



THERMON STANDARD TERMS & CONDITIONS OF PURCHASE FOR GOODS

1. ACCEPTANCE OF TERMS.

Seller agrees to comply with all terms set forth herein and in the purchase order, to which these terms, any amendments, supplements, specifications are attached and are expressly incorporated by reference (collectively, the “Order”). “Buyer” means the Thermon entity issuing the Order and “Seller” means the person, organization or entity to whom the Order is addressed. “Work” means the products purchased by Buyer from Seller. “Buyer Affiliate” shall mean any entity, including without limitation, an individual, corporation, company, partnership, and or limited liability company. Acknowledgement of this Order or start of the Work as per this Order shall be deemed acceptance of this Order. The terms of this Order take precedence over any alternative terms connected with this transaction unless such alternative terms are: i) part of a signed Master Supply Agreement, or ii) set forth on the face of the Order to which these terms are attached. In the event the terms are part of a signed Master Supply Agreement between the parties.

2. PRICES AND PAYMENTS.

2.1 Prices. Seller's price includes all costs associated with the Order. Any federal, provincial, local, sales, use, value added, excise or similar taxes, tariffs or the like imposed on the sale or use of the Work will not be included in Seller's price but will be separately identified on Seller's invoice.

2.2 Payment Terms. Unless otherwise stated on the face of this Order, payment from Buyer is due sixty (60) days from the date of the invoice.

2.3 Invoices. Seller's invoice shall include Buyer's Order number. Buyer shall be entitled to reject Seller's invoice if any information of the invoice does not match the Order. Any resulting delay in payment shall be Seller's responsibility. No extra charges of any kind will be allowed unless agreed in writing by Buyer or a Buyer Affiliate. Buyer is allowed to set-off at any time any and all amounts owing from Seller to Buyer or a Buyer Affiliate.

3. DRAWINGS AND DOCUMENTS.

Seller shall notify Buyer of any discrepancies, inconsistencies, errors and omissions in the specification, drawings or any other Order documents. Seller shall be responsible for obtaining Buyer's approval of the relevant drawings and other documents and shall submit such in a timely manner for Buyer's review. Seller shall be responsible for the correctness and completeness of the documents prepared by and on its behalf and shall not be relieved from its liability or obligations under the Order by reason of any approval, review, or examination of such documents, whether expressed or implied, by or on behalf of Buyer.

4. CHANGES AND SUSPENSION.

4.1 Changes. Buyer may at any time make changes within the general scope of this Order to: a) drawings, designs or specifications where the goods to be furnished are to be specially manufactured for Buyer; b) method of shipment or packing; c) place and time of delivery; d) amount of Buyer's furnished property; e) quality; f) quantity; or g) scope or schedule of goods. Seller shall make all changes requested by Buyer without delay or excuse.

4.2 Suspension of Work. Buyer may at any time, by notice to Seller, suspend performance of the Work for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend Work to the extent specified, properly caring for and protecting all Work in progress and materials, supplies and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials and equipment for the Work and shall take such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the suspended Work by written notice to the Seller.



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specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal.

4.3 Costs Related to Changes or Suspension. If any changes cause an increase or decrease in the cost of, or the time required for the performance of, any Work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing. Any claim by Seller for adjustment under this clause will be deemed waived unless asserted within five (5) days from Seller's receipt of the change or suspension notification, and may only include reasonable direct costs that will necessarily be incurred as a direct result of the change.

5. PACKING, PRESERVATION AND MARKING.

5.1 Packing, preservation and marking will be in accordance with the specification drawing or as specified on the Order, or if not specified, the best commercially accepted practice will be used, and at a minimum consistent with applicable law. In addition, Seller shall include the following information on each shipment under this Order: Buyer's Order number, case number, routing center number (if provided by Buyer's routing center), country of manufacture, destination shipping address, commodity description, gross/net weight in kilograms and pounds, dimensions in centimeters and inches, center of gravity for items greater than one (1) ton and precautionary marks (e.g., fragile, glass, air ride only, do not stack, etc.), loading hook/lifting points and chain/securing locations where applicable to avoid damage and improper handling.

5.2 Seller shall place all markings in a conspicuous location as legibly and permanently as the nature of the article or container will permit. All goods shall be packed in an appropriate manner, giving due consideration to the nature of the goods, with packaging suitable to protect the goods during transport from damage and otherwise to guarantee the integrity of the goods to destination. Goods that cannot be packed due to size or weight shall be loaded into suitable containers, pallets or crossbars thick enough to allow safe lifting and unloading. Vehicles that reach their destination

and present unloading difficulties will be sent back to their point of departure.

6. DELIVERY AND PASSAGE OF TITLE.

6.1 Delivery. Time is of the essence of this Order. Seller shall immediately inform Buyer in writing of any actual or anticipated delay to the delivery dates and shall promptly submit for approval its proposal to Buyer indicating remedial measures to address any delay. Seller shall at its own expense mitigate the delay in order to maintain the delivery dates. Seller shall provide complete and reliable information to Buyer on the status of its performance, including but not limited to Work progress, suborder status, material delivery dates, inspection/testing program, manufacturing, fabrication and assembly status on a regular basis as required by Buyer. If Seller fails to deliver the goods, documents, drawings or other deliverables as scheduled, Buyer may assess damages weekly equal to 1% of the Order value per week of up to a total of 10% of the Order value. The parties agree that such amounts, if assessed, are not an exclusive remedy for the agreed delay period; are a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based on circumstances existing at the time the Order was issued; and are to be assessed as liquidated damages and not as a penalty.

6.2 Delivery Terms. Unless otherwise stated in the purchase order or the Master Supply Agreement, delivery term shall be DDP Thermon facility. DDP shall be interpreted as per INCOTERMS 2020).

6.3 Passage of Title. Unless expressly agreed in writing otherwise, full and unrestricted title to the goods shall pass to Buyer if and when the goods are delivered in accordance with the delivery terms in the Order. Any payment made by Buyer shall be without prejudice to its right to reject goods that do not conform to the requirements in the Order and upon any such rejection the title to the rejected goods shall revert to Seller. Any and all of the goods which title has been vested in Buyer shall be registered by Seller as being held



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on behalf of Buyer and being the property of Buyer and such goods shall be segregated by Seller and shall be marked or otherwise identified as such. Seller warrants to Buyer full, complete and unrestricted title to the goods furnished by Seller under the Order. Seller shall waive all liens, charges, restriction, reservation, security interests, encumbrances, or retention and any other like interests of Seller or any third party for goods furnished under the Order. At Buyer's request, Seller shall provide evidence that the goods are free of such interests as stated.

6.4 Risk of Loss. Regardless of the transfer of title to the goods, Seller shall remain responsible for the risk of loss or damages with respect to the goods until the moment of delivery of compliant goods in accordance with the delivery terms and shall have insured the goods in its care, custody or control until compliant goods are delivered to Buyer. Should any loss or damage occur to the goods, prior to the transfer of risk of loss or damage, Seller shall either, at Buyer's option, immediately replace such goods with conforming goods under the Order at Seller's cost, or reimburse Buyer for the loss, including any necessary additional expenses and costs which may be incurred resulting from the loss or damage.

6.5 Goods Delivered to Third Party. If goods are to be delivered to a third party, each shipment shall include a detailed, complete bill of material/parts list that lists each component of the goods purchased by Buyer. Seller shall also include, in each item shipment, the complete bill of materials/parts list for such item and indicate which components of the bill of materials/parts list are included in the shipment as well as those bill of material/parts list components which are not included in the item shipment. This bill of material/parts list shall be included with the packing list for each shipment. When requested by Buyer, Seller must provide a packing list with values for each item.

6.6 Goods Crossing International Borders. If goods will cross an international border, Seller shall provide a commercial invoice as required for customs clearance. The invoice shall be in English, or destination country specific language, and shall include: contact names and phone numbers of persons at Buyer and Seller who have knowledge of the transaction;

Buyer's Order number; Buyer's Order line number; release number; part number and detailed description of the merchandise; unit purchase price in currency of the transaction; quantity; INCOTERM and named location; and country of origin of the goods. In addition, all goods or services provided by Buyer to Seller for the production of goods not included in the purchase price shall be separately identified on the invoice (i.e., consigned material, tooling, etc.). Each invoice shall also include the applicable Order number or other reference information for any consigned goods and shall identify any discounts or rebates from the base price used in determining the invoice value. Seller shall be responsible for all costs, penalties, fines or other charges that arise because of Seller's failure to provide accurate and adequate documentation.

6.7 Importer of Record and Drawback. If goods are to be delivered DDP (INCOTERMS 2020) to the destination country, Seller agrees that Buyer will not be a party to the importation of the goods, that the transaction(s) represented by this Order will be consummated after importation and that Seller will neither cause nor permit Buyer's name to be shown as "importer of record" on any customs declaration. Seller also confirms that it has Non-Resident importation rights, if necessary, into the destination country with knowledge of the necessary import laws. If Seller is the importer of record into the United States for any goods, including any component parts thereof, associated with this Order, Seller shall provide Buyer required documentation for Duty Drawback purposes which includes, but is not limited to, Customs Form 7552 entitled "Certificate of Delivery" properly executed as well as Customs Form 7501 "Entry Summary" and a copy of Seller's Invoice.

7. INSPECTION AND TESTING.

7.1 Documentation and Inspection. As aligned with ISO 9001:2015 – Quality Management System Requirements, Buyer and its authorized representatives as relevant parties to facilities and applicable documented information, on related products supplied by the Order, shall have the right, of access to such information. As such Buyer should be able to inspect and test the goods and any part thereof at all



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premises of Seller and other places where the goods are being manufactured before, upon or after delivery in accordance with the delivery terms in the Order, Seller shall give Buyer free of charge all opportunity and support to inspect and test.

7.2 Corrective Actions. Goods of any part thereof, that are found to be unsatisfactory, defective and/or not in conformance with the requirements of the Order during any inspection or testing, shall be promptly rectified or removed and re-tested at Seller's expense and shall not give Seller any entitlement for extension of time under the Order. Goods shall not be deemed to be accepted by Buyer or its end customer until determined satisfactory after the final inspection and testing. Any authorization, approval and release of or participation in inspections and tests, any acceptance or provision of instructions, directions, information, drawings, or data there under, any lack thereof and any failure to discover defects in the goods or failure to reject the goods in accordance with the Order, by Buyer, shall not relieve Seller of any of its guarantees, liabilities or obligations under the Order, nor shall be considered as an acceptance, express or implied, of the goods or any part thereof by Buyer.

7.3 Inspection and Testing Records. Seller shall provide and maintain an inspection, testing and process control system acceptable to Buyer to ensure compliance with this Order and shall keep complete, accurate records available to Buyer in accordance with Section 15. Acceptance of such system by Buyer shall not alter the obligations and liability of Seller under this Order.

8. WARRANTIES.

8.1 Warranty Period. Seller warrants to Buyer and its end-customers for a period of the later of twenty-four (24) months from being put into operation or thirty six (36) months from delivery (the "*Warranty Period*"), that the goods shall: (a) be free from all liens, encumbrances and defects of title, design, manufacture, Workmanship and material; (b) conform to descriptions, specifications, drawings, data and samples provided by or referred to by Buyer; (c) be new and of the best quality and be

merchantable, safe and fit for the intended purpose; (d) conform to any statements made on the container, labels or in advertisements; (e) conform in all respects with samples supplied by Seller and with any applicable quality manual, standards, procedures and requirements furnished by Buyer; (f) be adequately contained, packaged, marked and labeled; and, (g) comply with applicable international and industry codes and standards. Seller further warrants that the goods shall meet the performance requirements agreed upon.

8.2 Rejection. If any of the goods furnished pursuant to this Order are found to be unsatisfactory, defective or otherwise not in conformity with the requirements of this Order, any applicable drawings, descriptions, specifications, data and samples provided by or referred to by Buyer and specifications, whether such defect or non-conformity relates to scope provided by Seller or any one affiliated with Seller, then Buyer, in addition to any other rights, remedies and choices it may have by law, contract or at equity, and in addition to seeking recovery of any and all damages and costs emanating directly or indirectly therefrom, at its option and sole discretion and at Seller's expense may: a) require Seller to immediately repair or replace non-conforming goods with goods that conform to all requirements of this Order; b) take such actions as may be required to cure all defects and or bring the goods into conformity with all requirements of this Order, in which event, all related costs and expenses and other reasonable charges shall be Seller's responsibility; c) withhold total or partial payment; d) reject and return all or any portion of such goods; or e) rescind this Order without liability. For any repairs or replacements, Seller, at its sole cost and expense, shall perform any tests requested by Buyer to verify conformance to this Order.

8.3 Remedies. If Seller fails to meet its obligation to remedy such nonconformity or defect, Buyer may, in addition to termination of the Order in accordance with Section 9, decide to carry out or engage a third party to carry out the necessary Work of modification, repair or replacement at Seller's expense and deduct the actual costs and expenses incurred by Buyer from the contract price or recovered as



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a debt, at Buyer's option. If it is not possible to modify, repair, replace or re-install the goods to conform to the warranty set forth above, then Seller shall, at Buyer's option, either refund or credit to Buyer's account the purchase price of the goods within thirty (30) days of written demand from Buyer.

9. TERMINATION.

9.1 Termination for Convenience. Buyer may terminate all or any part of this Order at any time by written notice to Seller. Upon termination (other than due to Seller's insolvency or default including failure to comply with this Order), Buyer and Seller shall negotiate reasonable termination costs consistent with costs allowable under Section 5 and identified by Seller within thirty (30) days of Buyer's termination notice to Seller.

9.2 Termination for Default. Seller shall be deemed in default of this agreement and Buyer may terminate without liability the whole or any part of this Order if Seller: a) fails to perform within the time specified or any written extension granted by Buyer; b) fails to make progress which, in Buyer's reasonable judgment, endangers performance of this Order in accordance with its terms; or c) fails to comply with any of the terms of this Order. Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default from Buyer. Upon termination, Buyer may procure at Seller's expense and upon terms it deems appropriate, goods similar to those so terminated. Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar goods. Buyer's rights and remedies in this Section are in addition to any other rights and remedies provided by law or under this Order.

9.3 Termination for Insolvency/Prolonged Delay. If Seller ceases to conduct its operations in the normal course of business or fails to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought against Seller, a receiver for Seller is appointed or applied for, an assignment for the benefit of creditors is made or an excused delay (or the aggregate time of multiple

excused delays) lasts more than sixty (60) days, Buyer may immediately terminate this Order without liability, except for goods, delivered and accepted within a reasonable period after termination.

9.4 Obligations upon Termination. Upon expiration or after receipt of a notice of termination for any reason, Seller shall immediately: (1) stop Work as directed in the notice; (2) place no further subcontracts or purchase orders for materials, facilities hereunder, except as necessary to complete the continued portion of this Order; and (3) terminate all subcontracts to the extent they relate to Work terminated. After termination, Buyer shall have the right, title and interest in and to all completed Work and Work in process, including all designs, drawings, specifications, other documentation and materials required or produced in connection with such goods and all of Buyer's Confidential Information as defined below and shall immediately deliver such to Buyer.

10. BUYER'S PROPERTY.

10.1 All of Buyer's tangible and intangible property, including, but not limited to, information or data of any description, tools, materials, drawings, computer software, know-how, documents, trademarks, copyrights, equipment or material furnished to Seller by Buyer or specially paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain Buyer's property. Such property, while in Seller's custody or control, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Any consigned material, tooling or technology used in production of the goods shall be identified on the commercial or proforma invoice used for international shipments. Buyer hereby grants a license to Seller to use any information, drawings, specifications, computer software, know-how and other data furnished or paid for by Buyer hereunder for the sole purpose of



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performing this Order for Buyer. This license is non-assignable and is terminable with or without cause by Buyer at any time.

10.2 Buyer shall own exclusively all rights in ideas, inventions, Works of authorship, strategies, plans and data created in or resulting from Seller's performance under this Order, including all patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademark rights and other intellectual property rights. If by operation of law any such intellectual property is not owned in its entirety by Buyer automatically upon creation, then Seller agrees to transfer and assign to Buyer, and hereby transfers and assigns to Buyer, the entire right, title and interest throughout the world to such intellectual property. Seller further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such intellectual property to Buyer.

11. INDEMNITY AND INSURANCE.

11.1 *Indemnity.* Seller shall defend, indemnify, release and hold harmless Buyer, its directors, officers, employees, agents representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, or liabilities (including without limitation claims for personal injury or property or environmental damage, claims or damages payable to customers of Buyer, and any act or omission of Seller, its agents, employees, or subcontractors, except to the extent attributable to the sole and direct gross negligence of Buyer. Seller further agrees to indemnify Buyer for any attorneys' fees or other costs that Company incurs in the event that Company has to file a lawsuit to enforce any indemnity or additional insured provision of this Order.

11.2 *Insurance.* Seller shall maintain the following insurance: (i) Comprehensive General Liability in the minimum amount of EUR/USD \$2,000,000 combined single limit per occurrence with coverage for bodily injury/property damage, including coverage for contractual

liability insuring the liabilities assumed in this Order, products liability, contractors protective liability, where applicable, collapse or structural injury and or damage to underground utilities, where applicable, and coverage for damage to property in Seller's care, custody and control; (ii) Business Automobile Liability Insurance covering Comprehensive Automobile Liability covering bodily injury/property damage and all owned, hired and non-owned automotive equipment used in the performance of the Order in the amount of EUR/USD \$1,000,000 combined single limit each occurrence; (iii) Employers' Liability in the amount of EUR/USD \$2,000,000 each occurrence; (iv) Property Insurance covering the full value of all goods, rented or leased by Seller in connection with this Order; and (v) appropriate Workers' Compensation Insurance protecting Seller from all claims under any applicable Workers' Compensation and

11.3 *Occupational Disease Act.* Coverage similar to Workers' Compensation and Employers' Liability shall be obtained for each local employee outside the United States where Work in connection with this Order is performed. Buyer shall be named as additional insured under Seller's Comprehensive General Liability policy for any and all purposes arising out of or connected to this Order. Upon request, Seller shall furnish Buyer an endorsement showing that Buyer has been named an additional insured and a certificate of insurance completed by its insurance carrier(s) certifying that insurance coverages are in effect and will not be canceled or materially changed except ten (10) days after Buyer's written approval. Seller hereby waives subrogation. All insurance specified in this Section shall contain a waiver of subrogation in favor of Buyer, its Affiliates and their respective employees for all losses and damages covered by the insurances required in this Section, including coverage for damage to Buyer's property in Seller's care, custody or control.

12. ASSIGNMENT AND SUBCONTRACTING.

Seller may not assign or otherwise transfer its rights and obligations relating to this Order or any interest herein including payment, without Buyer's prior written consent. Seller shall not subcontract or delegate performance of all



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or any substantial part of the Work called for under this Order without Buyer's prior written consent.

13. COMPLIANCE.

13.1 *Compliance with Laws.* Seller represents, warrants, certifies and covenants that it will comply with all applicable laws including, but not limited to, any national, international, federal, state, provincial or local law, treaty, convention, protocol, common law, regulation, directive or ordinance and all lawful orders, including judicial orders, rules and regulations issued thereunder Seller further confirms that it is familiar with the Buyer's Vendor **Code of Conduct** (available at <https://d1io3yog0oux5.cloudfront.net/b04ddeb3bdf14c17eaec61652d875a8d/thermon/db/517/4629/file/F+Thermon+Vendor+Code+of+Conduct+%282023.11.15%29.pdf> (the "**Vendor Code of Conduct**") and has accepted its applicability and contents and will at all times be compliant with the Vendor Code of Conduct. Failure to comply with the Vendor Code of Conduct shall constitute a material breach of the Order by Seller. If Buyer reasonably believes that Seller has violated the Vendor Code of Conduct, Buyer shall have the right to immediately terminate the Order without penalty or any obligation to pay Buyer any additional compensation. Seller further agrees at Buyer's request to provide certificates relating to any applicable legal requirements or to update any and all of the certifications, representations and warranties under this Order in form and substance satisfactory to Buyer. Buyer shall have the right to audit all pertinent records of Seller, and to make reasonable inspections of Seller facilities, to verify compliance with this Section.

13.2 *Seller Conduct.* Seller shall establish, implement and maintain, to the satisfaction of Buyer, proportionate and effective compliance policies and procedures that include communication and employee training, internal review and audit, reporting on incidents or violations and disciplinary sanctioning in order to recognize, avoid, mitigate and remedy any non-compliance, misconduct or the appearance of impropriety while conducting any business activity in connection with the Order in compliance with the Vendor Code of Conduct.

13.3 *Seller Compliance Warranties.* Seller hereby represents and warrants that, as of the date of this Order, Seller, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Order and that Seller has taken reasonable measures to prevent its agents, representatives or any other third parties subject to its control or influence from doing so.

14. QUALITY, HEALTH, SAFETY AND ENVIRONMENT (QHSE)

14.1 *General.* With reasonable advance notice, Buyer and its authorized representatives shall have the right to carry out QHSE inspections and audits and investigate any incidents, at any time during the Order and at all premises of Seller and Seller shall afford all cooperation and full access which may be required to carry out such inspections, audits and investigations. Seller shall establish, implement and maintain proportionate, effective and properly documented policies and procedures with respect to quality, risk and security management and regarding the care for health and safety of the personnel, third parties, the public in general, and for the environment, in order to ensure compliance to the requirements under the Order and shall demonstrate such to the satisfaction of Buyer, which demonstration shall be accompanied with all the proper QHSE certifications.

14.2 *Breach of QHSE Obligations.* Any failure of Seller or any third party, which is contracted by Seller for the fulfillment of its Seller's obligations under the Order or otherwise in connection with the Order, to comply with the provisions of THE QHSE specifications in the Order, QHSE instructions given by Buyer or the applicable authorities, or with the applicable law in respect of QHSE, shall be considered a material breach of the material obligations under the Order.

15. CONFIDENTIAL INFORMATION.

The terms of this Order and any information or documentation, including without limitation Seller's plans,



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specifications, data, and drawings, regardless of media or form, disclosed by Buyer to Seller shall be deemed to be confidential to, and the property of, Buyer (the "*Confidential Information*"). Seller shall use such Confidential Information only as required to perform its obligations under this Order. Seller shall safeguard and hold in strict confidence all such Confidential Information. Seller shall not disclose any Confidential Information without Buyer's prior written consent. Seller agrees that it shall not, without Buyer's prior written consent in each instance, (a) use the name of Buyer or any trademark, trade device, service mark, symbol or logo owned by Buyer, or (b) represent that any product provided by Seller has been approved or endorsed by Buyer.

16. INTELLECTUAL PROPERTY INDEMNIFICATION.

Seller shall indemnify, defend and hold Buyer harmless from all costs and expenses related to any suit, claim or proceeding brought against Buyer or its customers based on a claim that any article or apparatus, or any part thereof constituting goods furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party. Buyer shall notify Seller promptly and give Seller authority, information, and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein and related attorney's fees and costs. If use of said article, apparatus, part, device or process is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part, process or device, or replace same with a non-infringing equivalent.

17. GOVERNING LAW AND JURISDICTION.

The validity, construction and performance of this Order shall be governed and construed in accordance with the laws of (i) the State of Texas if the Buyer is incorporated in the United States of America, (ii) the Province of Alberta, Canada, if the Buyer is incorporated in Canada, and (iii) the laws of the Buyer's jurisdiction of incorporation if the Buyer

is not incorporated under the laws of the United States of America or Canada. The federal and state courts located in Travis County, Texas shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Order if the Buyer is incorporated in the United States of America. The competent court in the Province of Alberta, Canada, shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Order if the Buyer is incorporated in Canada. The UN Convention on Contracts for the International Sales of Goods and the Hague Conventions Relating to a Uniform Law on the International Sales of Goods will not, for any reason, govern or apply to any transaction, performance or dispute under this Order.

18. DISPUTE RESOLUTION.

18.1 Buyer and Seller shall attempt amicably to resolve any controversy, dispute or difference arising out of this Order. If, after thirty (30) days following the receipt of notice of any such controversy, dispute or difference arising out of this Order, duly authorized management of Buyer and Seller are unable to reach an amicable agreement, then such controversy, dispute or difference shall be governed by either Section 18.2 or 18.3 below, depending on the jurisdiction of incorporation of Buyer.

18.2 If Buyer is incorporated under the laws of any state of the United States of America or any province of Canada, then either party may initiate litigation in accordance with Section 19 above.

18.3 If Buyer is incorporated under the laws of any jurisdiction outside of the United States of America and Canada, the parties agree to submit any controversy, dispute or difference arising out of this Order to settlement proceedings under the Alternative Dispute Resolution Rules (the "*ADR Rules*") of the International Chamber of Commerce ("*ICC*"). If the dispute has not been settled pursuant to the ADR Rules within forty-five (45) days following the filing of a request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the ICC (the "*ICC Rules*") by one or more arbitrators appointed in accordance with such ICC Rules. The place for arbitration



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shall be the location as may reasonably be determined by Buyer, and proceedings shall be conducted in the English language. The award shall be final and binding on both Buyer and Seller, and the parties hereby waive the right of appeal to any court for amendment or modification of the arbitrators' award.

19. WAIVER. No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Either party's failure to enforce any provisions hereof shall not be construed a waiver of a party's right thereafter to enforce each and every such provision.

20 AFTER TERMINATION OF ORDER.

Upon termination of this Order, for whatever reason, Seller shall stop the processing of Buyer personal data, unless instructed otherwise by Buyer, and these undertakings shall remain in force until such time as Seller no longer possesses Buyer personal data.

21. ENTIRE AGREEMENT.

This Order, with documents as are expressly incorporated by reference, is intended as a complete, exclusive and final expression of the parties' agreement with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties. This Order may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument. The invalidity, in whole or in part, of any of the foregoing articles or paragraphs of this Order shall not affect the remainder of such article or paragraphs or any other article or paragraphs of this Order, which shall continue in full force and effect. All provisions or obligations contained in this Order, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of an Order will survive and remain binding upon and for the benefit of the parties, their successors (including without limitation successors by merger) and permitted assigns including, without limitation, Sections 6, 7, 8, 9, 10, 11, 15, 16, 17, 18 and 19.