MSS, LLC TERMS AND CONDITIONS OF PURCHASE OF GOODS

Applicability. These terms and conditions of purchase (these "**Terms**") are the only terms which govern the purchase of the goods and services ("**Goods**") by MSS, LLC ("**Buyer**") from the seller named in the applicable Purchase Order ("**Seller**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The purchase order printed on the reverse side of these Terms (the "**Purchase Order**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms. *Delivery*. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Seller shall deliver all Goods to the address specified in the Purchase Order (the "**Delivery Point**") during Buyer's normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods. *Quantity*. If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis. *Shipping Terms*. Delivery shall be made FOB Delivery Point unless otherwise stated in the Purchase Order. *Title and Risk of Loss*. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. *Inspection and Rejection of Nonconforming Goods*. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. *Price*. The price of the Goods is the price stated in the Purchase Order (the "**Price**"). If no price is included in the Purchase Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. *Payment Terms*. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within 30 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. *Warranties*. Seller warrants to Buyer that all Goods will: be free from any defects in workmanship, material and design; conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; be fit for their intended purpose and operate as intended; be merchantable; be free and clear of all liens, security interests or other encumbrances; and not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. The warranties set forth in this Section are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer. *General Indemnification*. Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's prior written consent. *Intellectual Property Indemnification*. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent. *Compliance with Laws*. Seller shall comply with all applicable laws, regulations and ordinances. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. *Termination*. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination. *Waiver*. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. *Confidential Information*. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. *Assignment*. Seller shall not assign any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the Seller of any of its obligations hereunder. *Relationship of the Parties*. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. *Governing Law; Dispute Resolution*. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provisions. Any dispute arising under this Purchase Order that cannot be resolved by informal negotiation shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator in San Diego, California. The decision of the arbitrator shall be final and binding, and judgment thereon may be entered in any court having jurisdiction. *Notices*. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section. *Severability*. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. *Survival*. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement. *Amendment and Modification*. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.