of shipment, route or carrier, Supplier will ship the goods at the lowest possible transportation rates. Any additional freight, cartage or other costs incurred directly or indirectly as a result of Supplier's failure to observe the conditions set forth in this paragraph will be for Supplier's account. If the goods are not accompanied by a packing slip, Purchaser's count or weight shall be conclusive.

13. HAZARDOUS MATERIALS.

All goods must be packaged in the manner specified by Purchaser and shipped in the manner and by the route and carrier designated by Purchaser. If Purchaser does not specify the

manner in which the goods must be packaged, Supplier shall package the goods so as to avoid any damage in transit. If Purchaser does not specify the manner of shipment, route or carrier, Supplier will ship the goods at the lowest possible transportation rates. Any additional freight, cartage or other costs incurred directly or indirectly as a result of Supplier's failure to observe the conditions set forth in this paragraph will be for Supplier's account. If the goods are not accompanied by a packing slip, Purchaser's count or weight shall be conclusive.

14. PRICE.

- a) **Base Price.** The price which Supplier charges in filling this Order shall not be higher than that last charged or quoted to Purchaser for such goods or services (if there has been a previous charge or quotation) unless Purchaser expressly agrees otherwise in writing. If Purchaser has included a price on the face hereof or in such other written communication to Supplier, such price shall control, subject to the terms and conditions herein, unless such price exceeds the lowest price at which Supplier is selling such Items or similar items, in which case the lower price shall control. No extra charges of any kind will be allowed unless specifically agreed to in writing by the Purchaser.
- b) **Return.** If there has been no charge or quotation to Purchaser for such Items previously and if no price is set forth on the front hereof, Purchaser shall have the privilege to return the Items, with Supplier paying the cost of transportation, if Supplier charges a price which is in excess of the lowest price at which Supplier is selling such Items. Except as may be otherwise provided in this Order, the price includes all applicable federal, state, and local taxes.
- c) **Competitive Price.** If at any time prior to delivery of the Items, Purchaser is given the opportunity to purchase a portion of or all of the Items, or similar items of like quality, at a

bona fide, competitive price which is less than the price to be charged by Supplier hereunder, Purchaser shall so notify Supplier. Should Supplier fail to meet such lower price within thirty (30) days following the date of Purchaser's notice, Purchaser may, at its option, purchase from the other source at the lower price, in which event Purchaser and Supplier shall be relieved of their obligations hereunder in respect of that portion of the Items or similar Items so purchased from the other source.

- d) **Price Warranty.** The Supplier warrants that the prices for the articles sold to the Purchaser under this Order are not less favorable than those currently extended to any other customer for the same or like articles in equal or less quantities. In the event Supplier reduces its price for such article during the term of this Order, Supplier agrees to reduce the prices hereof correspondingly.

15. PAYMENT.

The time for payment and discount (if applicable) of Supplier's invoices shall commence with the date of

- a) actual receipt of invoice.
- b) actual inspection and acceptance of the items ordered herein, or
- c) Compliance by Supplier with the applicable specifications, whichever is later. The price or prices specified on such invoices shall include all applicable federal, state, and local taxes and will not be changed as a result of failure by the Supplier to include any applicable tax or as a result of any change in the Supplier's tax liabilities. For the avoidance of any doubt, payment of any invoices shall not constitute acceptance of the goods or services and shall be subject to appropriate adjustment for failure of Supplier to meet the requirements or specifications of this order. Purchaser may set off any amount owed by Supplier or any

of its affiliates to Purchaser to Supplier under this order.

- d) **Credit Line.** Supplier will give 90 days' written notice before reducing Purchaser's credit line and the credit line cannot be reduced under any circumstances more than once per calendar year. Supplier to consult with Purchaser prior to any credit line reduction and provide reasons for reducing the credit line. Supplier will only reduce the credit line if Purchaser and Supplier are not able to agree upon a mutually satisfactory solution to Supplier's concerns.

16. FORCE MAJEURE.

Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable, which events are limited to natural disasters, embargoes, explosions, riots, wars (threats of war) or acts of terrorism (each, a "Force Majeure Event"). Seller's financial inability to perform, changes in cost or availability of materials, equipment, components or services, market conditions or supplier actions or contract disputes will not excuse performance by Seller under this Section. Without delay, Seller shall give Buyer prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Seller shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement. In addition to its other rights under this Agreement or the Law, during any Force Majeure Event, Buyer may, at its option: (a) amend, suspend or terminate the Order (Agreement); (b) purchase Goods from other sources without liability to Seller, and require

Seller to reimburse Buyer for any additional costs to Buyer of obtaining the substitute goods compared to the Prices for such Goods under this Agreement; or (c) require Seller to provide Goods from other sources in quantities and at a time requested by Buyer and at the Prices for the Goods hereunder. If requested by Buyer, Seller shall, within five (5) days of such request, provide adequate assurances that a Force Majeure Event will not exceed ten (10) days. The rights granted to Seller with respect to excused delays under this Section are intended to limit Seller's rights under theories of force majeure, commercial impracticability, impracticability or impossibility of performance, or failure of presupposed conditions or otherwise, including any rights arising under the UCC.

17. PATENTS.

The Supplier, as part of consideration for this Order and without further cost to Purchaser, hereby grants and agrees to grant Purchaser, and, to the extent requested by Purchaser to its customers, an irrevocable, nonexclusive, worldwide, royalty-free right and license to use, sell, manufacture, and cause to be manufactured products embodying any and all inventions and discoveries made, conceived, or actually reduced to practice in connection with the performance of this Order. Supplier shall indemnify and save Purchaser harmless from any liability loss, damage, judgment or award, including cost and expenses arising out of any claims or suits for infringement of patents or other rights purporting to cover the product for its normal intended use. Supplier shall, at its own expense, defend the Purchaser on such claims or suits provided Purchaser shall give Supplier prompt notice in writing of such claims or suits and shall supply at Supplier's expense all reasonably requested information.

18. WORK ON THE PREMISES.

If work is to be performed hereunder on premises specified by Purchaser, Supplier represents that it has or will examine the

premises and any specifications or other documents furnished in connection with the Items and satisfy itself as to the condition of the premises and site. Supplier agrees that no allowance shall be made in respect of any error as to any of the foregoing on the part of Supplier. Supplier shall at all times keep the premises free from accumulations of waste material or rubbish. At the completion of the Items, Supplier shall leave the premises broom-clean. Risk of loss or damage to Supplier's materials or equipment while the same are on premises specified by Purchaser shall remain with Supplier, and Purchaser shall have no responsibility or liability to Supplier or any one claiming through Supplier in respect of any loss or damage thereto, notwithstanding the fact that storage space on such premise is provided by Purchaser. Supplier shall abide by all safety regulations of Purchaser in performing any work on premises specified by Purchaser.

19. INDEMNITY AND INSURANCE.

Supplier shall defend and indemnify Purchaser against all damages, liability, claims, losses and expenses (including attorneys' fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any act or omission of Supplier, its agents, employees or subcontractors. Supplier shall maintain such general liability insurance including, if applicable, products liability, completed operations, contractors liability and protective liability, automobile liability insurance and Workers' Compensation, and employer's liability insurance as will adequately protect Purchaser against damage, liabilities, claims, losses and expenses (including attorneys' fees) arising from the goods or services supplied to Purchaser. Supplier agrees to submit certificates of insurance, evidencing its insurance coverage promptly upon the request of Purchaser. At all times when Supplier is on any site owned or controlled by Purchaser in connection with this

Order, Supplier shall abide by all of Purchaser's rules applicable to the site.

20. INDEPENDENT CONTRACTOR.

For any services provided hereunder Supplier shall be an independent contractor of the Purchaser, and nothing in this Order shall be construed to create or constitute a partnership, joint venture, or any other agency or employment relationship between the parties hereto. Neither party is authorized to enter into any agreement on behalf of, assume any obligation for, or otherwise bind the other party financially or otherwise; nor is either party responsible for the obligations of the other party, including but not limited to tax obligations and labor obligations to the other's own employees such as their employment termination, wage/salaries, benefits, vacation pay, and the like.

21. CHANGES.

Purchaser shall have the right at any time by written notice to Supplier to make changes in the specifications, the quantity of items called for, delivery schedules (postponements only), and requirements covering testing, packaging or destination. If any such change causes an increase or decrease in the cost of, or the time required for, performance, a corresponding adjustment will be made in the contract price or delivery schedule. Any claim by Supplier for adjustment under this clause shall be deemed waived unless made in writing within ten (10) days after receipt by Supplier of notice of such change. Price increases or extensions of time for delivery shall not be binding on Purchaser unless accepted by Purchaser in writing. Purchaser will not accept any change or substitution made by Supplier in any goods or services ordered hereunder unless such change or substitution has been prior approved in writing by the Purchaser.

a) Drawings/Specifications. Any drawings/specifications that are created for items in this Agreement and any additional

items will be the sole property of Purchaser. Purchaser reserves the right to issue any drawings/specifications to other suppliers national or international for use in purchasing those items.

22. INSPECTION/TESTING/REJECTION.

Payment for the goods or services delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective. Goods so rejected and goods supplied in excess of quantities called for herein may be returned to the Supplier at its expense and, in addition to Purchaser's other rights, Purchaser may charge the Supplier all expenses of unpacking, examining, repacking, and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformities are not apparent on examination resulting in deterioration of its finished product, Purchaser reserves the right to require the replacement, as well as payment of damages. No substitute will be accepted without specific written approval by Purchaser.

23. PURCHASER'S PROPERTY.

All tooling, parts, schedules and specifications and all reproductions thereof, and any other property furnished to Supplier by Purchaser, or paid for by Purchaser shall be the property of Purchaser, clearly so identified, and subject to removal at any time upon Purchaser's demand, and shall be used only in filling orders from Purchaser or its nominee. Supplier assumes all liability for loss of and damage to such property and Supplier shall, unless otherwise directed in writing by Purchaser, insure at Supplier's expense such property in an amount equal to the replacement cost thereof with loss payable to Purchaser.

24. REMEDIES.

Purchaser shall be entitled to all incidental damages resulting from a breach by Supplier, including, but not limited to, all expenses

reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions incurred in effecting cover, and any other reasonable expense incident to a delay or breach by Supplier. Purchaser's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any items or payment therefore shall not waive any breach.

25. ASSIGNMENTS AND SUBCONTRACTING.

This Order and any payments to be made hereunder may not be assigned or transferred without prior written approval by Purchaser. No invoices may be rendered by others than the named Supplier without the written permission of Purchaser. All claims for moneys due or to become due from the Purchaser shall be subject to deduction by the Purchaser for any setoff or counterclaim arising out of this or any other purchase orders with the Supplier whether such setoff or counterclaim arose before or after such assignment by the Supplier.

26. GRATUITIES.

Supplier has not and will not offer or give to any employee, agent or representative of Purchaser any gratuity with the view toward securing any business from Purchaser by influencing such person with respect to the terms, conditions or performance of any contract with or order from Purchaser. Any breach of this warranty shall be a material breach of each and every contract between Purchaser and Supplier.

27. JURISDICTION AND VENUE.

The construction and interpretation of this Order and any disputes arising hereunder (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving reference to its conflict of laws principles. Any legal actions, suits

or proceedings arising out of this Order (whether for breach of contract, tortious conduct or otherwise) shall be brought exclusively in the courts of Denver, Colorado or the United State District Court of the District of Colorado, and the parties to this Order hereby accept and submit to the personal jurisdiction of these Colorado courts with respect to any legal actions, suits or proceedings arising out of this Order. The rights and obligations of the Purchaser and Supplier shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Purchaser and Supplier both expressly disclaim application of the CISG.

28. MECHANIC'S LIENS.

Supplier agrees to indemnify, hold harmless, and defend Purchaser from and against all laborer's, materialmen's and/or mechanic's liens arising from the performance of Supplier's obligation under this Order and shall keep the premises of Purchaser free from all such claims, liens, and encumbrances. Supplier for itself and all of its contractors and suppliers of any tier, waives all rights of lien against the property and premises of Purchaser for labor performed or for goods or services provided under this Order.

29. ENTIRE AGREEMENT.

These terms and conditions and the terms and conditions in any addendum, drawing, print, report, or other form agreed to by the Parties in writing will constitute the entire agreement between the parties, and there will be no deviation therefrom unless accepted in writing by the Purchaser. If there is any inconsistency between these terms and conditions, the face of any Order, and any supplemental or ancillary documents then the terms and conditions stated herein shall prevail.

30. IMMIGRATION LAWS.

Supplier shall comply and shall be responsible for demonstrating compliance by all subcontractors, with all immigration laws and respective personnel working at any site owned

or occupied by the Purchaser. Supplier shall be responsible for any claims, costs, fines, or delays arising from noncompliance with the obligations of this section.

31. EQUAL OPPORTUNITY.

This clause applies only in the event that the goods or services ordered herein are to be used in whole or in part for the performance of government contracts and where the dollar value of said goods exceeds, or may in any one year exceed \$10,000. During the Performance hereof, the Supplier agrees as follows: The Supplier will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Supplier will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment.

32. EMPLOYMENT OF VETERANS.

This clause applies only in the event that the goods ordered herein are to be used in whole or in part for the performance of government contracts and where the dollar value of said goods exceeds, or may in any one year exceed \$10,000. The Supplier will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era or other veteran as these categories are defined by the Department of Veteran Affairs and as otherwise implemented by the department of Labor (“Veterans”) in regard to any position for which the employee or applicant for employment is qualified. The Supplier agrees to take affirmative action to employ, advance in employment and otherwise treat Veterans without discrimination based upon their disability or veteran status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. **The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment.**

33. EMPLOYMENT OF HANDICAPPED.

This clause applies only in the event that the goods ordered herein are to be used in whole or in part of the performance of government contracts and where the dollar value of said goods exceeds \$2,500. The Supplier will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the

employee or applicant for employment is qualified. Supplier agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. **The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment.**

34. LIMITATION OF DAMAGES.

In no event shall Purchaser be liable for anticipated profits, costs of tooling or equipment, or for any incidental or consequential damages. Purchaser’s liability on any claim of any kind for any loss or damage arising out of or connected with or resulting from this agreement or from the performance or breach thereof shall, in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

35. INAPPLICABILITY OF COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OR TRADE.

No course of prior dealings between the parties and no usage of trade shall be relevant to

explain or supplement any term used in this Order. Acceptance or acquiescence in a course of performance rendered under this Order shall not be relevant to determine the meaning of this Order even though acquiescing party has knowledge of the nature of the performance and opportunity for objection.

36. SOFTWARE.

- a) **Ownership.** With respect to the software products if any, provided by Supplier, Purchaser and Supplier intend and agree that such software products are being licensed and not sold, and that the words “purchase,” “sold,” or similar or derivative words are understood and agreed to mean “license.” Supplier shall retain ownership of and title to all software products provided hereunder, notwithstanding anything to the contrary stated herein.
- b) **License.** Supplier hereby grants Purchaser a royalty- free, nonexclusive license to use, copy, operate, process and sublicense software products provided hereunder for Purchaser’s internal business purposes on the hardware products provided hereunder and to use, copy, operate, process and sublicense the related documentation for Purchaser’s internal business purposes.
- c) License Terminates when Purchaser’s lawful possessions of the hardware products hereunder ceases, provided affect sublicenses previously granted.

37. MANUFACTURER’S LOCATION.

While Supplier agrees that no changes may be made to a manufacturing location without Purchaser’s written approval, Supplier agrees to notify Purchaser in writing at least 30 days in advance of any change proposed to be made in accordance with this Agreement. If Purchaser, in its sole discretion, does not agree to the change proposed by Supplier, Supplier agrees to continue manufacturing at current location.

38. BUSINESS CONTINUITY.

At Purchaser’s request, Supplier will have and maintain a Business Continuity Program (BCP), including, but not limited to, plans, implementing procedures and/or standard operating procedures, training, drills and exercises that complies with federal, state and/or local regulatory requirements and/or recognized industry best practices. The BCP will be documented, auditable and certified by an office of Supplier and it will be made available to Purchaser. Supplier to provide Purchaser with primary contact information and secondary contact information within 30 calendar days after execution of this Agreement.

39. AUDIT.

At Purchaser’s request and upon reasonable prior written notice, Purchaser will have the right to inspect and audit during normal business hours. Supplier will cooperate with the audit, and will grant assistance and access to applicable records, materials and equipment. Purchaser will have the right to audit during the Term and for a period of one (1) year following the end of the Term.

40. CERTIFICATION REQUIREMENTS.

To ensure Suppliers respect and enforce our company standards, we include a clause within this Order governing our contractual relationship with Suppliers, which stipulates that our Suppliers must abide by our anti-slavery and human trafficking standards. Thus, as a condition of doing business with us, and as a means of self-certification, this Order reads: “1) Supplier represents that it complies with all applicable laws and regulations, including eradication of forced, indentured, involuntary or compulsory labor in its facilities, and requires its suppliers, including labor brokers and agencies, to do the same; 2) Supplier represents that its supply chain and materials incorporated into its products comply with national and international laws prohibiting slavery and human trafficking; and 3) Supplier agrees to treat workers with dignity and respect, provide them with a safe

work environment, conduct business in compliance with applicable environmental, labor and employment laws, and refrain from corrupt practices and engaging in human rights violations.”

41. SALE OF GOODS OUTSIDE THE UNITED STATES.

The rights and obligations of the Purchaser and Supplier shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG); rather, their rights and obligations shall be governed by the laws of the state of Colorado including its provisions of the Uniform Commercial Code.

42. WAIVER.

The waiver by any party to this Order of a breach of any term or provision of this Order shall not operate or be construed as a waiver of any subsequent breach by any party. Purchaser’s failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Purchaser’s waiver of any breach hereunder shall not thereafter waive any other terms, conditions, rights, or privileges.

43. BINDING EFFECT.

This Order shall be binding upon, and shall inure to the benefit of, the parties and their heirs, personal representatives, successors, and assigns, but neither party may assign this Order or any right or obligation hereunder to any person unless otherwise permitted herein. No assignment of this Order or of any right or obligation hereunder shall relieve the assignor of its obligations hereunder without the written consent of the other party.

44. SEVERABILITY.

If any provision of this Order is declared to be invalid, void or unenforceable a court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Order shall remain fully enforceable, and this Order shall be interpreted in all respects as if such provision were omitted.

45. MODIFICATION.

This Order may not be modified except by a writing signed by the party or parties to be burdened by the effects of the modification. Neither party shall be deemed to have waived any right or remedy under or with respect to this Order unless such waiver is expressed in a writing signed by such party. No waiver of any right or remedy under or with respect to this Order by a party on any occasion or in any circumstance shall be deemed to be a waiver of any other right or remedy on that occasion or in that circumstance nor a waiver of the same or of any other right or remedy on any other occasion or in any other circumstance.