

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. "Affiliate" means any entity(ies) that directly or indirectly controls, is controlled by, or is under common control with Seller.
- 1.2. "Application" means Seller's application for business credit extended to and signed by Buyer in connection with these Terms.
- 1.3. "Buyer" means the person or entity specified in the Order or SOW.
- 1.4. "Buyer Data" means Personal Data, sensitive data or any other data about Buyer and Customer, their computers and equipment, files stored on or collected through their computers and equipment, or their computers and equipment's interactions with other computers and equipment or interactions with virtual and physical environment, and any other information and data received from Buyer or Customer directly or indirectly.
- 1.5. "Buyer Material" means Buyer's preexisting intellectual property provided by Buyer for the purpose of an Order or SOW.
- 1.6. "Confidential Information" means information received by the receiving party from the disclosing party which (a) is marked as "Confidential" or "Proprietary"; or (b) would reasonably be considered confidential and/or proprietary under the circumstances surrounding disclosure.
- 1.7. "Customer" means Buyer's customer, including any end user, of the Products, Software, and/or Services.
- 1.8. "Deliverables" means any work product, reports, or other deliverables developed and provided by Seller as part of the Services and required under an Order or SOW.
- 1.9. "DPA" means Seller's "Data Processing Agreement" made available at www.accu-tech.com/termsandconditions.
- 1.10. "Existing Agreement" means a mutually-executed current agreement between the parties that governs the purchase and sale of the Products, Software and/or Services.
- 1.11. "Order" means a purchase order issued by Buyer to Seller for the purchase and/or use of the Products, Software, and/or Services.
- 1.12. "Personal Data" means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under the General Data Protection Regulation or other applicable data protection laws.
- 1.13. "Products" means the products, materials, or goods described in an Order or SOW, including Special-Order Products, Project Products, and Owned Brands Products..
- 1.14. "Project" means any discrete Buyer initiative for Buyer, a specified Customer or location that requires Supplier to allocate or set aside products, materials, capacity, or services, including related phases, variants, refreshes, expansions, and follow-on activities, and that may involve multiple shipments, milestones, orders, or releases.
- 1.15. "Seller" means the selling entity specified in the Order or SOW.
- 1.16. "Seller Materials" means all processes, formulas, tools, ideas, concepts, methodologies, software, know-how, business practices, trade secrets, object code, source code, documentation, information and ideas developed by Seller or its licensors, and all intellectual property rights therein.
- 1.17. "Services" means those specific tasks, functions, responsibilities, Deliverables and other services described in an Order or SOW.
- 1.18. "Software" means any computer programs, applications, operating systems, firmware, cloud-based or hosted software or service provided by a third-party licensor/provider/reseller by Seller, accessible via the internet or other network, including any related documentation.
- 1.19. "SOW" means a document between Seller and Buyer that specifies the Products, Software, and/or Services provided by Seller to Buyer in the scope, nature, and other relevant characteristics within the Territory.
- 1.20. "Special-Order Product" means any Product (i) that Seller procures or specially stocked for Buyer (including Products that are custom made, modified, altered, or includes special features), (ii) not readily saleable by Seller to other customers, (iii) identified by Seller as non-cancelable or non-returnable, or (iv) that Seller stocks in its inventory as instructed by Buyer or pursuant to a forecast provided by Buyer.

- 1.21. "Territory" means the country or jurisdiction in which the Products and/or Services will be provided and/or performed.
- 1.22. "Terms" means these Terms and Conditions of Sale.
2. **SCOPE OF AGREEMENT.** Except in the event there is an Existing Agreement, these Terms govern the sale, purchase and use of Products, Software, and/or Services by Buyer from Seller and, together with the Application, and each Order and SOW, constitutes the entire and separate agreement between the parties with respect to the subject matter of these Terms. If a conflict arises between or among these Terms, the Application, and an Order and/or SOW, these Terms shall prevail unless otherwise expressly agreed in writing by authorized representatives of the parties. If Buyer is accepting these Terms on behalf of Customer or another party, Buyer represents and warrants that Buyer has full authority to bind such party to these Terms. Any additional, preprinted or different terms contained on any purchase order, portal, or other communication from Buyer purporting to apply shall be deemed void and unenforceable unless expressly agreed and signed in writing by authorized representatives of both parties. Buyer's or its Customer's placement of an Order, SOW or receipt or acceptance of the Products, Software and/or Services constitute acceptance of these Terms.
3. **ORDERS.**
 - 3.1. Seller reserves the right, in its sole discretion, to cancel, accept or reject any Order, in whole or in part, at any time, without liability. Any change requested by the Buyer to any aspect of the scope of an Order or SOW must be agreed in writing by both parties and may result in a price and/or delivery adjustment as determined by Seller. Seller reserves the right to implement a minimum order size of \$350 per Order. If Seller authorizes that all or part of an Order or SOW be terminated or suspended by modification, rescission or as otherwise provided in Sections 6 and 15, Buyer shall pay termination charges equal to Seller's costs associated with the Order or SOW, as determined by generally accepted accounting principles, plus a reasonable profit on the entire Order or SOW, and any additional costs incurred by Seller as a result of such termination or suspension. Seller's costs shall include any amount Seller must pay to its suppliers and manufacturers relating to the relevant Order or SOW.
 - 3.2. Buyer agrees and expressly consents that it must take possession of and accept delivery of any Special-Order Product and any Project Products no later than thirty (30) days after Seller notifies Buyer that such items are available for pickup or delivery, or after completion of Seller's delivery obligations, as applicable **TIME IS OF THE ESSENCE WITH RESPECT TO THIS OBLIGATION.** Orders for any Special-Order Product or Project Products are non-cancellable. If Buyer fails to timely take possession or accept delivery, or attempts to cancel, Buyer shall promptly pay the full purchase price for the affected items and reimburse Seller for all associated fees and costs, including reasonable and documented storage, staging, handling, transportation, and any manufacturer or supplier cancellation or change fees. Seller may, at its option and without further notice, tender delivery by placing the affected items into storage for Buyer's account and risk, invoice Buyer for all amounts then due upon availability or tender to storage and continue to invoice reasonable storage and related charges until pickup or delivery occurs. Any such storage constitutes valid tender of delivery for all purposes, including invoicing and risk allocation as provided in these Terms. Seller may require a non-refundable deposit for any Special-Order Product or Project Products. For clarity, title and risk of loss shall pass as provided elsewhere in these Terms, and nothing herein obligates Seller to hold inventory beyond the foregoing period. Seller may, in its discretion, require a non-refundable deposit for any Special-Order Product ordered by Buyer.
 - 3.3. Unless expressly authorized in writing by Seller, the Products or Software shall not be used in or in connection with a nuclear facility or application. If Buyer uses any Product or Software in connection with any nuclear facility or activity, it does so at its own risk and Buyer will indemnify, defend and hold Seller harmless, and waives and will require its insurers to waive all right of recovery against Seller for any

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damage, loss, destruction, injury or death resulting from a "nuclear incident", as defined in the Atomic Energy Act of 1954, as amended, whether or not due to Seller's negligence. Seller's consent to Buyer's use of the Product or Software in connection with any nuclear facility or application will be subject to additional terms and conditions that Seller deems necessary to protect its interests.

4. **SERVICES.** The Services requested by Buyer shall be specified in an Order or SOW. When applicable, Buyer shall provide Seller with sufficient, free, safe and timely access to its premises and/or system as required to provide the Services. Buyer warrants that the premises where the Services will be performed will comply with all applicable federal, state and local occupational safety, welfare and health standards, rules, and regulations. Buyer agrees to ensure, so far as is reasonably practicable, the health, safety and welfare of Seller's personnel when on Buyer's premises including, but not limited to providing and maintaining premises and systems that are, so far as is reasonably practicable, safe and without risks to health. Seller may use subcontractors to perform its contractual obligations under an Order or SOW. The Services may be performed by Seller, an Affiliate of Seller, or an authorized subcontractor of Seller, and Buyer expressly consents to such performance, provided that Seller remains responsible for the acts and omissions of its Affiliates and authorized subcontractors in performing the Services. Buyer shall not supervise or direct the performance of any Seller subcontractors. Seller or Seller's subcontractors, when applicable, shall obtain and maintain the necessary licenses, certifications, and permits, specialty or otherwise, required to provide the Services. If Seller's performance of any of its obligations is prevented or delayed by Buyer: (a) Seller shall, without limiting its other rights or remedies under these Terms or as otherwise provided by law or equity, have the right to suspend or terminate performance of the Services; and (b) Buyer shall be liable for any costs and expenses sustained or incurred by Seller as a result thereof. Without limiting the foregoing, completion times referenced in an Order or SOW are only estimates. Buyer acknowledges that Seller's performance may depend on third-party regulatory, customs, or compliance actions in the relevant Territory. Buyer acknowledges and agrees that Seller does not assume control over the worksite and does not accept care, custody, or control of Buyer's or Customer's equipment, systems, or facilities.
5. **PRICE.** Prices on Seller's website, catalogs or in Seller quotes are subject to change without notice. Unless otherwise extended in writing by Seller, all prices on a Seller quote will expire and become invalid upon the expiration date stated therein. If no expiration date is specified, the quote will expire thirty (30) calendar days from its issue date. Notwithstanding anything to the contrary, Seller reserves the right to adjust any quote or pricing on an Order, at any time prior to Order issuance or Product shipment, to reflect increases in tariffs, levies, duties, freight or importation costs, supplier pricing or surcharges, commodity or metals pricing, or material exchange rate fluctuations, regardless of whether Buyer has issued a new Order for such Products. Any manifest errors are not binding on Seller. Buyer is liable for applicable transaction taxes, including sales, use, and value-added taxes, goods and services taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Buyer (collectively, "Transaction Taxes"), regardless of when such Transaction Taxes are levied or imposed. Such Transaction Taxes shall be due whether or not included on the invoice, Order or SOW. Buyer shall provide Seller with proof of exemption from Transaction Taxes at least fifteen (15) business days before the invoice due date.
6. **PAYMENT.** (a) Payment for Products, Software and Services must be made (i) in the currency identified in the invoice or in its equivalent as specified in writing by Seller, and (ii) by check or wire transfer or any other means specified by Seller, at its sole discretion. Seller may issue any invoice through one of its Affiliates, and Buyer shall timely pay any such invoice as if issued by Seller. Buyer shall pay any Seller invoice within thirty (30) days from invoice date without any right to offset, counterclaim, holdback or deduction, unless otherwise agreed in writing by Seller. Seller may, in its sole discretion, issue invoices (including advance, deposit, progress, or prebilling) for Products, Services, and/or Software prior to receiving any Order or release from Buyer, and Buyer shall pay all such invoices in accordance with these Terms notwithstanding any contrary Buyer terms or procedures. Without limiting the foregoing, Seller shall have the right to invoice Buyer upon shipment of Products, and Buyer shall pay all such invoices in accordance with these Terms. Buyer must provide notice of any payment dispute within ten (10) days of the date of the invoice or Buyer waives any right to dispute such invoice; however, any such dispute shall not delay timely payment to Seller. Seller reserves the right to require guarantees, security or payment in advance of shipment from Buyer. In the event Buyer fails to pay the total sums due on an invoice by the due date or if an Insolvency Event (as defined in section 15.3 below) occurs, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to suspend performance of any outstanding Orders or SOWs and to recover reasonable attorneys' fees and/or other expenses incurred collecting all outstanding sums from Buyer or otherwise enforcing or successfully defending these Terms. Seller may set off any amount due from Buyer from any amounts due to Buyer. Seller reserves the right to convert any payment into electronic funds at its discretion. All payments made by Buyer and all invoicing by Seller under this section shall comply with applicable law. (b) If Seller extends business credit to Buyer under an Application, then Seller's Business Credit Terms published at www.accu-tech.com/termsandconditions, as amended from time-to-time, shall apply and are expressly incorporated herein by reference.
7. **SHIPPING.** Unless otherwise agreed to in writing, (i) all Product shipments shall be FOB shipping point (INCOTERMS 2020), and (ii) Seller may, in its sole discretion, use any commercial carriers and method and route of transportation for shipment of the Products. Buyer shall be responsible for shipping charges, including all applicable freight, shipping, insurance and handling charges, unless otherwise agreed to in writing. Title to and risk of loss of the Products passes to Buyer upon transfer to the carrier at the shipping point. Software may be delivered electronically. Shipping dates or other applicable performance dates are estimated on the basis of prompt receipt of the Order and all information, drawings and approvals required to be furnished by Buyer. In the event Buyer, verbally or in writing, confirms a delivery date with Seller but subsequently suspends the Order or is unable to accept delivery, Buyer shall reimburse Seller for all costs and expenses Seller incurs as a result thereof, including, but not limited to, reasonable storage costs. No delay in the shipment or delivery of any Products relieves Buyer of its obligations under these Terms. Seller reserves the right to make partial or early shipments without liability or penalty. Buyer shall pay for the units shipped whether such shipment is in whole, partial or early fulfillment of an Order. Buyer acknowledges and expressly agrees that Software shall be deemed delivered when license keys or access credentials are transmitted, made available, or otherwise enabled for Buyer or Customer. Unless otherwise expressly agreed in a writing signed by both parties, the Software subscription term commences upon such delivery.
8. **ACCEPTANCE.** Buyer shall be deemed to have accepted the Products and Services unless written notice of nonconformity identifying the specific requirements of the Order or SOW are not met is given to the Seller within five (5) business days from date of delivery. If Buyer fails to timely provide such notice, the Product and Services shall be deemed accepted. Partial use, beneficial use, or placement into operation constitutes acceptance.
9. **SHORTAGES.** Buyer shall submit all claims for shortages in writing to Seller within ten (10) days of receiving the Products; otherwise such claims will be deemed waived. Quantities are subject to normal

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manufacturer allowances. In the case of wires and cables, such allowances are plus 10% and minus 5%.

10. RETURNS. Product returns shall be made pursuant to Seller's Product Return Policy, published at www.accu-tech.com/termsandconditions, as modified from time to time. Seller reserves the right to apply a re-stocking fees to any Product returns. Software cannot be returned without Seller's express prior written authorization. Software cannot be returned without Seller's express prior written authorization.

11. WARRANTY.

11.1 Product and Software Warranty. Seller is only a reseller of Products and Software and shall, to the extent permitted, transfer and assign to Buyer any and all transferable warranties made to Seller by the manufacturer of the Products and Software. Unless otherwise specified in a writing signed by Seller, Seller provides no independent warranty for any Products and Software. Buyer's sole and exclusive remedy for any alleged non-conforming part, defect, failure, inadequacy, or breach of any warranty related to Products and Software (collectively, "Defects") shall be limited to those warranties and remedies provided by the manufacturers or licensor thereof. Seller is not responsible for obtaining access or any costs associated with the delivery of replacement Products, uninstalling, installed Products, installing replacement Products, or any related labor costs. Seller's obligations under this Section 11.1 will be void unless Buyer provides Seller with notice of the Defect within 30 days of the date Buyer discovered or should have discovered the Defect. Buyer shall contact Seller prior to contacting the manufacturer or licensor. In the event Buyer provides notice of a Defect to the manufacturer or licensor, Buyer shall immediately notify and engage Seller on any and all discussions and actions to be taken with such manufacturer. Seller DOES NOT WARRANT that the Software will be free from errors or defects, will meet Buyer's needs, or will operate without interruption. Seller DOES NOT WARRANT that the Software will provide fail-safe performance when used in hazardous environments, including any application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage. If Seller supplies any Products or Software which include open-source software, Seller is not liable for defects in title or quality of the information, software or documentation, or for ensuring that it is correct, accurate, free of third-party property rights and copyrights, complete and/or usable. Buyer acknowledges and agrees that all Products identified or labeled as "clearance" are sold by Seller to Buyer strictly on an "as-is" basis, without any express or implied warranties, including without limitation any warranties of merchantability or fitness for a particular purpose, and Buyer assumes all risks associated with such Products.

11.2 Owned Brands Product Warranty. For products sold under Seller's owned brands (the "Owned Brands Products"), Seller warrants to the original purchaser that, at delivery and for one (1) year from the invoice date (the "Warranty Period"), the Owned Brands Products will be free from defects in materials and workmanship under normal use. This warranty is limited to the original buyer, is non-transferable, and applies only to Owned Brands Products purchased directly from Seller and fully paid. Buyer must comply with Seller's return material authorization ("RMA") procedures. No returns without a prior written RMA. Returned items must be shipped, at Buyer's risk and expense, in original or equivalent packaging, freight and insurance prepaid, to the location designated by Seller, with proof of purchase and the RMA number. Seller may inspect and test at its facility or on site. If a claim is not covered, Buyer is responsible for evaluation, handling, repair, and return shipping costs. If, during the Warranty Period and after compliance with these procedures, an Owned Brands Product is proven to Seller's reasonable satisfaction to be defective in materials or workmanship under normal use, Seller's sole obligation, and Buyer's exclusive remedy, is, at Seller's option, to repair, replace (with new, refurbished, or functionally equivalent product or parts, which may be later versions), or refund the purchase price paid. Any

repaired or replaced product is warranted only for the remainder of the original Warranty Period. Seller is not responsible for access, removal, uninstallation, decommissioning, reinstallation, recommissioning, validation, site work, downtime, or any labor or travel costs. Third-party components, accessories, or software furnished with the Owned Brands Products are warranted, if at all, only by their original manufacturers or suppliers; Seller will pass through any transferable warranties to the extent permitted. Seller disclaims responsibility for third-party products and for designs or specifications provided by or on behalf of Buyer. Changes to design, materials, or specifications that do not adversely affect form, fit, or function are not defects.

11.3 Services Warranty. Seller warrants that Services it performs under any quotation, proposal, order acknowledgment, Order, or SOW will be performed in a professional workmanlike manner consistent with generally accepted industry standards. Seller does not warrant results or outcomes. Buyer must notify Seller in writing with reasonable detail of any breach within fifteen (15) days after the earlier of (a) performance of the Services at issue or (b) when Buyer first knew or reasonably should have known of the alleged nonconformity. Upon timely notice, Seller's sole obligation, and Buyer's exclusive remedy, for breach of this warranty is, at Seller's option: (i) reperformance of the nonconforming Services, or (ii) a credit or refund not exceeding the fees actually paid for the nonconforming Services. Any reperfomed Services are warranted only for the remainder of the original period. This warranty is conditioned on: (1) timely payment; (2) Buyer's compliance with Seller instructions, site-prep requirements, and maintenance; (3) Buyer providing safe, timely, reasonable access to sites, systems, equipment, data, and personnel; and (4) no misuse, neglect, improper storage or operation, failure to follow instructions, or unauthorized modifications or repairs. Buyer must allow Seller to investigate and cure. Buyer may not back-charge, repair, or re-perform Services, or allow others to do so, without Seller's prior written consent; doing so voids this warranty. Any credit or refund may be conditioned on reasonable documentation. The parties acknowledge and agree that the same remedy applies subcontracted Services. Seller makes no additional warranties for subcontractors and, to the extent permitted, will pass through any third-party warranties in lieu of additional Seller obligations. Seller is not responsible for third-party services, products, or software not furnished by Seller. Furthermore, Seller has no responsibility or liability for (A) third-party services, products, or software not provided by Seller; (B) Buyer- or customer-furnished materials, equipment, software, data, designs, specifications, or instructions; (C) pre-existing, concealed, or code-violation conditions, hazardous materials, or other conditions at the site or outside Seller's control; (D) normal wear and tear; (E) accidents, force majeure, power or environmental anomalies, cyber events, or other non-Seller causes; or (F) cosmetic or de minimis conditions that do not materially impair function. Any access to networks or systems is provided "AS IS."

11.4 Forfeiture of Warranty.

11.4.1 The warranties described herein do not cover, and Seller shall have no liability for: (a) normal wear and tear; (b) defects, failures, or damages caused by improper or unauthorized installation, maintenance, storage, handling, use, operation, or repair; (c) accident, abuse, neglect, misuse alteration, modification, or unusual physical, electrical, or environmental stress; (d) use of the Products, Software, and/or Services in a manner inconsistent with Seller's or manufacturer's instructions, specifications, or recommendations; (e) any products, parts, or equipment not supplied by Seller; (f) consumables or expendable items; or (g) any costs or expenses related to removal, installation, labor, or transportation of the defective or replacement Products, Software, and/or Services.

11.4.2 Furthermore, Seller's obligations under the warranties described herein are conditioned upon (i) Buyer's strict compliance with all payment terms, (ii) Buyer's provision of reasonable access and cooperation to Seller for inspection and verification of the claimed defect, and (iii) return of the defective Products to Seller,

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- freight prepaid, if requested by Seller. Any replacement products provided under these warranties may be new or refurbished, at Seller's sole discretion.
- 11.4.3 No agent, reseller, or other third party is authorized to alter or expand this warranty or to make any representation or warranty on Seller's behalf. If any term of this warranty is held invalid, the remaining terms will remain in full force and effect and will be applied to the maximum extent permitted by law. This warranty gives Buyer specific legal rights, and Buyer may have other rights that vary by jurisdiction; nothing in this warranty seeks to limit rights that cannot be limited under applicable law.
- 11.5 **Buyer's Information.** Buyer is solely responsible for the accuracy, completeness, legality, sufficiency, and timeliness of all information, data, designs, specifications, instructions, site details, and other materials it or its representatives provide to Seller, and Seller may rely on such information without independent verification. Seller is not responsible for nonconformities, delays, failures, rework, or costs caused by inaccurate, incomplete, misleading, untimely, or insufficient Buyer-provided information or instructions; schedules and pricing will be equitably adjusted, and Seller may suspend performance, until corrected. Buyer must confirm that the Products, Software, and Services, and all specifications, quantities, and configurations, are correct and suitable for Buyer's intended use; absent a signed writing, Seller does not design, select, or approve systems or warrant fitness for any particular purpose. Buyer grants Seller the rights necessary to use Buyer-provided information for performance and warrants such use is lawful and non-infringing, and, to the extent permitted by law, will defend, indemnify, and hold Seller harmless from third-party claims and related losses arising from Buyer-provided information, designs, or instructions.
- 11.6 **DISCLAIMER. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND SELLER DISCLAIMS AND EXCLUDES, AND BUYER WAIVES, ALL OTHER EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST REDHIBITORY DEFECTS, CONFORMITY TO ANY REPRESENTATION, DESCRIPTION, OR SPECIFICATION, PERFORMANCE, NON-INFRINGEMENT, AND OF ANY OTHER TYPE, REGARDLESS OF WHETHER ARISING BY LAW (STATUTORY OR OTHERWISE), COURSE OF PERFORMANCE, COURSE OF DEALING, OR ANY OTHER LEGAL OR EQUITABLE BASIS. IN THE EVENT THAT DISCLAIMER OF WARRANTY STATEMENTS ARE NOT PERMITTED BY LAW, SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE LESSER OF THE APPLICABLE WARRANTY PERIOD OR THE MINIMUM PERIOD REQUIRED BY LAW. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PRODUCTS, OWNED BRANDS PRODUCTS, SOFTWARE, AND SERVICES ARE PROVIDED "AS IS" EXCEPT TO THE EXTENT THE MANUFACTURER OR LICENSOR HONORS ANY WARRANTY EXPRESSLY MADE BY IT.**
- 11.7 Buyer acknowledges and expressly agrees that any drawings, designs, suggestions, recommendations, or advice (paid for, free, or otherwise) as to any Products, Software, or Services including installation or use recommendations (collectively, "Advisory Materials") are provided "as is" and are for informational and conceptual purposes only. Buyer acknowledges that in the event it follows any such Advisory Materials, it does so at its own risk and agrees that Seller will not be liable for any issues, damages, claims, liabilities, or losses suffered by Buyer or any third party, directly or indirectly, due to Buyer or any third party following any Advisory Materials. Buyer is solely responsible for validating that any recommendations, designs, or configurations are suitable for Buyer's or Customer's intended use and comply with applicable laws, codes, and standards.
- 12. PROPRIETARY RIGHTS. LICENSE.**
- 12.1 Intellectual Property Ownership.** Each party shall retain ownership of all right, title and interest in and to its pre-existing intellectual property, Confidential Information, materials and/or Deliverables. Buyer grants to Seller a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license to use Buyer Material solely as necessary to perform its obligations during the term of the applicable SOW or Order. Upon payment in full of the applicable fees, Seller grants Buyer a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, perpetual license to access, use, and reproduce, for Buyer's own internal business operations, the Deliverables (and any Seller Materials solely as provided by Seller as part of the Deliverables). No ownership rights in any Products, Services, or materials are transferred to Buyer or Customer. Nothing in these Terms or any SOW shall be construed or interpreted as a "work for hire" arrangement.
- 12.2 Software License.** If applicable, Buyer shall be granted a limited license to use and access any Software strictly pursuant to the end user license agreement ("EULA"), cloud/subscription agreement, or terms of use issued by the licensor/provider governing access to and use of the Software, and Buyer shall be bound by and comply with and ensure that its personnel and Customer complies with, at all times, any license terms pertaining to such Product or Software. Buyer acknowledges that Software associated with a Product is licensed and not sold to Buyer. If applicable, unless otherwise agreed to in writing, Software associated with a Product is licensed and not sold to Buyer. Buyer shall, and shall cause its personnel and Customer to (i) comply with all applicable laws, regulations, industry standards and third party rights in connection with its access to and use of the Software; (ii) accept and comply with all obligations contained in the license agreement provided by the Product or Software manufacturer; and (iii) use reasonable and diligent efforts consistent with industry standards to protect and maintain Buyer Data, Personal Data, and any Customer information collected by Buyer's applications from unauthorized access or use. Buyer shall not, and Buyer shall instruct its Customer to not: (i) transfer, assign or sublicense the Software, or its license rights thereto, to any other person, organization or entity, including through rental, timesharing, subscription, hosting, or outsourcing the Software, except as specifically set forth herein; (ii) use the Software for any unauthorized purpose; (iii) attempt to create any derivative version thereof; (iv) remove or modify any marking or notice on or displayed through the Software or documentation; or (v) de-compile, decrypt, reverse engineer, disassemble or otherwise reduce same to human-readable form. In the event Software and/or Services are provided and accessed by Buyer through the internet at a website provided by Seller, Buyer acknowledges and agrees that Seller is not responsible for (i) Buyer's access to the internet, (ii) any breaches of security, interruptions and/or interceptions of information or communication through the internet, and (iii) changes or losses of data through the internet. Further, Buyer acknowledges that security of transmissions over the internet cannot be guaranteed.
- 12.3 Buyer Data.** (a) The Products, Software, and/or Services may employ applications and tools to collect Buyer Data. Seller may collect and use Buyer Data necessary to provide Buyer and/or Customer with the relevant Products, Software, and/or Services functionalities as ordered (including detecting and reporting threats and vulnerabilities on Buyer's and/or Customer's computer network), to enable Seller to improve Products, Software, and/or Services (including content synchronization, device tracking, troubleshooting, etc.), to manage the Products, Software, and/or Services, to further or improve overall security, to recommend product updates, replacements, or upgrades, regardless of where Buyer purchased those products, and to develop new services, software, functionality and capabilities. Buyer grants Seller a royalty-free, non-exclusive, irrevocable, worldwide, perpetual right and license to use, reproduce, store, access, transmit, modify, aggregate

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and disclose Buyer Data for provisioning and improvement of the Products, Software, and/or Services, for research and development purposes, training, and for the deployment of new services, software, functionality and capabilities. This includes without limitation compiling statistical and performance information and making such anonymized information publicly available. Buyer shall be solely responsible for the processing of Buyer Data using the Products, Software, and/or Services, as well as the accuracy, quality, integrity, legality, reliability, and appropriateness of all Buyer Data. Buyer represents and warrants to Seller that Buyer has the right and authority to furnish Seller with any and all data provided to Seller related to these Terms. The Products, Software, and/or Services may rely on Buyer Data supplied by Buyer, and Seller is not liable for the content of Buyer Data. Except as required under applicable law, Seller does not assume any duty or obligation to correct or modify Buyer Data. Except as provided in these Terms, Buyer retains all rights, title, and interest in and to Buyer Data. Buyer is responsible and liable for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Buyer Data; and access and use of the Products, Software, and/or Services in a manner that is inconsistent with these Terms. To the extent Buyer discloses or transmits Buyer Data to a third-party, Seller is no longer responsible for the security, integrity, or confidentiality of such content outside of Seller's control. Where, as part of or in relation to Products, Software, and/or Services, Seller process Buyer Personal Data, Buyer shall be deemed to have read and agreed to the DPA. (b) Buyer acknowledges and agrees that authorized representatives of Seller may be granted limited access to Buyer's online accounts with Seller and to Buyer Data solely to assist with the online purchasing process for Products, Software, and/or Services. Such access shall be subject to the same restrictions and obligations set forth in these Terms, may be revoked by either Seller or Buyer at any time by written notice, and all activities will be logged and subject to review by both parties. Seller will notify Buyer promptly of any addition or removal of a Seller representative from Buyer's online account. Seller's representatives shall comply with all applicable data security and confidentiality requirements. Seller shall not be liable for any actions or omissions of its authorized representatives while accessing Buyer's online accounts or Buyer Data, to the extent such actions or omissions are taken at the express direction of Buyer.

13. INDEMNIFICATION.

13.1 By Seller. (i) Seller hereby transfers any intellectual property indemnity from the manufacturer of Products, Software, and Services to Buyer. Seller's obligation to indemnify Buyer shall not be greater than the intellectual property indemnity provided by the manufacturer of such Products, Software, and Services and shall only apply if Buyer complies with Section 13.3 herein. Seller's indemnification obligation does not apply if (a) Seller followed Buyer's specifications, instructions or designs relating to the Products, Software or Services; (b) Buyer continued to use the Products, Software or Services after Seller informed Buyer of modifications required to avoid infringement; or (c) the alleged infringement results from Buyer's misuse, modification or enhancement of the Products, Software, and/or Services, whatever the case may be, or from the use of such in combination with other products not provided or approved by Seller. (ii) Seller will indemnify Buyer against third-party intellectual property infringement claims arising from Buyer's use of the Owned Brands Products, provided that Buyer complies with Section 13.3 herein. This indemnity does not apply to claims resulting from: (a) Buyer's specifications or instructions; (b) use of the products in combination with unauthorized items; (c) modifications not made by Seller; or (d) unauthorized use of the products. Seller's liability under this indemnity is limited to the purchase price paid for the specific Owned Brands Products at issue. This indemnity is Buyer's exclusive remedy for intellectual property infringement claims related to the Owned Brands Products.

13.2 By Buyer. Buyer shall indemnify and defend Seller and its affiliates, directors, officers, affiliates, employees, agents, successors, and permitted assigns ("Indemnitees") against any claims, demands, damages, liabilities and expenses (including court costs and reasonable attorneys' fees) that Indemnitees incur as a result of or in connection with: (a) any claims arising from Buyer's: (i) failure to obtain any consent, authorization or license required for Indemnitees' use of Buyer Materials; (ii) use of the Products, Software, or Services in any manner (e.g., solely or in combination) not expressly permitted by these Terms or the applicable license agreement or specifications provided by the Product and/or Software manufacturer or provider of Services; (iii) misuse, modifications, enhancements, or programming to the Products, Software, Services; (iv) negligence, willful misconduct, or failure to exercise reasonable care in providing accurate, complete, or updated information, data, specifications, design, drawings, or documentation to Seller used by Seller in providing the Products or Services under these Terms or any SOW, or Buyer's breach of any representation or warranty regarding the same; (v) breach of its obligations, representations, and warranties under these Terms; (vi) gross negligence or other act or omission in connection with the performance of its obligations under these Terms; (vii) providing Seller any information, data, specifications, design, drawings, or documentation that is used by Seller in providing the Products, Software, or Services under these Terms or any SOW that results in any intellectual property infringement or misappropriation; (viii) failure to comply with applicable export control laws and regulations; or (ix) breach of the applicable EULA or use restrictions, or unauthorized use or redistribution of Software; (b) Indemnitees' compliance with any technology, designs, instructions or requirements, including any specifications provided by Buyer or a third party on Buyer's behalf; and (c) any reasonable costs and attorneys' fees and expenses required for Indemnitees to respond to a subpoena, court order or other official government inquiry regarding Buyer's use of the Products, Software, or Services. Without limiting the foregoing, Buyer shall indemnify, defend, and hold harmless Indemnitees from and against any claims for bodily injury, death, or property damage arising out of or relating to site conditions, hazardous materials, Buyer's or Customer's failure to maintain a safe worksite, or Buyer's or Customer's operation, maintenance, or use of Products, Software, Deliverables, and/or Services.

13.3 Notification. The indemnified party shall: (i) provide prompt written notice to the indemnifying party; (ii) reasonably cooperate in connection with the defense or settlement of the claim, including providing all reasonable information and assistance at the indemnifying party's cost; and (iii) give the indemnifying party sole control over the defense and settlement of the claim, provided that any settlement of a claim shall not include a specific performance obligation or admission of liability by the indemnified party. Failure to provide timely notice that prejudices the indemnifying party shall relieve the indemnifying party of its obligations under these Terms and any obligation to reimburse the indemnified party for its attorney's fees incurred prior to notification.

13.4 The foregoing indemnities are personal to Seller and Buyer and may not be transferred or assigned to anyone. This Section 13 states the parties' exclusive remedies for any claims arising under Sections 13.1 and 13.2, other than any remedies that may be available against third party manufacturers or providers of the Products, Software or Services.

14. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS, LOST BUSINESS, LOST REVENUE, DELAY DAMAGES, OR ANY OTHER SPECIAL, INCIDENTAL, LIQUIDATED, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR

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NOT SUCH DAMAGES ARE FORESEEABLE. THIS LIMITATION OF LIABILITY APPLIES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. FURTHERMORE, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER'S LIABILITY ON ANY CLAIM ARISING OUT OF OR CONNECTED WITH THESE TERMS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS, SOFTWARE, OR SERVICES, WHETHER IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), MISREPRESENTATION, BREACH OF CONTRACT, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE PRODUCTS, SOFTWARE, AND/OR SERVICES GIVING RISE TO THE CLAIM.

15. TERMINATION AND SUSPENSION.

- 15.1 In addition to and subject to Seller's rights in Section 6, in the event of any material breach of these Terms, Order, or SOW by either party, the non-breaching party may cancel the applicable Order or SOW by giving thirty (30) days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the thirty (30) day period.
- 15.2 In the event Seller or Buyer terminates an Order or SOW, Buyer shall not be entitled to any refund or credit of fees paid or payable hereunder. Buyer shall remain liable for Payment of invoices for Products and Software already delivered and Services already performed and for the fees and costs described in Section 3 above, and payment of any manufacturer cancellation charges for unshipped items. In the event an Order or SOW is terminated, all licenses granted therein shall also terminate. Subject to the limitations and other provisions of these Terms, any provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of these Terms.
- 15.3 In addition to any other remedies provided under these Terms or applicable law, Seller may exercise any reclamation rights and/or suspend or terminate an Order or SOW with immediate effect if Buyer: (i) fails to pay any amount owed to Seller when due; (ii) fails to comply with any of its obligations herein; (iii) experiences an adverse change in financial position or becomes a credit risk; or (iv) becomes insolvent, receivership, reorganization or assignment for the benefit of creditors, to the extent permissible under law (each, an "Insolvency Event"). Upon any suspension or termination of Services, Buyer shall pay for all Services performed, materials procured, committed costs, demobilization, and reasonable overhead and profit for work not performed to the extent allocable to the suspension or termination.
- 16 **CONFIDENTIALITY.** The receiving party shall protect the disclosing party's Confidential Information with the same degree of care as the receiving party normally uses in the protection of its own Confidential Information, but in no case with any less degree than reasonable care. The receiving party shall not disclose to any third party any Confidential Information it receives from the disclosing party. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party; (iii) was known by the receiving party prior to its receipt without any breach of any confidentiality obligations; or (iv) was independently developed by the receiving party without use of the disclosing party's Confidential Information. If the receiving party becomes legally obligated to disclose any Confidential Information by subpoena, court order or other lawful government action, the receiving party may disclose the Confidential Information only to the extent so ordered and, to the extent permitted by law, after providing prompt written notification to the disclosing party of the pending disclosure. Neither party may use such Confidential Information in any way for any purpose, except as authorized under the Order or SOW. Either party may disclose Confidential Information to its auditors or attorneys under an obligation of confidentiality no less stringent, or Seller to its

affiliates and/or third parties on a need-to-know basis to the extent necessary. Upon termination or expiration of these Terms, the receiving party shall, at the disclosing party's option, return or destroy all confidential information in its possession, except as (a) required to be retained by law, (b) in accordance with its reasonable, established records retention policies, and/or (c) as necessary for the purpose of asserting, defending, or managing any actual or potential claim, dispute, or litigation. Any retained confidential information shall remain subject to confidentiality obligations set forth herein for so long as it is retained. Any breach of this section shall entitle the disclosing party to seek injunctive relief in addition to any other remedies available at law or in equity. If Seller offers to sell Buyer Products, Software, or Services from a specific manufacturer, Buyer shall not purchase such Products, Software, or Services directly from that manufacturer without Seller provides prior written approval. Buyer acknowledges that certain Services may require remote access to systems or temporary handling of Buyer Data or Customer Data. Any such access or handling will be limited to what is necessary to perform the Services, and Buyer is responsible for implementing and maintaining appropriate backups and security safeguards. Seller disclaims any liability for loss or corruption of Data not caused solely by Seller's intentional misconduct. Buyer further acknowledges and agrees that Buyer Data entered into or processed by the Software is controlled by the licensor/provider under its EULA and policies, and Seller does not control such data processing. Any Buyer Data processing by Seller shall be subject to the DPA, if applicable.

- 17 **COMPLIANCE WITH LAW.** Each party shall comply with all applicable laws, rules and regulations, including but not limited to, export and import, trade restrictions, FARs, anti-bribery and anti-corruption, anti-money laundering, anti-human trafficking and slavery, environmental protection, and health and safety. Products and Software may be subject to export controls under the laws, regulations, sanctions and/or directives of the United States and other countries, in which case, these Products and Software are only authorized for use (e.g., via a government-approved and issued export license, which Buyer must obtain) by the ultimate end-user in the destination identified in the transaction documents between Seller and Buyer. Buyer shall not sell, export, re-export or transfer, or cause a deemed export or re-export of the Products and Software (in their original form or after being incorporated into other items) to any county or person to which/whom sell, export, re-export or transfer (actual or deemed) is prohibited without first obtaining all required authorizations or licenses. To the extent permitted by law, Buyer shall indemnify and hold Seller harmless from any loss or damage arising from its violation of any such laws, rules, and regulations. Buyer shall not use, transfer or access any Products, Software, or Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the manufacturer and the U.S. government by regulation or specific license. If Seller receives notice that Buyer is or becomes identified as a sanctioned or restricted party under applicable law (including without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List), Seller will not be obligated to perform any of its obligations under any Order or SOW. Equipment, systems, or services provided by Seller may incorporate, include, or use telecommunications equipment, systems, parts, components, elements, or services that have sourcing restrictions depending on the intended use under section 889 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. No. 115-232). With respect to Services performed at any site, Buyer shall be responsible for site-specific safety orientation, access badging, and any background check requirements it elects to impose; provided that any such requirements are disclosed prior to quotation and stated in the SOW. Any additional costs or delays arising from such requirements

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shall be borne by Buyer. With respect to Software, Buyer shall, and shall cause any Customer to, comply with all export, sanctions, and local law restrictions, including territorial or user-location limits in the applicable EULA. Buyer shall not export, reexport, transfer, or permit access contrary to law or the EULA.

- 18 **PRIVACY.** Each party shall comply with all applicable laws governing the collection, use, storage, and disclosure of personal data (as defined by applicable data protection laws) and must obtain any required consents regarding the handling and processing of personal data as required by law. Buyer acknowledges that Seller is headquartered in the United States and operates globally, that data collected by Seller from Buyer in connection with these Terms may be transferred into and/or processed in the United States or other locations outside of the United States by Buyer or an authorized third party, and Buyer expressly consents to such transfer and processing. In the event of any unauthorized access to or disclosure of personal data, the party responsible shall notify the other party promptly, and in any event within seventy-two (72) hours of discovery and shall cooperate fully in any investigation or remediation efforts.
- 19 **FORCE MAJEURE.** Seller shall not be liable for any failure to perform its obligations under an Order or SOW resulting directly or indirectly from, or contributed to or by acts of God, acts of terrorism, civil or military authority, epidemic or pandemic, fires, strikes or other labor disputes, accidents, floods, war, riot, inability to secure raw material or transportation facilities, hacking or other malicious attack, dissolution of the applicable manufacturer's business, acts or omissions of carriers, or any other circumstances beyond Seller's reasonable control.
- 20 **LAW, VENUE.** These Terms and any transactions contemplated herein shall be governed according to the substantive laws of the State of Georgia, without regard to principles of conflicts of law, and shall not be governed by the U.N. Convention on the International Sale of Goods. Any issues, disputes or controversies arising out of or in connection with Buyer's payment for any Products, Services and/or Software under an Order, SOW or these Terms ("Payment Dispute") shall be settled by the applicable exclusive jurisdiction and venue of the state or federal courts selected, at Seller's sole discretion, to initiate the Payment Dispute and Buyer shall not contest or challenge the personal jurisdiction or venue of such courts and extra-territorial service of process. Any other non-payment related issue, dispute, or controversy ("Dispute") between the parties, including with respect to contract formation or the interpretation of these Terms, that cannot be commercially resolved by the parties shall be submitted to nonbinding mediation as a condition precedent to litigation. The parties shall mutually agree upon the mediator and shall share equally in the mediator's fees. If the parties cannot resolve their Dispute through the mediation process, the parties hereby consent to (i) the exclusive jurisdiction and venue of the state or federal courts located in Atlanta, Georgia and shall not contest or challenge the personal jurisdiction or venue of such courts, and (ii) extra-territorial service of process. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EXPRESSLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO (a) TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING IN ANY WAY RELATING TO, ARISING FROM OR IN CONNECTION WITH THESE TERMS AND THE TRANSACTIONS CONTEMPLATED HEREIN AND SHALL APPLY TO ANY SUCH ACTION OR PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND (b) PARTICIPATE IN ANY CLASS ACTION, CLASS ARBITRATION, OR OTHER REPRESENTATIVE ACTION WITH RESPECT TO ANY CLAIM ARISING OUT OF OR RELATING TO THESE TERMS.** Notwithstanding the foregoing, if Seller is sued in any other jurisdiction or forum (including but not limited an arbitration proceeding) for matters related to any Products, Software or Services sold to Buyer, Seller shall have the right to join Buyer as a party to any

such proceeding, and Buyer hereby consents to such joinder.

- 21 **RELATIONSHIP OF PARTIES.** The parties are independent contractors and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. A person who is not a party to an Order or SOW shall not have any benefit or rights under or in connection with either. Buyer shall not control or direct the means, methods, or manner of Seller's or its subcontractors' performance of the Services.
- 22 **GENERAL.** These Terms shall be construed and interpreted without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. No amendments, modifications, waivers, rescission or termination of these Terms can be made through the parties' course of dealings and no such change can be made except in writing and signed by authorized representatives of the parties. Failure by a party to exercise any right or remedy under these Terms shall not be deemed a waiver of such right or remedy unless in writing signed by the party, nor shall any waiver be implied from the acceptance of any payment. No waiver by a party of any right shall extend to or affect any other right, nor shall a waiver by a party of any breach extend to any subsequent breach. Buyer shall not assign an Order or SOW, by operation of law or otherwise, without the express written approval of Seller. Any attempt to assign or transfer all or any part of these Terms without first obtaining that written consent will be void or voidable, at Seller's election. Any provision of these Terms that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be limited or eliminated to the minimum extent required by that jurisdiction, and the remaining provisions shall remain in full force and effect. Buyer acknowledges that the terms or content of any hyperlinked document, as amended from time to time, are incorporated in these Terms by reference and that it is Buyer's responsibility to review the terms or content in the hyperlinks referenced. All notices under these Terms must be in writing (e.g., e-mail or physical mail) and addressed to the other party at its address set forth in the Order or SOW.

23 **STORAGE RELATED SERVICES – STORAGE TERM SHEET**

ONLY In the event Seller provides *product storage-related Services to Buyer under a Storage Term Sheet, Order or any other documentation* which specifically references these Terms; then the following additional terms and conditions shall apply. Any capitalized terms used herein and not defined shall have the meaning set forth in the Storage Term Sheet, as applicable. The term "Company" and "Buyer" shall have the same meaning for purposes of the Terms. In the event of a conflict between the following additional terms and conditions and the Terms, these terms and conditions shall prevail.

- 23.1 **Term and Termination.** The Storage Term Sheet shall run for the Storage Term (if no Storage Term is specified, the term shall be 180 days) and shall only renew upon the mutual written agreement of the parties. Either party may terminate the Storage Term Sheet by providing at least thirty (30) days prior written notice to the other party. Further, Seller may immediately terminate this Storage Term Sheet in the event Buyer fails to timely satisfy any invoice due to Seller. Upon the effective date of the termination of this Storage Term Sheet, Seller shall ship, at Buyer's sole risk and expense, any remaining Products that are being stored on Buyer's behalf to the Designated Buyer Ship- To Location.
- 23.2 **Storage of Products.** For Buyer's benefit, Seller shall receive, unload, and store the Products at the Facility. Upon prior notice to Buyer, Seller may change the location of the Facility. The

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Products shall be stored at the Facility at Buyer's sole risk and expense. The parties acknowledge and agree that the Product storage-related Services are provided on an "as-is" "as available" basis

- 23.3 **Shipping.** Upon Buyer's issuance of a Shipping Order (as defined below), and at Buyer's sole risk and expense, Seller shall ship the Products to the Designated Ship-To Location. A "Shipping Order" shall mean a written request issued by Buyer to Seller that identifies: (i) the specific Product to be shipped; (ii) the quantity of Products to be shipped; (iii) the method of shipping selected by the Buyer; and (iv) the shipping destination, if different from the Designated Ship-To Location. Following acceptance of a Shipping Order, Seller shall ship the requested quantity of Products identified in the Shipping Order as soon as commercially reasonable, unless a specific date is mutually agreed to by the parties. If Buyer does not specify the mode of shipment or carrier, Seller shall use commercially reasonable efforts to ship the Products in the most cost-effective manner but does not guarantee that it will be the least expensive option available. Delivery of the Products being stored on Buyer's behalf may be made in one or multiple shipments based on Seller's discretion. Shipping charges shall be included on Seller's invoice to Buyer; provided, however, that Seller may require, in its discretion, that Buyer prepay the fees and costs associated with shipping.
- 23.4 **Invoicing and Payment.** Regardless if the Products are being stored on Buyer's behalf or if they have already been shipped to the Designated Buyer Ship-To Location, Buyer shall timely satisfy the invoices issued by Seller to Buyer for the purchase of the Products. Seller shall invoice Buyer for the Storage Fees plus applicable tax, and Buyer shall pay Seller the Storage Fees within Payment Terms of the date of the invoice. In the event Buyer fails to pay the total sums due on an invoice by the due date, the entire outstanding balance due to Seller on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to suspend performance of under the Storage Term Sheet and recover reasonable attorneys' fees and/or other expenses incurred collecting all outstanding sums from Buyer or otherwise enforcing or successfully defending the Terms. Seller may set off any amount due from Buyer from any amounts due to Buyer.
- 23.5 **Title and Risk of Loss to the Products.** Seller is only storing Product that has been purchased by Buyer. As such, in the case of a Storage Terms Sheet, title to the Product and risk of loss shall at all times remain with Buyer, including, but not limited to, when they are being stored at the Facility. Buyer acknowledges and agrees that Seller shall have no obligation whatsoever to maintain any insurance specifically covering the Product. As such, Buyer shall be solely responsible for, and shall be required to maintain insurance to cover any risk of loss to the Products while in storage at the Facility. Buyer agrees to indemnify, defend, hold harmless and release Seller and its affiliates and their respective shareholders, officers, directors, employees, agents, successors and assigns from all liabilities arising from any loss or damage to the Products due to any cause whatsoever, including fire, insects, rodents, rust, normal wear and tear, leakage, moisture, changes in temperature, acts of God, deterioration by time, or damage or for any loss or damage from causes beyond Seller's reasonable control. Further, Buyer shall be responsible for all risk of loss to the Products while en route to the Designated Buyer Ship-To Location or to such other destination as Buyer may designate in writing.