

STANDARD TERMS AND CONDITIONS OF PURCHASE

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DEFINITIONS:

Agreement: shall mean these Terms and Conditions together with the Order pursuant to which goods or services are being provided and all documents specifically referenced herein or in such Order.

Buyer: shall mean the Tally affiliated company issuing the Order.

Deliverables: shall mean Goods and/or Services depending on the context.

Goods: shall mean materials or products described in Orders, the purchase of which is governed by the terms of this Agreement.

Order: shall mean a document, electronic or hard copy, issued by Buyer to Seller, in the form of a purchase order or release or similar document, referring to these Terms and Conditions and ordering Deliverables.

Intellectual Property: shall mean all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

Seller: shall mean the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order, to whom the Order is issued by Buyer.

Services: shall mean services (whether or not ancillary to a sale of Goods) described in Orders, the purchase of which is governed by the terms of this Agreement.

Terms and Conditions: shall mean these Standard Terms and Conditions of Purchase.

1. SCOPE OF THE AGREEMENT

- 1.1. This Agreement must be accepted as indicated in Orders or, if Orders do not provide, in writing by Seller within the time specified on the face of the Order or, if not so specified, within a reasonable time of Seller's receipt hereof.
- 1.2. If for any reason Seller fails to accept this Agreement in writing or as specified in the Order, the furnishing or commencement of any Services called for hereunder, (including preparation for manufacture), the shipment by Seller of any Goods (or lots thereof) ordered hereby, the acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's election, be treated as an unqualified acceptance by Seller of this Agreement and all the terms and conditions hereof.
- 1.3. Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Agreement shall

constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and shall apply to each Deliverable received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of Seller.

- 1.4. If the Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to all such additional and different terms herein and acknowledge that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of the relevant Order.

2. PRICE AND PAYMENT

- 2.1. **Payment terms:** Payment terms will be net ninety (90) days following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in this Agreement.
- 2.2. Seller warrants that the agreed price for the Deliverables is not less favorable than that currently extended to any other buyer for the same or like Deliverables in similar quantities.
- 2.3. **Cash Discount:** The cash discount period, if any, shall be computed as commencing with receipt by Buyer of invoice or of Deliverables, whichever is later.
- 2.4. **Invoices:** All invoices must contain the following information: Purchase order number, item number, description of items, quantities, unit prices, and taxes. Payments of invoices shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of this Agreement. Buyer or any of its affiliated companies may set off any amount owed by Seller or any of its affiliated companies to Buyer or any of its affiliated companies against any amount owed by Buyer hereunder. In accordance with U.S. Bureau of Customs and Border Protection ("CBP") Regulations – 19 CFR 141.81, a commercial invoice will be presented with each merchandise shipment entering the U.S. Such invoice shall be prepared in the English language (or an English translation attached thereto), in accordance with 19 CFR 14
- 2.5. Buyer shall not be obligated to pay for any Deliverable if the invoice for such Deliverable is received more than twelve (12) months after the receipt of the Deliverable.

3. TAXES

Sample

- 3.1. Unless otherwise stated in the Agreement, all payments, prices, fixed or otherwise, sums, payments, fees and monetary amounts mentioned in this agreement are exclusive of any and all sales and use taxes, value added taxes, goods and services taxes, taxes levied upon importation, such as customs duties, excises, or any other taxes ("Taxes") levied in regard of any of the transactions covered by this Agreement.
- 3.2. When invoicing, Seller shall a) include amounts of Taxes, or specific fees Seller is required by applicable law to add-on to the sales price and collect from Buyer or otherwise is legally due from Buyer and b) separately state each of the Taxes.
- 3.3. Seller is solely responsible for the fulfillments of Seller's obligations under law or statute in respect to collecting and remitting Taxes collected from Buyer under this Agreement to the proper tax authority. Any penalties, fees or interest charges imposed by a tax authority or other authority as the result of non-payment of Taxes collected by Seller from Buyer will be borne by Seller. Seller shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.
- 3.4. Seller shall not collect Taxes on the supply of goods and services under this agreement in case and under circumstances where a) the transaction is not subject to Taxes, b) the liability for payment of Taxes is shifted or reversed by law or statute or otherwise is the legal responsibility of the Buyer or c) Buyer has been authorized to pay Taxes directly to the appropriate Tax authority.
- 3.5. Seller shall deliver electronically by way of the Internet all software of any type, including manuals. Seller shall separately itemize the prices of electronically delivered software, licenses, fees and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the internet." License locations should clearly be stipulated in the Agreement to allow for proper allocation of any Taxes owed.
- 3.6. Seller warrants that invoices issued in relation to goods and services supplied under this agreement are in compliance with any and all requirements as to content and format imposed by tax and/or civil statute that has jurisdiction over the transaction or transactions performed by the seller.
- 3.7. Buyer shall withhold any portion of the monies from the amount payable under the invoices issued to it to account for any withholding for taxes that is required to be made by the Buyer pursuant to the tax laws in the relevant tax jurisdiction. Any such amount required to be withheld by the Buyer on behalf of the Seller shall be deemed a payment on account of the relevant invoices issued to the Buyer. Buyer shall provide Seller with receipts supporting any taxes withheld.
- 3.8. Buyer is not responsible for any tax based on Seller's income, payroll or gross receipts.

- 3.9. Buyer shall report and remit any Taxes relating to property for which Buyer retains title pursuant to the Agreement, accruing prior to and after the commencement of the Agreement. Where Seller possesses Buyer-owned property, Seller shall notify Buyer of any disposal or movement of such property. Seller shall report and remit any property-related Taxes relating to property for which Seller retains title pursuant to the Agreement, accruing prior to and after the commencement of the Agreement.
- 3.10. Seller shall, upon receipt from any Tax Authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing directed to: Manager, Tax Compliance, ACME , Main Road M/S 10S-1, Farmington, MA, 1898011
- 3.11. Seller shall cooperate in the equitable resolution of disputes pertaining to any Taxes arising from this Agreement. If Buyer may directly contest any Taxes in its own name, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Seller shall in good faith, as requested by Buyer, contest the Taxes. Seller shall supply Buyer with information and documents as Buyer may reasonably request for Buyer to control or participate in any proceeding to the extent permitted herein.
- 3.12. If Seller receives a refund of any Taxes attributable to Buyer; Seller shall pay such amount to Buyer within thirty (30) days of receipt. Seller shall indemnify Buyer against any and all losses, costs, and expenses (including reasonable attorneys' fees) which result from Seller's violation of its obligations under this section.

4. DELIVERY

- 4.1. Seller shall furnish the items called for by this Agreement in accordance with the delivery terms stated on the Order and if delivery dates are not stated, Seller shall offer Buyer its best delivery dates, subject to written acceptance by Buyer ("Delivery Dates"). Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Buyer may defer payment or return at Seller's expense, any Deliverables delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such items.
- 4.2. Unless otherwise expressly set forth in the Order, the delivery terms for Goods shall be: AADP Buyer's facility Incoterms 2000 provided that Seller

shall be responsible for unloading of the Goods in accordance with Buyer's instructions and the risk of unloading will be that of Seller. As consistent with this delivery term, standard delivery instructions of the relevant procurement department apply and may be obtained through the relevant Buyer procurement representative. Title shall pass to Buyer on delivery of Goods as provided in this section. If delivery is required to be made to a third party (drop shipment), title and risk of loss shall pass to Buyer when delivered at the consignee's facility.

- 4.3. **Notice Of Delay:** Whenever an actual or potential reason for delay (including but not limited to labor disputes), delays or threatens to delay the timely performance of the Order, Seller agrees to immediately notify Buyer in writing of all relevant information and, subject to the force majeure provision set forth herein, to make and pay for all necessary changes to fulfill its obligations under the Order and mitigate the potential impact of any such delay. Buyer has the right without incurring any liability to cancel any Deliverables affected by the delay in performance.
- 4.4. **Cessation of Production:** Seller shall give Buyer at least one hundred eighty (180) days prior written notice of the permanent discontinuance of production of items covered by Orders, provided however that compliance with this provision shall in no way relieve the Seller from its obligations under the Order.
- 4.5. **Packing:** Seller shall not charge separately for packaging, packing or boxing, unless Buyer has agreed to such charges in writing. Seller shall not combine in the same container, material that is to be delivered to

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different receiving locations. All wood products used in packaging shall be ISPM 15 compliant.

- 4.6. **Marking:** Unless otherwise agreed in writing, exterior containers shall be marked with the following: (1) Address of Buyer site and Seller; (2) Order number; (3) Part number; (4) Special markings called for on the Order; (5) Quantity; and (6) (where applicable) Vendor Code or other vendor identification number. In accordance with CBP Regulations 19 CFR 134, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or its container will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.
- 4.7. **Bills of Lading:** Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of

the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.

4.8. **Packing Slip:** Seller shall include an itemized packing slip with all shipments that will adequately identify the Goods shipped, including Buyer part number.

4.9. **Shipping and Approved Carriers:** On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, Goods shall be shipped in accordance with routing instructions furnished by Buyer. If such instructions are not received, Goods shall be shipped via least expensive method sufficient to meet delivery requirements, but always through Buyer approved carriers.

5. PRIME OR CUSTOMER CONTRACT REQUIREMENTS

5.1. When Seller's work hereunder will form a part of the work, whether Goods or Services, under a contract that Buyer has with another or others, Seller agrees, by its acceptance hereof, to be bound to Buyer in the same manner and to the same extent that Buyer is bound to its customer. Seller further agrees that Buyer's contract with its customer is incorporated herein and forms an integral part of this Agreement and that it has examined the drawings, specifications, terms and conditions of such contract and that it will be bound by such drawings, specifications, terms and conditions. Access to all such documentation will be provided to Seller upon request.

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5.2. For Orders issued under any government or commercial sales contract with the U.S. Government or subcontracts at any tier under U.S. Government contracts, the provisions of the version of "**U.S. Government Provisions and Clauses for Orders Under U.S. Government Contracts**" in effect on the date of the particular Order shall apply. These provisions are made available on the Internet at the following URL and will be provided to Seller in hard copy upon written request.

<http://www.Tally.com/Suppliers/Pages/DummyTerms-and-Conditions.aspx>

The Parties recognize that the URL may change from time to time and agree that any such change will not affect the applicability of the material referenced. Tally agrees to provide the new URL upon Seller's request in the event of a change.

6. INSPECTION/ACCEPTANCE/REJECTION

6.1. All Deliverables being provided to Buyer's specifications covered by the Order may be inspected and tested by Buyer or its designee, at all

reasonable times and places, including during manufacture. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests.

6.2. All inspection records relating to Deliverables covered by the Order and being manufactured to Buyer's specifications and/or drawings shall be available to Buyer during the performance of the Order and for such longer periods as specified by Buyer.

6.3. Deliverables furnished hereunder shall have zero defects, and Seller has the obligation to properly inspect such items prior to delivery to Buyer. If any Deliverables covered by the Order are defective or otherwise not in conformity with the requirements of the Order, Buyer may, (i) rescind the Order as to such Deliverables, and rescind the entire Agreement if such defect or non-conformity materially affects Buyer; (ii) accept such Deliverables at an equitable reduction in price; or (iii) reject such Deliverables and require the delivery of replacements. Deliveries of replacements shall be accompanied by a written notice specifying that such Deliverables are replacements. If Seller fails to deliver required replacements promptly, Buyer may (i) replace, obtain or correct such Deliverables and charge Seller the cost occasioned Buyer thereby, and/or (ii) terminate the Order for cause.

6.4. Rejected Deliverables may be returned to Seller at Seller's cost.

7. CHANGE ORDERS

Buyer shall have the right at any time prior to the Delivery Date of Deliverables to make changes in drawings, designs, specifications, packaging, place of delivery, nature and duration of Services, and method of transportation, or require additional or diminished work. If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Seller's claims for adjustment under this section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date Seller receives the change order.

8. WARRANTIES

8.1. Seller expressly covenants and warrants that all Deliverables shall conform to the specifications, drawings, samples or other description upon which the Order is based, shall be suitable for the purpose intended, merchantable, free from defects in material and workmanship, and free from liens, or encumbrances of title, and that Deliverables of Seller's design will be free from defect in design. Inspection, test, acceptance or use of Deliverables furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. This warranty shall run to Buyer, its successors, assigns, customers, and the users of the Deliverables. Seller agrees to replace or correct defects of any Deliverables not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of

such nonconformity by Buyer. In the event of failure by Seller to correct defects in or replace nonconforming Deliverables promptly, Buyer, after reasonable notice to Seller, may make such correction or replace such Deliverables and charge Seller for the cost incurred by Buyer thereby. Seller further warrants that all work will be performed in a professional manner in accordance with the highest industry standards.

- 8.2. **Permits and Licenses:** Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller agrees to obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing national, state, provincial or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.
- 8.3. **Product Support Obligation:** Seller shall maintain, at its expense, the ability to, and shall, provide product support for the Deliverables for ten (10) years after the last Order is placed by Buyer under this Agreement.

9. ENVIRONMENTAL, HEALTH & SAFETY

- 9.1. **Test Reports:** Any Seller test reports or other test results related to the Deliverables shall be provided to Buyer as set forth in the terms of the Order, or if not specified in the Order terms, upon Buyer's request.
- 9.2. **Environmental and Safety:** Seller agrees to comply with Buyer's environmental, health and safety standards during Seller's performance hereunder and when at Buyer's jobsites, including without limitation, Buyer's jobsite safety rules; and if Seller is unable or unwilling to comply with such requirements, the Order can be withdrawn without further recourse by Seller. Specifically, and without limitation, Seller agrees to: (1) Comply with the applicable national, state, provincial or local environmental, occupational health and/or safety legislation or regulations. (2) Supply to employees and require that all employees wear specified safety equipment, including but not limited to eye protection and foot protection. (3) Adhere to all Buyer's safety requirements and instructions as indicated by Buyer or Buyer's representatives including without limitation, if Seller will be performing Services within Buyer's facilities, the compliance requirements and restrictions applicable to Services performed within Buyer's facilities. (4) Immediately prior to commencement of any work or service, contact a responsible Buyer

representative. (5) Submit the Workers' Compensation Board Firm Number to Buyer's safety office. (6) Require its suppliers to agree to the requirements of this section and the section of this Agreement entitled "Compliance with Laws".

- 9.3. **Use Of Hazardous Substances:** Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify the material composition, on a substance by substance basis including quantity used of each substance, of any Goods ordered by Buyer and/or of any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer. Separately and/or alternatively, Seller agrees to provide, upon and as requested by Buyer to satisfy any applicable regulatory or customer requirements restricting the use of any hazardous substances, all reasonably necessary documentation to verify that any Goods ordered by Buyer and/or any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer, do not contain particular hazardous substances specified by Buyer.

10. SECURITY

This provision applies whenever Seller's employees, agents, representatives, subcontractors, subcontractor employees, or any other person used by Seller (collectively, "Seller Personnel") will be granted access to (1) Buyer's facilities or the facilities of Buyer's customers ("Facilities") and/or (2) Buyer's or Buyer's customer's computer-based information systems, computer systems, databases and/or files ("Systems").

Seller is responsible for ensuring that any Seller Personnel requiring access to Facilities and/or Systems meets the following minimum requirements designed to assess honesty and trustworthiness:

- 10.1. Access to Facilities and/or Systems in the United States. In advance of Buyer granting Seller Personnel access to Facilities and/or Systems:

- 10.1.a. Seller must verify the identity and authorization to work status of Seller Personnel through the form I-9 and E-Verify processes and provide written certification in the form provided by Buyer that the requirements of this provision have been satisfied;
- 10.1.b. Seller shall perform a background screen on Seller Personnel using FirstAdvantage (or such other company approved by Buyer) and provide written certification in the form provided by Buyer that (1) Seller Personnel do not have any criminal convictions, as reported in the result of a background screen, or (2) if they do have criminal convictions, Seller Personnel were hired only after an individualized assessment was conducted in accordance with all applicable laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the access to be granted, the specific jobs at issue, and the length of

time since the convictions; and

- 10.1.c. Seller shall perform a global sanctions search (i.e., a multi-source search including U.S. and foreign databases generally known as “denied party screening lists”) on Seller Personnel and provide written certification in the form provided by Buyer that Seller Personnel have not been identified in any such screenings.

10.2. Access to Facilities and/or Systems outside the United States. In advance of Buyer granting Seller Personnel access to Facilities and/or Systems:

- 10.2.a. Seller must verify the identity of Seller Personnel. Additionally, Seller must verify that Seller Personnel has requisite work authorization to perform services requiring access to specific foreign Facilities and/or Systems contemplated by this Agreement and provide written certification in the form provided by Buyer that the requirements of this provision have been satisfied; and
 - 10.2.b. Seller shall perform a background screen on Seller Personnel using PrimaryPrecedence (or such other company approved by Buyer). As allowable by local/applicable laws, Seller shall provide written certification in the form provided by Buyer that (i) Seller Personnel do not have any criminal convictions, as reported in the result of a background screen, or (ii) if they do have convictions, Seller Personnel were hired only after an individualized assessment was conducted and taking into consideration the nature and severity of the underlying offenses, the specific jobs at issue, and the length of time since the convictions; and
 - 10.2.c. Seller shall perform a global sanctions search (i.e., a multi-source search including U.S. and foreign databases generally known as “denied party screening lists”) on Seller Personnel and provide written certification in the form provided by Buyer that Seller Personnel have not been identified in any such screenings.
- 10.3. In the event Seller Personnel is performing work under, or given access to (i) information or data controlled for export purposes under U.S. law or (ii) information or data related to Buyer’s contracts with the U.S. government or subcontracts thereunder (as may be indicated by the appearance of a government contract number elsewhere in this Agreement or the applicable Release), or if Buyer otherwise specifically requires, as allowable by local/applicable laws, Seller Personnel shall also be a “U.S. person” as defined by 22 CF 12.5. Buyer may further direct Seller to use a qualified service provider to verify “U.S. person” status, at Seller’s sole cost and expense; and Seller shall retain documents verifying that the requirements of this paragraph 10.3 have been satisfied.
- 10.4. Buyer and the Tally Participating Sites reserve the right to impose additional requirements before granting Seller Personnel access to Facilities and/or Systems (e.g., drug screening, credit check, security clearance, signing an intellectual property agreement). If additional

requirements are imposed, Seller shall provide Buyer with written certification in the form provided by Buyer that the requirements have been met. Seller shall retain documents verifying that the additional requirements have been satisfied. Buyer or the Tally Participating Sites may further direct Seller to use a designated service provider to verify authorization to work, U.S. person and/or citizenship status, along with additional attributes regarding citizenship and the Seller, at Seller's sole cost and expense.

- 10.5. Should Seller desire to assign Seller Personnel that do not fully meet the requirements herein, Seller may make a request for an exception in writing to Buyer, detailing the specific circumstances. Buyer may, on a case-by-case basis and in its sole discretion, either grant or deny any such requests.
- 10.6. Failure to provide the certifications required herein may result in a refusal to grant Seller Personnel access to Facilities and/or Systems, and Seller shall be responsible for promptly providing a replacement.
- 10.7. Seller shall immediately update Buyer if, at any time during performance of this Agreement, any information related to Seller Personnel is altered or rendered inaccurate for any reason. Inability of Seller to comply with the requirements of this provision shall not excuse Seller from performing the Agreement and shall not constitute an excusable delay.
- 10.8. Buyer may (i) audit the methodology, process, and results relied upon by Seller to confirm that Seller Personnel meet the requirements herein, and (ii) deny access to Facilities and/or Systems where Buyer reasonably believes that Seller Personnel do not meet the requirements of this Section 10.
- 10.9. Seller represents and warrants that if individuals and/or entities other than Seller Personnel are engaged by it in the performance of this Agreement, Seller shall require these individuals and/or entities to satisfy requirements no less than those stipulated herein.
- 10.10. Seller acknowledges and agrees that any breach of this Section 10 may result in a violation of U.S. law for which Buyer, Seller, and/or Seller Personnel may be liable.
- 10.11. Upon five days prior written notice, Buyer, or its designee, may audit all pertinent books and records of Seller and its subcontractors, and make reasonable inspection of Seller's and its subcontractor's premises, in order to verify compliance with the requirements of this provision.
- 10.12. Any delay in delivery due to Seller's failure to comply with this provision shall not relieve Seller of its obligations and shall not constitute a force majeure or give rise to an excusable delay.

12. INTELLECTUAL PROPERTY

- 12.1. "Background Intellectual Property" shall mean all Intellectual Property other than Foreground Intellectual Property.
- 12.2. "Foreground Intellectual Property" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- 12.3. Each Party retains its existing rights in Background Intellectual Property.
- 12.4. Buyer shall own all Foreground Intellectual Property. Seller shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Seller shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Seller hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Seller agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Seller to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property assigned to Buyer pursuant to the Order shall be considered Buyer's Proprietary Information (defined hereinafter). Seller agrees that, for any works of authorship created by Seller or any employees or any others used by Seller in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire". For any works of authorship that do not come under such categories, Seller, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- 12.5. Seller represents and warrants that Seller has sufficient rights in all Goods, Services, and Intellectual Property and other items that Seller uses or transfers to Buyer in connection with the Order to allow Seller to lawfully comply with the Order.
- 12.6. Seller hereby grants and promises to grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 12.7. Seller hereby irrevocably waives and promises to waive all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with

the Order.

- 12.8. Seller represents and warrants that Seller shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, firmware, free software, open source software, freeware, general public license-governed software, or any electronic hardware including without limitation free hardware designs, or open source hardware designs, in any form that is subject to any obligations or conditions that may provide a legal right to any third party to access such software and/or electronic hardware, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution or conveyance of such software or electronic hardware.
- 12.9. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Seller a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.