



TERMS AND CONDITIONS FOR COMMERCIAL ORDERS
(SUPPLIES AND SERVICES)

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1. DEFINITIONS

As used throughout these terms and conditions, the following terms shall have the meanings set forth below.

“Buyer” means DIAZYME LABORATORIES, INC.

“Order” means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are affixed.

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will furnish the supplies or services provided for herein.

Except as otherwise provided in these terms and conditions, the term “subcontract” includes purchase orders issued by Seller under the Order, but does not include Seller’s employment relationships.

All references to “works,” “supplies,” “articles,” “products,” or “items” shall include “services,” if the Order, wholly or in part, provides for the furnishing of services.

2. INDEPENDENT CONTRACTOR

Seller is, and shall be deemed to be, an independent contractor and not an agent or employee of Buyer either expressly or impliedly. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order shall grant to either party the right to make commitments of any kind for, or on behalf of, the other party.

3. PACKING AND SHIPMENT

Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. Buyer’s Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. INSPECTION

Buyer shall be permitted to inspect Seller’s manufacture, fabrication and testing. For these purposes, and upon reasonable advance notice, Seller shall provide access to Seller’s facilities to enable Buyer and its representatives to perform inspections and to determine Seller’s orderly, timely and satisfactory compliance with the requirements of the Order.

Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of the Order.

Any work, or item, which fails to meet the Order requirements may be rejected. If delivered to Buyer’s destination, rejected work or items shall be removed promptly by Seller at Seller’s expense.

5. DELIVERY

TIME OF DELIVERY UNDER THE ORDER IS OF THE ESSENCE. If Seller fails to adhere to the delivery schedule set forth in the Order, and Buyer must therefor demand a more expeditious means of transportation than

specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way affects any other rights and remedies available to Buyer related to such delivery.

Unless otherwise noted on the Order, the date of delivery shall mean the date the item is to be delivered at Buyer’s facility, or if the Order is for services, the date the services are to be completed.

Buyer’s needs are for the quantities specified within the Order. Items delivered in excess of the quantities ordered result in substantial administrative expense to Buyer. Therefor, articles delivered under the Order in excess of the quantity specified may be retained by Buyer at no additional cost. Buyer is under no obligation to notify Seller of any over shipments.

6. TITLE AND RISK OF LOSS

Title shall pass to Buyer at the specified destination. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item.

Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereby until delivered at the specified destination.

Seller shall bear all risks as to rejected items after notice of rejection.

7. WARRANTY

Notwithstanding inspection and acceptance by the Buyer of supplies furnished under the Order, all supplies furnished under the Order will be free from defects in material or workmanship and will conform with all requirements of the Order. Seller warrants that supplies ordered to specifications hereunder will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with the Order. If supplies are not ordered to such specifications, Seller warrants that they will be fit for the purpose intended. All articles purchased hereunder are warranted to be merchantable, to be of good material and workmanship, and to be free from defect for a period of one year after delivery and acceptance by Buyer. All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers.

Seller further warrants that all work and services called for herein shall comply with the requirements of the Order and shall conform to the highest standards applicable to them.

8. SPECIAL TOOLS

If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling the Order (each a “Special Tool”), such Special Tools shall be properly identified by Seller as such. Title shall pass to Buyer upon payment for the Special Tool. If a Special Tool is needed for the manufacture by Seller of the Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, and hand over to Buyer, as applicable, at the completion of the Order unless Buyer directs Seller in writing to dispose of such Special Tool.

9. BUYER-FURNISHED PROPERTY AND MATERIAL

Property and material furnished by Buyer to Seller for use in performance of the Order is to be held by Seller for mutual benefit and if the materials are damaged or not satisfactorily accounted for, Seller will pay for all such property and materials. Seller shall properly mark and account for all Buyer property.

10. PAYMENT

Payment date and cash discount period shall be calculated from either the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever occurs last. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer (or any of its affiliated entities) against any amount payable by Buyer (or any of its affiliated entities) to Seller.

11. ACCEPTANCE

Any one of the following methods will constitute acceptance of the Order by the Seller:

- (a) acknowledgement in writing;
- (b) commencement of performance by Seller; or (c) delivery in whole or in part of the items or services called for under the Order. Seller's acceptance of the Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of the Order. No condition stated by the Seller in its acknowledgement of the Order, quotation or any other document provided by Seller shall be binding upon Buyer if in conflict or inconsistent with, or in addition to the terms and conditions of the Order, unless expressly accepted in writing by an authorized representative of Buyer's Purchasing Department. The rights and obligations described in the Order shall survive completion of and final payment of the Order.

12. CHANGES

(a) An authorized representative of Buyer's Purchasing Department may at any time without notice to the sureties, if any, issue written directions to the Seller requiring additional work within the general scope of the Order, or directing the omission of or variation in work covered by the Order or any amendment thereto. If any such direction results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this clause 12 must be asserted in writing within fifteen (15) days from the date of receipt by Seller of the notification of change.

(b) Whether made pursuant to this clause 12 or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing by an authorized representative of Buyer's Purchasing Department. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in a writing which is signed by an authorized representative of the Buyer's Purchasing Department and which expressly states that it constitutes a modification or change to the Order.

(c) Seller shall notify Buyer of any changes in the purchased product prior to implementation of such changes that affect the ability of the purchased product to meet specified purchase requirements.

(d) Seller shall proceed with prosecution of the work in accordance with any written direction issued under the Order.

13. WRITINGS REQUIRED

(a) No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.

(b) No oral statement of any person whatsoever shall in any manner or degree, modify or otherwise affect the terms of the Order.

(c) No extra charge of any kind, or change in the price or schedule or terms and conditions of the Order will be allowed unless specifically agreed to in writing by an authorized representative of the Buyer's Purchasing Department.

14. RECORDS

Seller agrees that its manufacturing plant, or such part of any manufacturing plant as may be engaged in the performance of the Order, and its books, documents, papers and records shall at all reasonable times be subject to examination and audit by any person designated by Buyer. Such books and records shall be maintained by Seller for a period of five (5) years after final payment is made under the Order.

15. STOP WORK ORDER

The Buyer may, at any time, by written notice to Seller, require Seller to stop all or part of the work called for by the Order for a period of ninety (90) days after such notice is delivered to Seller. Within ninety (90) days after such notice is delivered to Seller, or within any extension of the period to which the parties have agreed, Buyer shall either:

(a) withdraw the notice and direct Seller to resume work, in which event Seller may be entitled to receive an equitable adjustment of the Order price or schedule or both, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or

(b) terminate the work and the Order or part thereof.

16. TERMINATION FOR CONVENIENCE

(a) Buyer may, at its option, terminate the Order, in whole or in part, for Buyer's convenience, by written notice, including fax notice to Seller, effective at date of sending. Upon termination hereunder, Seller shall:

(i) forthwith stop work under the Order on the terminated portion thereof and place no further orders or lower-tier subcontracts hereunder,

(ii) terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and

(iii) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same. Within three (3) months after receipt of such notice of termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim which shall include termination costs, if any, from lower-tier subcontractors, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:

(1) The Order price for articles which have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination,

an equitable adjustment will be made to the Order price for such articles.

(2) The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of the Order other than articles whose price is paid under subclause 16(a), except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this subclause 16(a)(iii)(2), if the Order provides for fixed hourly rates,

Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of the Order.

(3) Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

(4) Such allowance for profit on the work performed as may be reasonable and allocable under the circumstances; provided, however, that if it appears that Seller would have incurred a loss if the Order had not been terminated, no profit shall be allowed and Buyer's payments pursuant to subparagraph (ii) above will be reduced by the proportionate amount of such loss as the terminated portion of the Order relates to the entire Order.

(b) Payments under this clause 16, including all payments made under the Order prior to the termination, shall in no event exceed the aggregate price specified in the Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under subclause 16(a)(iii) above, with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this clause 16.

(c) In no event will Seller be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by subclause 16(a)(iii) above, nor shall Seller be allowed to recover any cost incurred prior to termination unless such cost was allocated to the Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

17. TERMINATION FOR DEFAULT

(a) Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof including warranties or fails to make progress as to endanger performance of the Order in accordance with its terms. Termination hereunder shall be effected by written notice to Seller.

(b) In the event Buyer terminates the Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so

terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the Order to the extent not terminated under the provisions of this clause 17.

(c) Except with respect to defaults of subcontractors at any tier, Seller shall not be liable for excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.

(d) If the Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of:

(i) any completed items, and

(ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or acquired for the performance of such part of the Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed items delivered and accepted by Buyer shall be at the Order price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of the Order under the provisions of this clause 17, it is determined for any reason that Seller was not in default under the provisions of this clause 17, or that the default was excusable under the provisions of clause 17(c), the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause 16 and the Order shall be equitably adjusted to compensate for such termination and the Order modified accordingly.

(f) The rights and remedies of Buyer provided in this clause 17 shall not be exclusive and are in addition to any others provided by law or the Order.

18. DATA

If the Order is for research, development, or experimental work, all data, notes, drawings, designs, sketches, specifications, records, and memoranda of every description in any physical or electronic form relating to the work hereunder or any part thereof as Seller shall produce, and all copies of the foregoing, shall be the property of Buyer and subject to inspection by Buyer at all reasonable times and shall be delivered to Buyer or otherwise disposed of by Seller as Buyer may direct from time to time.

19. PROPRIETARY INFORMATION

(a) Seller shall not, during the term of the Order, and for

a period of five (5) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of the business, or any other confidential or proprietary information, of Buyer or its affiliates, suppliers, or customers which Seller shall have obtained because of the Order. Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with the Order.

(b) Notwithstanding the foregoing subclause 19(a), Seller shall have no obligation with respect to any confidential or proprietary information which the Seller can demonstrate:

- (i) was in Seller's rightful possession free of any obligation of confidence prior to its first receipt from Buyer,
 - (ii) is publicly known through no fault of the Seller,
 - (iii) is obtained from a third person who had a right to disclose it, or
 - (iv) was independently developed without access to any confidential or proprietary information of Buyer.
- (c) No private data, proprietary designs, ideas, or information of Seller is to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both parties to the Order, all information which passes from Seller to Buyer shall be treated as nonconfidential, including material provided in written form and marked by the originator as being confidential or private.

20. PATENT RIGHTS

If the Order is for, or includes, experimental, development, or research work, to be performed in accordance with special requirements of Buyer, Seller agrees to disclose and on request assign to Buyer inventions conceived or first actually reduced to practice in the course of or under the Order.

21. ADVERTISING, USE OF NAME

Seller shall not, without first obtaining written consent of an authorized representative of Buyer's Purchasing Department, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles or services provided for in the Order. Seller 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 concerning the Order or projects contemplated by the Order), without the Buyer's prior written consent in each

instance.

22. INDEMNITY

Seller agrees to indemnify Buyer against any liability, including costs and expenses, for:

- (a) any asserted trademark, copyright, or patent infringement arising from the manufacture, use, or sale of any articles furnished to Buyer under the Order, except where such articles are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention,
- (b) any breach of any warranty of Seller hereunder, and
- (c) any damages incurred by Buyer or any third party as a result of or arising out of the manufacture, use or sale of articles furnished by Seller under the Order.

23. PRECAUTIONS, INDEMNITY, AND INSURANCE

In addition to Seller's obligations set forth in clause 22, Seller will defend Buyer at Seller's expense from any suit or action,

criminal or civil, arising out of Seller's performance of the Order, or that of its officers, directors, employees or agents. Further, Seller shall procure and maintain during the term of the Order and at its expense insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:

- (a) Automobile liability insurance protecting the Seller from automobile bodily injury and property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.
- (b) Comprehensive general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors and fire legal liability. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$1,000,000 aggregate combined single limit, personal injury, bodily injury and property damage.
- (c) If the Order is for engineering or other professional service, professional liability coverage with a limit no less than \$1,000,000.
- (d) Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances.

For (a) and (b) above, such policies shall name Buyer as additional insured when requested by Buyer.

Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by the Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

If Seller's work under the Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause 23.

24. PROPERTY INSURANCE

Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all property in which Buyer has an interest hereunder. Coverage will be provided on an all-risk basis and value will be at replacement cost.

25. TAXES

I. Domestic (U.S.):

(a) Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order.

(b) Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this domestic clause 25(l), as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.

(c) Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this clause 25(l), when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

II. Foreign (Non-U.S.):

The total purchase amount of the Order does not include any taxes or duties of any foreign country, jurisdiction, government, or subdivision thereof, including but not limited to income tax, value added tax, withholding tax, sales tax, use tax, excise tax, personal property tax, assessments, ad valorem tax, stamp and documentary taxes, import duties and all other governmental charges, fees, fines, interest or other penalties whatsoever, in each case imposed by the applicable foreign country, jurisdiction, government or subdivision thereof. Seller shall not be required to file, and Buyer shall arrange for a tax exemption for any such taxes or duties imposed by the foreign country, jurisdiction, government or subdivision thereof, in a manner acceptable to the applicable foreign taxing jurisdiction or authorities, or otherwise to be responsible for payment of such taxes or duties. If Seller is required to pay any applicable foreign taxes, duties, or any other foreign governmental charges, fees, fines, interest, or other penalties whatsoever, Buyer agrees to pay or reimburse Seller any such amounts as they become due.

26. SUBCONTRACTING

Seller will obtain Buyer's written approval before subcontracting the Order or any substantial portion thereof. The purchase of raw materials or standard commercial articles is not a subcontract within the meaning of this article.

27. FORCE MAJEURE

Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any

loss or damage resulting therefrom, due to: (a) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, epidemics, or unusually severe weather affecting either party; or (b) similar causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.

28. COMPLIANCE WITH LAWS

Seller understands and acknowledges that Buyer is committed to compliance with all domestic and foreign laws affecting its business and operations. Seller agrees that in performing its duties under the Order, Seller will conduct itself in strict adherence to all applicable laws, rules and regulations.

29. EXPORT CONTROLS

Information exchanged pursuant to the Order may include the use of, or access to, Technical Data (as defined in the Export Regulations defined herein) that is subject to export controls under 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Regulations"). U.S. Law prohibits the transfer or export of Technical Data without an export license to any employee or other person who is not a United States Citizen or Permanent Resident Alien, as well as to corporations or to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States. Seller acknowledges that it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided access to Technical Data provided under the Order. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately notify Buyer's authorized Purchasing Department representative.

30. ASSIGNMENT

Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer two copies of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

31. DISPUTES

In the event of any dispute arising hereunder between Buyer and Seller, Seller shall proceed with performance under the Order pursuant to the position taken by Buyer in such a dispute.

32. APPLICABLE LAW

The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's choice of law provisions shall not apply. The 1980 U.N. Convention on Contracts for the International Sales of Goods shall not apply to any sales transactions governed by these terms and conditions.

33. ATTORNEY FEES

If it is necessary for either party to obtain legal representation to enforce any part of the Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

34. NON-WAIVER

The failure of Buyer to insist, in one or more instances upon strict performance or to exercise any rights shall not waive or relinquish to any extent Buyer's right to assert or rely upon any such terms or rights on any future occasion.

35. PRECEDENCE

If any of the provisions of the Order are in conflict, the following will be the order of precedence:

- (a) typed provisions on the face of the Order,
- (b) Buyer's Order attachments, including these terms and conditions,
- (c) other specifications or documents incorporated by reference,
- (d) Seller's proposal or other documents only when specifically referenced on the Order. In the event of any conflicting provisions, the Seller shall promptly notify Buyer thereof.

36. ORDERS WITH ASSIGNMENT OF CERTAIN PERSONNEL

If the Order contains a key personnel clause and the designated employee(s) of Seller become unavailable to perform services under the Order, a replacement for that individual with comparable abilities and qualifications shall be promptly assigned. Seller shall promptly furnish an authorized representative of Buyer's Purchasing Department with resume(s) and any other information Buyer may reasonably request to support assignment of the replacement personnel.

37. SELLER'S OBLIGATIONS FOR "NOT-TO-EXCEED" ORDERS

If the Order is a not-to-exceed order, Seller agrees to perform its obligations within the "not-to-exceed" (NTE) price set forth in the Order. If at any time during performance of the Order, Seller's incurred costs plus its estimated costs to complete, are projected to exceed the total Order NTE price, Seller shall immediately notify Buyer in writing giving a revised NTE. Seller shall be under no obligation to continue performance, if in doing so, the NTE price shall be exceeded and Buyer shall not be obligated to pay Seller more than the NTE price, unless specifically authorized in writing by an authorized representative of Buyer's Purchasing Department. When Seller's incurred costs equal seventy-five (75%) of the NTE price, Seller shall promptly provide written notification to an authorized representative of Buyer's Purchasing Department indicating total incurred costs and projected cost to complete.

38. PAYMENTS UNDER COST REIMBURSABLE LINE ITEMS

- (a) If this is a cost reimbursement type order or if the Order specifies fixed hourly rates for services, a statement of accounts or invoice, shall be sent to Buyer's Accounts Payable Department monthly. Invoices tendered for payment shall show the monthly rate of expenditure by labor classification as well as other costs allowable under the Order. Delays in receiving a statement or invoice, and errors and omissions on the statement, will be considered just cause for deferring payment without losing discount privilege.
- (b) The Seller shall promptly notify the Buyer's Accounts Payable Department of any overpayment received by the Seller under the Order. Overpayments identified by either the Buyer or the Seller shall be refunded to the Buyer in the manner it directs.
- (c) The Seller shall submit a final invoice to the Buyer within ninety (90) days after completion of the Order. If the Seller fails to submit a final invoice within the time

specified, the Buyer may determine the total amount due the Seller under the Order and issue a unilateral modification to the Order. Amounts paid by the Buyer in excess of the total amount due the Seller shall be refunded to the Buyer within forty-five (45) days of the Seller having received the unilateral modification.

- (d) Seller agrees to maintain books, records, documents, and other evidence (hereinafter called "records") to the extent and in such detail as necessary to properly reflect all costs of labor, materials, equipment, supplies and service, and other expenses for which reimbursement is claimed. Seller will make available at the office of Seller at all reasonable times during the duration of the Order and until five (5) years after final payment, any of the records for inspection, audit, or reproduction by an authorized representative of Buyer. Buyer may also extend or shorten the retention period by amending the Order in writing.

39. WITHHOLDING

- (a) If the Order is a Time and Material order, Seller agrees to the withholding of five percent (5%) of the Order price not to exceed \$50,000 in order to ensure the submission of all documents required to close-out of the Order.
- (b) Seller agrees to the withholding of fifteen percent (15%) or \$50,000, whichever is less, of the Order, if the Order is a cost reimbursement order to ensure the submission of all documents required to close-out the Order.
- (c) Withholdings shall commence with the first invoice and cease with the earlier of having reached the ceiling amount or the issuance of a completion invoice.

40. ACCOUNTING SYSTEM

By acceptance of the Order, Seller certifies that Seller's accounting system can segregate costs adequately to allow for a sufficient audit of costs incurred by line-item detail.

41. CREDIT

The Seller shall credit to the Buyer, either as a cost reduction or by cash refund, the applicable portion of any income, rebate, allowance, or other credit related to cost for which the Seller has been reimbursed by the Buyer.

42. TRAVEL COSTS

Unless otherwise noted in the Order, travel costs shall be reimbursed at cost, provided airfare cost does not exceed the cost of coach airfare and meals and incidental expenses do not exceed the amounts set forth in the current Federal Travel Regulation prescribed by the General Services Administration.

43. REPORTING OF DEFECTS AND NONCOMPLIANCE

If the Order or any specification or drawing attached to the Order indicates that this procurement is for a basic component, or design for a basic component, or for materials, supplies, or hardware, which will be used in a nuclear reactor, facility or activity licensed by the Nuclear Regulatory Commission (NRC), the provisions of 10 CFR 21 shall apply to the Order and are hereby incorporated by reference with the same force and effect as if fully recited herein.

In the event the Order or the specifications or drawings attached hereto fail to specify the use of the items covered by the Order as set forth above, and the Seller has knowledge that any item covered by the Order will, in fact, be used in an NRC-licensed nuclear reactor, facility or activity, the provisions of 10 CFR 21 shall apply

and are hereby incorporated by reference with the same force and effect as if fully recited herein.

44. ENTIRE AGREEMENT

These terms and conditions and those on the face of the Order to which this form is attached including other specifications, attachments or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral between the parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by an authorized representative of Buyer's Purchasing Department.

In the event the Order is for temporary labor, including job shopper services, clauses 45, 46, 47, 48 and 49 shall also apply.

45. PERSONNEL UNDER TEMPORARY LABOR ORDERS

If the Order is for contract labor, the Buyer may interview, test, and evaluate the qualifications of any person nominated for work under the Order, and may reject any such individual. If any such individual is rejected by Buyer, Seller shall supply additional candidates in a timely manner. Upon approval, Buyer will reimburse persons retained beyond an initial five-day probationary period for actual travel costs to the job site, designated on the face of the Order. In no event shall such costs exceed a single round trip, Coach airfare, from each such individual's present location to the job site. If the Buyer rejects anyone within the first five (5) days of service for any reason, or if anyone involved should resign within the first five (5) days of service or fail to work for five (5) consecutive working days, Buyer shall have no obligation to reimburse such individual for said transportation costs.

46. TRAVEL COMPENSATION

If the Order is for temporary labor, upon approval, Buyer will reimburse persons retained beyond an initial five-day probationary period for actual travel costs to the job site, outside of San Diego County, designated on the face of the Order. In no event shall such costs exceed a single round trip, tourist air fare, from each such individual's present location to the job site. If the Buyer rejects anyone within the first five (5) days of service for any reason, or if anyone involved should resign within the first five (5) days of service or fail to work for five (5) consecutive working days, Buyer shall have no obligation to reimburse such individual for said transportation costs.

47. INVENTIONS AND COPYRIGHT AGREEMENT

Seller's personnel shall execute an Inventions and Copyright Agreement under which all work performed by Seller under the Order shall be construed as work performed by employees of Buyer.

48. PERSONNEL QUALIFICATIONS

The Buyer may interview, test, and evaluate the qualifications of any person nominated for work under the Order, and may reject any such individual. If any such individual is rejected by Buyer, Seller shall supply additional candidates in a timely manner.

49. EXECUTIVE ORDERS

Seller shall comply with:

(a) Executive Order 11246, "Vietnam Era Veteran Readjustment Assistance Act of 1974" and "Section 503 of the Vocational Rehabilitation Act of 1973"

(b) Executive Order 13496, "Notification of Employee Rights Under Federal Labor Laws", 29 CFR Part 471, Appendix A to Subpart A; and

(c) Section 5, Paycheck Transparency, of Executive Order 13673, "Fair Pay and Safe Workplaces."