

## General Terms and Conditions for the Purchase of Goods by Taoglas

### 1. Applicability.

a. These terms and conditions of sale (these "Terms") are the only terms which govern the purchase of the goods ("Goods") by Taoglas USA, Inc. 4851 Paramount Drive, San Diego, CA 92123, or the Taoglas entity identified in the Purchase Order ("Buyer") from the seller identified in the Purchase Order (as defined below) ("Seller") to which these Terms are attached or incorporated by reference.

b. The purchase order issued by Buyer ("Purchase Order") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

c. All terms and conditions contained in any prior or contemporaneous oral or written communication which are different from, or in addition to, the terms and conditions in these Terms are hereby rejected and shall not be binding on Buyer, whether or not they would materially alter these Terms. Notwithstanding anything herein to the contrary, if a written contract signed by authorized representatives of both parties in existence covering the sale/purchase of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

d. This Agreement shall begin on the date of acceptance by the Seller and shall continue, unless terminated earlier in accordance with these Terms or on agreement between Buyer and Seller.

2. **Delivery Date.** Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate these Terms immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and

reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

3. **Quantity.** Seller shall deliver the quantities of the Goods specified in the Purchase Order. If Seller delivers more or less than the quantity of Goods specified, without prior written consent from Buyer, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. **Delivery Location.** All Goods shall be delivered to the address specified in Purchase Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer.

5. **Shipping Terms.** Delivery shall be made in accordance with Purchase Order or as otherwise agreed by the parties. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the Goods to Buyer within 3 business days after Seller delivers the Goods to the transportation carrier. The Contract Reference Number must appear on all shipping documents, shipping labels, air waybill/bill of lading, invoices, correspondence, and any other documents pertaining to these Terms.

6. **Title and Risk of Loss.** Title to Goods shipped under any Purchase Order passes to Buyer upon the earliest to occur of (i) delivery of the Goods to Buyer, (ii) payment of any portion of the Price for such Goods by Buyer, (iii) Buyer's acceptance of the Goods and (iv) Seller's delivery of the Goods to the Delivery Location. Title will transfer to Buyer even if Seller has not been paid for such Goods, provided that Buyer will not be relieved of its obligation to pay for Goods in accordance with the terms hereof. Notwithstanding any agreement between Buyer and Seller concerning transfer of title or responsibility for shipping costs,

risk of loss to Goods shipped under any Purchase Order passes to Buyer upon receipt and acceptance by Buyer at the Delivery Location, and Buyer will not bear any risk of loss or damage with respect to Goods until Buyer's receipt and acceptance of such Goods is met in accordance with the terms hereof. As part of this process, Seller shall submit a delivery note to Buyer every time Seller delivers Goods to Buyer. Buyer shall sign on the delivery note and return a copy to Seller or its authorized third party representative.

**7. Packaging.** Seller shall properly pack, mark, and ship Goods as instructed by Buyer and otherwise in accordance with applicable Law and industry standards and shall provide Buyer with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Goods, the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number, and the country of origin.

**8. Ingredients and Materials Disclosure.** Upon Buyer's written request, Seller shall promptly provide to Buyer, in such form and detail as Buyer requests, a list of all ingredients and materials incorporated in the Goods, the amount of such ingredients and materials, and information concerning any changes in or additions to such ingredients and materials.

**9. Inspection and Rejection of Nonconforming Goods.** "Nonconforming Goods" means any goods received by Buyer from Seller that: (a) do not conform to the part number listed in the applicable Purchase Order; (b) do not fully conform to the specifications in any Purchase Order; (c) on visual inspection, Buyer determines are otherwise Defective; or (d) exceed the quantity of Goods ordered by Buyer pursuant to these Terms or any Purchase Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of these Terms. Goods are subject to Buyer's inspection and approval or rejection notwithstanding Buyer's prior receipt of or payment for the Goods. Buyer shall have a reasonable period of time, not to be less than ten (10) business days following delivery of the Goods to the Delivery Location ("**Inspection Period**"), to inspect all Goods received under these Terms and to inform Seller, in writing, of Buyer's rejection of any Nonconforming Goods. Buyer may return to Seller any or all units of rejected Goods that constitute Nonconforming Goods

because they exceed the quantity stated in these Terms or any Purchase Order. If Buyer rejects any other Nonconforming Goods, Buyer may elect to (a) require Seller, at Seller's sole cost, to repair or replace the rejected Goods at the location specified by Buyer (which may include Seller's location, Buyer's location or the location of a third party), (b) purchase similar goods from another source (and apply such purchases against Buyer's quantity requirements hereunder), (c) produce similar goods itself (and apply such production quantities against Buyer's quantity requirements hereunder), (d) repair the Goods itself or have a third party repair the Goods, (e) retain the rejected Goods; and (f) offer discounts to Buyer in addition to options (a) – (d), in each case without limiting the exercise by Buyer of any other rights available to Buyer under these Terms or pursuant to applicable Law. All returns of Nonconforming Goods to Seller are at Seller's sole risk and expense. Goods that are not rejected within the Inspection Period will be deemed to have been accepted by Buyer; provided, however, that Buyer's acceptance of any Goods will not be deemed to be a waiver or limitation of Seller's obligations pursuant to these Terms (or any breach thereof), including those obligations with respect to Seller's Product Warranty and Seller's duty to indemnify Buyer. Any Nonconforming Goods with defects that are hidden, undiscoverable or not obvious upon initial inspection and later discovered shall not be deemed to be a waiver or limitation of Buyer's rights to pursue all available remedies under these Terms as against Seller. If the later discovered defects of Nonconforming Goods are discovered within one year from the date of acceptance or another date as mutually agreed by the Parties, and the defects are caused due to the Seller's Nonconforming Goods or other breach of these Terms, Buyer may notify Seller and request that Seller replace the Goods within a reasonable period of time, repair the defects, and compensate Buyer for all related losses incurred. If Seller fails or is unable to repair or replace the Goods within forty-eight (48) hours after notification by Buyer, Buyer may conduct the repairs or find replacement Goods at Seller's expense. All expenses related to labor, expedited shipping, internal and external sorting, travel, part replacement costs, and other correction action costs associated with the Nonconforming Goods will be taken into account when calculating potential expenses. The Seller shall confirm inventory and remanufactured Goods and

respond regarding restocking status within 48 hours upon receipt of 8D corrective action report. The Seller shall also propose temporary countermeasures within 48 hours upon notice of nonconforming Goods and reply to complete 8D report within 5 business days. If the Seller fails to reply with the 8D report before 5 business days, Buyer may postpone payment for one (1) month and may postpone payment for two (2) months in the event of a ten (10) day delay of response by Seller. In the event Buyer determines during the inspection that Seller has shipped a quantity of Goods larger than the agreed upon amount placed in the Purchase Order, Seller shall retrieve the Goods at its own expense unless it receives written notice from Buyer that Buyer agrees to use or purchase such Goods. If Seller fails to retrieve the Goods within the timeframe agreed upon between Seller and Buyer, which shall be no later than 30 days, Buyer shall not be responsible for any loss, damage, deterioration of over shipped Goods and can dispose of said Goods after 30 days or other shorter agreed upon timeframe.

**10. Price.** Buyer shall purchase the Goods from Seller at the prices set forth in the Purchase Order, as it may be modified from time to time by agreement of the Parties (the "**Price**"). The Price includes all, and Seller is solely responsible for, all costs and expenses relating to packing, crating, boxing, transporting, loading, and unloading, customs, Taxes, tariffs and duties, insurance and any other similar financial contributions or obligations relating to the production, manufacture, sale, and delivery of the Goods. All Prices are firm and are not subject to increase for any reason, including changes in market conditions, increases in raw material, component, labor or overhead costs or because of labor disruptions or fluctuations in production volumes.

**11. Payment Terms.** Except for any amounts disputed by Buyer in good faith, Seller's accurate and correctly submitted invoices will be payable within sixty (60) days following the later of (a) Buyer's receipt of Seller's invoice or (b) Buyer's receipt of the applicable Goods. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may reasonably direct, of the absence of any Encumbrances on the Goods. Any payment by Buyer for Goods will not be deemed acceptance of the Goods or waive Buyer's right to inspect. Buyer will be entitled to any discounts allowable by Seller for

prompt payment even though Buyer is unable to make payment within the time limits set by Seller if such failure is due to Seller's actions or other circumstances or events beyond Buyer's reasonable control.

**12. Setoff.** To the fullest extent permitted by law, all amounts due from Buyer to Seller are net of any indebtedness of Seller to Buyer. In addition to any right of set-off, deduction or recoupment provided or allowed by Law, Buyer may, without notice to Seller, set off against, and deduct and recoup from, any amounts due or to become due from Buyer to Seller, any amounts due or to become due from Seller to Buyer, including for damages resulting from breaches by Seller of its obligations under these Terms or any other agreement between such parties. If an obligation of Seller is disputed, contingent or unliquidated, payment by Buyer of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. In the event of Seller's bankruptcy, if all of the contracts (including these Terms) between Buyer and Seller have not been promptly assumed by Seller (under applicable Law), Buyer may withhold payment to Seller for Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other losses is eliminated.

**13. Most Favored Customer.** Seller represents and warrants that the Prices set forth in the applicable Purchase Order is at least as low as the price charged by Seller to other buyers for similar volumes of the same Goods or similar goods. If at any time during the Term, Seller charges any other buyer a lower price for the same Goods or similar goods, Seller shall apply that price to all same or similar Goods under these Terms. If Seller fails to meet the lower price, Buyer may, at its option, in addition to all of its other rights under these Terms or at Law, terminate these Terms without liability pursuant to these Terms. The Parties shall reflect any adjustment to pricing under this Section in a new Purchase Order; provided, however, that, notwithstanding anything to the contrary contained, the execution and delivery of any such new Purchase Order by each of the Parties will not be a condition to the effectiveness of such price adjustment.

**14. No Right to Manufacture and Sell Goods or Similar Products to Other Parties.** Seller shall not

manufacture or sell to any Person other than Buyer or enter into any agreement with any Person other than Buyer related to the manufacture or sale of, the Goods or other goods or products that are similar to or competitive with the Goods. Seller shall not, at any time, use any of Buyer's Intellectual Property (including Foreground Intellectual Property Rights and Background Intellectual Property Rights) to manufacture or sell Goods or other goods or products that are similar to or competitive with the Goods to any other buyer. This Section will survive expiration or termination of these Terms. Seller shall not use Buyer's Intellectual Property to reverse engineer Buyer's Goods for a profit.

**15. Third Party Seller Provisions and Audits.**

Seller shall not entrust any part of its obligation of supplying Goods under any Purchase Order under these Terms to a third party without the prior written consent of Buyer. Under special circumstances Buyer may provide written consent to Seller to use a third party seller to supply raw materials and Goods in order to ensure consistent delivery and meeting timetables. The Third Party Seller shall meet the same obligations and be held by the same terms under these Terms as Seller. The Third Party Seller shall also submit to and pass an audit according to Seller's quality system meeting ISO9001/IATF16949 standards and keep relevant records. The records shall be provided to Buyer upon request. In the event that 1) three consecutive batches of raw materials purchased by Seller or the Third Party Seller are rejected by Buyer; 2) the yield rate of three consecutive batches in the manufacturing process is zero; 3) Buyers' customers make serious complaints regarding the Seller; 4) major abnormalities happen, or 5) the regular assessment of Seller is graded below level C (scored below 69 out of 100), Buyer may arrange temporary supervision and audit the manufacturing site of Seller or Third Party Seller, which neither shall refuse. The Seller bears joint liability and contractual performance responsibility with the Third Party Seller regarding the quality, quantity, delivery time, and warranty of the Products offered by the Third Party Seller. The Seller shall supervise and instruct the Third Party Seller at all times and ensure the Goods conform to the Specifications for the Purchase Orders. Seller shall sign quality control and environmental agreements that have the same obligations and effect as these Terms with the Third Party Seller. If the quality and

quantity of the Goods offered by the Third Party Seller do not conform to the Specifications of the Purchase Order, or the Goods are not delivered on time, and the Third Party Seller of the Seller does not make improvements within a period of time as requested by Buyer, Buyer has the right to refuse to accept the Goods provided by the Third Party Seller. The Seller shall be responsible for the remaining unshipped Goods and relevant contractual obligations in the Purchase Order between both parties. If the Seller fails to perform its unfinished contractual obligations and has not improved within the specified time as mentioned in the written notice from Buyer, Buyer may terminate the Purchase Order with the Seller and request all damage caused thereby.

**16. Quality.** Seller shall meet or exceed Buyer's quality standards for the Goods as adopted by Buyer from time to time, and which are provided by Buyer to Seller.

**17. Identification Management.** Seller shall conduct identification management of the Goods according to relevant regulations, including but not limited to, identifying and labeling Goods according to the method stipulated by Buyer when Seller purchases raw materials or parts of the Goods. If the specification, manufacturing process, manufacturing method, materials, machinery equipment, or factory location changes, the Seller shall identify and monitor the first Goods after the changes and propose engineering changes to the purchasing agent of Buyer. The Seller shall mark the manufacturing batch number of the Goods designated by Buyer to manage its production record and ensure the traceability of its sources, production quality records and relevant information.

**18. Manufacturing Process.** Unless other special reasons are agreed to by Buyer, the Seller shall submit manufacturing methods, design materials, management documents, other information requested by Buyer and quality standards certificates to Buyer. Seller warrants that the Goods to be delivered under each Purchase Order shall be manufactured using materials in accordance with Buyer's Specifications and that the materials shall be brand new without using any recycled materials. In order to confirm the implementation of production process and quality control system of the Goods, Seller agrees to allow

Buyer and Buyer's customers to enter Seller's production plant or factory.

**19. Protection Against Supply Interruptions.**

Seller shall, at Seller's sole cost and expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Goods to Buyer for not less than thirty (30) days during any foreseeable or anticipated event or circumstance that could interrupt or delay Seller's performance under these Terms, including any labor disruption, whether or not resulting from the expiration of Seller's labor contracts (and whether or not such occurrence constitutes a Force Majeure Event hereunder). Seller shall notify Buyer at least sixty (60) days before the termination or expiration of any collective bargaining or other labor agreement that relates to Seller's Personnel involved in the production or delivery of the Goods.

**Duty to Advise.** Seller shall promptly provide written Notice to Buyer of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under these Terms; (b) any delay in delivery of Goods; (c) any defects or quality problems relating to Goods; (d) any change in Control of Seller; (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to these Terms; or (f) any failure by Seller, or its subcontractors or common carriers, to comply with Law. "**Control**" (and with correlative meaning, the terms "Controlled by" and "under common Control with" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership or voting securities, by contract or otherwise. "**Person**" means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity. In addition, Seller shall promptly notify Buyer in writing of any change in Seller's authorized Representatives, insurance coverage or professional certifications.

**20. Tooling Orders.** Seller may not charge Buyer for the cost of manufacturing or procuring any Tooling or other materials used in the production and

sale of the Goods unless Buyer agrees in writing to reimburse Seller for Seller's actual reasonable costs of manufacturing or procuring such Tooling or other materials (a "**Reimbursement Authorization**"). "**Tooling**" means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Seller in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto. Payment for such Tooling or materials will be due only after (a) Buyer has successfully completed all testing of such Tooling or materials required by Buyer, which will be conducted at Seller's sole cost and expense, (b) Buyer has successfully conducted a tooling audit in accordance with its customer's requirements, and (c) Seller has provided to Buyer detailed invoices documenting the actual costs incurred by Seller for such Tooling or materials, including copies of any invoice issued to Seller by any third party with respect thereto, and any other information reasonably requested by Buyer with respect to such Tooling or materials (which may include CAD models and drawings). Buyer shall pay Seller only the actual cost of such Tooling or materials, not to exceed the authorized amount, if any, stated in the applicable Reimbursement Authorization. Buyer will own all Tooling.

**21. Warranties.** Seller warrants to Buyer that for a period of one year, or for such longer period as provided by Buyer to its customers or any end users, all Goods will: (a) be free from any defects in workmanship, material, and design; (b) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests, or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller

shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

**22. Inspection and Audit Rights.** Seller hereby grants to Buyer, and its authorized Representatives, access to Seller's premises (including Seller's manufacturing operations used in production of the Goods) and all pertinent documents and other information, whether stored in tangible or intangible form, including any books, records, and accounts, in any way related to Seller's performance under these Terms (including Sellers' processes and procedures), Goods, Bailed Property or any payment or other transaction occurring in connection with these Terms, for the purpose of auditing Seller's compliance with the terms of these Terms and any other agreements between Buyer and Seller, including Seller's charges for Goods, or inspecting or conducting an inventory of finished Goods, work-in-process or raw-material inventory or Bailed Property; provided that any physical inventory inspection may take place no more frequently than semi-annually. Seller agrees to cooperate fully with Buyer in connection with any such audit or inspection. Seller shall maintain, during the Term and for a period of five (5) years after the Term, complete and accurate books and records and any other financial information. Seller shall segregate its records and otherwise cooperate with Buyer so as to facilitate any audit by Buyer. Seller shall reimburse Buyer for all amounts associated with errors discovered during an audit. In addition, Seller shall reimburse Buyer for the amount of Buyer's reasonable costs and expenses incurred in conducting the audit if the results of such audit indicate that such discrepancy is greater than ten (10) percent of the total amount actually payable by Buyer for the period examined. If requested by Buyer, Seller shall use its best efforts to permit Buyer and its Representatives to obtain from subcontractors or other Sellers to Seller the information and permission to conduct the reviews specified with respect to Seller in this Section22

**23. Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions,

authorizations, consents, and permits that it needs to carry out its obligations under these Terms.

**24. Withdrawal or Recall of Goods.** If Buyer, any of Buyer's customers or any Governmental Authority determines that any Goods sold to Buyer are Defective and a recall campaign is necessary, Buyer will have the right to implement such recall campaign and return Defective Goods to Seller or destroy such Goods, as determined by Buyer in its reasonable discretion, at Seller's sole cost and risk. "**Defective Goods**" means goods shipped by Supplier to Buyer pursuant to this Agreement that are Defective. If a recall campaign is implemented, at Buyer's option and Seller's sole cost, Seller shall promptly replace any Defective Goods and provide such replacement Goods to Buyer or Buyer's designee. The foregoing will apply even if the warranty applicable to the Goods have expired. Seller will be liable for all of Buyer's costs associated with any recall campaign if such recall campaign is based upon a reasonable determination that the Goods fail to conform to the warranties set forth in these Terms. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a recall campaign is necessary. Seller shall maintain appropriate levels of recall insurance as identified in these Terms.

**25. General Indemnification.** Seller shall indemnify, defend, and hold harmless Buyer and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under these Terms and the cost of pursuing any insurance providers, incurred by Indemnified Party Indemnified Party (collectively, "**Losses**"), relating to any claim of a third party or Buyer arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct, or breach of these Terms. Seller shall not enter into any settlement without Buyer's or Indemnified Party's prior written consent.

**26. Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify, and hold

harmless Buyer and any Indemnified Party against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnified Party's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnified Party's prior written consent.

**27. Insurance.** For period of five (5) years from date of Delivery, Seller shall, at its own expense, maintain and carry in full force and effect, subject to appropriate levels of self-insurance, commercial general liability insurance (including product liability) in a sum no less than the equivalent of \$1 million USD for bodily injury and/or property damage, \$3 million USD for products/completed operations aggregate, \$3 million USD for general policy aggregate, \$5 million USD in product recall insurance, all-risk property insurance covering Bailed Property and all of Seller's Property, including Equipment, for its full replacement value, fire insurance policy with limits no less than \$3 million, and Employers' Liability insurance with limits not less than \$2 million USD aggregate and \$1 million USD per occurrence with financially sound and reputable insurers. Upon Buyer's reasonable request, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Buyer as an additional insured and loss payee. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy. Seller waives and Seller shall cause its insurers to waive, any right of subrogation or other recovery against Buyer, its Affiliates, and their insurers.

**28. Termination.** In addition to any remedies that may be provided under these Terms, Buyer may terminate these Terms with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Buyer

may terminate these Terms upon written notice to Seller. Termination due to a Force Majeure Event is subject to the provisions of Section 46. If Buyer terminates these Terms for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

**29. License of Seller's Background Intellectual Property Rights.** Seller grants to Buyer an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to grant sublicenses, to use Seller's Background Intellectual Property Rights to produce, use, sell and to obtain, from alternate sources, products and services similar to the Goods (including related systems and components) following the expiration or earlier termination of these Terms and in connection with Buyer's rights hereunder to purchase Goods from an alternative source at any time during the Term hereof.

**30. Intellectual Property.**

(a) "**Intellectual Property Rights**" means all industrial and other intellectual property rights comprising or relating to (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; and (f) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world. "**Trademarks**" means all rights in and to trademarks, service marks, trade dress, trade names, brand names, logos, symbols, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the

goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world. "**Trade Secrets**" means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein. "**Buyer's Intellectual Property**" means all Intellectual Property Rights owned by or licensed to Buyer, including all Foreground Intellectual Property Rights and any of Buyer's Background Intellectual Property Rights used in the design, production, and manufacturing of the Goods. "Foreground Intellectual Property Rights" means any and all of the Intellectual Property Rights developed with respect to, or for incorporation into, the Goods, that are either developed by Buyer alone, by Buyer and Seller jointly or by Seller alone as requested by Buyer in connection with these Terms. "Seller's Intellectual Property" means all Intellectual Property Rights owned by or licensed to Seller, including any of Seller's Background Intellectual Property Rights used in the design, production, and manufacturing of the Goods.

(b) Ownership. Each of the Parties acknowledges and agrees that; (a) each Party retains exclusive ownership of its Background Intellectual Property Rights; (b) Buyer does not transfer to Seller any of its Background Intellectual Property Rights, and Seller may not use any of Buyer's Background Intellectual Property Rights other than to produce and supply Goods to Buyer hereunder; (c) Seller does not transfer to Buyer any of Seller's Background Intellectual Property Rights, except that Seller grants to Buyer and its customers the right to resell Goods or incorporate Goods purchased from Seller into finished goods and to sell such finished goods to its customers; (d) all Foreground Intellectual Property Rights will be owned by Buyer; (e) Seller assigns to Buyer all of Seller's right, title and interest in and to all Foreground Intellectual Property Rights, and, to the extent that any Foreground Intellectual Property Rights are copyrightable works or works of authorship (including computer programs, technical specifications, documentation, and manuals), the Parties agree that such works are "works made for hire" for Buyer under the US Copyright Act and all

other international copyright laws; and Seller shall only use the Foreground Intellectual Property Rights to produce and supply Goods to Buyer; and Seller waives any claim against Buyer, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for infringement of any Intellectual Property Rights.

(c) Prohibited Acts. Each of the Parties shall not; (a) take any action that may interfere with the other Party's Intellectual Property Rights, including such other Party's ownership or exercise thereof; (b) challenge any right, title or interest of the other Party in such other Party's Intellectual Property Rights; (c) make any claim or take any action adverse to such other Party's ownership of its Intellectual Property Rights; (d) register or apply for registrations, anywhere in the world, the other Party's Trademarks or any other Trademark that is similar to such other Party's Trademarks or that incorporates such Trademarks in whole or in confusingly similar part; (e) use any mark, anywhere, that is confusingly similar to the other Party's Trademarks; (f) misappropriate any of the other Party's Trademarks for use as a domain name without such other Party's prior written consent; or (g) alter, obscure or remove any of the other Party's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under these Terms (including Goods), marketing materials or other materials.

**31. Confidential Information.** All non-public, confidential, or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with these Terms is confidential, solely for the use of performing these Terms and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b)



known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party. Any separate confidentiality agreement shall govern confidentiality between the parties and shall take precedence over this Section.

**32. Entire Agreement.** This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

**33. Survival.** Subject to the limitations and other provisions of these Terms: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of these Terms; and (b) Sections on Compliance with Laws, Confidentiality, Governing Law, Dispute Resolution of these Terms, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, or indicated as surviving termination, shall survive the expiration or earlier termination of these Terms.

**34. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications under these Terms (each, a "Notice", and with the correlative meaning "Notify") must be in writing and addressed to the other Party at the address on the Purchase Order (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

**35. Severability.** If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction; provided, however, that if any

fundamental term or provision of these Terms is invalid, illegal, or unenforceable, the remainder of these Terms shall be unenforceable. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify these Terms to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**36. Amendments.** No amendment to, or modification of, or rescission, termination, or discharge of these Terms is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of these Terms, and signed by an authorized representative of each Party.

**37. Waiver.** No waiver by any Party of any of the provisions of these Terms shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these Terms, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**38. Cumulative Remedies.** All rights and remedies provided in these Terms are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the foregoing, the Parties intend that, if Buyer terminates the Agreement in accordance with Section 28, Seller's sole and exclusive remedy is the right to payment for the Goods received and accepted.

**39. Assignment.** Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under these Terms without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer, or subcontract any

or all of its rights or obligations under these Terms without Seller's prior written consent.

**40. Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to these Terms and their respective permitted successors and permitted assigns.

**41. No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to these Terms and their respective permitted successors and assigns, and nothing in these Terms, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

**42. Dispute Resolutions.** Any dispute, controversy or claim arising out of or relating to these Terms, or the breach, termination or invalidity hereof (each, a "Dispute"), shall be submitted for negotiation and resolution to the Chief Operating Officer of Buyer of Seller (or to such other person of equivalent or superior position designated by Seller in a written Notice to Buyer) and the Chief Operating Officer of Buyer (or to such other person of equivalent or superior position designated by Buyer in a written Notice to Seller), by delivery of written Notice (each, a "Dispute Notice") from either of the Parties to the other Party. Such persons shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve any Dispute within ninety (90) days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of these Terms.

**43. Choice of Law.** This Agreement, including all exhibits, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to these Terms, are governed by, and construed in accordance with, the Laws of the State of California without regard to the conflict of laws provisions thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms (and which the Parties expressly exclude).

**44. Choice of Forum.** Each Party irrevocably and unconditionally agrees that it shall not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to these Terms, including all exhibits,

attachments and appendices attached hereto and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the courts of San Diego, California as the court of first instance. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such court and agrees to bring any such action, litigation or proceeding only in such court referred to in this section. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

**45. Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy that may arise under these Terms, including any exhibits, attachments, and appendices attached to these Terms, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to these Terms, including any exhibits, attachments, and appendices attached to these Terms, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that such other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such Party has considered the implications of this waiver, (c) such Party makes this waiver voluntarily, and (d) such Party has been induced to enter into these Terms by, among other things, the mutual waivers and certifications in this Section.

**46. Force Majeure.** Any delay or failure of either Party to perform its obligations under these Terms 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 may include natural disasters, embargoes, explosions, riots, wars or acts of terrorism) (each, a "Force Majeure Event"). Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or Seller actions or contract disputes will not excuse performance by Seller under this Section. 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. Such notice shall be given no later than 10 days following a 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 these Terms. During any Force Majeure Event, Buyer may, at its option (a) purchase Goods from other sources and reduce the quantities hereunder by such quantities 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 these Terms, (b) require Seller to deliver to Buyer all finished Goods, work in process or parts and materials produced or acquired for work under these Terms, 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 twenty (20) days. If the delay lasts more than such twenty-day period, or if Seller does not provide such adequate assurances, Buyer may immediately terminate these Terms without any liability to Seller. The rights granted to Seller with respect to excused delays under these Terms 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.

**47. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from these Terms.