For the purposes of these terms and conditions (these “Terms and Conditions”), “Purchaser” is the entity issuing the Purchase Order, and “Supplier” is the entity providing goods or services as described in the Purchase Order (“Work”) to Purchaser. Also, for purposes of these Terms and Conditions, “Purchase Order” shall mean the document issued by Purchaser to Supplier which describes the specific Work to be furnished by Supplier, and which incorporates by reference these Terms and Conditions, along with other referenced or incorporated documents, and as may be amended from time to time by a change order.

1. The following Terms and Conditions shall have no force or effect if any other terms or conditions issued by Purchaser are referenced in the Purchase Order, or if the Purchase Order references another agreement between Purchaser and Supplier.

2. Supplier shall be deemed to have accepted the Purchase Order, including these Terms and Conditions, and any amendment or change order to the Purchase Order by: (i) Supplier’s signature on the Purchase Order or any amendment or change order; (ii) any material delivered or service performed; (iii) Purchaser’s receipt of Supplier’s invoice for material or service; or Supplier’s acceptance of Purchaser’s payment for material or service.

3. Supplier is an independent contractor, and shall not be considered an employee, agent or representative of Purchaser. Supplier shall at all times be responsible for the Work, and for the acts and omissions of its sub-suppliers and subcontractors.

4. Purchaser shall pay Supplier the undisputed charges for the Work on the later of 30 days after Purchaser’s receipt: (i) of a valid invoice, in a form acceptable to Purchaser, in Purchaser’s Accounts Payable Division at P.O. Box 700, Rosemead, CA 91770 or; (ii) of the Work. A single valid invoice shall be submitted no sooner than upon shipment of the material or completion of the Work. Purchaser’s payment for the Work shall not constitute acceptance of the Work. Purchaser has the right to withhold payment of particular charges that Purchaser disputes in good faith, pending the resolution of the dispute. With respect to any amount to be paid by Purchaser under the Purchase Order, Purchaser may deduct from this amount any amount Supplier owes to Purchaser.

5. Supplier warrants that Work, materials and documentation supplied pursuant to the Purchase Order shall (i) conform to all requirements of the Purchase Order and the descriptions and specifications provided, (ii) be properly packaged and shipped, and (iii) be delivered in a timely manner, be of good design and workmanship, free of defects, made of new material, and be fit for the purpose required by Purchaser. Supplier warrants that services provided will conform to the requirements of the Purchase Order and will be completed in a timely and professional manner. Work, materials, services, and documentation delivered to Purchaser shall not be deemed accepted by Purchaser until after Purchaser has notified Supplier of its acceptance. If, within one year following Purchaser’s acceptance, Supplier’s Work, or any materials, documentation, or services furnished to Purchaser are found to be defective, non-conforming, or unfinished, Supplier shall, at its own expense, re-perform, replace, or correct defective Work, or finish performance of services. If Supplier fails to begin such Work within five days after Purchaser’s written demand, Purchaser may engage other’s services, the cost of which shall be charged to Supplier and reimbursed to Purchaser.

6. Supplier shall ship materials or documentation and secure all shipments to assure sufficient protection to prevent in-transit damage. Supplier shall ship materials or documentation to the location and by the date specified in the Purchase Order, time being of the essence. Supplier shall promptly notify Purchaser of any condition affecting the delivery date. Supplier’s failure to deliver in a timely manner shall constitute grounds for rejection of the goods or services by Purchaser or termination of the Purchase Order.

7. Supplier shall comply with all applicable laws, rules, regulations, and ordinances in the performance of the Purchase Order, including those relating to environmental law, toxic or hazardous materials, labeling, OSHA standards, occupational health and safety. Supplier shall also comply, and shall cause its employees, sub-suppliers or subcontractors to comply with all Purchaser’s policies and procedures, including its safety program. Supplier shall obtain, and maintain throughout the duration of the Work and the term of the Purchase Order, all permits, licenses, and approvals necessary for the performance of the Work.

8. Supplier shall defend, indemnify and hold harmless Purchaser and its subsidiaries and affiliates, and their respective officers, directors, agents, employees, successors, and assigns from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, penalties, or fines, including attorney’s fees and expenses, resulting from or arising out of any claim relating to the performance or nonperformance of Supplier’s obligations under the Purchase Order. The insurance requirements in Section 9 shall not be construed to limit Supplier’s indemnity obligations.

9. Supplier shall obtain and maintain, and require all its contractors to obtain and maintain, sufficient insurance policies to protect against any loss or damages which may arise under the Purchase Order including: Worker’s Compensation Insurance as required by law, covering all states of operation; Employers’ Liability Insurance with a minimum limit of $1,000,000 each occurrence; Commercial General Liability Insurance with a minimum limit of $1,000,000 for bodily injury, personal and advertising injury, product/completed operations, and contractual liability, with a limit no less than $1,000,000 per occurrence, and $3,000,000 in the aggregate; and Commercial Automobile Liability Insurance covering all owned, hired, or otherwise operated non-owned vehicles with minimum combined single limit of $1,000,000 each occurrence. Supplier shall furnish to Purchaser upon request certificates of insurance naming Purchaser as additional insured. Supplier’s insurance shall be primary as to any and all insurance or self-insurance available to Purchaser, and shall specifically cover the indemnity obligations assumed herein. The insurance required in no way limits or restricts Supplier’s indemnity obligations under the Purchase Order.

10. Purchaser shall have the right at any reasonable time during business hours, from the date of the Purchase Order and continuing for three years after completion or the Work, or upon termination or expiration of the Purchase Order, whichever is later, to audit the books, records, or other accounts of Supplier to determine Supplier’s compliance with the Purchase Order. Supplier accepts full liability for the performance of all contributions, taxes, wages or other remuneration paid Supplier’s or its sub-suppliers’ or subcontractors’ employees.

11. The construction, validity and interpretation of the Purchase Order and these Terms and Conditions shall be governed by, and construed in accordance with, the laws of the State of California. The parties will accept personal jurisdiction and service in California, and waive all other rights with respect to conflict of laws principles.

12. Supplier agrees that from the date of the Purchase Order and continuing for a period of three years following the completion of the Work, or the termination or expiration of the Purchase Order, whichever is later, to hold all documents, manuals, business plans, concepts, designs, models, trade secrets, intellectual property of any kind, terms of the Purchase Order, and all other materials of Supplier, whether oral or written, containing or reflecting any of the foregoing (Confidential Information) confidential, and not to communicate, divulge or otherwise make available to any person without the prior written consent of Purchaser. Confidential Information may be discussed only with those persons who need to know such information for the sole purpose of performing the Work. Supplier will not use Purchaser’s name, likeness, or images for the purpose of any media release or publicity without first obtaining written consent from Purchaser’s Corporate Communications Department. In the event the Supplier breaches this non-disclosure covenant, Purchaser shall have the right to equitable relief, including injunction and specific performance, without prejudice to other rights and remedies otherwise available.

13. Supplier shall defend, indemnify and hold harmless Purchaser, its subsidiaries and affiliates, and their respective officers, directors, agents, employees, successors and assigns from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs, including attorney’s fees and expenses, arising out of any claim that the use or resale of the Work or any documentation infringes upon or violates any trade secret, trademark, trade name, copyright, patent, or other intellectual property right.
14. The title and risk of loss or damage to materials and documentation passes from Supplier to Purchaser upon delivery to Purchaser. Title shall be free and clear of any and all liens and encumbrances.

15. The waiver by Purchaser or Supplier of any default or breach shall not be taken to be a waiver of any continuing or subsequent default or breach of any other provision of these Terms or Conditions or the Purchase Order or affect the rights or remedies thereto.

16. Purchaser may terminate or suspend the Purchase Order at any time and for any reason. However, where Supplier is not in default upon termination, Purchaser shall make payments for all Work accepted by Purchaser and verified costs in conformity with the Purchase Order as of the date of termination. Such payment shall constitute Supplier’s exclusive remedy in the event of termination of the Purchase Order by Purchaser.

17. All inventions, discoveries, trade secrets, patents, copyright, and other intellectual property, including new processes, material, software, work product, blueprints, drawings, dies, patterns, tools, documentation, etc. conceived, developed, reduced to practice, prepared or constructed by Supplier under the Purchase Order shall be deemed the property of Purchaser, and Supplier assigns, transfers, and conveys all right, title, and interest thereto to Purchaser. Upon the completion of the Work or cancellation of the Purchase Order, Supplier shall deliver all such material to Purchaser.

18. No provision of the Purchase Order, these Terms and Conditions, or other incorporated document shall be construed against any party, merely because that party drafted the document. The parties warrant that they have had time to review and discuss these provisions with interested parties, and understand the terms as written or revised.

19. The entire agreement between the parties with respect to the subject matter is contained in the Purchase Order and all other documents, including these Terms and Conditions, incorporated by reference. Supplier shall not assign, transfer or modify the Purchase Order or any interest therein without first obtaining prior written approval of the Purchaser. Any changes, exceptions, or different terms and conditions proposed by Supplier, or contained in Supplier’s acknowledgment of the Purchase Order or any form issued by Supplier are hereby rejected and have no effect unless expressly stated in the Purchase Order or incorporated in a change order issued and executed by Purchaser.

20. All changes to the Purchase Order, including, but not limited to, changes to Work, dates, material, insurance, milestones, security and regulations shall be effected only by the issuance of a change order issued and executed by Purchaser and accepted by Supplier in accordance with the terms of the Purchase Order.

21. Notwithstanding the completion of the Work or termination of the Purchase Order or any portion thereof, the parties shall continue to be bound by those provisions of the Purchase Order which by their nature survive such completion or termination.

22. In no event shall Purchaser, its officers, directors, employees, agents, representatives, successors, or assigns be liable to Supplier for any special, indirect, incidental, or consequential damages, whether in contract, tort (including negligence) or strict liability; including loss of use or underutilization of labor or facilities, loss of revenue or anticipated profits, or claims from customers, resulting either from (a) Purchaser’s performance or nonperformance of its obligations under the Purchase Order, or (b) Purchaser’s suspension of Work or termination of the Purchase Order.

23. If any section, provision, or portion of these Terms and Conditions is held to be invalid, illegal, or void by a court of proper jurisdiction, this decision shall not impair, affect, or invalidate the remainder of the document.

24. Any inconsistency between any terms of these Terms and Conditions and the Purchase Order are to be resolved in favor of the terms of that Purchase Order for the Work set forth in that Purchase Order.