

CONDITIONS OF CONTRACT WHICH ARE A PART OF THE PURCHASE ORDER

1. **CONTRACT** — No agreement to modify this contract shall be binding upon Encapsys, LLC (hereinafter "Buyer") unless agreed to in writing by Buyer's authorized representative, and any and all previous agreements inconsistent with the terms and conditions herein are hereby cancelled to the extent of such inconsistency. This contract shall in all respects be construed and governed by the internal laws of the state wherein Buyer's office issuing this order is located. The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision. The term "product" shall mean the subject of this agreement. The term "item" shall mean one of the products.

2. **CHANGES** — Buyer reserves the right at any time to make changes in the specifications or other description to which the product is to conform. In such event, any claim for an adjustment in price or delivery schedule shall be deemed waived unless notice thereof is made in writing within thirty (30) days following Seller's receipt of such changes. Price increases or extensions of time shall not be binding upon Buyer unless evidenced by a purchase order change issued by Buyer.

3. **SPECIFICATIONS AND INSPECTIONS** — All products ordered to Buyer's specifications or in reliance upon data or advertising submitted to or received by Buyer in connection with the products shall comply with such specifications, data and advertising current as of the date of this order unless otherwise authorized by Buyer. The product and items shall be subject to inspection and testing by Buyer at all places and times, including the period of manufacture, the period of development and the period of performance of services. If any inspection or test is made on Seller's premises, Seller shall without additional charge provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. Buyer reserves the right to reject items which do not conform to the specifications, drawings, other data or advertising, or which do not comply with the warranties hereinafter stated. Items rejected after delivery shall be returned to Seller at Seller's risk and expense. Payment for any product or item shall not be deemed acceptance thereof.

4. **PRICE** — Buyer shall not be billed at a price higher than the price last charged or quoted by Seller for the same product or item unless authorized by this order or by a purchase order change. Seller represents that the price charged for the product(s) or item(s) covered by this order is the lowest price charged by Seller to purchasers of a class similar to Buyer purchasing in quantities and under circumstances substantially comparable in all material respects to those specified in this order. Any price reduction affecting purchasers of a class similar to Buyer, made by Seller with respect to products or items covered by this order subsequent to the date hereof and prior to Buyer's receipt of said items, shall apply to this order. Seller warrants that the prices charged hereunder are and shall be in compliance with any governmental program of price restraint or control now in effect or hereafter adopted and hereby agrees to make appropriate refunds to Buyer if and to the extent necessary for Seller to be in compliance therewith.

5. **EXTRA CHARGES AND PACKAGING** — No charges shall be allowed for taxes, import duties, transportation, packaging, packing, returnable containers, documentation, media or otherwise unless agreed to by Buyer. All sales, use, excise or similar taxes to be paid by Buyer must be itemized separately hereon and on invoices. Shipments shall be packaged according to specifications or, if not covered in specifications, so as to permit efficient handling, provide adequate protection, and comply with requirements of the carrier. Damage resulting from improper packaging will be charged to Seller.

6. **WARRANTY** — Seller warrants for a period of one (1) year after date of receipt, that the products and items to be furnished hereunder shall conform in all respects to the specifications, drawings, and other data or advertising submitted to or received by Buyer, or with Seller's samples, and that same shall be merchantable, of good material and workmanship, free from defects, and fit for the use intended by Buyer. Such warranties shall be in addition to any other warranties, given to Buyer and shall survive inspection test, acceptance and payment. Buyer may, at its option, either return for full credit or require prompt correction or replacement of defective or nonconforming products, items, or parts thereof, which right shall be in addition to such other legal or equitable rights possessed by Buyer, including without limitation, the right to recover damages from Seller in connection with any loss, including incidental and consequential losses. The return to Seller of any defective or nonconforming products, items or parts shall be at Seller's expense, and no replacements of defective or nonconforming products, items or parts shall be made unless specified or agreed to by Buyer. Items required to be corrected or replaced shall be subject to this warranty and to the clause above entitled "Specifications and Inspections" to the same extent as products or items originally delivered under this order. Upon written request by Buyer therefor, Seller shall provide properly executed releases of liens by, or satisfactory evidence of full payment to Seller's subcontractors, if any, and suppliers, and if Seller refuses or neglects to furnish such releases or other evidence of payment, then, and in any event, Buyer shall have the right to withhold from sums otherwise due Seller amounts reasonably necessary to protect Buyer against loss due to actual or threatened claims by such subcontractors or suppliers and, at Buyer's option, to pay said sums, or a portion thereof, to such subcontractors or suppliers on behalf of Seller or Buyer and without any obligation to account to Seller therefor.

7. **DELIVERY** — If delivery of times or other performance required hereunder is not accomplished at the time or times indicated in this order or promised by Seller, whichever is earlier, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this order by notice, effective immediately upon receipt by the Seller and at its option to arrange for completion of performance by itself or others and charge Seller with any loss incurred. No provision of this order for the delivery of items in installments shall be construed as making the Seller's obligations severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk. Notwithstanding the foregoing, neither party shall be liable for damages for any delay arising out of causes beyond their reasonable control and without their fault or negligence, including but not limited to acts of God, acts of the other party, acts of civil or military authority, labor disputes, fire, or shortage of power. If any delay is caused by delay of subcontractor and is beyond the control and without the fault or negligence of Seller, Seller shall incur no liability for such delay unless the goods or services to be furnished by such subcontractor were obtainable from other sources in sufficient time to meet the required delivery hereunder, but in no event, shall Buyer be obligated to pay or reimburse Seller for any extra costs incurred by Seller in connection with securing substitute performance. Seller shall notify Buyer forthwith upon learning of any event which may result in any delay.

8. **BUYER'S PROPERTY** — Unless otherwise agreed in writing, everything furnished to the Seller by Buyer for use in the performance of this contract shall be and remain Buyer's property, and shall be subject to repossession or removal by Buyer, or pursuant to Buyer's instructions, used only in the performance of this or similar contracts, held at Seller's risk, returned in the same condition as when delivered, ordinary wear and tear excepted and kept insured by Seller at Seller's expense while in its custody and control in an amount equal to the replacement cost thereof, with loss payable to Buyer. Seller shall at Buyer's expense unless otherwise agreed, execute all documents and do all acts reasonably required by Buyer to record or otherwise give legal public notice of Buyer's interest in such property.

9. **CONFIDENTIALITY** — Except as otherwise specifically agreed, all information disclosed by Buyer to Seller shall be held in confidence by Seller and Seller's agents, employees, representatives, subcontractors and suppliers. Seller shall take all reasonable precautions to prevent any such information from being divulged to third persons not employed by or associated with Seller, including having recipients acknowledge the confidential status of such information and agree to like restrictions on divulging such information. This obligation of confidence shall continue for a period of five years after completion of this order unless otherwise agreed in writing. Information presently in the public domain or which becomes so except as a result of the fault of Seller shall not be considered confidential.

10. **RIGHTS IN DEVELOPMENT AND COPYRIGHT** — This paragraph shall apply if the product is services or if the product is to be designed or developed and such design or development is paid for by Buyer. Seller shall disclose and assign on demand, and it does hereby assign, to Buyer, any and all inventions, improvements, copyrights or developments, each whether patentable or not, which it may make or assist in making in the course of such designing or development. Seller assigns, and agrees hereafter on demand to assign to Buyer all copyrights, patents and applications for patents in connection with any such invention, improvement, design or development and shall do all acts and execute all instruments which Buyer may request in connection therewith. Seller shall cause every appropriate person employed

by or associated with it to enter into an agreement under which each such person shall disclose and assign to Seller or Buyer all inventions and execute all papers and do all acts deemed necessary by Seller or Buyer relative to assignment and patent protection of such inventions. Seller shall furnish Buyer with originals or duplicate originals of such agreements. All information, ideas, results and data developed by Seller as a result of developmental work contemplated by this section shall be transmitted by Seller only to and become the exclusive property of Buyer and likewise be regarded by Seller as confidential for the same period(s) and subject to the same exceptions as are provided in Section 9, hereof. If the product is services, or is to be designed or developed, and results in a copyrightable work, then the product is agreed to be deemed a work made for hire and the copyright shall be owned by Buyer. Seller warrants that it is free to enter into this Agreement and has no obligations or requirements under any other agreement contrary to any of the terms and conditions contained herein.

11. **INDEMNIFICATION** — Seller agrees that upon being notified promptly and given authority information and offered assistance, it shall promptly investigate and defend at its own expense all claims, suits, or proceedings in which Buyer or its subsidiaries, or its or their respective successors, assigns, distributors, dealers, customers, or users of Buyer's products, supplies or services are made defendants or claimed potential defendants for any infringements, claimed infringement, or alleged inducement of infringement, or unauthorized or unlawful use of any patent, copyright, or trademark, wherever registered or issued, or trade secret, or proprietary data, or other information resulting from the manufacture, sale, use of lease or other disposition of any product item, or any part thereof furnished pursuant to this contract. Seller further agrees to pay and discharge any and all judgments, settlements or decrees which may be rendered or awarded in any such suits or proceedings against any such defendants. Seller shall have the right, with the approval of Buyer, which shall not be unreasonably withheld, to settle any such suits or proceedings on terms and conditions of Seller's own selection, provided they are not in conflict with the terms and conditions provided herein. In the event Seller fails to promptly investigate and defend or settle as provided hereinabove, then Buyer shall, following notification to Seller, have the right from that time forward to have sole control of the defense of any said claim, suit, or proceeding and all negotiations for its settlement or compromise in which event Seller further agrees to pay as they become due all of the costs, expenses, and attorneys' fees incurred by Buyer, and/or judgments or decrees which may be entered. This indemnity does not extend to any suit or proceeding which is based upon a patent claim covering a combination in which any product, item, or part furnished under this contract is merely an element of the claim combined with other devices or elements not furnished hereunder unless Seller is a contributory infringer, and except in the event such other device or element is merely an immaterial part of the combinations, nor does this indemnity extend to any product whose infringement is a direct result of Seller being required to adhere to a specific design provided to Seller by Buyer.

12. **INDEMNIFICATION** — Seller, to the extent of Seller's negligence, shall defend, indemnify and hold harmless Buyer against all claims and demands for loss of life, personal injury or property damage arising out of Seller's performance hereunder, or the products provided by Seller hereunder, including claims by Seller's employees and agents for injuries occurring on Buyer's premises. Buyer shall have the right to withhold from any sums otherwise due Seller hereunder, amounts reasonably necessary to protect Buyer against loss on account of such claims or demands. Seller shall, upon request from Buyer, furnish evidence of insurance with limits as follows: worker's compensation insurance as required by law, bodily injury and property damage public liability insurance of not less than \$500,000 per occurrence, including contractual liability and automobile bodily injury and property damage liability insurance of not less than \$500,000 per accident.

13. **ASSIGNMENT AND SUBCONTRACTS** — Seller shall not assign this order or any of the Seller's rights hereunder, whether by direct assignment, amalgamation, merger or the sale of all or substantially of its capital stock, assets or properties, including its right to receive any money due or to become due hereunder, nor shall Seller enter into a subcontract with any other party for the furnishing of items or services without Buyer's prior written consent.

14. **COMPLIANCE WITH LAWS** — Seller shall, in the performance of this contract, comply with all applicable federal, state and local laws, regulations, guidelines, standards (including OSHA standards) and orders (collectively "law") now in effect. Any provision certification or agreement required to be a part of this contract by virtue of any such law, is hereby incorporated herein by reference. Seller shall prepare and execute all documents and do all things or, as the case may be, refrain from any prohibited activities in order that Buyer shall not be deemed in default of its obligations under any contract with the federal or any state or local government or any supplier thereto. Seller's obligations hereunder may include, but shall not be limited to (a) refraining from discriminating against any employee or applicant because of race, color, religion, national origin, sex, age, handicap, veteran's status, or any other protected category, (b) establishing or maintaining affirmative action plans as required by law or by the terms of any of Buyer's or Buyer's customer's contracts with any governmental entity, (c) providing certifications of compliance with various laws, and obtaining similar certifications from its suppliers and subcontractors, (d) complying with various pollution control requirements, (e) contracting with minority business concerns, small business concerns, and firms in certain designated areas, and (f) filing various reports or providing information. This contract may, at Buyer's option, be deemed a subcontract to Buyer's federal supply schedule.

15. **RESERVATION OF RIGHTS** — No failure by either party to insist upon strict compliance by the other party with any of the terms of this contract shall be construed as a waiver of such party's rights to insist upon strict compliance therewith in the future.

16. **DUTY DRAWBACK RIGHTS** — This order includes all related customs duty and import drawback rights, if any, (including rights developed by substitution and rights which may be acquired from Seller's suppliers) which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback.

17. **TERMINATION FOR CONVENIENCE OF BUYER** — Buyer may for Buyer's convenience, terminate this contract in whole or in part at any time upon written notification to Seller. In such event, the extent of Buyer's total liability shall be as follows. If the product is services, to pay the portion of the contract price as the work completed bears to the whole, or, if the product is goods to pay the price of the existing finished goods inventory at the time of termination, but no more than required to fulfill the next delivery scheduled within the thirty (30) days immediately following the date of termination plus Seller's cost of its then existing work-in-process inventories, required to fulfill an additional thirty (30) days of deliveries; provided however, that there shall be no liability for inventories in either category which are readily usable or re-saleable. Seller shall use reasonable efforts to mitigate the extent of its losses resulting from such termination, and in no event, shall the amount of Seller's recovery hereunder result in Seller realizing a profit greater than originally and reasonably anticipated by Seller.

18. **TERMINATION FOR CAUSE** — Buyer may also terminate this contract in whole or in part for cause which may include, but not be limited to (a) Seller's failure to comply with any of the terms and conditions of this contract, (b) Seller's failure to provide Buyer, upon request, with reasonable assurances of future performance, (c) Seller's commencement of or becoming the subject of any proceedings providing for relief of debtors, or (d) Seller's becoming insolvent or bankrupt. In any such events, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination. In the event of termination for the reasons herein specified or for any other reason, all right, title, and interest in and to all or any portion of materials acquired by Seller for the performance of this contract, work-in-process, or completed items specified in such notice, shall, at Buyer's option, pass immediately to Buyer upon payment of any sums due Seller hereunder, and Buyer shall have the right either to demand and receive such materials, work or items from Seller or to enter, upon 48 hours prior notice, the premises where such property may be located and take possession thereof without any liability to Seller on account of such retaking.

19. **MUTUAL: WAIVE OF CONSEQUENTIAL DAMAGES** — Notwithstanding any other clause in the Agreement, neither Party shall be liable to the other, or shall make any claim, for any incidental, indirect or consequential damages arising out of, or connected in any way to work in this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action inducing, without limitation, negligence, strict liability, breach of contract, statutory and breach of warranty.