



## Terms and conditions

1. **Agreement.** These Standard Terms and Conditions ("**Agreement**") is provided to the recipient named on the attached quotation and/or work plan ("**Client**" or "**Buyer**"), in conjunction with the attached work plan and associated quotation (the "**Quote**") by Forge Nano, Inc. of 12300 Grant St, Thornton, CO 80241, USA ("**Company**" or "**Seller**").

## 2. Scope

2.1. In this Agreement "**Goods**" means tangible deliverable or software, "**Services**" means any intangible work product. "**Equipment**" means hardware, equipment, other tangible items, machinery and parts (or any of them) and consists of Standard Equipment and Non-standard Equipment, "**Standard Equipment**" means Equipment described in the Seller's published catalogue, "**Non-standard Equipment**" means other Equipment adapted or made to Buyer's requirement, "**Buyer**" shall mean the party buying Equipment and shall include, if the context so permits, its agents or sub-contractors.

2.2. The Terms and Conditions of this Agreement apply to and are deemed to be incorporated in all contracts for Goods and Services, and all descriptions, quotations, proposals, offers, acknowledgements, acceptances and sales are subject to and shall be governed exclusively by the Terms and Conditions stated herein. Buyer's acceptance of any offer is limited to these Terms and Conditions, which shall prevail over all terms and conditions (if any) proposed by Buyer, including in purchase orders from Buyer for Goods and/or Services ("**Purchase Orders**"). No such additional or inconsistent terms or conditions by Buyer shall become part of the contract between Buyer and Seller unless expressly accepted in writing by Seller, and Seller hereby objects to any such additional or inconsistent terms.

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

## 3. Validity and Offer

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



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

3.2. Prices quoted are exclusive of all applicable taxes, including but not limited to, any value added tax, Federal, state and/or municipal excise, sales and/or use taxes, levies and duties of any nature whatsoever ("**Taxes**") applicable to the Goods or Services, except only taxes based on Seller's income.

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

#### **4. Acceptance**

4.1. All Purchase Orders are subject to acceptance by Seller. Seller reserves the right to accept or reject any Purchase Order in whole or in part and to submit to Buyer counter-offers consisting of such additional or different terms and conditions, including those contained in these Terms and Conditions ("**Counter-offer**"); provided that unless otherwise expressly agreed, (i) any acceptance by Seller is conditional on these Terms and Conditions taking precedence and (ii) by accepting any Goods or Services Buyer acknowledges and agrees that it shall be deemed to have accepted these Terms and Conditions.

4.2. Acceptance of a Purchase Order will normally be advised by Seller within thirty (30) days of receipt. No obligation shall be binding on Seller unless and until the Purchase Order is accepted by Seller in writing or, if earlier, Goods or Services are supplied to Buyer by Seller.

4.3. Any acceptance by Seller of a Purchase Order is made conditional upon the Buyer's acceptance of these Terms and Conditions and any Counter-offer by Seller. Buyer may accept a Counter-offer by written acknowledgement, acceptance of, or payment for, Goods or in any other fashion. Buyer shall be deemed to have accepted any Counter-offer unless Buyer rejects such in writing within ten (10) days of the Buyer's receipt of the Counter-offer.



4.4. The acceptance by Buyer of a Counter-offer shall revoke any provision in the Purchase Order or other Buyer documentation that purported to limit or restrict any such acceptance. Buyer agrees that Seller's failure to object specifically to any such terms or conditions shall not constitute an acceptance by Seller thereof nor shall it constitute an acceptance by Seller of any waiver of, or modification to, the Terms and Conditions of this Agreement.

4.5. Once accepted the Purchase Order or the Counter-offer and, in either case, these Terms and Conditions as may be modified by an accepted Counter-offer shall constitute the contract ("**Contract**") between Buyer and Seller for Goods and/or Services.

**4.6. Work Commencement and Agreement to Terms and Conditions.** Seller will proceed with the services as outlined in the Quote upon receipt of a written Purchase Order for the estimated amount of the project costs and the required down payment, if any. The purchase order must reference the Quote indicating that the Buyer agrees to this Agreement.

4.7. The Terms and Conditions of this Agreement shall not be altered, supplemented, or amended by the use of any additional document(s) or Purchase Orders other than an accepted Counter-offer.

## **5. Payment**

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

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

5.3. Full payment must be made to Seller within thirty (30) days of the date of invoice, unless otherwise agreed in writing. Invoices will normally be dispatched on the date of completion of Services, shipment of Goods FOB Seller's facilities or on the date on which Buyer becomes responsible for the risk of loss of, or damage to, uncollected Goods.

5.4. All Purchase Orders are subject to credit approval before shipment. If, in Seller's judgement, Buyer's financial condition does not, at any time, justify payment terms as previously specified, Seller may cancel or suspend any



unfulfilled Contract. In such circumstances Seller may permit Buyer, upon written notice, immediately to pay for any Goods or Services.

5.5. Seller may require Goods to be delivered to a location outside the country in which Seller is incorporated to be covered by a confirmed irrevocable letter of credit drawn on a bank acceptable to Seller in a form acceptable to Seller.

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

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

5.8. Terms of Payment: 50%/40%/10%

Forge Nano requires a down payment of 50% upon acceptance of PO to begin design, procurement, and construction of the ALD reactor. 40% payment is due prior to shipment upon passing factory acceptance test (FAT). Final payment of the remaining 10% will be due upon completion of installation and training at the customer facility or no later than 30 days after delivery of equipment to agreed upon location.

All equipment purchases subject to Forge Nano's terms and conditions "Standard Terms and Conditions of Equipment Sale."

## **6. Standard of Care for Services and Goods not classified as "Equipment"**

Company warrants that its services are performed by personnel possessing competency consistent with applicable industry standards. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN SECTION 13 OF THIS AGREEMENT, NO OTHER REPRESENTATION, EXPRESS OR IMPLIED, AND NO WARRANTY OR GUARANTEE IS INCLUDED OR INTENDED IN THIS AGREEMENT, OR IN ANY REPORT, OPINION, DELIVERABLE, WORK PRODUCT, NUMBER OF COATING CYCLES PERFORMED, DOCUMENT OR OTHERWISE. FURTHERMORE, NO GUARANTEE IS



MADE AS TO THE EFFICACY OR VALUE OF ANY SERVICES PERFORMED OR PRODUCTS DEVELOPED, AND THE PRODUCTS ARE DELIVERED "AS IS". THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY COMPANY CONCERNING THE SERVICES AND RELATED WORK PRODUCT. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

### **7. Work Commencement and Agreement to Terms and Conditions**

Company will proceed with the Services as outlined in the Quote upon receipt of a written Purchase Order for the estimated amount of the project costs and the required down payment, if any. The Purchase Order must reference the Quote indicating that the Client agrees to this Agreement.

### **8. Intellectual Rights and Property**

The Services are covered by any existing confidentiality, non-disclosure and/or non-use provisions previously agreed to in writing by Client and Company, and Client hereby agrees that all communications and work product delivered by Company under the Quote, this Agreement, or the Company Services constitute and/or contain confidential and proprietary information of Company. Company's confidential and proprietary information shall not be disclosed by Client to any third party and shall only be used solely by Client for purposes of this Agreement. Sample materials coating services and any data, items, materials, work products, inventions, developments, equipment (including particle ALD reactor equipment), designs, processes or technology that is subject to any patent, copyright, trade secret, or any other intellectual property or proprietary rights protection of any kind anywhere in the world (including any derivative works rights thereto) shall be collectively referred to herein as "IP Rights." Ownership of all IP Rights in any sample materials coating services or other services, data, items, materials, work product, deliverables, inventions, developments, equipment (including particle ALD reactor equipment), designs, processes or technology owned or created by Company and licensed to Client at any time under any work plan, this Agreement and the Quote (including without limitation with respect to particle ALD) whether within or without the scope of the Quote, whether developed by Company alone or with others, and any subsequent modifications, improvements or derivative works to same (collectively, "Company IP") shall remain owned by and vest exclusively with Company. Notwithstanding the foregoing, upon



execution of the work plan and Client's full and unconditional agreement to the terms and conditions of this Agreement, Company hereby grants to Client a non-exclusive and non-transferable license to use the Company IP as solely contained or embedded in any work product or deliverable delivered to Client hereunder and solely for the purpose of internal research and internal evaluation in order to determine whether or not the Company IP contained or embedded in any work product or deliverable could be used for Client's purposes or products. For the avoidance of doubt, Client may not sell, distribute or otherwise commercialize any Company IP unless and until a separate written agreement is executed by the parties granting such rights to Client. Unless otherwise agreed to in writing signed by the parties, none of the Company IP contained in any deliverables or work product provided hereunder constitute works made for hire and Company shall remain the exclusive owner of all Company IP. Client shall not decompile, reverse engineer, disassemble, or otherwise attempt to rebuild or recreate the Company IP.

Seller shall retain all right, title and interest in and to, and except as expressly provided possession of, any know-how, technical information, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Seller and supplied by Seller under any Contract, including without limitation technical information, know-how, drawings and specifications relating to Equipment. All such information shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge without fault of Buyer, nor shall any such information be used by Buyer for any purpose other using the Equipment without Seller's prior written consent.

Client service requests for application support and process development will require the use and licensing of Company IP, trade secrets and specialized institutional knowledge. Any foreground intellectual property developed resulting from service to Client shall be jointly owned by Company and Client.

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



## 9. Shipping Terms.

9.1. Goods are shipped “best way” prepaid and added to Client’s invoice. Alternatively, at Client’s request, Goods may be shipped collect or using Client’s shipping account. Shipments will be made by surface delivery unless otherwise requested by Client.

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

9.3. Unless otherwise agreed in writing, all shipments of any tangible Goods shall be made FOB Seller’s production and/or distribution facilities, as may be specified by Seller from time to time. Seller may, at Buyer’s request and expense, arrange carriage and insure Goods against normal transit risks to the value of the purchase price, and may arrange such insurance on its own initiative if Buyer fails to prove that it has done so. Risk of damage to or loss of Goods shall pass to Buyer on Seller’s delivery of the Goods to the carrier; and until full payment of the purchase price by Buyer, Buyer shall indemnify and hold Seller harmless against all loss of, or damage to, Goods from whatsoever cause occurring.

9.4. If Seller arranges transportation of Goods for Buyer, in the event of loss of, or damage to, Goods, whether or not caused by Seller’s or its chosen carrier’s negligence or that of any other person, Seller’s liability shall be limited to passing on to Buyer the benefit of insurance. At Buyer’s option, Goods can be replaced with benefit of insurance, the timeline for replacement will be negotiated between Buyer and Seller.

9.5. Buyer will supply Seller with delivery instructions promptly on notification to Buyer that Goods are ready for shipment. If delivery instructions are not received or if Buyer requests that a shipment to be postponed for more than ten (10) days after the date Buyer is notified that the Goods are ready for shipment, Seller shall be entitled to make arrangements for storage of the Goods at Buyer’s risk and expense and to charge Buyer accordingly. In such case, Seller’s obligation to deliver the Goods will be deemed satisfied and Buyer will become responsible for the risk of loss of or damage to the Goods and for paying the purchase price.

9.6. Seller may suspend shipment of any unfulfilled Contract in the event of any act or omission on the part of the Buyer or if Buyer is in material breach



of Buyer's obligations under the Contract. In the event of Buyer's cancellation of the Contract whether or not in breach, Buyer shall pay all of Seller's costs to the point of notification and in the case of breach shall be liable to Seller for any and all costs, liabilities, damages and expenses of any kind or nature caused by such breach.

9.7.Seller will be responsible for the unpackaging and inspection of all Goods upon arrival. Damaged Goods and packaging must be kept for inspection by Seller and/or the carrier.

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

9.9.Unless otherwise agreed in writing, installation and commissioning is not included in the purchase price for the Goods.

#### **10.Compliance with Laws.**

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





its work, together with any import license and/or permits and related certificates that may be necessary.

## **11. Inspection and Testing of Goods**

11.1. All Goods are inspected by Seller before supply to Buyer and tested where appropriate.

11.2. An additional charge will be made for tests or trial runs carried out at Buyer's request, unless otherwise agreed to in writing. In the event that Buyer does not attend such tests it requests, after fourteen (14) days' notice, Seller will perform the tests and the Goods will be deemed accepted in Buyer's absence.

## **12. Retention of Title for Equipment**

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

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

12.3. If payment becomes overdue, or on the occurrence of any termination event referred to in Section 14 below, Seller may, where permitted by law and after giving notice to Buyer, enter upon any premises in Buyer's control where Seller reasonably believes Equipment to be, or otherwise take action, to recover Equipment, including without limitation such actions are available under the UCC.

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

## **13. Warranty**

13.1. Subject to the exclusions that follow, including in Section 13.5 below, Seller hereby undertakes to repair or replace at Seller's option, or to arrange repair or replacement by Seller's representative of, any Equipment supplied to Buyer if a defect in materials or workmanship arises in any of the parts or



components identified in clause (c) below solely under conditions of normal and proper use and maintenance (fair wear and tear excepted) provided that:

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

13.2. Any repaired or replaced Equipment will continue to be warranted for the unexpired period of the warranty referred to in Condition 10.1 above or, if longer, for thirty days. Any repair services provided are warranted against defects in material or workmanship for thirty (30) days.

13.3. Seller may charge Buyer for the costs of shipping Equipment to and from a Seller designated service center if the Equipment to be repaired or replaced is located in a country in which Seller does not have a service center.

13.4. Failing satisfactory repair or replacement, Seller may satisfy Seller's liability under this Section 13 by reducing the purchase price to a mutually agreed amount or by refunding the purchase price and retaking the Equipment. This Section 13 states Seller's sole liability, and Buyer's exclusive remedy, for any breach of the Warranty provided herein.



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

13.6.NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED WHOLLY OR PARTIALLY TO BUYER’S DESIGNS OR SPECIFICATIONS.

#### **14.Governing Law and Dispute Resolution**

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

14.2.Buyer and Seller agree that the courts of the State of Colorado shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract with venue in Adams County.

14.3.Seller and Buyer shall use best efforts to resolve any disputes between the parties first by discussion and negotiation between the working level parties involved, and second by escalation to the managers of such parties. Failing resolution of conflicts at the organizational level, Seller and Buyer agree that any remaining conflicts shall be submitted to non-binding mediation unless Seller and Buyer mutually agree otherwise. If the dispute is not resolved through non-binding mediation, then the parties may take other appropriate action subject to the other terms of this Agreement.

#### **15.Force Majeure**

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



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

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

## **16. Cancellation**

16.1. No Contract may be cancelled or altered by Buyer except upon terms and conditions acceptable to Seller.

16.2. Unless otherwise agreed in writing, should Buyer cancel any Contract, Buyer shall be liable for the costs of all work done and materials purchased or provided up to the time of cancellation plus a charge for overhead and loss of profit. If Goods have been shipped to Buyer, Buyer shall return the Goods, at Buyer’s expense, to Seller in the same condition as shipped.

## **17. Termination**

17.1. If Buyer commits any act of bankruptcy, including filing or having filed against it a petition in bankruptcy, or has a receiver appointed, or goes into liquidation, or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Seller under the Contract shall immediately become due and payable and Seller may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice.

17.2. Seller may terminate the Contract immediately by written notice to Buyer in the event of a failure by Buyer to comply with any material provision of the Contract, if the failure continues for more than fourteen (14) days after Buyer has been given written notice of such failure.

17.3. If Buyer fails to pay the purchase price within thirty (30) days of invoice or Buyer fails to collect Goods within thirty (30) days of Seller’s notice, Seller shall be entitled, without prejudice to its other rights, to terminate the Contract and to dispose of the Goods.

17.4. Termination shall be without prejudice to any prior right of either party.



## **18.Liability and Indemnification for Services and Goods Not Classified As Equipment**

18.1.EXCEPT FOR VIOLATIONS OR INFRINGEMENT OF Company IP OR ANY BREACHES OF CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY'S LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCTS OR SERVICES DELIVERED HEREUNDER SHALL EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY (OR PAYABLE BY) CLIENT TO COMPANY UNDER THE QUOTE AND WORK PLAN, AND NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL (INCLUDING LOSS OF PROFITS), PUNITIVE, OR SPECIAL DAMAGES.

18.2.Client agrees that Company shall have no liability based on any claim, damages, costs or expenses arising out of Client's use, sale or distribution of the samples, deliverables or work product or any third party's use, sale or distribution of such samples, deliverables or work product. Client agrees to indemnify, defend and hold Company harmless from and against any and all damages, losses, liability, costs and expenses (including reasonable attorney's fees) arising out of or in connection with any third-party allegations, proceedings, or claims based on Client's use, sale or distribution of the samples, deliverables, or work product or any third party's use, sale or distribution of the same.

## **19.Liability and Indemnification for Goods**

19.1.Regardless of the form of action (whether in contract, tort, breach of warranty, strict liability or otherwise), and except as otherwise expressly provided herein, IN NO EVENT (i) SHALL SELLER'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC GOODS COMPLAINED OF, (ii) SHALL SELLER'S MAXIMUM LIABILITY FOR ALL DAMAGES RELATED TO THE EQUIPMENT PURCHASED HEREUNDER (OR UNDER A RELATED PURCHASE ORDER) OR OTHERWISE ARISING IN CONNECTION WITH SUCH GOODS EXCEED THE TOTAL AMOUNT PAID FOR SUCH GOODS, OR (iii) SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS AND LOSS, DAMAGE OR DESTRUCTION OF DATA) IRRESPECTIVE OF THE CAUSE (INCLUDING NEGLIGENCE) AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.



19.2. The Equipment may be used by Buyer to design products and applications and to provide services to its customers. Seller shall have no liability or responsibility (i) to assist Buyer in product design or development, (ii) for Buyer's products or services, or (iii) for support of Buyer's customers; rather, Buyer is solely responsible for its own products, applications, services and designs using or relating to Seller's Equipment and for supporting its customers. To minimize the risks associated with the Buyer's products and applications, Buyer will provide adequate design and operating safeguards for use of the Equipment and for use of any products or applications created using the Equipment.

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

19.4. Indemnity for Infringement of Intellectual Property Rights: Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this Section 19.4. Seller will defend at its expense and will pay the cost of any settlement



or damages awarded in an action brought against Buyer based on an allegation that any Equipment sold pursuant to this Contract infringes the U.S. patents, U.S. trademarks, copyrights, trade dress or trade secrets (hereinafter “**Intellectual Property Rights**”) of a third party. Seller’s obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any claims or actions including all negotiations for settlement or compromise. If an item sold hereunder is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, at its sole expense and option, procure for Buyer the right to continue using said item, replace or modify said item so as to make it non-infringing, or offer to accept return of said item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to items delivered hereunder for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any item sold hereunder. The foregoing provisions of this Section 19.4 shall constitute Seller’s sole and exclusive liability and Buyer’s sole and exclusive remedy for infringement of Intellectual Property Rights. If a claim is based on information provided by Buyer or if the design for an item delivered hereunder is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right of any person or entity.

## **20. Entire Agreement.**

20.1. The Quote, work plan, this Agreement, and any effective non-disclosure or confidentiality agreement between the parties contain the entire agreement between the parties with respect to its subject matter and supersedes the terms and conditions of any other agreement made effective prior to the date hereof or any preprinted terms of any purchase order submitted at any time. This Agreement may not be modified except by a writing signed by authorized representatives of both parties.

20.2. In the event of conflict between any terms and conditions of the Quote, work plan, this Agreement or any effective non-disclosure or confidentiality agreement between the parties, the terms of this Agreement shall control unless otherwise specified in writing signed by the authorized representatives of the parties.



## 21. Miscellaneous

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

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

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

21.4. The Contract shall constitute the entire agreement between Seller and Buyer relating to the purchase and sale of Goods and/or Services. The Contract shall inure to the benefit of and shall be binding upon Seller and Buyer and their respective successors and assigns, including any entity with which either party may merge or consolidate or to whom either party may transfer assets comprising the Goods and/or Services.

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

21.6. Buyer represents that the person placing the Purchase Order and accepting any Counter-offer on Buyer's behalf has the full authority to do so.





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

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

21.9.All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of any Equipment (whether in catalogues or advertisements or accompanying or referred to in the Contract) are stated by Seller in good faith based on Seller's experience as being correct within acceptable tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. In the absence of any special arrangements to the contrary, it is Buyer's responsibility to ensure that Equipment ordered is sufficient and suitable for Buyer's purposes.

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

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

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

## **22.Destination Control**

22.1.These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first



obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Revised June 2022