



REVISION #: R250123

Standard Terms and conditions

1. **Agreement.** These Standard Terms and Conditions (“**Agreement**”) constitute a binding agreement between Forge Nano, Inc. of 12300 Grant St, Thornton, CO 80241, USA (“**Company**” or “**Seller**”) and you or the legal entity you represent (“**Client**” or “**Buyer**”). The seller and/or buyer are collectively the **Parties** or individually the **Party**.

2. **Scope**

2.1. In this Agreement “**Services**” means the installation of the Equipment and any training provided with respect to the Equipment; “**Equipment**” means hardware, software, equipment, other tangible items, machinery and parts (or any of them) and consists of Standard Equipment and Non-Standard Equipment; “**Standard Equipment**” means Equipment described in the Seller’s published catalogue; and “**Non-Standard Equipment**” means Standard Equipment which has been adapted or built to Buyer’s requirements or designs.

2.2. The Agreement applies to and is deemed to be incorporated into all contracts for Equipment and Services, and all descriptions, quotations, proposals, offers, acknowledgements, acceptances, orders and sales (collectively, “**Purchase Orders**”) are subject to and shall be governed exclusively by the Agreement. No Purchase Order shall modify any provision of this Agreement except to describe more fully the Equipment and Services required or to include information specific to that order and to that order only. If the terms of any Purchase Order are inconsistent with the terms of this Agreement, this Agreement shall control, unless agreed upon between the Parties. The Contract shall constitute the agreement between Seller and Buyer and shall supersede any prior, contemporaneous, or future communications, promises, or negotiations regarding the Purchase Order subject matter.

2.3. No modification to this Agreement shall be valid unless in writing and duly signed by a person authorized by Seller. Without limiting the foregoing, this Agreement shall not be supplemented by any trade usage, course of prior dealings or acquiescence in any course of performance.

3. **Price and Taxes**

3.1. Prices quoted for (a) Services and Standard Equipment remain valid for thirty (30) days unless otherwise specified in the Purchase Order; and (b) Non-Standard Equipment are



estimates and may be increased without notice in the event of increases in the Seller's costs of: (i) labor and materials; (ii) compliance with laws and regulations including those concerning hazardous materials; (iii) handling, delivery, shipping and transport; or (iv) energy or fuel; or (v) any other costs of supply or of Seller's performance arising between the time of quotation and the time of supply.

3.2. Prices quoted are exclusive of all applicable taxes, including but not limited to, any value added tax ("**VAT**"), Federal, state and/or municipal excise, sales and/or use taxes, levies and duties of any nature whatsoever ("**Taxes**") applicable to the Equipment or Services.

3.3. Buyer is responsible for all VAT, duties and other Taxes associated with the Equipment and Services, except for any taxes based on Seller's income. All Taxes shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the relevant taxing authority; however, Seller may elect to pay any such Taxes directly, in which event Buyer shall repay Seller promptly after invoicing therefor.

3.4. Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller shall be made without Seller's prior, express written approval.

4. Acceptance

4.1. A Purchase Order is for the purchase of Equipment and Services. Buyer shall deliver a Purchase Order to Seller, which Purchase Order shall be deemed an offer to purchase, which Seller may accept or reject in its sole discretion. Seller's acceptance of an offer to purchase is binding on Seller only if made by written instrument delivered to Buyer confirming the Equipment and Services to be purchased and detailing the payments required for such Equipment or Services. Each Purchase Order is expressly conditioned upon Buyer's assent to each and all of the terms of this Agreement, and Buyer's acceptance is limited as such, and Seller rejects any additional or inconsistent terms and conditions set forth in the Purchase Order.

4.2. Acceptance of a Purchase Order will normally be advised by Seller within thirty (30) days of receipt. No obligation shall be binding on Seller unless and until the Purchase Order is accepted by Seller in writing or if an earlier Service Agreement dictates otherwise between the Buyer and Seller.

4.3. Once accepted by Seller, the Purchase Order and this Agreement shall constitute the contract ("**Contract**") between Buyer and Seller for Equipment and/or Services.

4.4. This Agreement shall not be altered, supplemented, or amended by the use of



any additional document(s) or Purchase Orders and the Agreement shall prevail over any terms and conditions set forth in Buyer's form of Purchase Order, unless specified in writing and agreed upon between the Parties.

5. Payment

5.1. All amounts are stated and payments are to be made in US Dollars unless otherwise agreed in writing.

5.2. If Buyer specifies a currency other than US Dollars, Seller reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the currency of the quotation and US Dollars arising between the time of quotation and acceptance of the Purchase Order.

5.3. Buyer shall pay Seller a down payment equal to 50% of the full amount of the Equipment and Services as set forth in the acceptance by Seller of a Purchase Order. Following receipt of the down payment, the Seller will then begin the design, procurement, and construction of the Equipment.

5.4. Upon receipt of the required down payment, Seller will proceed with the provision of Services or preparation of Equipment as outlined in the applicable Purchase Order, and Seller shall have no obligation to begin sourcing materials for the Equipment until such down payment is received. Buyer understands that any delay in making the down payment will extend the timing for delivery of the Equipment.

5.5. The remaining purchase price for the Equipment shall be paid as follows:

- a) 40% of the full amount shall be paid to the Seller following the Equipment passing the factory acceptance test (FAT) performed by the Seller and will be due prior to shipment of the Equipment.
- b) Final payment of the remaining 10% shall be paid to Seller at the earlier of: (i) completion of installation of the Equipment and training at the Buyer facility, or (ii) 30 days after Buyer is notified the Equipment have passed the factory acceptance test (FAT) and are ready for delivery.

5.6. Seller shall have no obligation to begin fulfillment of the Purchase Order until the initial 50% down payment is made and shall have no obligation to ship the Equipment until the 40% payment has been made. With respect to any payments due pursuant to this Contract, such payments must be made to Seller within thirty (30) days of the date of invoice, unless otherwise agreed in writing.



5.7. Seller may require alternative payment terms with respect to any Non-Standard Equipment, which terms shall be set forth in the Seller's acceptance of the Purchase Order.

5.8. All Purchase Orders are subject to credit approval before shipment. If, in Seller's judgement, Buyer's financial condition does not, at any time, justify payment terms as previously specified, Seller may cancel or suspend any unfulfilled Contract. In such circumstances Seller may permit Buyer, upon written notice, to pre-pay for any Equipment or Services.

5.9. Seller may require Equipment to be delivered to a location outside the United States to be covered by a confirmed irrevocable letter of credit drawn on a bank acceptable to Seller in a form acceptable to Seller.

5.10. If any payment is overdue Seller shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Buyer without notice and/or to charge interest on any amount overdue at the applicable statutory default interest rate or, if none, at the rate of twelve percent (12%) per annum compounding daily (or, if less, the greatest amount permitted by law).

5.11. If, despite any default by Buyer, Seller elects to continue to make shipments of Equipment, Seller's action in so doing shall not constitute Seller's waiver of any default by Buyer or in any way prejudice Seller's legal remedies for such default.

6. Limited Warranty for Services

Company warrants that the Services are performed by personnel possessing competency consistent with applicable industry standards. NO OTHER REPRESENTATIONS ARE MADE WITH RESPECT TO THE SERVICES, EXPRESS OR IMPLIED, AND NO WARRANTY OR GUARANTEE IS INCLUDED OR INTENDED IN THIS AGREEMENT, OR IN ANY REPORT, OPINION, DELIVERABLE, WORK PRODUCT, NUMBER OF COATING CYCLES PERFORMED, DOCUMENT OR OTHERWISE. FURTHERMORE, NO GUARANTEE IS MADE AS TO THE EFFICACY OR VALUE OF ANY SERVICES PERFORMED. THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY COMPANY CONCERNING THE SERVICES AND RELATED WORK PRODUCT. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

7. Intellectual Rights and Property

7.1. To the extent that the Client and Company have previously entered into a written confidentiality, non-disclosure and/or non-use agreement, the Parties hereby agree that all



communications and work product delivered by Company under the Purchase Order, this Agreement, the Contract, or the Company Services constitute and/or contain confidential and proprietary information of Company and shall be subject to such previous agreement.

7.2. In addition to any previous confidentiality agreement, if any, Company's confidential and proprietary information shall not be disclosed by Client to any third-party and shall only be used solely by Client for purposes of this Contract.

7.3. Sample materials coating services and any data, items, materials, work products, inventions, developments, equipment (including particle ALD reactor equipment), designs, processes or technology that is subject to any patent, copyright, trade secret, or any other intellectual property or proprietary rights protection of any kind anywhere in the world (including any derivative works rights thereto) shall be collectively referred to herein as "**IP Rights.**"

7.4. Ownership of all IP Rights in any sample materials coating services or other services, data, items, materials, work product, deliverables, inventions, developments, equipment (including particle ALD reactor equipment), designs, processes or technology owned or created by Company and licensed to Client at any time under any work plan, Contract, Purchase Order, or this Agreement (including without limitation with respect to particle ALD) whether within or without the scope of the Contract, Purchase Order, or Agreement, and whether developed by Company alone or with others, and any subsequent modifications, improvements or derivative works to same (collectively, "**Company IP**") shall remain owned by and vest exclusively with Company.

7.5. Notwithstanding the foregoing, upon delivery of the Services or Equipment and provided that payment in full has been received by the Company, the Company hereby grants to Client a limited, non-exclusive and non-transferable license to use the Company IP as solely contained or embedded in any work product or deliverable delivered to Client hereunder and solely for the purpose of either its internal research and/or its use with respect to Client's products.

7.6. For the avoidance of doubt, Client may not sell, distribute or otherwise commercialize any Company IP unless and until a separate written agreement is executed by the Parties granting such rights to Client. Unless otherwise agreed to in writing signed by the Parties, none of the Company IP contained in any deliverables or work product provided hereunder constitute works made for hire and Company shall remain the exclusive owner of all Company IP. Client shall not decompile, reverse engineer, disassemble, or otherwise attempt to rebuild or recreate the Company IP.

7.7. Seller shall retain all right, title and interest in and to, and except as expressly provided, possession of, any know-how, technical information, drawings, specifications or documents, ideas, concepts, methods, processes, techniques, inventions, and other



Company IP developed or created by or on behalf of Seller and supplied by Seller under any Contract, including without limitation technical information, know-how, drawings, specifications and other Company IP relating to Equipment. All such information shall be kept confidential by Buyer and shall not be disclosed to any third-party unless and until the same is or becomes public knowledge without fault of Buyer, nor shall any such information be used by Buyer for any purpose other than the specific purpose for which the Equipment was intended.

7.8. Client service requests for application support and process development will require the use and licensing of Company IP. Any foreground intellectual property developed with respect to, or for incorporation into, the Non-Standard Equipment, that are either developed by Buyer alone, by Buyer and Seller jointly or by Seller alone as requested by Buyer in connection with this Agreement shall be jointly owned by Company and Client.

7.9. Seller's trademarks and names, and those of its associated companies shall not be used otherwise than in reference to, and as applied by Seller to, any Equipment. Client shall not remove any Company trademarks on the Equipment. For purposes of such reference Buyer may use the word form of the mark and may not use any logo, design or other distinctive feature of Seller's marks without Seller's express consent. Further, if Seller objects to any use of its marks, upon notice to Buyer of the objection Buyer shall cease and desist from such use.

8. Shipping Terms.

8.1. Equipment is shipped "best way" prepaid and added to Client's invoice. Alternatively, at Client's request, Equipment may be shipped using Client's shipping account. Shipments will be made by surface delivery unless otherwise requested by Client. For avoidance of doubt, Client is responsible for all shipping, packaging, VAT and other costs associated with shipping the Equipment, and Seller may require prepayment of such costs prior to shipping the Equipment.

8.2. Any delivery dates shown on a Purchase Order are estimates only. Seller will use reasonable efforts to supply Equipment within the time requested in the Purchase Order and in any event within a reasonable period, but in no event shall Seller guarantee shipment according to such time or be liable for damages due to delays in delivery.

8.3. Unless otherwise agreed in writing, all shipments of any tangible Equipment shall be made FOB Seller's production and/or distribution facilities, as may be specified by Seller from time to time. Seller may, at Buyer's request and expense, arrange carriage and insure Equipment against normal transit risks to the value of the purchase price, and may arrange such insurance on its own initiative at Buyer's cost and expense if Buyer fails to prove that it has done so. Risk of damage to or loss of Equipment shall pass to Buyer on Seller's delivery



of the Equipment to the carrier or the deemed delivered date; and until full payment of the purchase price by Buyer, Buyer shall indemnify and hold Seller harmless against all loss of, or damage to, Equipment from whatsoever cause occurring.

8.4. If Seller arranges transportation of Equipment for Buyer, in the event of loss of, or damage to the Equipment, whether or not caused by Seller's or its chosen carrier's negligence or that of any other person, Seller's liability shall be limited to passing on to Buyer the benefit of insurance. Provided, however, all benefits of insurance procured by Seller shall remain with Seller until full payment of the purchase price is received by Seller. At Buyer's option, Equipment can be replaced with benefit of insurance, the timeline for replacement will be negotiated between Buyer and Seller.

8.5. Buyer will supply Seller with delivery instructions promptly upon receiving notification from Seller that the Equipment has passed the factory acceptance test (FAT) and is ready for shipment. If delivery instructions are not received or if Buyer requests that a shipment be postponed for more than sixty (60) days after the date Buyer is notified that the Equipment is ready for shipment, Seller shall be entitled to make arrangements for storage of the Equipment at Buyer's risk and expense and to charge the Buyer accordingly, which could be in the form of, but not limited to, a co-location fee. In such case and as of the date that is sixty (60) days after the date Buyer is notified that the Equipment is ready for shipment (the "**deemed delivered date**"), Seller's obligation to deliver the Equipment will be deemed satisfied and Buyer will become responsible for the risk of loss of or damage to the Equipment and for paying the purchase price and any costs associated with storage of the Equipment. In such cases in which the Buyer delays or requests the Seller to delay the shipment of Equipment, the warranty shall start 60 days after the factory acceptance test (FAT) notification to the Buyer.

8.6. If Buyer fails to accept delivery of the Equipment within sixty (60) days after the Buyer is notified that the Equipment is ready for shipment then Seller may store the Equipment at its facility and charge a standard co-location fee to hold the Equipment at its facility, at Buyer's sole cost, expense and risk of loss.

8.7. Seller may suspend shipment of any unfulfilled Contract in the event of any act or omission on the part of the Buyer or if Buyer is in material breach of Buyer's obligations under the Contract, failure to pay any amounts when due shall be a material breach of Buyer's obligations, including payment of any storage fees due to Seller.

8.8. Seller will be responsible for the unpackaging and inspection of all Equipment upon arrival, unless otherwise agreed upon between the Parties in writing or set forth in the Purchase Order. Damaged Equipment and packaging must be kept for inspection by Seller and/or the carrier.



8.9. Seller may modify the specification of Equipment without notice provided that the modification will not materially affect the performance, form or fit of the affected Equipment.

8.10. Unless otherwise agreed in writing or set forth in the Purchase Order, installation and commissioning is included in the purchase price for the Equipment.

9. Compliance with Laws.

In performing this Contract, Buyer and Seller agree to comply with all applicable laws and regulations including, but not limited, to all export control or other trade regulation. Buyer agrees to obtain all permits, licenses and authorizations or certificates that may be required in connection with its purchase or licensing of Equipment. This includes any laws, regulations, orders or other restrictions on the export of Equipment from the United States, which may be imposed from time to time by the US Government. Buyer shall not export or re-export, directly or indirectly, Equipment or information pertaining thereto to any country for which either such government or any agency thereof requires an export license or governmental approval at the time of export or re-export without first obtaining such license or approval, and Seller's performance of the Contract will be conditional upon Buyer procuring, at Buyer's expense, such license or approval. If Equipment is to be exported, Buyer must obtain at Buyer's expense any import license required for the country into which the Equipment is to be imported. Specifically, with regard to export control, Buyer hereby acknowledges that all Equipment provided under this Agreement are subject to U.S. export control laws and may not be provided directly or indirectly to Iran, Syria, North Korea, or Cuba, or individuals or entities based or resident in these countries. Buyer acknowledges that if Seller has reason to believe that U.S. export control laws may be or have been violated, Seller may, in its sole discretion, suspend or terminate this Contract immediately upon written notice. Buyer shall attach to all Purchase Orders the necessary information to permit Seller to commence its work, together with any import license and/or permits and related certificates that may be necessary.

10. Inspection and Testing of Equipment

10.1. All Equipment is inspected and tested by Seller, and must pass the Seller's factory acceptance test (FAT) before notification is provided to Buyer that the Equipment is ready for shipment.

10.2. An additional charge to Buyer will be made for tests or trial runs carried out at Buyer's request, unless otherwise agreed to in writing. Seller may proceed with the requested tests by providing written notification to Buyer of the date set for such tests, which date will be at least seven (7) days after delivery of written notification of such date. If Buyer fails to attend the tests or fails to request a rescheduled date then Seller will perform the tests in Buyer's absence and will have no obligation to re-perform the tests without the payment by Buyer of



additional fees.

10.3. Seller shall not perform any testing, training or trial runs with any products, compounds or materials which are not standard materials and approved by Seller. To the extent that Seller agrees to perform such Services with non-standard materials, the Buyer hereby agrees to defend, indemnify and hold harmless Seller from any damages, losses, cost, expenses (including attorney's fees) with respect to any failures of the Equipment, claims by third-parties of violation of their IP Rights or any other matter related thereto.

10.4. To the extent Services are included in a Purchase Order, Seller shall have no obligation to extend the timing for provision of such Services or provide additional hours of Service if Buyers fail to take delivery of the Equipment on or prior to the deemed delivered date. If Seller is required to adjust its schedule for the delivery and installation of the Equipment at Buyer's request or due to Buyer's failure to set a delivery date, Buyer agrees to pay Seller for such inconvenience at standard rates then charged by Seller for such installation and training Services.

10.5. Buyer understands that Seller separately offers service plans with respect to the Equipment. If Seller requires training services related to the Equipment following installation, Buyer shall be required to purchase a service plan or pay the then applicable hourly rate for such training services, which services shall be evidenced by a separate purchase order and agreement.

11. Retention of Title for Equipment

11.1. Equipment shall remain Seller's property until Buyer has made full and unconditional payment to Seller of all sums due.

11.2. Until payment in full is made to the Seller the Equipment shall be held by Buyer as bailee for Seller and will be kept readily identifiable as Seller's property. Without limiting the foregoing, Seller may elect to treat the delivery of the Equipment as a conditional sale and require Buyer to execute a security agreement and financing statement granting Seller a purchase money security interest in the Equipment.

11.3. If payment becomes overdue, or upon the occurrence of any termination event referred to in Section 15 below, Seller may, where permitted by law and after giving notice to Buyer, enter upon any premises in Buyer's control where Seller reasonably believes Equipment to be, or otherwise take action, to recover Equipment, including without limitation such actions as are available under the UCC.

11.4. Prior to full payment of the purchase price, Buyer shall keep insured Equipment shipped to Buyer by Seller under policies with such provisions, for such amounts and with



such insurers as shall be satisfactory to Seller.

12. **Limited Warranty for Equipment**

12.1. Subject to the exclusions that follow, including in Section 12.5 below, Seller hereby undertakes to, at Seller's option, repair or replace, or arrange for repair or replacement by Seller's representative of, any Standard Equipment supplied to Buyer if a defect in materials or workmanship arises solely under conditions of normal and proper use and maintenance (fair wear and tear excepted); provided that:

- a) the Standard Equipment was purchased and used for a purpose for which it was suitable and was operated and maintained in accordance with the operating instructions;
- b) Buyer promptly notifies Seller of the claim in writing;
- c) unless otherwise agreed or specified by the Seller in writing, the defect must occur and be reported to Seller within twelve months following the earlier of: (i) installation/start-up of Standard Equipment; or (ii) the deemed delivered date;
- d) the Standard Equipment has not been repaired or modified by anyone other than Seller or at Seller's direction;
- e) in the case of equipment or parts not of Seller's own manufacture, unless otherwise required by law, Seller's responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Seller by the manufacturer of such equipment or part;
- f) the defect does not arise from Buyer's specification or instructions; and
- g) Buyer has paid the purchase price for the Equipment in full.

12.2. Any repaired or replaced Equipment will continue to be warranted for the unexpired period of the warranty set forth in 12.1 above. Any repair services provided are warranted against defects in material or workmanship for thirty (30) days.

12.3. Seller may charge Buyer for the costs of shipping Equipment to and from a Seller designated service center, or for travel expenses of a technician, if the Equipment to be repaired or replaced are located in a country in which Seller does not have a service center.

12.4. Failing satisfactory repair or replacement, Seller may satisfy Seller's liability at Seller's elected under this Section 12 by reducing the purchase price to a mutually agreed



amount or by refunding the purchase price and retaking the Equipment. This Section 12 states Seller's sole liability, and Buyer's exclusive remedy, for any breach of the warranty with respect to the Equipment as provided herein.

12.5. EXCEPT AS EXPRESSLY WARRANTED ABOVE, EQUIPMENT IS PROVIDED "AS-IS" AND WITHOUT REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. EXCEPT FOR THE LIMITED REMEDIES PROVIDED ABOVE, BUYER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF EQUIPMENT. NOTHING STATED IN THIS AGREEMENT WILL IMPLY THAT THE OPERATION OF ANY EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED. OTHER WRITTEN OR ORAL STATEMENTS BY SELLER, ITS REPRESENTATIVES, OR OTHERS DO NOT CONSTITUTE WARRANTIES OF SELLER.

12.6. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED WHOLLY OR PARTIALLY TO BUYER'S DESIGNS OR SPECIFICATIONS; INCLUDING ANY EQUIPMENT DESIGNATED AS NON-STANDARD EQUIPMENT, UNLESS PREVIOUSLY NEGOTIATED BETWEEN THE PARTIES.

13. Governing Law and Dispute Resolution

13.1. The Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

13.2. Seller and Buyer shall use best efforts to resolve any disputes between the Parties first by discussion and negotiation between the working level Parties involved, and second by escalation to the managers of such Parties. Failing resolution of conflicts at the organizational level within 20 days of the initial dispute, Seller and Buyer agree that any remaining conflicts shall be submitted to non-binding mediation unless Seller and Buyer mutually agree otherwise. If the dispute is not resolved through non-binding mediation within 60 days of submitting the dispute to mediation, then the Parties may take action pursuant to Section 13.3 below.

13.3. Any dispute, controversy or claim arising out of or related in any way to this Contract and/or any sale and purchase of Equipment hereunder or any transaction contemplated hereby which cannot be amicably resolved by the Parties pursuant to Section 13.2 above shall be solely and finally settled by arbitration administered by the Judicial Arbitrator Group in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The



arbitration shall take place before one arbitrator sitting in Adams County, Colorado. The arbitrator will be bound to adjudicate all disputes in accordance with the laws of the State of Colorado. The decision of the arbitrator shall be in writing with written findings of fact and shall be final and binding on the Parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award incidental damages, consequential damages, indirect damages, statutory damages, special damages, exemplary damages, punitive damages or specific performance. Each Party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Contract.

14. Force Majeure

14.1. Seller shall not be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control.

14.2. Such acts or events shall include, but shall not be limited to, acts of God, civil or military authority, pandemics, civil disturbance, fire, strikes, lockouts or slowdowns, factory or labor conditions, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses, government order, law or actions, or other "force majeure" events beyond Seller's reasonable control.

14.3. In the event of such delay, the date of shipment shall, at the request of Seller, be deferred for a period equal to the time lost by reason of the delay or otherwise for a reasonable time.

15. Termination

15.1. This Contract may only be terminated or cancelled pursuant to this Section 15.

15.2. The Buyer and Seller may mutually agree to terminate any Purchase Order or this Contract at any time in a writing executed by Buyer and Seller.

15.3. Buyer may terminate this Contract by delivery of a written notice of termination any time between the delivery of a Purchase Order and prior to the payment of the down payment.

15.4. Seller may terminate this Contract by delivery of a written notice of termination:

- a) If Buyer commits any act of bankruptcy, including filing or having filed against it a petition in bankruptcy, or has a receiver appointed, or goes into liquidation, or if a similar event occurs under applicable insolvency laws (except for the purpose of



reconstruction or amalgamation);

- b) In the event of a failure by Buyer to comply with any non-monetary material provision of the Contract, if the failure continues for more than fourteen (14) days after Buyer has been given written notice of such failure;
- c) If Buyer fails to pay the purchase price when due or Buyer fails to collect or receive the Equipment (or make other accommodations, including payment of storage) within sixty (60) days after the date Buyer is notified that the Equipment is ready for shipment.

15.5. **Equipment:** Regardless of the reason for termination, Buyer shall be liable for the costs of all work done and materials purchased or provided up to the time of termination (including but not limited to time and materials, uncancellable orders, raw materials), plus a charge for overhead and loss of profit, which amount shall be due immediately upon such termination. In the case of breach by Buyer resulting in termination of the Contract, Buyer shall be liable to Seller for any and all costs, liabilities, damages and expenses of any kind or nature caused by such breach. Upon termination, if Equipment has been shipped to Buyer, Buyer shall return the Equipment, at Buyer's expense to Seller in the same condition as shipped, subject to approval by our Quality Controller, or otherwise pay the full purchase price for such Equipment. Equipment cannot be returned after signed SAT.

15.6. **Parts:** No Parts may be returned from Buyer unless prior authorization has been given and Return Merchandize Authorization (RMA) Number has been issued and provided from the Seller. Such Parts will only be accepted under the following conditions:

- a) Freight and packaging are prepaid and a packing list enclosed with the Parts
- b) The item must be in new condition and be subject to approval by our Quality Controller
- c) Refund will only be allowed on the original invoiced price less a minimum restocking fee of twenty (20) percent on the value. Higher restocking fees may apply subject to the type and condition of product returned
- d) No Refund will be allowed for non-standard or specifically procured Parts

15.7. Termination shall be without prejudice to any prior right of either Party, nor shall termination constitute a waiver of either Party's rights, remedies or defenses under this Agreement, at law, in equity or otherwise. Seller's rights upon termination shall include the right to dispose of the Equipment, resell the Equipment or take any action permitted under



Section 11.3.

16. Liability and Indemnification for Services

16.1. REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE), AND EXCEPT FOR VIOLATIONS OF THE CONTRACT, INFRINGEMENT OF COMPANY IP, BREACHES OF CONFIDENTIALITY OBLIGATIONS, INDEMNIFICATION OBLIGATIONS OR AS OTHERWISE PROVIDED IN SECTION 15.5, NEITHER PARTY'S LIABILITY TO THE OTHER IN CONNECTION WITH THIS CONTRACT OR ANY SERVICES DELIVERED HEREUNDER SHALL EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY (OR PAYABLE BY) CLIENT TO COMPANY UNDER THE APPLICABLE PURCHASE ORDER, AND NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS AND LOSS, DAMAGE OR DESTRUCTION OF DATA) IRRESPECTIVE OF THE CAUSE (INCLUDING NEGLIGENCE) AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

16.2. Client agrees to indemnify, defend and hold Company, and its directors, officers, shareholders, employees, agents, subcontractors and other representatives harmless from and against any and all damages, losses, liability, costs and expenses (including reasonable attorney's fees) arising out of or in connection with any third-party allegations, proceedings, or claims based on Client's use, sale or distribution of the Equipment, samples, deliverables, or work product or any third-party's use, sale or distribution of the same.

17. Liability and Indemnification for Equipment

17.1. REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE), AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, IN NO EVENT (i) SHALL SELLER'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC EQUIPMENT COMPLAINED OF, (ii) SHALL SELLER'S MAXIMUM LIABILITY FOR ALL DAMAGES RELATED TO THE EQUIPMENT PURCHASED HEREUNDER (OR UNDER A RELATED PURCHASE ORDER) OR OTHERWISE ARISING IN CONNECTION WITH SUCH EQUIPMENT EXCEED THE TOTAL AMOUNT PAID FOR SUCH EQUIPMENT, OR (iii) SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS AND LOSS, DAMAGE OR DESTRUCTION OF DATA) IRRESPECTIVE OF THE CAUSE (INCLUDING NEGLIGENCE) AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

17.2. The Equipment may be used by Buyer to design products and applications and



to provide services to its customers. Seller shall have no liability or responsibility (i) to assist Buyer in product design or development, (ii) for Buyer's or any third-party's products or services, or (iii) for support of Buyer's customers, or (iv) Buyer's use, sale or distribution of the Equipment, samples, deliverables or work product or any third-party's use, sale or distribution of such Equipment, samples, deliverables or work product; rather, Buyer is solely responsible for its own products, applications, services and designs using or relating to Seller's Equipment and for supporting its customers. To minimize the risks associated with the Buyer's products and applications, Buyer will provide adequate design and operating safeguards for use of the Equipment and for use of any products or applications created using the Equipment.

17.3. Buyer agrees to indemnify, defend and hold Seller, and its directors, officers, shareholders, employees, agents, subcontractors and other representatives harmless from and against any and all damages, losses, liability, costs and expenses (including reasonable attorney's fees) arising out of or in connection with any third-party allegations, proceedings, or claims based on Buyer's products, applications, services and designs.

17.4. The Equipment is a sophisticated technical device that may be modified and upgraded by the Buyer. This generally relies on Buyer-supplied components, third-party chemicals, can be damaged if modified, cause harm and injury if used by persons who are not cautious and properly trained and qualified technicians. Custom modifications may void certifications and warranties. Accordingly, Buyer agrees that (i) it will allow only properly trained and qualified technical workers to use the Equipment and will require that they use the Equipment in a safe and appropriate manner, (ii) it will indemnify, defend and hold harmless Seller and its directors, officers, shareholders, employees, agents, subcontractors and other representatives from any claims, liabilities, damage, loss or expense (including reasonable attorney's fees) suffered or incurred as a result of Buyer's possession, storage, operation, maintenance, modification, failure or other acts or omissions related to the Equipment, except to the extent caused by the gross negligence, willful misconduct or breach of warranty of Seller. Without limiting the foregoing: BUYER WILL INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ANY LOSS, CLAIM OR DAMAGE SUFFERED BY SELLER, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND OTHER REPRESENTATIVES: a) CAUSED BY BUYER SUPPLYING EQUIPMENT TO ANY PERSON WHO IS NOT A PARTY TO THE CONTRACT; OR b) SUFFERED ON BUYER'S SITE, EXCEPT TO THE EXTENT CAUSED BY SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Buyer agrees that these liability provisions are an essential part of the Contract and that Seller would not enter into a sales transaction with Buyer without the liability waivers and protections provided in this Contract.

17.5. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Buyer by a third-party based on an allegation that any Standard Equipment sold pursuant to this Contract infringes the U.S. patents, U.S. trademarks,



copyrights, trade dress or trade secrets (hereinafter “**US IP Rights**”) of a third-party. Seller’s obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any claims or actions including all negotiations for settlement or compromise. If an Standard Equipment sold hereunder is subject to a claim that it infringes the US IP Rights of a third-party, Seller may, at its sole expense and option, procure for Buyer the right to continue using said item, replace or modify said item so as to make it non-infringing, or offer to accept return of said item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for Non-Standard Equipment, claims of infringement based on information provided by Buyer, or directed to items delivered hereunder for which the designs are specified in whole or part by Buyer, or infringements resulting from Buyer’s modification of the Equipment or its combination or use in a system not designed by Seller. The foregoing provisions of this Section 17.6 shall constitute Seller’s sole and exclusive liability and Buyer’s sole and exclusive remedy for infringement of US IP Rights. If a claim is based on information provided by Buyer or if the design for an item delivered hereunder is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such use or Equipment infringes any patent, trademark, copyright, trade dress, trade secret or any similar right of any person or entity.

18. Entire Agreement.

18.1. This Agreement, the Contract, the Purchase Orders and any effective non-disclosure or confidentiality agreement between the Parties contain the entire agreement between the Parties with respect to its subject matter and supersedes the terms and conditions of any other agreement made effective prior to the date hereof or any preprinted terms of any purchase order submitted by Buyer at any time. This Agreement may not be modified except by a writing signed by authorized representatives of both Parties.

18.2. In the event of conflict between the Contract, any Purchase Order, this Agreement or any effective non-disclosure or confidentiality agreement between the Parties, the terms of this Agreement shall control unless otherwise specified in writing and signed by the authorized representatives of the Parties.

19. Miscellaneous

19.1. Buyer may neither assign nor transfer its rights under the Contract by operation of law or otherwise, without the prior written consent of Seller. Seller’s affiliated companies may participate in Seller’s performance under the Contract. Save as expressly provided, no term or provision of the Contract shall be enforceable by a third-party (being any person other than the Parties and their permitted successors and assignees).

19.2. In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of the Contract shall remain in full force and effect to the fullest extent permitted by applicable



law.

19.3. No dispute shall be brought by Buyer against Seller for damages arising out of the purchase, manufacture, use, delivery (including late delivery), or transportation of Equipment or Services, whether such dispute is for breach of contract, breach of warranty, tort or otherwise, unless such arbitration pursuant to Section 13.3 is commenced within one (1) year after the cause of action has accrued. No arbitration shall be made or filed against Seller by Buyer unless Buyer has paid, at the time the claim is made or the arbitration is filed, the entire purchase price or all installments thereon, in strict accordance with the terms of the Contract, and failure to make such payments shall be an absolute defense to any such arbitration. If Buyer fails to perform any of its obligations pursuant to a Contract, Buyer shall pay Seller all costs and expenses incurred by Seller, including all attorney's fees, in enforcing Seller's rights relating to such Contract, whether by formal proceedings or otherwise, in addition to any other remedy available to Seller.

19.4. The Contract shall inure to the benefit of and shall be binding upon Seller and Buyer and their respective successors and assigns, including any entity with which either Party may merge or consolidate or to whom either Party may transfer assets comprising the Equipment and/or Services.

19.5. Seller and Buyer each acknowledge that they have read and understand the terms and provisions of this Contract and have had an opportunity to have the same reviewed by an attorney of their choice.

19.6. Buyer represents that the person placing the Purchase Order and entering into the Contract on Buyer's behalf has the full authority to do so.

19.7. No waiver by either Party of any breach of any of this Agreement by the other Party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a Party hereunder shall be binding upon such Party only if in writing and signed by such Party.

19.8. Nothing contained in this Agreement shall be deemed to require Seller to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Seller's failure to take any such action shall not be deemed a breach hereunder.

19.9. All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of any Equipment (whether in catalogues or advertisements or accompanying or referred to in the Contract) are stated by Seller in good faith based on Seller's experience as being correct within acceptable



tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. In the absence of any special arrangements to the contrary, it is Buyer's responsibility to ensure that Equipment ordered is sufficient and suitable for Buyer's purposes.

19.10. Buyer must ensure that persons who use, maintain or otherwise handle Equipment receive adequate training and safety literature. Copies of safety literature as available are included as a portion of the operational manuals.

19.11. Buyer must provide safe working conditions to Seller personnel for any on-site services. The determination of safe working conditions is at the sole discretion of the Seller's employees.

19.12. While on-site at the Buyer, Seller's employees are not authorized or required to handle or service any equipment of the Buyer or a third-party not specifically listed in the Contract.

19.13. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Contract including, but not limited to, the following provisions: Section 7, 9, 11 and 13-20.

20. Destination Control

20.1. The Equipment is controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Revised January 2025