

## **POGO EQUIPMENT AND SUPPLY, INC. TERMS AND CONDITIONS OF PURCHASE**

1. **OFFER AND ACCEPTANCE.** These Terms and Conditions (“**Terms and Conditions**”) form an integral part of any purchase order (“**Purchase Order**”) to which they are attached or referenced. The Purchase Order is deemed to constitute an offer from the buyer (“**Buyer**”) to seller (“**Seller**”), each of whom is identified in the Purchase Order. Seller’s acceptance of all the provisions of the Terms and Conditions is deemed to be made by Seller without any additions, deletions or other modifications to said Terms and Conditions. Accordingly, any conflicting provision of any nature whatsoever, such as, but without limitation, any provision related to disclaimer of warranty or limitation of liability, contained in any of Seller’s documents (“**Seller’s Documents**”), whether delivered by Seller to Buyer, before, concurrent or after issuance by Buyer of the Purchase Order, which include, without limitation, any of Seller’s invoices, bills of lading, purchase confirmations, purchase orders or any other documents provided by Seller to Buyer relating, directly or indirectly, to the subject matter of the Purchase Order, irrespective of materiality, are hereby deemed objected to in advance by Buyer. Subject to the foregoing and without restricting the generality thereof, Seller shall be deemed to have accepted these Terms and Conditions of the Purchase Order under any of the following circumstances: (a) Seller’s execution and return of the Purchase Order to Buyer; (b) Seller’s acknowledgement to Buyer of Seller’s intention to sell to Buyer the goods subject of the Purchase Order and/or perform for Buyer the services in the Purchase Order; or (c) commencement or the delivery by Seller to Buyer of any of the goods or services in the Purchase Order.

**ALL BUYER ORDERS AND ACCEPTANCES BY THE SELLER ARE EXPRESSLY CONDITIONED UPON ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND IN ANY CONTRACTUAL SUPPLY OR PURCHASE AGREEMENT THAT MAY HAVE BEEN EXECUTED BY SELLER AND BUYER. ADDITIONAL OR DIFFERENT TERMS FROM THOSE CONTAINED IN THESE TERMS AND CONDITIONS OF PURCHASE OR IN ANY OTHER CONTRACTUAL SUPPLY OR PURCHASE AGREEMENT ARE EXPRESSLY REJECTED. COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE, TO THE EXTENT THEY MODIFY, ADD TO OR DETRACT FROM THESE TERMS AND CONDITIONS, SHALL NOT BE BINDING ON BUYER.**

Buyer and Seller agree that the terms and conditions printed herein are accepted in good faith by both parties as the controlling and final terms and conditions. Buyer and Seller further agree that, to the extent applicable, there should not be a “battle of forms” as described in Section 2-207 of the Uniform Commercial Code. Buyer’s commencement of performance is not to be construed as acceptance of any of Seller’s terms or conditions. Buyer may commence performance in reliance on Seller’s acceptance of these Terms and Conditions.

2. **REPRESENTATIONS.** Seller hereby represents to Buyer, as follows with respect to all goods and services in the Purchase Order and the execution of Seller’s obligations in respect thereof:

(a) **GENERAL.** That all goods or services of the Purchase Order, including their packaging and labeling, will: (i) conform to the descriptions, drawings, specifications and standards of Buyer as set out in the Purchase Order or as otherwise communicated by Buyer to

Seller; (ii) be of good material, quality, design and workmanship and free from all defects; (iii) be safe and fit for the ordinary purposes for which the goods are intended to be used by Buyer, including for any special uses known by Seller to be contemplated by Buyer; (iv) be merchantable and pass without objection in the trade; (v) run without variation and be of even kind, quality and quantity within each unit and among all units; (vi) be the same level of quality (or better) as any samples previously provided by Seller to Buyer; (vii) comply with all other provisions of the Purchase Order; and (viii) comply in all respects with all applicable federal, state, municipal and local laws, rules, regulations and ordinances existing at the time of delivery of any goods by Seller to Buyer. That all services in the Purchase Order will be performed by Seller for Buyer in compliance with: (i) all provisions of the Purchase Order; and (ii) performed with the professional skill and care aligned with industry standard for such services.

(b) TITLE; INFRINGEMENT. That: (i) the title conveyed to Buyer of all goods will be good and merchantable and its transfer to Buyer will be rightful and not interfere with the rights of any nature whatsoever of any third party; (ii) the goods will be delivered to Buyer free and clear of any security interest, lien, priority or encumbrance, including, without limitation, any mortgage; (iii) all of the goods delivered to Buyer and all services to be performed for Buyer, not provided or specified by Buyer, will not infringe, or otherwise conflict with any rights of any nature whatsoever of any third party, including, without limitation, any intellectual and industrial property rights, such as any patent, copyright, trademark, trade name or similar rights, nor violate the trade secrets of any third party; (iv) all works of every nature and kind (the "Works"), including, without limitation, reports, deliverables or other materials, that Seller or any of its affiliates, agents, contractors or alike create for or on behalf of Buyer, directly or indirectly, in the course of providing services of any nature or kind whatsoever, as well as all of the intellectual and industrial property rights relating to the Works, including, without limitation, intellectual and industrial property rights relating to copyrights, trademarks, patents and industrial designs, shall be and remain the exclusive and sole property of Buyer upon Buyer's payment in full of all applicable fees due to Seller under the Purchase Order; and (v) neither the ordinary purposes for which the goods will be used by Buyer nor any intended special uses known by Seller to be contemplated by Buyer will infringe or otherwise conflict with the rights of any nature whatsoever of any third party; and

(c) MISBRANDED, HAZARDOUS SUBSTANCES AND PROPOSITION 65 COMPLIANCE. That as of the time of delivery of any goods subject of the Purchase Order, all such goods (1) will not be adulterated, misbranded or unsafe, nor a good that may not be introduced into interstate commerce, within the meaning of any applicable federal, state, municipal and local laws, rules, regulations and ordinances existing at the time of such delivery, including, without limitation: (i) the Food, Drug and Cosmetics Act (USA) (the "Act"); (ii) the Federal Hazardous Materials Transportation Act (USA); and (iii) any other federal or state hazardous substances laws or any other similar laws or regulations; and (2) will comply with California's Safe Drinking Water and Toxic Enforcement Act (commonly known as Proposition 65).

The foregoing representations and warranties shall survive delivery of the goods and performance of the services subject of the Purchase Order, and shall not be deemed waived either by reason of Buyer's acceptance thereof or by payment therefor. The representations and warranties set forth in subparagraphs **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.** above are not intended to be

exclusive or to replace other representations and warranties of quality that may be given in connection with the purchase of any of the goods and services subject of the Purchase Order, whether written or oral, express or implied. No representation or warranty disclaimer, whether related to express or implied representations and warranties, including the warranties of merchantability and fitness for a particular purpose, or limitation as to damages or remedies, whether contained in printed conditions that may appear on any of Seller's Documents or otherwise, shall be valid or effective, unless and to the extent that such disclaimer or limitation is contained in a written instrument separate from any purported disclaimer or limitation and signed by a duly authorized representative of Buyer in advance of delivery of the goods and/or performance of the services subject of the Purchase Order. Seller agrees, upon request of Buyer, to provide Buyer with appropriate certificates showing compliance with all of the aforementioned representations and warranties.

3. **PRICES; TAXES.** The prices specified in the Purchase Order for the goods and services subject thereof include all costs and expenses to be paid by Buyer to Seller, including without limitation and as applicable, all costs and expenses for packaging, storage, loading, crating and transportation (including all related insurance), unless specifically designated otherwise in the Purchase Order. No costs and expenses in addition to these prices will be allowed or accepted by Buyer without the prior written consent of Buyer. Prices charged for the goods and services subject of the Purchase Order shall comply with all applicable federal, state, municipal and local laws, rules, regulations and ordinances existing at the time of delivery or performance thereof, respectively. However, the said prices exclude any applicable tax, assessment, tariff, duty or similar charge which is imposed by any governmental authority upon or on account of the goods and/or services in the Purchase Order, as applicable. In the event that the Purchase Order provides that Buyer shall bear any tax, assessment, tariff, duty or similar charge, Seller shall separately itemize such charge(s) on its invoice(s).

4. **PAYMENT TERMS.** Unless provided to the contrary in the Purchase Order, payment terms for all invoices undisputed by Buyer are net sixty (60) days. Buyer may make payments by check, ACH (Automated Clearing House) or electronic funds transfer. Seller will not issue any invoice to Buyer for any of the goods and services in the applicable Purchase Order, unless and until delivery of such goods to Buyer has been made and/or Seller has executed its obligations in respect of such services. Each of Seller's invoices shall furnish such details as Buyer may reasonably require from time to time.

5. **CHANGES.** Buyer may at any time by amendment or other writing, change the design (including drawings, materials, and specifications), processing, method of packing and shipping, quantity and the place of delivery of the goods or services. In such case, the time for performance and purchase price shall not change unless Seller notifies Buyer in writing, within ten (10) days of receipt of such change that an adjustment in purchase price or time for performance is necessary. If Buyer determines that any such change materially affects cost or timing, Buyer may equitably adjust the purchase price and delivery schedule(s). Seller shall not make changes to the Purchase Order or the scope of supply under the Purchase Order without Buyer's written

approval. In the event of any dispute under this section, Seller shall not be allowed to cease or delay performance under the Purchase Order.

6. **VOLUME PROJECTIONS.** Seller acknowledges that any estimates, forecasts or projections of future anticipated volume or quantity requirements for goods supplied by Buyer are for informational purposes only and are subject to change at any time.

7. **SHIPPING RELEASES.** If delivery dates for the goods are not specified on the face of the Purchase Order, Seller shall procure materials and fabricate, assemble, and ship goods only as authorized by Buyer. Deliveries will be made only in the quantities and on the dates specified by Buyer. Buyer may return over-shipments to Seller at Seller's risk and expense. Buyer may, from time to time, and with reasonable notice, change or temporarily suspend shipping schedules specified in the Purchase Order.

8. **PACKING, MARKING, AND SHIPPING.**

(a) Seller, at its own cost, shall pack and ship the goods in accordance with the requirements of Buyer and the carrier transporting such goods. Seller shall mark each package in accordance with Buyer's instructions in addition to any instructions by the carrier. Seller will reimburse Buyer for costs incurred as a result of improper packing, marking, routing, or shipping.

(b) Seller shall not charge separately for packing, marking, or shipping, unless Buyer authorizes such charges in writing, in which case Seller shall add such charges to its invoice as a separate item and attach supporting data.

9. **EXPORT/IMPORT.** For each international shipment, Seller shall include a price invoice with the master packing slip and upon request shall furnish all other required export/import documents. Export credits and customs drawbacks shall belong to Buyer or its designee. Upon request, Seller shall furnish in satisfactory form all documents required to obtain export credits and customs drawbacks or to satisfy any other government requirement, including certificates that identify the country of origin of the materials used in the goods and the value added in each country.

10. **DELIVERY OF GOODS.** All goods in the Purchase Order will be delivered by Seller to Buyer, delivered duties paid (DDP Incoterms 2010) Buyer's location indicated in the Purchase Order or as otherwise communicated by Buyer to Seller from time to time. Seller shall be responsible for any damage to Buyer's property during the delivery of any goods, including, but not limited to, whether such damage results from the negligence of Seller, any carrier entrusted to deliver the goods by the Seller or any breach of Seller's obligations under the Purchase Order. Delivery of any goods by Seller to Buyer shall not constitute acceptance by Buyer.

11. **PERFORMANCE OF SERVICES.** The Seller's services shall be performed in a manner commensurate with industry best practices for projects similar in size, scope and complexity of the goods and services covered under the Purchase Order and as expeditiously as is consistent with professional skill and care and the orderly progress of the Project (the "Standard of Care"). The services or goods ordered by Buyer shall be provided by Seller at the time and frequency identified in the Purchase Order, which may be adjusted as mutually agreed upon in writing by the parties. Seller shall be responsible for any damage to Buyer's property during the

performance of the services to the extent that such damage results from the negligence of Seller and/or any other person within the Seller's control, or hired by the Seller, or Seller's breach of any of the provisions of these Terms and Conditions or the Purchase Order. Seller will be responsible for ensuring that all the services to be rendered are performed in strict accordance with the provisions of the Terms and Conditions and the Purchase Order, including, without limitation, in compliance with Seller's representations and warranties contained herein.

12. **TIME IS OF THE ESSENCE.** In accordance with the Standard of Care, the goods and services in the Purchase Order must be received by Buyer within the time specified for delivery in the Purchase Order. In addition to its remedies contained in these Terms and Conditions, Buyer has the unconditional right to reject and return, without liability, any goods received later than the delivery date(s) specified in the Purchase Order or as otherwise communicated by Buyer to Seller from time to time, as well as the unconditional right to refuse, without liability, the performance of any services later than the delivery date(s) specified in the Purchase Order or as otherwise communicated by Buyer to Seller.

13. **INSPECTION; REVOCATION.** Buyer is under no duty to inspect goods on delivery or prior to Buyer's use. Retention, use or payment for such goods shall not constitute acceptance thereof and any goods found not to be in compliance with any of the provisions of the Purchase Order or these Terms and Conditions shall not impair any of Buyer's rights and remedies against Seller, whether such rights are granted to Buyer under these Terms and Conditions or exist in law or equity. Buyer may reject, or revoke its acceptance of, all or any part of the goods that do not conform to all the provisions of the Purchase Order. Rejected goods will be held at Seller's sole risk and expense for not more than thirty (30) days pending Seller's instructions and, if Seller requests return of such goods, Buyer shall return such goods to Seller at Seller's sole risk and expense. Rejected goods remaining in Buyer's possession after said thirty (30) days period may be sold for Seller's account, destroyed or otherwise disposed of by Buyer, at Buyer's sole discretion. Seller shall remit to Buyer the price paid by Buyer for any rejected goods plus all costs of transportation, shipping, unpacking, examining, repacking, reshipping, storing and other like expenses related thereto. If requested by Buyer, Seller agrees to promptly replace any rejected goods. Acceptance of any non-conforming goods by Buyer shall not be deemed a waiver of Buyer's right to reject future deliveries of non-conforming goods, seek indemnification hereunder or cancel any applicable Purchase Order.

14. **FORCE MAJEURE.** Buyer will not be liable to Seller for Buyer's failure to comply with any of the provisions of the Purchase Order or the Terms and Conditions if such failure is caused by any act of God or nature, war, riot, insurrection, civil disorder, embargo, fire, flood, epidemic or pandemic, order by any governmental entity which causes Buyer or Buyer's industry to operate in a diminished capacity for a given period of time, or accident (collectively, the "**Force Majeure Event**"), provided the Force Majeure Event does not result from the negligence or intentional act of Buyer and is outside of Buyer's reasonable control. Buyer, in invoking a Force Majeure Event, will give Seller prompt notice in writing of the occurrence of any Force Majeure Event, as well as take all reasonable commercial measures to eliminate its cause and recommence the performance of its obligations under the applicable Purchase Order as quickly as possible. If the Force Majeure Event continues for a period of more than thirty (30) days, then Buyer may terminate the Purchase Order with immediate effect upon written notice to Seller. For

greater certainty, but without restricting the generality of the foregoing, inability to pay a monetary sum shall not ever constitute a Force Majeure Event.

#### 15. PROPRIETARY RIGHTS.

(a) Except as otherwise stated in these Terms and Conditions or the Purchase Order, neither party transfers to the other party any patent, trade secret, trademark, copyright, or other intellectual property right owned by such party, whether registered or unregistered (“Intellectual Property Right”).

(b) Seller grants to Buyer and its affiliated companies a nonexclusive, royalty free, irrevocable license of Seller’s Intellectual Property Rights to: (i) use, sell, and modify goods and incorporate the goods into other products for use or sale; and (ii) in the case where Seller is unable or unwilling to perform or has breached these Terms and Conditions, to make goods or have goods made by an alternate source for the remaining duration of the applicable Purchase Order or as otherwise mutually agreed to in writing. Buyer may share with third parties any drawings or other information provided by or through Seller and related to the goods.

(c) All works of original authorship, ideas, inventions (whether patentable, patented, or not), know-how, processes, compilations of information, and other intellectual property created by Seller for which the development was paid for by Buyer (collectively, “Proprietary Materials”), and all Intellectual Property Rights in such Proprietary Materials, are owned by Buyer. Seller agrees that all such Proprietary Materials created by Supplier for which the development was paid for by Buyer are “works made for hire” as that term is used in connection with the U.S. Copyright Act. Seller shall be solely responsible for the defense or settlement of every claim of infringement of any present or future patent, copyright, industrial design right, or other proprietary right that results from the sale or use of the goods (i) alone, (ii) in combination by reason of their content, design, or structure, or (iii) in combination in accordance with Seller’s recommendations, or at Buyer’s option provide all reasonable assistance to Buyer in Buyer’s handling of such claims. Seller’s obligations shall apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing.

16. **CONFIDENTIALITY; NONDISCLOSURE.** Buyer and Seller agree that prior to and while these Terms and Conditions are in effect, confidential and/or proprietary information not generally available to the public (collectively, the “**Confidential Information**”) may have been and/or may be provided by one party (the “**Disclosing Party**”) to the other party and/or other persons related to or affiliated with the Seller or Buyer respectfully, as applicable (collectively, the “**Recipient**”) regarding the Disclosing Party and its related business. Such Confidential Information includes, but is not limited to: (i) all recipes, formulations, specifications, products, strategies, forecasts, projects, documents and financial information of the Disclosing Party, including sales figures, marketing information, computer records, software, trade secrets, secret processes, know-how, techniques, practices, systems, drawings, designs and concepts not reduced to material form; and (ii) intellectual property, images, text, video, real-time stream, digital documents or other material owned by or licensed to the Disclosing Party. The Recipient hereby agrees to maintain in confidence and not use or disclose to any person the Confidential Information, for any reason or purpose whatsoever other than in connection with the performance of the Purchase Order and except as may be expressly permitted in writing by the Disclosing Party.

These restrictions will not apply to the disclosure of Confidential Information by the Recipient which: (a) is required to be disclosed by any laws and regulations or order of any competent court, and for which the Disclosing Party, where not prohibited by any laws and regulations or court order, received as soon as reasonably possible prior written notice from the Recipient of such required disclosures; (b) was already known to the Recipient through lawful means prior to disclosure; (c) was in the public domain at the time it was disclosed or becomes publicly available to the Recipient after disclosure through lawful means; (d) was independently developed by the Recipient; or, (e) was disclosed to the Recipient by a third party who had the right to make disclosure. Subject to the above exceptions, the Recipient agrees that the obligations hereunder relating to the Confidential Information will continue after the termination of the Purchase Order. Upon termination of the Purchase Order, the Recipient will return all Confidential Information, to the Disclosing Party or shall destroy all copies of the Confidential Information, including any notes or other documents that contain or refer to the Confidential Information.

17. **BUYER'S PROPERTY.** If, in connection with the Purchase Order, Buyer ships to Seller or otherwise places in Seller's control or custody any property of Buyer for repair, inspection or any other reason, Seller assumes all responsibility for loss of or damage to Buyer's property when in Seller's control or custody.

18. **INDEMNITY.** Seller agrees, at its own cost and expense, to indemnify and hold harmless Buyer its directors, officers, shareholders, employees, and its successors and assigns from and against all damages, liabilities, claims, losses, costs, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Losses**"), directly arising out of a third party claim, suit, action, proceeding, investigation, and/or demand to the extent directly arising out of: (i) any defect or non-conformance of any of the goods and/or services with the provisions of the Purchase Order or these Terms and Conditions; (ii) any breach of the provisions of these Terms and Conditions or any express or implied representation or warranty by Seller or its employees, affiliates, contractors, or agents or (iii) any negligent act or omission, or willful misconduct, of Seller or its employees, affiliates, contractors, or agents. Buyer shall have the right to actively participate in the defense of any Losses and Seller shall not enter into any settlement agreement that may affect the rights and obligations of Buyer, without Buyer's prior written consent. Seller's indemnification obligations shall attach to all goods and services in the Purchase Order and shall survive the termination or cancellation of the Purchase Order and shall continue after delivery or performance of and payment for the goods and services.

19. **INSURANCE.** Seller agrees to maintain insurance policies at its own expense: (a) commercial general liability insurance on an occurrence basis, including a duty to defend, which must provide coverage for bodily injury and property damage with the following minimum limits of insurance which could be obtained on a primary coverage or combination of primary and excess/umbrella follow form coverage: (i) one million dollars (\$1,000,000) for each occurrence limit for each of property damage and bodily injury liability; and (ii) one million dollars (\$1,000,000) for products and completed operations liability. Such commercial general liability shall also include blanket contractual liability, broad form property damage, premises and operations, personal injury, independent contractors, and advertising liability; (b) automobile liability insurance, with minimum limits of one million dollars (\$1,000,000) for property damage and bodily injury per occurrence covering all non-owned, leased or hired vehicles; (c) workers' compensation insurance, covering all statutory benefits in the states of Seller's operations; and (d)

if Seller performs consulting services for Buyer, professional liability insurance, with minimum limits of one million dollars (\$1,000,000) per occurrence.

Seller's insurance shall also: (a) be placed with insurance companies rated at least A- by the latest ratings published by A.M. Best ; (b) all insurance policies must be written on a per occurrence basis; (c) upon execution of a Purchase Order, Seller shall deliver to Buyer a certificate, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above; (d) policy renewal dates must be noted, and new certificates must be provided, meeting the requirements noted in these Terms and Conditions, throughout the entire time that Seller provides goods and/or services to Buyer or any of its affiliates; (e) thirty (30) day prior notice of the cancellation of any of Seller's insurance policies will be provided to the Buyer by Seller's insurers; and (f) Buyer shall be added as an additional insured on the commercial general liability and automobile liability insurance policies. The insurance requirements set forth herein are minimum coverage requirements and are not to be construed in any way as a limitation on Seller's liability.

**20. REMEDIES; WAIVER; DISCLAIMERS; LIMITATIONS; SET-OFF.** Buyer shall have all the rights and remedies specified in these Terms and Conditions and any other remedy allowed by law or in equity. All such rights and remedies are cumulative. Buyer may deduct from any payment due to Seller or set-off against any claim by Seller, any amount which is due to Buyer or its affiliates by Seller for any reason whatsoever. Buyer's waiver of or failure to exercise any applicable right or remedy in response to a breach of any provisions in these Terms and Conditions by Seller shall not constitute a waiver of any subsequent breach of the same provision or any other provisions of these Terms and Conditions. No right or remedy of Buyer shall be deemed to have been waived, unless such waiver is in writing and signed by a duly authorized representative of Buyer. **IN NO EVENT WILL THE SELLER OR THE BUYER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**21. CANCELLATION; TERMINATION.** In addition to its other rights and remedies, Buyer reserves the right to cancel any Purchase Order or any part thereof at any time with notice to Seller, if Seller breaches any provision contained in these Terms and Conditions, including, without limitation, Seller's failure to meet the specified delivery or performance dates or Seller's delivery or performance of any non-conforming goods or services, respectively, and Buyer will not incur any liability to Seller due to such termination. Buyer reserves the right to terminate the Purchase Order without cause at any time prior to the delivery of the goods and services without the requirement of paying for any restocking fees or other costs associated with termination.

**22. COMPLIANCE WITH LAW; INDEPENDENT CONTRACTORS.** In the performance of either party's obligations contained in these Terms and Conditions, the parties shall comply with all applicable federal, state, municipal and local laws, rules, regulations and ordinances, governing the party's performance under the Purchase Order and these Terms and Conditions. Buyer and Seller are and will at all times remain independent contractors, and no principal/agent or partnership relationship shall exist or be created between them. Neither party



has any right or authority to bind the other to any obligations or responsibilities and neither will represent or hold itself out as an agent or representative of the other.

23. **ASSIGNMENT; INVALIDITY; GOVERNING LAW; VENUE; AMENDMENT.** Seller may not subcontract or delegate, nor may it assign or transfer to any third party or parties, any of its obligations under the Purchase Order without the prior written consent of Buyer. Buyer may assign the Purchase Order in whole or in part without the written consent of Seller. The invalidity of any provision of these Terms and Conditions shall not affect the validity of any other provisions thereof. These Terms and Conditions and the transactions in connection therewith shall be governed by and construed and enforced exclusively in accordance with the laws of the State of Ohio, without regards to principles of conflicts of law, and specifically excluding the United Nations Convention on Contracts for the International Sale of Goods and the application of any other uniform civil or conflict of law rules created by intergovernmental or inter-State Conventions or Treaties or multi-lateral pacts. In the event any action at law, suit in equity or judicial proceedings arises directly, indirectly or otherwise in connection with the subject matter of these Terms and Conditions, such action, suit or proceeding shall be brought before and litigated solely in the courts of Hamilton County, Ohio. **Seller waives its right to a jury trial in any court action arising between the parties, whether under any Purchase Order or these Terms and Conditions and the Seller's agreement to waive its right to a jury trial will be binding on its successors and assigns.** These Terms and Conditions cannot be changed, modified or superseded, except by written instrument signed by a duly authorized representative of Buyer.

24. **NOTICES.** Any notices or other communication (other than invoices or payments) required or permitted to be given to Buyer or Seller shall be in writing, personally delivered, sent electronically or sent by a nationally recognized overnight courier service company to the addresses set out in the Purchase Order. Such notice shall be deemed served at the time delivered or, if mailed, three (3) business days after the date mailed.

25. **ENTIRE AGREEMENT.** Except if confirmed pursuant to a separate written agreement signed between the parties covering the same subject matter of the Purchase Order and specifically superseding these Terms and Conditions, these Terms and Conditions constitute the entire agreement between Buyer and Seller relating to the subject matter contemplated herein and supersedes all previous communications, representations and agreements, whether oral or written, between the parties.