



MORE LIGHT

## **TERMS AND CONDITIONS OF DEVELOPMENT**

### **1. Acceptance**

These Terms and Conditions of Development (the "**Development Terms**") are incorporated into, govern, control and shall apply to: (i) all proposals, quotations, acknowledgments, invoices, Statements of Work ("**SOW**") and other documents issued by Traffipax, LLC ("Seller") related to the design and development of products and related services for testing, future mass production and other development and research related purposes (the "**Development**"); (ii) all purchase orders, releases, SOWs and other documents related to Development ("**Purchaser Documents**") issued by purchaser ("**Purchaser**"); and (iii) all goods and services related to Development ("**Development Products**") provided and/or sold by Seller to Purchaser. Any provision and/or order for Development Products, any SOW and any other documents agreed to by the parties in a signed writing ("**Contract**") are expressly conditioned upon, governed and controlled by, and subject to the Development Terms and any inconsistent, conflicting, and/or additional terms hereto in Purchaser Documents are deemed material and are expressly rejected, and do not form a part of the Contract. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes any prior discussions, negotiations, agreements and understandings. Purchaser represents that it has not relied upon any promises or representations of Seller other than those expressly provided for herein.

### **2. Termination**

Neither the Contract nor any related order may be terminated, cancelled or altered by Purchaser except upon terms acceptable to Seller, as evidenced in a signed writing by Seller's authorized representative and Purchaser shall pay to Seller all resulting direct, indirect, consequential, including loss of profits, incidental and other damages suffered by Seller resulting therefrom. No changes to the Development Products including without limitation any changes in Target Specifications (as defined herein), payment schedules, and projected completion dates will be effective unless accepted in a signed writing by an authorized representative of Seller.

### **3. Delivery and Acceptance**

Purchaser shall use the Development Products for testing and research purposes only to determine if they are useable with its products and if Development Products can achieve the Target Specifications. Purchaser shall not use or supply the Development Products or any intellectual property developed related thereto by Seller for any other commercial purposes including mass production unless subsequently agreed to in a signed writing with Seller including but not limited to the terms and conditions of sale and use related to any commercial versions of the Development Products. Unless otherwise agreed to in a signed SOW, Seller will use commercially reasonable efforts to develop the Development Products to the target specifications set forth in the SOW and if none, in Seller's quotation ("**Target Specifications**"). Purchaser

shall promptly provide to Seller any necessary assistance, cooperation, feedback, direction and updates of any documentation and information related to Seller's performance or as otherwise reasonably requested by Seller from time to time. Unless otherwise agreed to in a signed SOW, all Development Products will be delivered EXW Seller's manufacturing site, INCOTERMS 2010. Except as otherwise agreed to in a signed SOW, Seller shall use commercially reasonable efforts to cause the Development Products to be developed, shipped and delivered in accordance with the terms of the Contract and provides no guarantees as to delivery dates or that the Development Products will satisfy the specifications or requirements of Purchaser, as such dates and Product specifications and requirements are estimates and targets only. Seller shall not be responsible or liable to Purchaser for any loss or damage of any nature whatsoever resulting from Seller's delayed performance in the development, shipment and/or delivery of the Development Products for any reason. Purchaser shall be deemed to have accepted the Development Products on the earlier of the date (i) when Purchaser signs the SAT (as hereinafter defined), which shall not be unreasonably withheld or delayed by Purchaser or the Development Products pass the SAT in Seller's sole reasonable discretion; (ii) Purchaser incorporates the Development Products into other goods; or (iii) sixty (60) days from the date of delivery. "**SAT**" is the acceptance testing set forth in the SOW, or if none, as otherwise set forth in Seller's standard site acceptance test procedures adopted from time to time by Seller. The Purchaser shall immediately notify Seller in writing of any defect and deviation from Target Specifications. If a Product is rejected, notice must be given to the Seller no later than fourteen (14) days after the event, defect and/or non-conformance arose or is discovered which causes Purchaser to reject. Failure to so act shall constitute an irrevocable acceptance by the Purchaser. Any rejection by the Purchaser must be in writing and state with specificity all defects/deviations upon which Purchaser will rely to support its rejection. The Seller shall not be in default because of its delays or failure to develop, deliver or perform under the Contract resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling, or order; (ii) the lack of labor or usual means of transportation, fires, floods, explosions, strikes or other accidents, contingencies, or events, at the Seller's or the supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery or performance; and/or (iii) delays by Purchaser in (a) inspecting, testing, or acceptance; (b) furnishing requested specifications, materials, tooling, or information or defects in any of the foregoing, and/or (c) making payments or otherwise. Upon delivery, all risk of loss or damage and any further cost and responsibility for claims, delivery, and, if applicable, placement and storage shall pass from Seller to Purchaser.

### **4. Insurance**

Purchaser, at its sole expense, will maintain insurance coverage on the Development Products at all times until Seller has been paid in full relative thereto. Such insurance shall cover all risks of loss or damage from any cause whatsoever and shall be in

an amount equal to the purchase price of the Development Products, or the full undepreciated replacement value (new) of the Development Products, at Seller's option. All insurance will be of a type, form, in amounts, with a company and under terms and conditions satisfactory to Seller. Purchaser shall designate Seller as a lender loss payee and additional party insured on each insurance policy. Such insurance policy shall provide that no cancellation or nonrenewal thereof will be effective without 30 days prior written notice to Seller of such cancellation or nonrenewal.

**5. Payment**

The fees to be paid to Seller for the Development Products under the Contract shall be as set forth in Seller's quotation or order acknowledgment, the SOW or as otherwise agreed to by the parties. Unless otherwise provided in the Contract, all invoices shall be paid within thirty (30) days after delivery. If Purchaser fails to pay any invoice when due or if, in the judgment of Seller, the financial condition of Purchaser at any time prior to shipment does not justify the extension of credit, then Seller may require payment in advance or otherwise modify the payment terms upon notice to Purchaser. Interest at the rate of one and one-half percent (1 ½%) per month or at the highest rate allowed by law, whichever is less, shall be charged to all overdue accounts. In the event Purchaser shall be in default of any of the terms hereof, or becomes insolvent or proceedings are instituted to declare Purchaser bankrupt, or a receiver is appointed for Purchaser, Seller may terminate the Contract and upon such termination by Seller, any and all claims or demands against Purchaser held by Seller shall immediately become due and payable. Seller may, from time to time, set-off or recoup any debt Seller owes Purchaser against any debt, credit or other obligation or liability payable by Purchaser to Seller (regardless whether such debt, credit or other obligation or liability arose out of or relates to the Contract).

**6. Prices**

Unless otherwise provided in the Contract, prices shall be those in effect at the time of delivery and all prices are payable in U.S. dollars. Any tax, duty, custom, inspection or testing fee, or any other fee, interest or charge of any nature together with all penalties and expenses whatsoever imposed by any governmental authority on or measured by the transactions between Seller and Purchaser shall be added to the price of Development Products, and paid by Purchaser in addition to the prices quoted or invoiced. Prices include Seller's standard packaging. Purchaser is responsible for all shipment, transportation, customs, duties or other related costs.

**7. Installation**

Purchaser, at its sole cost, shall furnish such materials, labor and equipment as may be necessary for the prompt testing, installation, assembly and acceptance of the Development Products and Seller shall have no obligations or responsibilities with respect to said installation, testing, and assembly. If Seller agrees to or is otherwise construed to have directed, supervised, or controlled in any manner the rigging, erection, assembly, installation or testing of the Development Products, Purchaser hereby RELEASES, WAIVES, AND DISCHARGES Seller and its affiliated and related companies, and their respective shareholders, directors, officers, employees, agents and representatives (the "Released

Parties") from any and all liability relating to any personal injury, property damage, loss, and/or any and all claims or demands relating to, arising out of, and/or or in connection with Seller's rigging, erection, installation, assembly, servicing, testing, or use and operation of the Development Products, and training of Purchaser's personnel or due to the negligence of Purchaser, or its employees or agents during the erection, assembly, testing, or installation of the Development Products.

**8. Warranty and Damage Limitations**

Purchaser acknowledges that Seller is not providing any warranty or representations whatsoever that the Development Products shall satisfy or conform to the Target Specifications or that the target delivery dates will be met. Seller's sole warranty under the Contract is that Seller will use commercially reasonable efforts to (i) develop the Development Products and (ii) perform any other services agreed to by the Parties that are set forth in the SOW or, if none, in Seller's quotation (the "Warranty"). Purchaser acknowledges that developments in intellectual property and technology need to be achieved, and that there is uncertainty as to whether the requisite intellectual property and technology can be developed (along with other factors) in order to meet the Target Specifications and develop the Development Products in such a manner that, among other things, commercial production of Development Products meeting the Target Specifications can in fact be achieved. Purchaser acknowledges that Seller is not warranting or representing that the Target Specifications or delivery dates will be achieved even in the exercise of commercially reasonable efforts and Purchaser has not relied on any such alleged promises or representations in entering into the Contract.

**EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 10 WITH RESPECT TO INFRINGEMENT CLAIMS AND AS LIMITED THEREIN, PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER THE WARRANTY AND THE CONTRACT SHALL BE LIMITED TO, A REFUND OF THE PURCHASE PRICE PAID BY PURCHASER FOR ANY DEVELOPMENT PRODUCTS WHICH DO NOT COMPLY WITH THE WARRANTY OR OTHERWISE WITH THE CONTRACT ("AT-ISSUE DEVELOPMENT PRODUCTS") IN EXCHANGE FOR PURCHASER'S RETURN OF THE AT-ISSUE DEVELOPMENT PRODUCTS TO SELLER, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OF ANY NATURE. IN NO EVENT SHALL SELLER'S LIABILITY HEREUNDER OR OTHERWISE ARISING (INCLUDING WITHOUT LIMITATION INDEMNIFICATION CLAIMS) RELATIVE TO THE DEVELOPMENT PRODUCTS, WARRANTY, OR THE CONTRACT EXCEED IN ANY EVENT OR UNDER ANY THEORY OR CAUSE OF ACTION, THE PURCHASE PRICE PAID BY PURCHASER TO SELLER FOR THE AT-ISSUE DEVELOPMENT PRODUCTS. SELLER'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER, THE MANUFACTURER OF THE DEVELOPMENT PRODUCTS, AND ANY OTHER ENTITY INVOLVED IN THE DEVELOPMENT, DESIGN, MANUFACTURE, SALE, OR SERVICING OF THE DEVELOPMENT PRODUCTS (OR ANY PORTION THEREOF) AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES AND RELATED**

COMPANIES (COLLECTIVELY, THE **“MANUFACTURING AND SELLING COMPANIES”**), EXPRESS, IMPLIED OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND/OR OF TITLE. THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE CONTAINED HEREIN, AND ANY REPRESENTATIONS AS TO PERFORMANCE AND OTHER MATTERS, EXCEPT AS CONTAINED HEREIN, WERE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY. IN NO EVENT SHALL SELLER AND/OR THE MANUFACTURING AND SELLING COMPANIES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD-PARTY CLAIMS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER OR NOT CAUSED BY OR RESULTING FROM DEFECTS IN THE DEVELOPMENT PRODUCTS, THE NEGLIGENCE OF SELLER AND/OR THE MANUFACTURING AND SELLING COMPANIES, BREACH OF CONTRACT, STRICT LIABILITY FOR INJURIES TO PERSON OR PROPERTY, OR OTHER TORT, OR INDEMNIFICATION. THE WARRANTY SHALL NOT APPLY TO ANY DEVELOPMENT PRODUCTS OR PORTIONS THEREOF SUBJECTED TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION, ELECTRICAL FAILURE OR ABNORMAL CONDITIONS; IN THE EVENT PURCHASER AND/OR ANY OPERATOR FAILS TO COMPLY WITH ANY OPERATIONAL OR MAINTENANCE GUIDELINES OR REQUIREMENTS; PHYSICAL ABUSE OF THE DEVELOPMENT PRODUCTS OR ANY COMPONENT THEREOF; ACTS OF VANDALISM; WHERE PARTS OR COMPONENTS OF THE DEVELOPMENT PRODUCTS ARE CHANGED OR MATERIALS USED WHICH DO NOT CONFORM TO SELLER’S ORIGINAL SPECIFICATIONS; WHERE THE DEFECT IS CAUSED BY DESIGNS, MATERIALS, COMPONENTS, OR SPECIFICATIONS PROVIDED BY PURCHASER; ACCIDENTS OR DAMAGE RESULTING FROM, INCLUDING, BUT NOT LIMITED TO, FIRE, WATER, WIND, HAIL, LIGHTNING, ELECTRICAL SURGE OR FAILURE, EARTHQUAKE, THEFT OR SIMILAR CAUSES NOT CAUSED OR CONTRIBUTED TO BY THE SOLE NEGLIGENCE OF SELLER OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; AND TO DEVELOPMENT PRODUCTS WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY SELLER. Notwithstanding anything to the contrary in the Contract, Seller shall not be responsible for, and shall incur no liability with respect to, any information including, but not limited to, specifications, designs, materials, components, and drawings supplied by Purchaser or any of its subcontractors. No agent, employee or representative of Seller or the Manufacturing and Selling Companies has the authority to bind Seller or the Manufacturing and Selling Companies to any affirmation, representation or warranty concerning the Development Products sold hereunder, and unless such affirmation, representation or warranty is specifically included within the Contract, it will not

form part of the basis of the Contract, shall not in any way be binding upon Seller or the Manufacturing and Selling Companies or enforceable by Purchaser, and Purchaser represents and warrants that, except as specifically provided in the Contract including any SOW, it does not and will not rely on any promises, inducements, or representations made by Seller with respect to the subject matter of the Contract. Seller’s warranties hereunder are extended to and shall be for the sole and exclusive benefit of the original purchaser-user of the Development Products. The warranties are not assignable or otherwise transferable to any subsequent user of the Development Products and any sale or other transfer of the Development Products or any such attempted assignment and transfer of any warranty shall void Seller’s warranties, and Seller shall thereafter have no further obligation or liability with regards thereto.

**9. Security Interest**

Purchaser hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in the Development Products, together with all spare parts, attachments, accessories, modifications and substitutions thereto or thereof, whether heretofore or hereafter acquired by Purchaser, together with all proceeds (as presently or hereafter defined by the Uniform Commercial Code (“UCC”)) (or Personal Property Security Act (“PPSA”) as applicable) thereof. The aforesaid security interest shall secure and act as security for any and all indebtedness, liability and obligations of Purchaser to Seller, now existing or hereafter arising. Purchaser hereby appoints Seller as its attorney in fact, and authorizes Seller to, sign/authenticate on behalf of Purchaser such additional documents/records and make/undertake such actions as may be required from time to time to create, amend, extend, continue, maintain or perfect the security interest described herein or otherwise granted to or retained by Seller. In the event Purchaser shall be in default under the Contract, Seller shall have the remedies of a secured party under the UCC (or PPSA, as applicable), in addition to the rights and remedies set forth herein. Purchaser hereby agrees to pay Seller’s costs and expenses, including, but not limited to, reasonable attorneys’ fees and court costs for the determination of any amount due to Seller arising out of or in any way related to the Contract and/or for the collection of any amounts owing to Seller hereunder or incurred in the repossession of the Development Products.

**10. Patent Infringement**

The Parties acknowledge that the Contract relates to the provision of services and therefore, the Uniform Commercial Code (“UCC”) is not applicable including any implied warranty with respect to intellectual property infringement; provided, however, to the extent the UCC or like statute or law is applicable, Seller warrants to the best of its knowledge that any Product sold hereunder, when employed in the manner intended by Seller, will not in and of itself infringe any patent of the United States of America (“U.S.”). **NOTWITHSTANDING WHAT MAY BE OTHERWISE PROVIDED IN THE CONTRACT INCLUDING ARTICLE 8, PURCHASER’S SOLE AND EXCLUSIVE REMEDY UNDER THIS ARTICLE 10 WITH RESPECT TO THE ABOVE ARTICLE 10 WARRANTY SHALL BE LIMITED TO, AT SELLER’S SOLE AND EXCLUSIVE DISCRETION AND ELECTION, (1) SELLER’S DEFENSE OF ANY RESULTING SUIT OR PROCEEDING, BUT ONLY THE DEFENSE RELATED COSTS OR COVERED INDEMNIFICATION AMOUNT UP**

**TO THE PURCHASE PRICE OF THE DEVELOPMENT PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM; (II) SELLER TO PROCURE FOR PURCHASER THE RIGHT TO CONTINUE USING THE DEVELOPMENT PRODUCTS; (III) SELLER TO REPLACE THE DEVELOPMENT PRODUCTS WITH NON-INFRINGEMENT GOODS; (IV) SELLER TO MODIFY THE DEVELOPMENT PRODUCTS SO THEY BECOME NON-INFRINGEMENT BUT SUBSTANTIALLY EQUIVALENT TO THE DEVELOPMENT PRODUCTS; OR (V) SELLER TO REMOVE THE AFFECTED DEVELOPMENT PRODUCTS AND REFUND THE PURCHASE PRICE (LESS ALLOWANCE FOR USE, DAMAGE AND OBSOLESCENCE) THEREOF.** Seller's liability under this Article 10 is conditioned upon Purchaser giving immediate written notice of any such indemnification claim, and giving all such information available to Purchaser and such assistance as required by Seller with respect to such claim, and Purchaser's granting to Seller exclusive control of the settlement and litigation of any such suit, proceeding or claim while Seller is obligated to provide a defense and/or indemnification to the extent Seller elects to provide such a defense/indemnification. Seller makes no warranty against patent infringement resulting from portions of the Development Products made to Purchaser's specifications or the use of the Development Products in combination with other products or in the practice of any process.

#### **11. Intellectual Property.**

Each party agrees that all intellectual property and technology of the other party, its affiliates and any third party, as well as any improvements, modifications, and developments thereto, are and shall remain the sole and exclusive property of that party, its affiliates and any third party. Unless a SOW signed by the parties provides otherwise, any intellectual property and technology developed by Seller or jointly with Purchaser in the performance of the Contract shall be solely owned by Seller (collectively, "Foreground I.P.") and Purchaser hereby irrevocably assigns and agrees to assign to Seller its worldwide right, title and interest in and to the Foreground I.P., provided, however, regardless what may be provided in the Contract or any SOW to the contrary, Purchaser shall not own or have any rights whatsoever in any Foreground I.P. which constitutes know-how and developed in any way by Seller. In the event any SOW or any portion of the Contract provides that Foreground I.P. shall be owned by or transferred to Purchaser (provided, however, Purchaser shall not own or be transferred any Foreground I.P. which is ~~deemed~~ constitutes know-how that was developed in any way by Seller), Purchaser hereby grants to Seller a non-exclusive, royalty free, worldwide, and irrevocable license, with the right to grant and authorize sublicenses, in, under and to the Foreground I.P. to develop, improve, market, produce, sell, use and otherwise exploit the Foreground I.P. Each party agrees both during the term of the Contract and at any time up to five (5) years thereafter to reasonably support the other party, following other party's request and at other party's expense, in protecting the other party's intellectual property and technology by executing any documents that the other party may reasonably consider necessary or helpful in obtaining or maintaining its intellectual property and technology, and during the conduct of any interference, prosecution, litigation, or any other matter in connection therewith.

#### **12. Confidential Data**

All models, materials, samples and other information submitted by Seller (or an affiliate) shall remain the property of Seller (or an affiliate) and shall be treated as confidential information of Seller, and shall immediately upon expiration or termination of the Contract, be returned to Seller (or to the affiliate). All sketches, models, specifications, drawings, designs, data, information, ideas, methods, patterns and/or inventions made, conceived, developed or acquired by Seller (or an affiliate) in connection with the Contract shall vest in and inure to Seller's full benefit, notwithstanding any charges therefor that may have been or may be imposed by Seller, and shall not be disclosed by Purchaser to third-parties without Seller's prior written consent. Copyright in all materials made available by Seller (or an affiliate) shall remain in Seller (or an affiliate) at all times. Purchaser acknowledges that any information disclosed to Seller (or an affiliate) has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure or in a writing delivered to Seller at or prior to the time of the disclosure. Any patentable features developed by Seller (or an affiliate) shall be the property of Seller (or an affiliate) and Seller (or an affiliate) shall be under no obligation to refrain from using in its business any information, manufacturing processes, or unpatented disclosures which may pass to it from Purchaser in the performance of the Contract. Seller may disclose to Purchaser information that meets the definition of "nonpublic personal information" ("Nonpublic Personal Information") in the regulations promulgated under Title V of the Gramm-Leach-Bliley Act of 1999 as amended from time to time, 15 U.S.C. 6801 to 6809 ("GLB Act Privacy Regulation"). Purchaser shall not use or disclose such Nonpublic Personal Information to any nonaffiliated third party other than to carry out the purpose for which Seller disclosed such information to Purchaser, including use under an exception in the GLB Act Privacy Regulations in the ordinary course of business to carry out the purpose for which the Nonpublic Personal Information was disclosed. Furthermore, Seller may disclose to Purchaser other personal information that would not be considered Nonpublic Personal Information, but still must be kept confidential under the laws of certain states or governmental authorities ("Other Personal Information"). Purchaser shall not use or disclose such Other Personal Information to any nonaffiliated third party other than to carry out the purpose for which Seller disclosed such information to Purchaser. Purchaser shall maintain physical, electronic and procedural safeguards in compliance with applicable laws and regulations to protect the Nonpublic Personal Information and Other Personal Information received from Seller.

#### **13. Compliance with Laws**

Purchaser acknowledges that the Development Products may require certain safety features, protections, registration, testing, certification or other similar procedures under applicable laws, regulations and ordinances. Purchaser represents and warrants that it is familiar with all the applicable laws, regulations and ordinances which are or may be in effect relating to Purchaser's use and operation of the Development Products. Purchaser shall comply in all respects with any and all such laws and ordinances now or hereafter in effect. The Development Products (and all technology, and/or software contained therein) is sold for use within the U.S. only. Purchaser shall (a) comply with all applicable export/export control laws of the U.S. and any other foreign countries, governments, agencies or authorities (collectively, the "Laws"), and (b) not export or re-export the

Development Products in violation of any such Laws. In cases where export licenses or approvals are required, Purchaser shall be solely responsible for obtaining such required licenses or approvals from the appropriate governmental agencies or authorities. Upon request by Seller, Purchaser shall provide Seller with all of Purchaser's and the customer's information and documentary and other assistance required to maintain strict compliance with the Laws. Furthermore, Purchaser and its subcontractors will comply with (i) any and all other applicable, international, federal, state, provincial and local law, regulations, executive orders and other rules of law as in effect at any time during the Contract; and (ii) any and all Seller policies addressing such legal requirements. In particular and without limitation, Purchaser and its subcontractors will not take any action that will render Seller liable for a violation of the U.S. Foreign Corrupt Practices Act ("FCPA"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity, political party or instrumentality to assist it or Seller in obtaining or retaining business or to gain an unfair business advantage. Purchaser further represents that neither it nor any of its subcontractors will utilize forced, compulsory, or child labor in connection with the Contract. Seller may request Purchaser from time to time to certify in writing its compliance (and that of its subcontractors) with the foregoing, and Purchaser will comply with each such request. In addition, to the extent applicable for the Development Products provided hereunder, Purchaser will comply with all applicable environmental requirements that apply to the Development Products and hazardous materials. "Environmental Requirements" includes without limitation all global, federal, state, provincial, and local laws, rules and regulations pertaining to the protection of human health, safety, wildlife or the environment. "Hazardous Materials" includes, without limitation, any material or substance that is regulated by an Environmental Requirement. In particular and without limitation, Purchaser will comply with all applicable global regulations regarding the registration, restriction, prohibition, and/or recyclability of chemicals.

#### 14. Spare Parts & Service

From time to time, Purchaser may require spare parts for the Development Products which are not covered under the Warranty. Any such orders shall be subject to acceptance by Seller and shall be further subject to such terms and conditions as Seller may establish from time to time. These Development Terms shall be applicable to the sale of spare parts. Unless otherwise stated in Seller's invoice, the payment terms applicable to Purchaser's purchase of such parts shall be net thirty (30) days after Seller's invoice, subject to Paragraph 5 hereof. **SPARE PARTS SHALL BE WARRANTED FOR A PERIOD OF 30 DAYS FROM INSTALLATION; PROVIDED HOWEVER, THAT SUCH WARRANTY SHALL NOT EXTEND THE TERM OF THE WARRANTY GRANTED RELATIVE TO THE DEVELOPMENT PRODUCTS. ANY AND ALL OTHER EXPRESS, IMPLIED AND OTHER WARRANTIES OF ANY NATURE WHATSOEVER AND HOWSOEVER ARISING RELATIVE TO SPARE PARTS ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY PURCHASER. FURTHERMORE, THE OTHER LIMITATIONS OF WARRANTY AND LIMITATIONS OF DAMAGES SET FORTH IN PARAGRAPH 8 OF THESE DEVELOPMENT TERMS SHALL ALSO APPLY TO THE SALE OF SPARE PARTS.**

#### 15. Indemnification

Purchaser shall indemnify and hold harmless the Seller and the Manufacturing and Selling Companies from any and all claims and damages including third-party claims, damages and expenses (including attorneys' fees and costs) under any theory including tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the installation, use, operation, maintenance, repair, storage, sale, processing or other disposition of the Development Products or parts manufactured with the Development Products, if the action or inaction of the Purchaser or its employees, customers or agents, the Purchaser's specifications, or the Purchaser's breach of this Contract, were a cause of the injuries or damages giving rise to the claims against the Seller.

#### 16. Software

Any software contained within or supplied with the Development Products shall be in an executable form only. The source code shall not be included or provided, and is not sold and will not be delivered and shall remain the property of the Seller. In no event is the Purchaser entitled to license or otherwise sublicense any software or to deliver, distribute, circulate or communicate it publicly or make it otherwise accessible to any third-party. Purchaser shall not alter, copy, or otherwise reproduce any software delivered for its use.

#### 17. Right to Supply.

**PROVIDED SELLER DEVELOPS DEVELOPMENT PRODUCTS THAT ARE IN CONFORMITY WITH THE TARGET SPECIFICATIONS AND UNLESS OTHERWISE PROVIDED IN A SOW SIGNED BY THE PARTIES, PURCHASER SHALL PURCHASE ALL OF ITS REQUIREMENTS OF COMMERCIAL VERSIONS OF THE DEVELOPMENT PRODUCTS, INCLUDING FOR MASS PRODUCTION, EXCLUSIVELY FROM SELLER, THE OTHER TERMS OF WHICH WILL BE NEGOTIATED USING GOOD FAITH EFFORTS AND FINALIZED IN A SEPARATE SUPPLY AGREEMENT.**

#### 18. Miscellaneous Provisions

a. If any term or condition or part of the Contract including, but not limited to, these Development Terms is held to be invalid, the remaining terms and conditions of the Contract shall not be affected thereby. Except as otherwise provided herein, the Contract may be modified, cancelled, or rescinded only by the written agreement of both parties executed by their duly authorized agents. No claim arising out of any breach of the Contract may be discharged in whole or in part by waiver or renunciation of such claim unless such waiver or renunciation is in writing and signed by the parties hereto. The Contract may not be assigned without the express written consent of the parties hereto. In the event of a proper assignment, the contract shall be binding upon and inure to the benefit of the parties' successors and assigns. In the event of any inconsistency between or among the various documents forming the Contract, the following order of precedence will govern interpretation from highest to lowest the Development Terms, the SOW, Purchaser's Order Acknowledgement, Purchaser's Quotation/Proposal, and any Purchaser purchase order.

b. All rights available to Seller under the UCC (or PPSA, as applicable), except as specifically limited or excluded herein (even though not specifically enumerated herein), are expressly reserved to Seller as remedies available in the event of default. The Manufacturing and Selling Companies shall be extended the benefits and protections of the Contract.

c. **EXCEPT TO THE EXTENT THAT PERFECTION OF THE SECURITY INTEREST GRANTED HEREIN IS OTHERWISE MANDATED BY APPLICABLE LAW, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES. THE UNITED NATIONS CONVENTION ON INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THE PURCHASE AND SALE OF THE DEVELOPMENT PRODUCTS OR THE CONTRACT, WITHOUT LIMITING SELLER'S RIGHT TO COMMENCE ANY ACTION, AT SELLER'S ELECTION, IN ANY OTHER JURISDICTION, PURCHASER HEREBY AGREES THAT ALL DISPUTES OR DIFFERENCES, WHICH MAY ARISE OUT OF THE CONTRACT OR IN CONNECTION WITH IT, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") ("RULES") AS IN FORCE AT THE TIME OF SUCH DISPUTE BY ONE OR MORE ARBITRATORS APPOINTED IN ACCORDANCE WITH THE RULES. THE PLACE OF ARBITRATION SHALL BE NEW YORK, NEW YORK. THE ARBITRAL AWARD SHALL BE SUBSTANTIATED IN WRITING. THE ARBITRAL TRIBUNAL SHALL ALSO BE ENTITLED TO DECIDE ON THE VALIDITY OF THIS ARBITRATION CLAUSE. THE PARTIES AGREE THAT THEY HEREBY WAIVE AND SHALL HAVE NO RIGHT TO SEEK PRODUCTION OF DOCUMENTS OR ANY OTHER DISCOVERY FROM THE OTHER PARTY OR THIRD PARTIES IN CONNECTION WITH THE ARBITRATION PROCEEDING OR OTHERWISE. IN ADDITION, NO PARTY TO A CONTRACT IS PERMITTED DIRECTLY OR INDIRECTLY TO MAKE ANY APPLICATION PURSUANT TO 28 U.S.C. §1782. Seller shall not be required to post any bond or other forms of security in connection with any action for the repossession or replevin of, or otherwise relating to, the Development Products. PURCHASER WAIVES ANY AND ALL CLAIMS FOR PUNITIVE DAMAGES AGAINST SELLER AND THE MANUFACTURING AND SELLING COMPANIES AND ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY RELATING TO THE DEVELOPMENT PRODUCTS, THE CONTRACT, THE RELATIONSHIP OF THE PARTIES AND ANY OTHER MATTERS RELATED THERETO.**

d. Any proceeding by the Purchaser for breach of the Contract cannot be filed nor maintained unless (i) it is commenced within one (1) year after the breach or other event giving rise to Purchaser's claim has accrued; (ii) the Purchaser has given timely written notice to Seller of its claim and has provided Seller with reasonable opportunity to cure the breach or other event giving rise to the claim; and (iii) Purchaser deposits the unpaid portion of the purchase price of the Development Products with the tribunal pending final adjudication. An action shall accrue no later than the delivery of the subject Development Products or services.

e. In the event of Purchaser's breach of the Contract, Purchaser shall be liable to Seller for all damages, including, but not limited to, direct, consequential damages including lost profits and incidental damages, and costs, including attorneys' fees, incurred by Seller in enforcing the Contract. Purchaser acknowledges and agrees that Seller may share and provide to its related and affiliated companies all data and information Seller becomes aware of as a result of its relationship with Purchaser. The provisions of Articles 3, 4, 7, 8, 9, 10, 11, 12, 13, 15, 17 and 18 hereof and any other term that by its nature should survive expiration or termination shall survive the expiration or termination of the Contract for any reason. Seller is granted the right to use the name, logo, trademark and any reference of or to Purchaser, either directly or indirectly, in publicity releases, advertising, case studies, sales literature, and promotional materials.

f. In its relationship with Seller, Purchaser is an independent contractor. Nothing in the Contract shall be construed such that Purchaser shall be considered an employee, agent or partner of Seller. Except as otherwise provided herein, the Contract shall not confer any rights or remedies upon any third-party, other than the parties to this Contract and their respective successors and permitted assigns. Seller, at its discretion, may delegate, assign or otherwise engage the services of any subcontractor to perform any portion of Seller's obligations under this Contract; provided, however, Seller will not be relieved of any obligations under this Contract by virtue of performance of any such obligations by a subcontractor.