



Outback Power Technologies, Inc. ("Buyer")

Additional Terms And Conditions For The Purchase Of Goods And Services (the "Terms")

For the purposes hereof, the term "Buyer" shall mean Outback Power Technologies, Inc., and the term "Supplier" shall refer to the party from whom Buyer is purchasing such goods or services on the applicable Purchase Order (the "PO").

1. **Acceptance.** Buyer's payment of the purchase price, or any part thereof, does not constitute acceptance of the goods or services. Goods and services are subject to inspection and rejection by Buyer within a reasonable time following receipt by Buyer. Risk of loss does not pass to Buyer until acceptance of the goods or services. To the extent practicable, defective or nonconforming goods will be returned to Supplier at Supplier's sole cost and expense, and the risk of loss with respect to such defective or nonconforming goods shall never pass to Buyer and shall remain with Supplier. Any additional terms proposed in Supplier's acceptance of Buyer's offer, which add to, vary from, or conflict with the terms herein are hereby objected to by Buyer. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties. Any of the following shall constitute Supplier's unqualified acceptance of the PO and these terms and conditions: (a) acknowledgment; (b) furnishing of any part of the goods, services or products; (c) acceptance of any payment for the goods, services or products; or (d) commencement of performance.
2. **Order of Precedence.** These Terms together with the specifications, drawings, or other documents referred to on the face of the PO, or attached, or any documents incorporated by reference, supersede any prior or contemporaneous communications, representations, promises, or negotiations, whether oral or written, respecting the subject matter of the PO. All contract documents related to the PO are interpreted together as one agreement. But if there is an irreconcilable conflict among the provisions of those contract documents, the following order of precedence applies: (a) any supply agreement; then (b) any change order agreement; then (c) the face of the PO and any supplemental terms included or incorporated by reference; then (d) these Terms; and finally (e) other contract documents agreed to in writing by the parties.
3. **Delivery and Marking.** Unless otherwise indicated, goods described in the PO shall be Delivered Duty Paid (DDP Incoterms® 2010) Buyer's ship to address as set forth on the PO. All packaging and labels must include Buyer's PO number, Buyer's part number and revision designator, quantity, lot number and date of shipment. Supplier shall be responsible for ensuring the proper packaging, packing, and marking of product(s) delivered hereunder in accordance with the PO. Packaging, packing, and marking will conform to the instructions specified or provided by Buyer. Supplier must assure package integrity throughout the shipping cycle. Damage resulting from improper product packaging will be charged to Supplier. Supplier must comply with all applicable carrier regulations. Products received without proper packaging, packing, marking as set forth herein may be rejected by Buyer and returned to Supplier at Supplier's expense.
4. **Packing and Shipment.** unless otherwise specified, all Product shall be packaged and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practices; (ii) acceptable to common carriers for shipment at the lowest rate for the particular Products involved and (iii) adequate to maximize the potential of insuring safe arrival of the Product. No delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent.
5. **Property.** All jigs, dies, molds, equipment or other items owned by Buyer and used by Supplier hereunder, shall remain the property of Buyer, shall be kept in safe custody, shall not be removed from Supplier's facility without written consent from Buyer and shall not be used for the manufacture of products for anyone other than Buyer. All deliverables created specifically for Buyer hereunder shall be owned by Buyer and shall be considered work made for hire by Supplier for Buyer. If any such deliverable is not considered a work made for hire, Supplier shall assign, or obtain an assignment to, as applicable, all of the rights, title and interest in and to such deliverables to Buyer.
6. **Cancellation.** Buyer may cancel or terminate any PO, or any portion thereof, at any time, for any reason, including for the convenience of Buyer without being liable for any termination fee or any other penalty or charge. Enumeration of certain rights does not exclude others given by law. In the event that Buyer cancels or terminates any PO, Buyer shall pay to Supplier, as liquidated damages, an amount equal to the actual direct costs incurred by Supplier in performing under such PO up to the date of cancellation or termination less any amounts previously paid by Buyer for conforming goods or services properly performed under such PO; provided, however, that Buyer shall not be obligated to pay Supplier any costs incurred by Supplier to the extent Supplier can use or incorporate the goods, services or products for or into other purchase orders of Buyer, or for purchase orders, or for the benefit, of any other customer of Supplier.
7. **Stop Work Order.** Buyer may, at any time, by written notice to Supplier, require Supplier to stop all or part of the work called for by the PO for a period of ninety (90) days after such notice is delivered to Supplier. Within ninety (90) days after such notice is delivered to Supplier, or within any extension of the period to which the parties have agreed, Buyer shall either: (a) withdraw the notice and direct Supplier to resume work, in which event Supplier may be entitled to receive an equitable adjustment of the PO price or schedule or both, provided a claim for such an adjustment shall be submitted by Supplier within thirty (30) days after the end of the period of work stoppage; or (b) terminate the work and the PO or part thereof.
8. **Changes.** Buyer may change the specifications, description of services, goods, or any aspect thereof or anything relating thereto prior to receiving goods from, or the completion of services to be performed by, Supplier. If such change changes the cost or time required for performance under any PO, Supplier shall promptly notify Buyer of such change and Buyer shall have fifteen (15) business days within which to withdraw its request for change or accept the new terms. If Buyer does not respond to Supplier's notice within twenty (20) business days, the request for changes shall be deemed withdrawn and Supplier shall perform such PO under its original terms. Supplier will not make any change in a Product which would affect such Product's appearance, function, or performance, or other specification delineated in PO without Buyer's prior written consent.

9. **Timing.** Time is of the essence in the performance of any PO. If services are not completed or goods are not delivered by the delivery date set forth in a PO, Buyer may terminate a PO by written notice effective upon receipt by Supplier and obtain substitute services or goods elsewhere. Supplier shall promptly reimburse Buyer for any loss or increased costs, including downtime or overtime costs, incurred by Buyer as a result of obtaining such substitute goods or services. In any case, where delivery from Supplier to Buyer will be delayed, Supplier shall give actual Notice of such delay to Buyer as soon as Supplier learns of such Delay
10. **Responsibility for Delayed Delivery:** Supplier understands and agrees that Buyer purchases Product from Supplier for the purpose of fulfilling commitments to Buyer's Customers, and, because Buyer utilizes a lean manufacturing method and, thus, time is of the essence. Accordingly, in any situation where Delivery from Supplier to Buyer is delayed more than 2 business days from expected Delivery date, Buyer may arrange for Expedited Shipping from Supplier's facilities to Buyer's facilities or other location designated on PO, as well as from Buyer's facilities or other location listed on PO to Buyer's Customer, with Expedited Shipping costs to be paid by Supplier. "Expedited Shipping" means any mode of transit that will likely move Product from one point to another in a manner calculated to be quicker than regular ground freight trucking.
11. **Taxes.** Supplier is solely responsible for the payment of any sales, use or other tax or duty levied or based on the price of any goods, work or services provided pursuant to any PO. If Buyer pays any such tax or duty, Supplier shall promptly reimburse Buyer therefore.
12. **Price, Payment, Setoff.** If no price is stated in any PO, Supplier shall charge the lowest prices previously quoted or charged Buyer for like goods or services in like quantities under similar conditions. Supplier warrants that the prices stated in any PO are the lowest net prices charged by Supplier to any other customer for like goods or services in like quantities under similar conditions. If such lower price is quoted within thirty (30) days after delivery to Buyer, Supplier shall promptly pay to Buyer a rebate in the amount of the difference of such amounts within ten (10) days of such lower quote. Buyer shall have a right to recoup or setoff, as the case may be, against payments due or at issue under the PO or any other contract between the parties.
13. **Supplier Quality and Inspection.** Supplier will conform to internationally recognized quality control standards and inspection system, as well as related standards and systems that are directed by Buyer. Supplier will also participate in supplier quality and development programs of Buyer as directed by Buyer. All goods may be inspected and tested by Buyer at all reasonable times and places. If inspection or testing is made on Supplier's premises, Supplier will provide, without charge, all reasonable facilities and assistance required for the inspection and tests. Supplier's standard inspection and quality testing system must be approved by Buyer in writing. All inspection, testing, and quality records, including sub-tier supplier records relating to the goods, will be maintained by Supplier and during the performance of the PO, and for such longer periods if specified by Buyer.
14. **Disputes.** Any dispute arising under or in connection with the PO with respect to the rights, duties, or obligations of the parties shall be submitted in writing for resolution to ascending levels of management of the respective parties. Buyer may withhold the disputed invoice amounts while the parties try to resolve the dispute. If a dispute cannot be resolved to both parties' mutual satisfaction, after good faith negotiations, within ninety (90) days from the date the written claim is received by the other party, or such additional time as the parties agree upon in writing. Pending any resolution, or final decision referred to in this clause, or the settlement of any dispute arising under the PO, both parties shall proceed diligently, with their respective obligations under the PO. Payment of any fees by Buyer shall not waive any rights, claims or remedies. To the maximum extent permitted by law, the parties waive any right to a jury trial. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the products, goods and/or services delivered hereunder must be commenced within one year after the cause of action has accrued.
15. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL BUYER'S CUMULATIVE LIABILITY TO SUPPLIER FOR ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES RELATING TO A PO, OR THE GOODS OR SERVICES PROVIDED THEREUNDER, EXCEED THE AMOUNT OF THE PURCHASE PRICE FOR ANY SUCH GOODS OR SERVICES IN CONNECTION WITH THE APPLICABLE PO, LESS ANY AMOUNTS ALREADY PAID BY BUYER FOR SUCH GOODS OR SERVICES. BUYER SHALL NOT BE LIABLE TO SUPPLIER FOR ANY LOST PROFIT, LOSS OF BUSINESS, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.
16. **Indemnification.** Supplier shall indemnify, defend and hold harmless Buyer, its shareholders, subsidiaries, affiliates, officers, directors, attorneys, employees, agents, successors and assigns from and against any and all losses, obligations, liabilities, claims, suits, judgments, damages (whether incidental, consequential, or otherwise), penalties, fines, costs and expenses (including, without limitation reasonable attorney's fees) arising out of, or in connection with (a) the violation or alleged violation of any law, ordinance, regulation, or rights of third parties by reason of performance or nonperformance by Supplier of any PO; (b) breach of any term, condition, covenant, agreement, representation or warranty by Supplier; (c) any infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property relating to the use or design of any equipment, materials, goods or services furnished by Supplier under any PO or the processes or actions employed by or on behalf of Supplier in connection with any PO; (d) injury or death to persons or any real or personal property damage, arising from or relating to the goods or services provided by Supplier under any PO or acts or omissions of Supplier or its officers, directors, employees, agents, contractors or subcontractors; or (e) claims arising from or relating to injuries to or death of Supplier's employees, including but not limited to claims based upon allegations of negligence of Buyer. The indemnity provided in clause (e) is applicable to claims for which Supplier has or may have immunity under any workmen's compensation laws, or other similar law, and Supplier agrees and acknowledges that by undertaking to indemnify Buyer, Supplier is expressly undertaking indemnification liability by written contract pursuant to such workmen's compensation laws, or any other similar law. Supplier's obligations under this clause shall not be limited to its insurance coverage.
17. **Insurance.** Supplier agrees to maintain commercially reasonable levels of insurance coverage, including: (1) Commercial General Liability Insurance with a limit of not less than one million U.S. dollars (\$1,000,000) covering liability for property damage and bodily injury, including death to any person; (2) Automobile liability insurance with bodily injury and property damage limits of not less than one million U.S. dollars (\$1,000,000); and (3) "Umbrella" liability insurance in an amount not less than four million U.S. dollars (\$4,000,000) to cover claims in excess of the coverage limits provided above. If Supplier is providing professional services, advice or designs, it agrees to maintain Errors and Omissions Insurance with a limit of not less than one million U.S. Dollars (\$1,000,000).

If Supplier is performing services for Buyer, Supplier agrees to also maintain: (1) Commercial Crime covering employee dishonesty in an amount of not less than one million U.S. dollars (\$1,000,000); (2) Workers' compensation insurance for Supplier's employees at the applicable statutory limit and in an amount of not less than five-hundred thousand U.S. dollars (\$500,000) per occurrence; and (3) Property insurance covering "All Risk" of loss or damage to Supplier real and personal property. Buyer shall be named as an additional insured on the Commercial General Liability, Automobile Liability and Umbrella Liability policies, and Supplier shall provide Buyer with Certificates of Insurance. If applicable, all policies of insurance shall be underwritten through insurance companies licensed to do business in the jurisdiction where the services are being provided, and with at least A.M. Best rating of A- (X).

- 18. Confidentiality and Intellectual Property.** All information, including without limitation specifications, samples, drawings, materials, know-how, designs, processes, and other technical, business, or financial information, that: (a) has been or will be supplied to Supplier by or on behalf of Buyer; or (b) Supplier will design, develop, or create in connection with the PO; as to individual items or a combination of components or both, and whether or not completed, and all derivatives of (a) and (b) that Supplier has or will design, develop or create are deemed to be "Confidential Information" of Buyer. All Confidential Information is work made for hire and made in the course of services rendered. All rights to it belong exclusively to Buyer, with Buyer having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protection. To the extent that exclusive title or ownership rights in Confidential Information may not originally vest in Buyer, Supplier irrevocably assigns transfers and conveys to Buyer all right, title, and interest therein. For a period of five (5) years after termination or expiration of the PO, Supplier shall not disclose and shall, to the extent within its control, prevent the disclosure by others of the Confidential Information to any third party without the prior written consent of Buyer. Supplier agrees not to use, or make copies, of the Confidential Information except as required for the performance of its obligations under the PO, and agrees to limit access to the Confidential Information to its own employees, agents and consultants strictly on a "need to know" basis; provided, however, that such agents and consultants have executed an agreement with Supplier with confidentiality provisions at least as restrictive as those contained herein. Upon expiration or termination of the PO and if requested by Buyer, Supplier shall, to the extent possible, promptly return all of the Confidential Information. Each party acknowledges that the disclosure of confidential or proprietary information of the other may give rise to irreparable injury that may be inadequately compensable in damages. To the extent Supplier breaches, or Buyer could reasonably believe Supplier may breach, its confidentiality obligations stated herein, Supplier consents to Buyer obtaining injunctive relief to prevent, or otherwise limit the damages of, any such breach or threatened breach.
- 19. "Personal Data"** means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity. Supplier will: (a) treat Personal Data of all Buyer personnel and prospective personnel as Confidential Information; (b) take appropriate technical and organizational security measures as are required by Buyer to protect Personal Data; (c) use and permit employees and third parties to use Personal Data pursuant to Buyer's instructions only for purposes directly related to the performance of obligations under the PO; (d) refrain from transferring Personal Data out of the European Union unless Buyer has given its prior consent to the transfer and Supplier has satisfied any further requirements reasonably imposed by Buyer; (e) indemnify Buyer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which Buyer may suffer or incur arising out of any breach of this clause; and (f) promptly notify Buyer about: any legally binding request for disclosure of Personal Data by a law enforcement agency (unless otherwise prohibited); any accidental or unauthorized processing of Personal Data; and any requests received from individuals to whom Personal Data relates, without responding to that request unless it has been otherwise authorized to do so by Buyer.
- 20. Subcontractors.** Supplier may, upon written approval by Buyer, subcontract any portion of a PO to another person furnishing labor or materials to Supplier for the performance of any PO (collectively the "Subcontractors"), but Supplier shall nevertheless remain primarily liable and fully responsible for the performance of the obligations under such PO. If Supplier is subcontracting a service, Supplier must first obtain Buyer's written consent to use Subcontractors prior to subcontracting or otherwise permitting Subcontractors to perform services. No subcontract shall increase the fees or the scope or amount of expenses passed through to Buyer. Supplier shall cause its Subcontractors to, and remains fully responsible if they do not, comply with these Terms.
- 21. Relationship of Parties.** Supplier and Buyer are independent contracting parties and nothing in the PO will make either party the employee, agent or legal representative of the other for any purpose. The PO does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Supplier will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the PO, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Supplier or its respective contractors are employees or agents solely of Supplier or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Supplier or its contractors.
- 22. Liens.** If any PO calls for work or services to be performed upon Buyer's property, Supplier shall not file or cause to be filed, directly or indirectly, and shall keep such property and work free and clear of, any mechanics, construction or other similar liens (the "Liens"), and shall perform such other acts and provide such other assurances, including but not limited to obtaining payment and performance bonds and furnishing mechanics lien waivers, as Buyer may request from time to time or that is otherwise required to prevent or waive such Liens. Supplier shall give any Subcontractors notice of this clause and, prior to subcontracting any work or services to Subcontractors, shall require its Subcontractors to agree to waive any rights to Liens it may otherwise have with respect to Buyer, and to cooperate fully with Buyer to fill out forms, file documents, or otherwise perform any such acts or assist in waiving or preventing Liens prior to allowing any Subcontractor, or representative of Subcontractor, to furnish any labor or materials to Supplier for the performance of any PO or portion thereof.
- 23. Compliance with Law.** Supplier, and any goods or services supplied by Supplier, will comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to the manufacture, labeling, transport, import, export, licensing, approval or certification, including laws relating to environmental matters, hazardous materials, hiring, wages, hours and

conditions of employment, subcontractor selection, discrimination, occupational health or safety and motor vehicle safety. The PO incorporates by reference all clauses required by these laws. All materials used by Supplier will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Supplier certifies, warrants, and guarantees to Buyer that its product(s) are in full compliance with all applicable laws and regulation, including but not limited to:

- (a) Supplier, in the performance of the PO, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, ordinances, guidelines, directives, FAA, and other transportation regulations, and shall procure all licenses or permits, pay all fees, and other required charges. Supplier further represents, where applicable, that each chemical substance constituting or contained in products sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
 - (b) Supplier shall: (i) comply with the requirements of the Foreign Corrupt Practices Act, as amended, (FCPA) (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Supplier is within the jurisdiction of the United States; (ii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery; and, (iii) Supplier hereby agrees not to interact with any government official, political party or public international organization on behalf of Buyer without the prior written permission of the Buyer.
 - (c) Supplier, where applicable, agrees meet its compliance obligations with regard to the European Regulation (EC) No. 1907/2006 ("REACH") and Article 4.1 of the European Parliament Directive 2002/95/EC ("RoHS Directive").
24. **Ethics and Integrity.** Supplier will comply with Buyer's Code of Business Conduct and Ethics ("Code") or an equivalent ethics policy of its own, in performance of the PO. A copy of the Code is located on Buyer's website and may be obtained from Supplier upon request. Supplier will maintain an integrity and compliance program acceptable to Buyer and effective in preventing and correcting ethical violations and in maintaining compliance with laws.
 25. **Corporate Social Responsibility and Human Rights Policy.** Supplier will comply with Buyer's Corporate Social Responsibility and Human Rights Policy ("CSR") or an equivalent policy of its own, in performance of the PO. A copy of the CSR is located on Supplier's website and may be obtained from Supplier upon request. Supplier will review the CSR and similar supplier related criteria and guidelines set forth on the Buyer's website for suppliers.
 26. **Conflict Minerals.** Suppliers are expected to ensure that parts and products supplied to Buyer do not contain "Conflict Minerals" (gold, tin, tantalum and tungsten) or their derivatives that are sourced from the Democratic Republic of Congo ("DRC") or adjoining countries. Suppliers are expected to establish policies and perform due diligence consistent with the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.
 27. **Toxic Substances.** Upon receipt by Buyer of information, which would reasonably lead to the conclusion that a chemical substance or any other toxic substance, which is the subject of any PO, was manufactured, processed, transported or distributed in commerce in violation of the Toxic Substances Control Act, Buyer may suspend or terminate such PO.
 28. **Sustainability.** Buyer and Supplier hereby recognize the value in supporting initiatives that strive to achieve excellence in environmental and social performance. While these Terms and the PO defines the parameters in which the parties will conduct business, the parties agree to practice of the principles of sustainable business. Elements that the parties will consider include: (a) development of a sustainability report; (b) promoting diversity in the supplier base; (c) taking voluntary initiatives to reduce environmental impacts; and (d) supporting safe, healthful workplaces and communities, hiring and promoting employees without discrimination, paying competitive wages and benefits. In addition, Supplier will completely, accurately, and timely respond to Buyer's surveys and requests for information related to the sustainability and fully cooperate with Buyer in Buyer's efforts to collect information throughout Supplier's supply chain on the origin of materials.
 29. **Non-Discrimination.** Supplier warrants that it shall not, in performing its obligations under any PO, discriminate against any employee or applicant for employment on the basis of race, creed, color, age, sex, or national origin or on the basis of the employee or applicant being disabled, a disabled veteran or other protected veteran, for a position which the employee or applicant is qualified.
 30. **Customs Related Matters.** Credits or benefits resulting from the PO, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Supplier will provide all information and certificates necessary to permit Buyer (or Buyer's customers) to receive these benefits or credits. Supplier agrees to fulfill any customs related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of goods are Supplier's responsibility unless otherwise stated in the PO, in which case Supplier will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Supplier will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Supplier warrants that any information that is supplied to Buyer about the import or export of goods is true and that all sales covered by the PO will be made at not less than fair value under the anti-dumping laws of the countries to which the goods are exported.
 31. **Supply Chain Security.** Supplier, where applicable, will strive to support the criteria of any supply chain security program that the country of import for the goods may adopt.
 32. **Anti-Trafficking in Persons.** Supplier is in material compliance with, and requires its Subcontractors and any person under its control to comply with, all applicable local, national, and international laws, rules, and regulations relating to supply chain transparency concerning modern slavery and human trafficking, including the California Transparency in Supply Chains Act of 2010 and the U.K. Modern Slavery Act of 2015, which require businesses to provide disclosures and take other actions concerning their efforts, to address the issues of slavery and human trafficking in their supply chains. Supplier represents and warrants that it shall

abide by and comply with the requirements of these laws and shall require its employees, agents, contract labor and Subcontractors to abide by and comply with the requirements.

33. **Audit Rights.** Buyer reserves the right to audit Supplier's records to assure compliance with these Terms and the PO. Supplier shall make available all data reasonably requested by Buyer.
34. **Advertising and Use of Name.** Supplier shall not, without first obtaining written consent of an authorized representative of Buyer, in any manner advertise or publish the fact that Supplier has furnished or contracted to furnish to Buyer the articles or services provided for in the PO. Supplier agrees that it shall not use the Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements), without the Buyer's prior written consent in each instance.
35. **Assignment.** Supplier shall not assign any of its rights or obligations under any PO without the prior written consent of Buyer. Any merger, consolidation, reorganization, recapitalization, sale of a substantial portion of Supplier's business or assets or any other transaction by which there is a change in control of Supplier's, or any of Supplier's owners' or parents', business shall be deemed an assignment by Supplier. Buyer may assign the PO to any successor in interest. Supplier shall promptly notify Buyer in writing of any organizational changes made by Supplier, including name or ownership changes, mergers or acquisitions.
36. **Jurisdiction and Venue.** Any suit, action or other proceeding seeking to enforce, or in any way relating to, any provision of a PO shall be brought only in the Court of Whatcom County, Washington or the United States District Court for the Western District of Washington. Supplier irrevocably consents and submits to the jurisdiction and venue of such courts and irrevocably waives any objection which it may have to the laying of the venue of any suit, action or proceeding brought in such courts and any claim that such suit, action or proceeding brought in such courts has been brought in an inconvenient forum or that such courts lack jurisdiction.
37. **Severability.** If any provision of any PO or these Terms, or any portion thereof, is held invalid or unenforceable by any court of competent jurisdiction, the other remaining provisions will remain in full force and effect. Any provision of any PO held invalid or unenforceable only in part will remain in full force and effect to the extent not held invalid or unenforceable.
38. **Waiver.** Neither the failure nor any delay by Buyer in exercising any right, power or privilege under these Terms or any PO, will operate as a waiver of any such right, power or privilege, and no partial exercise of any such right, power or privilege will preclude further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
39. **Governing Law.** All POs and transactions shall be governed by, and construed in accordance with, the domestic internal laws of the State of Washington without regard to its principles pertaining to the conflict of laws.
40. **Warranties.** Supplier warrants that all goods, work or services furnished pursuant to the PO shall, as appropriate: (a) be new and free from defects; (b) conform to all designs, plans, specifications, responses to RFPs, marketing brochures and letters, oral and written claims made by Supplier, samples and statements on containers, labels and advertisements; (c) be performed in a good, professional and workmanlike manner; (d) be merchantable, safe, fit and appropriate for Buyer's particular purpose and use; and (e) be delivered free and clear of any claims, liens or encumbrances whatsoever. The foregoing warranties shall extend for a period of 5 years commencing from the date the goods are received by Buyer's Customer.
41. **Traceability Information:** Supplier warrants that traceability information (date/lot code package markings, etc.) will be provided to facilitate tracing.
42. **Force Majeure.** The following events, and only the following events, shall constitute force majeure under the PO: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. Neither Buyer nor Supplier shall be liable to the other for any delay or non-performance of obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure, provided (i) the Party shall inform the other in writing without delay of its occurrence, probable duration and cessation, and (ii) The Party shall immediately take any necessary measures in order minimize the effect of such an event on the performance of its obligations under any PO. If the event that caused the delay/non-performance continues for a period over 2 months, then either Party shall have the right to terminate any PO without incurring any liability hereunder.
43. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the PO or to such other address that may be designated by the receiving party in writing. A copy of each Notice should also be directed to the Buyer's Legal Department and office of the General Counsel. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this clause.
44. **Survival.** Provisions of these Terms that by their nature should apply beyond their terms will remain in force after any termination or expiration of the PO including, but not limited to, the following provisions: Indemnification, Insurance, Compliance with Laws, Confidentiality and Intellectual Property, Audit Rights, Advertising and Use of Name, Governing Law, Warranties, and Survival.
45. **No Oral Statements.** Neither Party has relied upon any oral representations, warranties, or provisions, and no oral statement has been made by either Party that alters the Terms or Conditions of any PO.
46. **Over Shipments.** Buyer agrees to pay only for actual quantities stated on PO. Over shipments will be held for a reasonable period of time at Supplier's risk and expense while Buyer awaits shipping instructions, and returned to Supplier, at Supplier's risk and expense, pursuant to Supplier's shipping instructions.