IMSAR LLC Purchase Order Terms and Conditions

1. ACCEPTANCE--The parties shall be bound by this order, and all its terms and conditions when Seller executes and returns the acknowledgment copy of this order or delivers or furnishes to IMSAR any of the goods and/or services ordered. No contract shall exist except as herein above provided.

2. DELIVERY--The time of delivery stated is the essence of this contract. The date specified for delivery is the required delivery date at IMSAR’s plant, unless otherwise specifically noted in the Purchase Order. IMSAR reserves the right to refuse any goods or services and to cancel all or any part thereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller’s deliveries will not meet agreed schedules, IMSAR may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller provided, nevertheless, that such right shall be in addition to any other rights and remedies of IMSAR. Acceptance of any part of this order shall not bind IMSAR to accept future shipments or performance of services, nor deprive it of the right to return goods already accepted and shall not be deemed to be a waiver of IMSAR’s right to cancel or return all or any part of the goods because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages incurred by IMSAR. Such rights shall be in addition to any other remedies provided hereunder or provided by law or otherwise. Delivery shall not be deemed to be complete until goods have been actually received and accepted by IMSAR, notwithstanding delivery to any carrier or until any services have been performed, received and accepted.

3. CHANGES--IMSAR at any time shall have the right to make changes to this Purchase Order by written notice to the Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller’s costs or time or performance of this Purchase Order, Seller shall notify IMSAR immediately and negotiate an adjustment.

4. NEW MATERIAL-- All goods delivered hereunder shall consist of new materials, unless otherwise stated on the Purchase Order.

5. PACKING AND SHIPPING--The goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates, to comply with any specific transportation specifications of IMSAR, and, in all cases, to comply with carriers’ regulations. All charges for packing, crating and transportation are included in the price for the goods set forth herein and will be paid by Seller except as otherwise specifically stated on the Purchase Order. A Packing List shall accompany each box or package shipment, showing the Purchase Order number as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count or weight or other measure of IMSAR shall be final and conclusive. IMSAR shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller’s expense.

6. PRICE--Unless otherwise specified, the prices established by this Contract are firm fixed prices. In the event Seller is liable to IMSAR for any amounts pursuant to this Contract, IMSAR may, at its election, set-off against any amounts payable to Seller under this contract.

7. INSPECTION AND ACCEPTANCE-- (a) IMSAR’s final acceptance of Goods or Services is subject to IMSAR’s final inspection within sixty (60) days after receipt at IMSAR’s facility or such other place maybe designated by IMSAR notwithstanding any payment or prior test or inspection. (b) Seller and its suppliers shall establish and maintain a quality control and inspection program in accordance with commercially accepted practices or as specified on the Purchase Order. For purchases of non-commercial items, and subject to applicable national security regulations, IMSAR and IMSAR’s representative shall have the right of access, on a non-interference basis, to any area of Seller’s or Seller’s Supply Chain sub-tier premises where any part of the work is being performed.

8. PAYMENT--The original and one copy of a Bill of Lading or comparable shipping document must accompany Seller’s invoices. Payment of such invoices shall be subject to a pro rata adjustment by IMSAR for any shortage in the goods shipped or defective goods rejected by IMSAR, or for any failure to perform services or defective performance thereof. Any discount period shall be calculated from the date of receipt by IMSAR of an appropriate invoice. Invoices may be mailed when goods are shipped, but time of payment shall not commence until actual or scheduled receipt, whichever is later, of items at their destination or upon satisfactory completion of services.

9. WARRANTIES--Seller represents, certifies and warrants (1) that the price charged for the goods and/or services purchased pursuant hereto shall be no higher than Seller’s current price to any other customer for the same quality or quantity of such goods or services; (2) that all goods delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship and that all goods will conform to applicable samples, specifications, drawings, and standards of quality and performance, and that all goods will be free from defects in design and suitable for their intended purpose; (3) that all services performed pursuant hereto will be free from defects in material...
and workmanship and will be performed in accordance with the specifications and instructions of IMSAR provided nevertheless that Seller shall retain the discretion and control with respect to the manner and means of performing such services and shall at all times remain an independent contractor. All the representations, certifications and warranties of Seller together with its service warranties and guaranties, if any, shall run to IMSAR LLC and customers. Seller agrees to indemnify, defend and hold IMSAR and its affiliate harmless from all claims, liability, loss, damage and expense including but not limited to recall expenses, reasonable attorneys’ fees and other special, consequential and incidental damages incurred or sustained by IMSAR or its affiliate by reason of any breach of any warranty, certification or representation with respect to the goods and/or services which are covered by this order. In the event that goods supplied pursuant hereto or services performed hereunder contain defects in material or workmanship or as to services, are not performed in accordance with the specifications and instructions of IMSAR, IMSAR may require prompt correction thereof, that the services be rendered again at Seller’s expense, or that the goods be replaced at Seller’s expense. If such defects exist or if Seller is unable or refuses to replace the goods or render the service again promptly, IMSAR may by contract or otherwise replace such goods or obtain such services and charge Seller or deduct from amounts owed by IMSAR to Seller the cost, expenses and losses including incidental and consequential damages incurred thereby which are in excess of Seller’s price for such goods or services. After notification to Seller that goods are defective, all risk of loss with respect to such goods shall be in Seller and Seller shall pay all packing and shipping charges in connection with defective goods returned by IMSAR. IMSAR’s approval of designs furnished by Seller shall not relieve Seller of its obligations herein. The goods covered by this order are intended for the manufacture and sale of the established products of IMSAR and its affiliates and in which IMSAR and its affiliates have built a substantial and valuable reputation for quality and efficiency and any defect in the goods or services hereunder may occasion special damage to IMSAR and its affiliates. All rights and remedies of the IMSAR and its affiliate hereunder shall be in addition to any other rights and remedies provided by law.

10. CHANGES—IMSAR may at any time by written or telegraphic notice cancel this order or make changes within the general scope of this order in any one or more of the following:

1. Drawings, designs or specifications,
2. Methods of shipments or packing,
3. Quantities,
4. Delivery schedules,
5. Place of Delivery, and
6. Instructions with respect to the rendition of services.
7. If any such change increases or decreases the cost of, or the time required for the performance of this order, an equitable adjustment in the price and/or delivery schedule will be made and set forth in a written modification to this order, but under no circumstances shall IMSAR be responsible for any raw material purchased by Seller in excess of the quantities released or for the fabrication of parts beyond normal lead times. Any claim for adjustment by Seller under this clause must be made within thirty (30) days from the date of receipt of the written notification of the change.

11. TAXES—Federal, State or Local taxes which are properly billable to IMSAR shall be stated separately in Seller’s Invoices. All tax exemption certificates will be accepted by Seller.

12. TOOLING—In the case of any tools, dies, jigs, fixtures, patterns, equipment or other facilities of IMSAR which may be in possession of Seller in connection with this order. Seller agrees that his responsibility shall be that of a Bailee and that he shall indemnify and hold harmless IMSAR from any loss or damage thereto which is caused by or as a result of any negligence, act or omission the part of Seller or its agents, employees or others until such time as such facilities are delivered into the possession of IMSAR.

1. With respect to such facilities, Seller will:
2. Make and affix such markings thereon as IMSAR may direct,
3. Make no change, modification or alteration thereto without IMSAR’s written consent,
4. Make no use thereof except in the production of material ordered by IMSAR,
5. Store the same without charge to IMSAR in separate racks or in sections of Seller’s plant, in either case, clearly marked “Property of IMSAR LLC.” and
6. Maintain the same in good condition excepting ordinary wear and tear.

13. If Seller acquires tools or equipment and which in connection with this order and charges IMSAR for the use thereof or a tool service charge in connection therewith, unless otherwise agreed in writing, IMSAR may at its option, upon completion or termination of this Purchase Order, elect to take title to such tools and upon receiving notice of such election Seller will deliver such tools to IMSAR upon payment by IMSAR to Seller of that portion of the unreimbursed out-of-pocket cost of such tools which was incurred by Seller at its expense.
14. RESPONSIBILITY FOR PROPERTY--Any property of IMSAR or of the United States which in connection with this Purchase Order is in the possession or control of Seller or Seller’s subcontractors, vendors or agents shall be returned to IMSAR in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of such goods. Risk of loss with respect to all such property shall be in Seller.

15. INSURANCE--Seller agrees, if and when requested by IMSAR to procure a policy or policies of insurance in form and amounts satisfactory to IMSAR including endorsements specifically naming IMSAR and/or its affiliates as an insured to cover products liability and completed operations and/or to insure all property of IMSAR which is connected with the order and of which Seller has care, custody, control or the right of control against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Satisfactory evidence of such insurance shall be submitted to IMSAR within a reasonable period of time after request. Upon request, Seller shall furnish certificates of insurance prior to start of work on IMSAR’s or its customer’s premises and indemnify IMSAR against all loss, damage or liability arising hereunder, and work will be performed only in accordance with safety rules and procedures while on the premises.

16. ASSIGNMENTS--This Purchase Order may not be assigned by Seller in whole or in part without the prior written consent of IMSAR.

17. USE OF DESIGNS, DATA, ETC.--Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by IMSAR and use such items only in the production of goods for furnishing of services under this order or other orders from IMSAR and not otherwise unless IMSAR’s written consent is first obtained. Upon completion or termination of this order, Seller shall return all such items including copies to IMSAR or make such other disposition thereof as may be directed or approved by IMSAR.

18. PATENTS AND DATA--Seller shall indemnify and hold harmless IMSAR, IMSAR’s customers, and users of IMSAR’s products against liability or suit of any nature, including costs and expenses for infringement of any patent or patent right arising from the manufacture, use or sale of any goods or any part thereof, called for in this order, including but not limited to articles recommended by Seller which are of the manufacture of others, except to the extent that any such liability or suit shall have arisen solely because of Seller’s manufacture of articles or original design of IMSAR. If any experimental, developmental or research work is called for or required hereunder, Seller agrees to and hereby does grant to IMSAR an irrevocable, non-exclusive, fully transferable royalty-free license to make, have made, use and sell any invention, improvement or discovery (whether or not patentable) that Seller conceives or first actually reduces to practice in the performance of this order.

Seller agrees to and hereby grants to IMSAR (i) an irrevocable, non-exclusive, fully transferable royalty-free license to reproduce, translate, publish, use and dispose of, and to authorize others so to do, any copyrighted or copyrightable material ordered as articles or incorporated in, or supplied as a supplement with, any articles: and (ii) the right to reproduce, use and disclose for any purpose all or any part of the reports, drawings, blueprints, data and technical information delivered or specified to be delivered by Seller to IMSAR under this order.

TRADEMARKS--Seller acknowledges IMSAR LLC is the owner of and the exclusive right to use the IMSAR LLC Trademarks including but not limited to "IMSAR LLC," regardless of form, design or type style. Accordingly, Seller agrees that it will not directly or indirectly manufacture for or sell or offer to sell to any party other than IMSAR any goods of whatever nature wherein any of the IMSAR LLC Trademarks are used in association therewith.

19. NOTICE OF LABOR DISPUTE--Whenever any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto IMSAR.

20. COMPLIANCE WITH LAWS -- Seller warrants that the goods have been produced in accordance with the requirements of the Fair Labor Standards Act (29 USCA 201-219) and all other applicable federal, state and municipal laws and regulations.

21. TERMINATION--IMSAR may, by written notice to Seller, terminate the whole or any part of this order if

1. Seller fails to perform any provisions of this order or so fails to make progress as to endanger performance of this order in accordance with its terms, or

2. Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due.

22. If this order is so terminated, IMSAR may procure or otherwise obtain, upon such terms and in such manner as IMSAR may deem appropriate, goods, or services similar to those terminated. Seller, subject to the exceptions set forth below, shall be liable to IMSAR for any excess costs of such similar goods or services. Seller shall transfer title and deliver to IMSAR, in the manner and to the extent requested in writing by IMSAR at or after termination such complete articles, partially completed articles and materials, parts, tools, dies, patterns, jigs,
fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this order, and IMSAR will pay Seller the contract price for completed articles delivered to and accepted by IMSAR as the fair value of the property of Seller so requested and delivered.

Seller shall continue performance of this order to the extent not terminated. IMSAR shall have no obligations to Seller in respect of the terminated part of this order except as herein provided. IMSAR’s rights as set forth herein shall be in addition to IMSAR’s other rights in case of Seller’s default, whether set forth in this order or not.

23. FORCE MAJEURE-The following events, and only the following events, shall constitute Force Majeure under this contract: (a) acts of God, or of a public enemy; (b) acts of Government; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control without fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a Force Majeure that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party’s notice under this Section shall include the party’s good faith estimate of the likely duration of the Force Majeure.

24. RELEASE OF INFORMATION—Seller agrees that prior to the issuance of any publicity or publication of any advertising which in either case makes reference to this order, or to IMSAR, Seller will obtain the written permission of IMSAR with respect thereto.

25. NON-WAIVER OF RIGHTS—The failure of IMSAR to insist upon strict performance of any of the terms and conditions in the Purchase Order or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same or to rely on such terms or conditions at any time thereafter.

26. ENTIRE AGREEMENT—This Purchase Order is intended by the parties as a final expression of their agreement and also is a complete and exclusive statement of the terms thereof, any prior oral or written agreements as to the subject matter notwithstanding. This contract may not be modified or terminated orally or by trade usage or any course of conduct and no modification nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against who such modification or waiver is sought to be enforced.

27. HEADINGS—The heading at the beginning of each numbered section hereof have been inserted for ease of reference only and are not part of this contract.