

Sekido Technology Corporation

TERMS AND CONDITIONS OF PURCHASE

- 1. ACCEPTANCE AND AMENDMENTS:** A Purchase Order accompanying these Terms and Conditions of Purchase (a "Purchase Order") constitutes an offer by Sekido Technology Corporation/STC Inc., and affiliates of the foregoing (with each such company referred to herein as "Buyer") to purchase from Seller the goods, materials and/or services referenced in a Purchase Order exclusively under these Terms and Conditions of Purchase ("Terms and Conditions"). The term "Purchase Order" includes any document (hard copy or electronic) or process used by Buyer to order and/or purchase goods, materials and/or services from Seller, including but not limited to: a one-time purchase order; a blanket or master purchase order; periodic shipment releases against a blanket or master purchase order; purchases charged to Buyer's credit card; and/or, periodic purchases/shipments per a vendor/supplier/Seller managed inventory system. Acceptance by Seller of a Purchase Order is expressly limited to these Terms and Conditions. No amendment, modification or waiver of any of these Terms and Conditions shall be effective against Buyer except as shall be set forth in writing signed by Buyer's authorized representative. Terms and/or conditions proposed by Seller in its quotation, acknowledgement, acceptance, invoice or otherwise which are additional to or different from these Terms and Conditions are objected to without further notification from Buyer and shall not become a part of a Purchase Order and shall not be binding upon Buyer. Buyer's acceptance of or payment for goods, materials and/or services provided by Seller shall not in any way constitute acceptance by Buyer of any counter terms, conditions or proposal submitted by Seller. All specifications, instructions, drawings and other data submitted by Buyer to Seller prior to the date of a Purchase Order concerning goods, materials and/or services purchased by Buyer from Seller are hereby made a part of the Purchase Order as if fully set forth herein.

A Purchase Order and these Terms and Conditions shall be deemed accepted by Seller and shall constitute the entire agreement between the parties with respect to the subject matter hereof upon any of the following: (a) Seller's acknowledgement of a Purchase Order; (b) Seller's commencement of performance under a Purchase Order; (c) Seller's acceptance of any payment under a Purchase Order; or (d) Seller's failure to deliver written notice of rejection to Buyer within ten (10) calendar days of receipt of a Purchase Order. A Purchase Order, these Term and Conditions, and a confidentiality or non-disclosure agreement between the parties that sets forth the handling of confidential information shared by Seller and Buyer merge all prior negotiations, supersede all prior agreements or understandings, and constitute the entire agreement between the Seller and Buyer with respect to the goods, materials and/or services covered by such Purchase Order and these Terms and Conditions.

- 2. PRICES INCLUDE TAXES AND PACKAGING:** Except as Buyer has otherwise provided in a Purchase Order, the prices stated in a Purchase Order for goods, materials and/or services include (i) all applicable federal, state, local and excise taxes, and duties; and (ii) the cost of packaging the goods or materials purchased in a manner suitable for shipment per good commercial practices or by the method specified or approved by Buyer. Seller shall not charge Buyer prices higher than those appearing in Buyer's Purchase Order. Payment terms by Buyer shall be net thirty (30) days from the date of receipt of goods or materials at Buyer's "ship to" address or Seller's date of invoice, whichever is the later date, unless otherwise agreed to in writing by Buyer. For services purchased by Buyer, payment terms are net thirty (30) days from the date of completion of services or Seller's date of invoice, whichever is the later date.
- 3. PAYMENT:** Seller must submit all invoices to Buyer in the form and format as specified by Buyer before any payment will be processed. All invoices must show Buyer's Purchase Order number, Seller's packing slip number, a description and count of the goods, materials and/or services that are the subject of the invoice and any freight authorization numbers. Provided invoices are submitted to Buyer as per the directions described in this Section 3, all undisputed invoices shall be paid net thirty (30) days (unless agreed upon by both parties) from the date of receipt of goods or materials at Buyer's "ship to" address or the date of the completion of the services or Seller's date of invoice, whichever is the later date, subject to Buyer's rights otherwise provided herein.
- 4. LICENSE OF SOFTWARE.** Seller hereby grants Buyer a nonexclusive, transferable and perpetual license to use any and all software that is embedded in the goods, materials and/or services covered by a Purchase Order and any and all software that is otherwise pre-installed by Seller on the goods, materials and/or services covered by a Purchase Order at the time of delivery, together with the documentation under each program element thereof.

5. **CHANGES:** Buyer reserves the right by written notice to Seller at any time prior to the delivery date of the goods, materials and/or services covered by a Purchase Order to make changes to the drawings, designs or specifications of such goods, materials and/or services ordered, the method of packing and shipping, the time, place or method of delivery, the quantity of goods, materials and/or services ordered or the work covered hereby. If any such changes affect Seller's cost and/or delivery schedule, Seller shall notify Buyer immediately, and, in the case of an increase in Seller's cost, within fourteen (14) calendar days of such notice. Seller shall submit to Buyer a written, detailed cost break-down comparing original requirements and costs to the changed requirements and costs. The parties will then discuss an equitable adjustment in a Purchase Order price, delivery schedule or both; however, no adjustment will be binding on Buyer unless evidenced by a change notice or revision to a Purchase Order signed by an authorized representative of Buyer. Nothing in this clause shall excuse Seller from proceeding with a Purchase Order as changed.
6. **PACKING, MARKING AND SHIPPING, PACKING SLIPS:** Seller shall pack, mark and ship all goods or materials in accordance with the requirements of a Purchase Order and good commercial practices. Damage to any goods or materials resulting from improper packaging will be charged to Seller. No additional charges will be allowed for containers, crating, boxing, bundling, dunnage, drayage, storage or transportation thereof, unless stated in a Purchase Order. Packing slips must accompany all shipments. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing slips. Buyer's Purchase Order number and Seller's packing slip number, description and count must appear on all invoices, packages, and bills of lading.
7. **DELIVERY:** Time is of the essence for deliveries, and Buyer requires 100% on-time delivery performance by Seller. Seller shall deliver in accordance with the quantities and delivery date(s) specified in a Purchase Order or, if a quantity or delivery date or dates are not specified in a Purchase Order itself, then only as authorized in a Purchase Order shipment release(s) issued by Buyer to Seller. Seller shall not deviate from the quantity and delivery date(s) specified on a Purchase Order or shipment release schedule unless written authorization is received by Seller from an authorized representative of Buyer. If Seller's delivery of the purchased goods, materials and/or services is not made in the quantities and at the times specified in a Purchase Order or shipment release, Buyer reserves the right without liability and in addition to any other rights and remedies, to cancel a Purchase Order or shipment release and to procure substitute goods, materials and/or services from other sources and charge Seller with any additional expenses and/or loss incurred including lost profits and special damages suffered by Buyer and/or Buyer's customer(s). Buyer shall have the right to reject any goods, materials and/or services which are tendered by Seller in advance of the date scheduled for delivery, to accept early delivery of goods, materials and/or services and defer payment until after the scheduled delivery date, or to accept early delivery of goods or materials and place such goods or materials in storage at Seller's expense until the scheduled delivery date. Buyer may return any overshipments to Seller at Seller's risk and expense. Items supplied per this purchase order must comply with Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS).
8. **FORCE MAJEURE:** Neither party shall be liable for delays or defaults due to causes beyond its control and without its fault or negligence, provided that Seller delivers written notice setting forth the cause of the anticipated delay immediately to Buyer whenever Seller has reason to believe that performance will not be made as scheduled. If Seller's delay or default is caused by a delay or default of Seller's subcontractor or supplier, such delay or default shall be excused only if it arose out of causes beyond the control of both Seller and the subcontractor or supplier and without the fault or negligence of either of them, and the goods, materials and/or services were not obtainable, at any cost, by Seller from other sources in sufficient time to meet the required delivery or performance schedule.
9. **REJECTION/REVOCAION:** Payment for any goods, materials and/or services or passage of title under a Purchase Order shall not constitute acceptance of the goods, materials and/or services thereof and Buyer and Buyer's customers reserve the right to inspect, at any time upon reasonable notice, all goods, materials and/or services purchased hereunder at Buyer's discretion and at Buyer's option and to reject nonconforming goods, materials and/or services or revoke acceptance of non-conforming goods, materials and/or services. At Buyer's option and at Seller's risk and expense, Buyer may return non-conforming goods or materials to Seller, require Seller to grant a full refund or credit to Buyer for non-conforming goods or materials, hold nonconforming goods or materials for disposition by Seller or rework nonconforming goods or materials to detect and correct nonconformities. In the case of non-conforming services, at Buyer's option and at Seller's risk and expense, Buyer may require Seller to re-perform the services, or require Seller to grant a full refund or credit to Buyer.

In the event of nonconforming goods, materials or services from Seller to Buyer, Seller shall, within seven (7) business days from notice thereof by Buyer, submit a written corrective action report to Buyer, including a

containment plan. Within fourteen (14) business days of notice from Buyer, Seller shall submit to Buyer a complete report which shall identify the root cause of the nonconformance, identify all affected goods, materials and/or services, and contain a complete corrective action plan, for Buyer's review and approval.

Buyer shall not be liable for failure to accept any part of the goods, materials and/or services purchased hereunder if such failure is the result of any cause beyond the control of Buyer, including, without limitation, fires, floods, acts of God, strikes, differences with employees, casualties, delays in transportation, inability to obtain necessary materials, utility services for machinery, total or partial shutdown of Buyer's facilities for any cause, or cancellation of orders from Buyer's customer(s). Acceptance of any part of the goods, materials and/or services ordered hereunder shall not bind Buyer to accept future shipments or waive its right to revoke acceptance of goods, materials and/or services previously delivered.

10. **SELLER'S CHANGE(S):** Seller acknowledges receipt and understanding of Buyer's specifications for the goods, materials and/or services Seller provides to Buyer. Under no circumstances may Seller, or Seller's suppliers and/or sub-contractors, make any change(s) to: the design, specifications, components, materials, manufacturing method, process, technology or equipment, the place of manufacture, packaging, labeling, software, environmental conditions of manufacture, quality assurance processes, quality management system, suppliers, sub-contractor(s), or source [individually and collectively "Seller's Change(s)"] of the goods, materials and/or services Seller provides to Buyer without Seller's written notification to Buyer at least ninety (90) days prior to the implementation of Seller's Change(s) and without the written approval of Buyer of Seller's Change(s). Any Seller's Change(s) Seller makes that is applicable or related to the goods, materials and/or services Seller provides to Buyer otherwise than in accordance with the provisions of this Section 10 shall constitute a material breach of a Purchase Order and these Terms & Conditions and shall entitle Buyer to immediately terminate a Purchase Order and/or make a claim for breach and for all costs, expenses and damages incurred by Buyer Entities related to an unapproved Seller's Change(s).
11. **SELLER'S WARRANTIES:** Seller warrants that all goods, materials and/or services provided to Buyer hereunder will conform to Buyer's instructions, specifications, drawings and data current as of the date of the most recent Purchase Order (unless otherwise specified in writing by Buyer) and to all industry standards unless otherwise specified in, or in conflict with, a Purchase Order, and will be merchantable, and free from defective materials or workmanship; and, will be fit for Buyer's purposes for a period of time not less than Buyer's customers' warranty periods for products and/or services in which Seller's goods, materials and/or services are incorporated. And, Seller acknowledges awareness and understanding of such warranty periods. Seller further warrants that the goods, materials and/or services furnished under a Purchase Order shall conform to all representations, affirmations, promises, descriptions, samples or models furnished by Seller to Buyer in connection with a Purchase Order unless provided otherwise in Buyer's specifications, written communication or directions to Seller. Seller covenants and warrants that the goods and/or materials and all of its parts and components are new and unused. Seller agrees that these warranties shall survive acceptance of the goods, materials and/or services. Seller further warrants that all services performed for or on behalf of Buyer will be performed in a competent, workmanlike manner, and shall be free from faults and defects. The warranties stated in this Section 11 are hereby extended to, and shall inure to the benefit of, Buyer and Buyer's affiliates, subsidiaries, successors and assigns and to Buyer's direct and indirect customers to whom the goods, materials and/or services provided hereunder, or products derived from or incorporating Seller's goods, materials and/or services, may be sold or transferred (Buyer and Buyer's affiliates, subsidiaries, successors, assigns and direct and indirect customers are jointly and severally "Buyer Entities").

In the event of breach of warranty by Seller, Buyer Entities shall be entitled to all rights and remedies available at law under a Purchase Order and under these Terms and Conditions, including, but not limited to, at Seller's expense: credit, replacement and/or repair of defective goods and/or materials and/or re-performance of services at Buyer's option; costs of removal of the goods and/or materials from any product, component, assembly or system into which the goods, materials and/or services may have been incorporated; and, replacement and reinstallation of non-defective goods and/or materials and the cost of return of the goods and/or materials, and/or the re-performance of the services. Seller shall also reimburse Buyer Entities for all indirect, incidental, consequential, exemplary and punitive damages caused by such nonconforming goods, materials and/or services including, but not limited to costs, expenses and losses incurred by Buyer Entities: (a) in inspecting, sorting, repairing or replacing such goods and/or materials, or procuring the required services elsewhere; (b) resulting from any production interruptions; (c) conducting any recall campaigns or other corrective actions, including the recall and replacement of non-conforming goods, materials and/or services and the products or systems in which such goods, materials and/or services have been incorporated, and all suspect lots of goods and/or materials that are included in the recall and replacement campaign; and, (d) claims

for personal injury or property damage. Seller's obligations pursuant to this Section 11 shall survive the completion of performance and the expiration or termination of a Purchase Order.

12. **BUYER'S PROPERTY:** Unless otherwise expressly provided in a Purchase Order, all tangible and intangible property furnished to Seller by Buyer Entities, or based on or derived from Buyer Entities' confidential or otherwise proprietary information, or produced or purchased by Seller at Buyer Entities' expense, for use in Seller's performance hereunder, and any replacement thereof, is and shall remain the exclusive property of Buyer Entities. For purposes of a Purchase Order and these Terms and Conditions, such property includes without limitation, dies, fixtures, molds, patterns, gauges, assembly or test equipment, information or similar items used in Seller's performance of a Purchase Order that are mainly acquired for Seller's performance hereunder or of such specialized nature that absent substantial alteration, their use is limited to the production of the goods or materials or the rendering of the services referenced in a Purchase Order. Absent a written agreement to the contrary, the amounts charged by Seller pursuant to a Purchase Order shall include payment for all such property. Hereinafter, any and all such property furnished to Seller by Buyer Entities, derived from Buyer entities' confidential information, or paid for by Buyer Entities is individually and collectively referred to as "Buyer's Property."

Seller shall not sell, encumber, transfer, assign, dispose of or modify Buyer's Property and shall not use Buyer's Property for any purpose other than in the performance of a Purchase Order without Buyer's prior written consent.

At all times while Buyer's Property is in Seller's custody or control, Buyer's Property shall be held at Seller's risk and fully insured at Seller's expense at replacement cost with loss payable to Buyer, and Seller shall provide routine maintenance at its expense.

Seller agrees that Buyer's Property shall remain personalty and shall not become a fixture attached to realty. Seller shall allow Buyer's representative to inspect Buyer's Property upon Seller's premises at any time upon reasonable notice. Seller hereby authorizes Buyer to file a form UCC-1 financing statement or its equivalent to enable Buyer to make its ownership rights in Buyer's Property of public record.

Upon completion, expiration or termination of a Purchase Order, Seller shall retain Buyer's Property at Seller's location and expense until disposition instructions are received from Buyer.

At any time upon the request of Buyer and in accordance with Buyer's instructions, Seller shall prepare for shipment, package and deliver Buyer's Property in good condition to Buyer's designated business location.

13. **INSURANCE:** Seller represents that it has and will maintain adequate insurance coverage to meet its liability obligations and agrees to furnish certificates of insurance showing that Seller has such insurance coverage. At a minimum, Seller will maintain and carry employer's liability insurance, workman's compensation insurance in statutory amounts, and general liability insurance, including but not limited to, public liability, property damage liability, product liability, completed operations liability, and contractual liability coverages, with such general liability insurance at not less than \$1,000,000.00 in coverage per occurrence.

Said certificates of insurance shall set forth the amount of coverage, the numbers of the policies and the dates of expiration. Compliance by Seller with the insurance requirements stated in this Section 13 shall not in any way affect or limit Seller's obligations as described in Section 11 above or duty to indemnify Buyer Entities under Section 14 below.

If a Purchase Order includes a purchase of goods or materials manufactured and/or services performed in whole or in part to Seller's designs or specifications, Seller agrees to provide Buyer, upon request, with a current certificate of errors and omissions and product liability insurance and the insurer's endorsement naming Buyer as an additional insured on Seller's policy.

14. **INDEMNIFICATION:** Seller agrees to indemnify, defend and hold Buyer Entities (including their officers, directors, shareholders, members, employees and agents) harmless from and against any and all losses, liabilities, lost profits, damages, claims, demands, suits, actions, proceedings, subrogation, costs and expenses, including, but not limited to, court costs and attorneys fees, incurred by Buyer Entities arising from or relating to goods or materials delivered or to services or labor performed by Seller pursuant to a Purchase Order, or breach of any of Seller's representations or obligations under a Purchase Order (hereinafter collectively referred to as "Claims") including Claims which are made by any third party including employees, workers, servants or agents of Seller or its subcontractors. Seller further agrees upon receipt of notification, to promptly assume full responsibility for the defense of any and all Claims which may be brought against Buyer Entities, and in such event, Seller shall not consummate any settlement without Buyer's prior written consent. If Seller performs any work on the premises of any of the Buyer Entities or utilizes any of the Buyer's Property, whether on or off the premises of any of the Buyer Entities, Seller shall indemnify and hold harmless Buyer Entities from and against any liabilities, claims, demands or expenses (including court costs and attorneys fees) for damages to the property or for injuries (including death) to any person, including without limitation any employees of Buyer Entities, or any other person arising from or in connection with Seller's performance of work or use of Buyer's Property. In the event "Buyer's Property", as defined in Section 12 hereof, is used by Seller in the performance of a Purchase Order, Buyer's Property shall be considered to be in the full custody and control of Seller during the period of use by Seller. Seller's obligations pursuant to this Section 14 shall survive the completion of performance and the expiration or termination of a Purchase Order.
15. **ACCESS TO FACILITIES, AUDIT AND INSPECTION:** If a Purchase Order (a) includes specifications, or (b) is for the procurement of either (i) goods and/or materials to be incorporated into Buyer's products or (ii) services to be used in the production of Buyer's products, then Seller's (and Seller's sub-tier suppliers and/or subcontractors who provide goods or services) plant, books and records pertinent or related to a Purchase Order (to the extent consistent with applicable laws and regulations) shall at all practical times be subject to review, inspection and audit by Buyer, its authorized representative and any authorized representative of Buyer Entities to the extent necessary to verify compliance with Buyer's specifications or to enable Buyer to comply with its obligations to its customer(s).
16. **BUYER'S REMEDIES:** Buyer Entities' remedies described herein shall be cumulative and in addition to any remedies allowed by law or in equity.
17. **CONFIDENTIALITY OBLIGATIONS AND PROPRIETARY RIGHTS:** All information (including materials that contain information) relating to a Purchase Order or to the goods, materials and/or services to be provided by Seller hereunder which have been disclosed to Seller by or on behalf of Buyer Entities or by any other entity with whom Buyer is doing business, or which will be developed in the course of Seller's performance under a Purchase Order specifically for Buyer Entities (collectively referred to as the "Information"), has been and will be received and held by Seller in confidence. Such Information includes, but is not limited to, Buyer Entities' trade secrets, drawings, plans, designs, specifications, manufacturing, research and development data, inventions, know-how, processes, procedures, technology, equipment, costs, suppliers, methods, sales, customer information and lists, financial data and business plans. Seller will not disclose the Information to others and will not use the Information for any purpose other than for the direct benefit of Buyer Entities. Seller shall treat the Information as confidential and as it would treat its own confidential and/or proprietary information, but not less than a reasonable degree of care. Seller will acquire no right in or to the Information, and Seller will promptly return the Information to Buyer and discontinue all use of the Information upon expiration or termination of a Purchase Order or at Buyer's written request. Seller will not disclose to Buyer Entities or use in the course and scope of Seller's performance hereunder any information of other entities that Seller does not have a lawful right to use or disclose. Seller will limit access to the Information to only those employees of Seller having a need to know such Information, and all such employees of Seller having access to the Information shall be made aware of and agree to the obligations under this Section 17.

Seller shall not have any obligations of confidentiality with respect to a specific portion of the Information if Seller can demonstrate that such portion of the Information:

- (a) was in the public domain at the time it was disclosed to Seller; or
- (b) entered the public domain subsequent to the time it was disclosed to Seller, through no fault of Seller including Seller's breach of any agreement with Buyer; or
- (c) was in Seller's possession free of any obligation of confidentiality at the time it was disclosed to Seller; or
- (d) was rightfully communicated to Seller free of any obligation of confidentiality subsequent to the time it was disclosed to Seller; or
- (e) was developed by employees or agents of Seller who had no access to Information of Buyer Entities, and Seller can demonstrate this development without access to the Information by written records.

In addition, Seller may disclose the Information, without violating the confidentiality obligations of this Section 17, to the extent the disclosure is required by a valid order of a court or other governmental body having competent jurisdiction, provided that Seller gives reasonable prior written notice to Buyer of such required disclosure, and makes a reasonable effort to assist Buyer in obtaining a protective order preventing or limiting the disclosure. In the event such a disclosure is compelled by a valid order, Seller will limit the disclosure to the least amount of the Information required.

Seller agrees that breach of these confidentiality obligations by Seller will cause Buyer Entities irreparable damage for which recovery of damages would be inadequate, and that Buyer Entities shall therefore be entitled to obtain timely injunctive relief, as well as such further relief as may be granted by a court other body of competent jurisdiction.

Any invention or development or copyrightable subject matter conceived, first reduced to writing, first reduced to practice or made by Seller, either solely or with others, in the course of Seller's performance under a Purchase Order is hereby assigned to Buyer if such invention or development or copyrightable subject matter (i) results from services for Buyer, or (ii) is made using Buyer's time, materials, facilities or Information. All such copyrightable subject matter will be a work made for hire. Seller will disclose such inventions, developments or copyrightable subject matter promptly to Buyer and will cooperate with Buyer during and after the term of a Purchase Order in filing and prosecuting any patent or copyright applications thereon and in evidencing ownership thereof by Buyer. Seller agrees that the payments made by Buyer to Seller pursuant to a Purchase Order are full and complete compensation for all obligations assumed by Seller hereunder, and the assignment of inventions or developments or copyrightable subject matter does not entitle Seller to any additional compensation.

The obligations of this Section 17 shall survive the completion of performance and expiration or termination of a Purchase Order.

18. **INDEMNITY FOR INFRINGEMENT:** Seller agrees upon receipt of notification, to promptly assume full responsibility for defending any claim, suit, action, or proceeding which may be brought against Buyer Entities which alleges that any goods, materials and/or services provided by Seller pursuant to a Purchase Order infringe any patent, trademark, copyright, trade secret or other proprietary right of any third party. Seller further agrees to indemnify Buyer Entities against any and all expenses, losses, royalties, lost profits and direct, indirect, consequential, incidental, special, exemplary and punitive damages, including court cost and attorneys' fees, resulting from such claim, suit, action or proceeding, including any settlement, decree or judgment entered therein. Buyer may at its option be represented and actively participate through its own counsel in any such claim, suit or proceeding, including any settlement, decree or judgment entered therein. Notwithstanding the foregoing, Seller shall have no obligation to defend or indemnify Buyer Entities with respect to any design-related claim for infringement of a patent, copyright, trademark or other proprietary right of a third party which claim is directed to goods or materials the designs for which were specified entirely and solely by Buyer, and delivered by Seller pursuant to Buyer's Purchase Order. Seller's obligations pursuant to this Section 18 shall survive the completion of performance and expiration or termination of a Purchase Order.
19. **TERMINATION FOR CONVENIENCE:** In addition to any other rights, Buyer further reserves the right to terminate Seller's performance under a Purchase Order in whole or in part at any time without cause by giving written notice of termination, whereupon Seller will cease performance on the date and to the extent specified in the notice and will take such actions as are reasonably necessary to protect Buyer's Property in Seller's possession until disposition instructions from Buyer have been received and executed by Seller. Seller will promptly advise Buyer of any items acquired in anticipation of completion of its performance and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding the disposition of such items. Seller will submit all claims resulting from such termination within thirty (30) calendar days of its receipt of such notice. Upon reasonable advance notice to Seller, Buyer shall have the right to

inspect Seller's records, facilities, work and materials relating to its performance or anticipated performance of a Purchase Order for the purpose of establishing the value of Seller's claims. Buyer will pay Seller, without duplication, the Purchase Order price for finished work accepted by Buyer and the actual, direct cost (but not including indirect costs or overhead) to Seller of work in progress and raw materials allocable to the terminated work based on Buyer's audit of Seller's records, using generally accepted accounting principles; however, the amount due Seller shall be reduced by the following:

- a. The market value or cost (whichever is higher) of any items used or disposed of by Seller without Buyer's consent;
- b. The agreed value of any items used or disposed of by Seller with the Buyer's consent; and
- c. The cost of any defective or destroyed goods or materials.

Buyer will make no payments for finished work, raw material or other items fabricated or procured by Seller in excess of the lesser of (i) that ordered; (ii) that for which Buyer has issued shipment releases as of the date of the notice of termination released; or (iii) thirty (30) calendar days supply. Notwithstanding the foregoing, payments under this Section 19 shall not exceed the price for the entire performance specified in a Purchase Order less payments that would otherwise be made to complete performance hereunder. Payment under this Section 19 will constitute Buyer's sole and exclusive liability in the event Buyer elects to terminate a Purchase Order without cause by notice. This Section 19 shall not apply to cancellation by Buyer under Section 20 below.

20. **CANCELLATION:** Buyer may cancel a Purchase Order and Seller's performance thereunder immediately without incurring liability to Seller (A) immediately upon (i) Seller's insolvency; (ii) filing of a voluntary petition in bankruptcy by Seller; (iii) filing of an involuntary petition in bankruptcy against Seller; (iv) appointment of a receiver or trustee for Seller; (v) execution or assignment for the benefit of creditors by Seller; or (vi) any comparable event to the foregoing; or, (B) upon thirty (30) calendar days written notice to Seller in the event of Seller's breach of contract or failure to perform.
21. **COMPLIANCE WITH LAWS, EXECUTIVE ORDERS AND REGULATIONS:** Seller warrants that the goods, materials and/or services supplied hereunder will have been produced or provided in compliance with, and Seller and Seller's sub-suppliers and/or subcontractors will comply with, all applicable laws, orders, rules, regulations, ordinances and conventions. Seller shall indemnify and hold Buyer Entities harmless from and against any loss, cost, damages, expense or liability claim (including attorneys fees and other costs of defense) arising from or relating to Seller's violation of this clause.

Seller agrees to promptly furnish to Buyer a list of any ingredient(s) determined by the U.S. EPA or any state EPA or other government agency, including European REACH and RoHS, as being potentially dangerous to human health or safety contained in any goods and/or materials covered under a Purchase Order, the amount of such ingredient(s) and information concerning any changes in such ingredient(s). Seller shall also complete and submit to Buyer, on a timely basis, the requested forms for confirmation of the presence or absence in Seller's goods or materials of Conflict Minerals as defined in The Dodd-Frank Wall Street Reform and Consumer Protection Act. Seller shall also take all necessary steps to ensure that Seller and its subcontractors and sub-suppliers do not include Conflict Minerals in their goods or materials or use such Conflict Minerals in any goods, materials and/or services provided to Buyer by Seller or Seller's subcontractors and sub-suppliers.

22. **ASSIGNMENT AND SUBCONTRACTING:** The obligations of Seller under a Purchase Order may not be assigned or subcontracted in whole or in part nor may any assignment of any money due or to become due hereunder be made by Seller without the prior written consent of Buyer and any prohibited assignment shall be null and void for all purposes. Such consent of Buyer shall not be unreasonably withheld.
23. **INDEPENDENT CONTRACTING PARTIES:** The relationship between Buyer and Seller shall be that of independent contracting parties. Nothing contained in a Purchase Order or these Terms and Conditions shall be construed as providing for the sharing of any costs, expenses, risks, or liabilities arising out of the other party's activities related to a Purchase Order and these Terms and Conditions. Seller shall not in any manner represent that it or its employees or agents are employees or agents of Buyer, and nothing contained in a Purchase Order and these Terms and Conditions shall be construed as authorizing Seller to create or assume any obligation or liability in the name of Buyer or subject Buyer to any obligation or liability. A Purchase Order and these Terms and Conditions shall not constitute, create, give effect to or otherwise imply a joint venture, pooling arrangement, partnership or formal business organization of any kind between Seller and Buyer. Nothing herein shall be construed as providing for the sharing of profit or losses arising out of the efforts of either or both parties.

24. **WAIVER/SEVERABILITY:** Buyer's failure to insist upon the performance of any term or condition of a Purchase Order or these Terms and Conditions or to exercise any right or remedy hereunder on one or more occasions shall not constitute a waiver or relinquishment of Buyer's right to demand future performance of such term or condition or to exercise such right or remedy in the future. If any term or portion of a Purchase Order or these Terms and Conditions is held to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term or portion shall be deemed reformed or deleted as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of a Purchase Order or these Terms and Conditions shall remain in full force and effect.
25. **NOTICE OF LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor dispute (involving Seller or any of Seller's sub-suppliers or subcontractors) may delay or is delaying Seller's timely performance under a Purchase Order, Seller shall immediately notify Buyer thereof giving Buyer all relevant information with respect to said dispute.
26. **PERIODIC REVISION:** From time to time, Buyer may revise these Terms & Conditions. Buyer will include a web-site location reference to Seller of such revised version with its effective date.