**PURCHASE ORDER**

|  |  |  |
| --- | --- | --- |
| **Product Description** | **Quantity** | **Price** |
|  |  |  |

|  |  |
| --- | --- |
| **Subtotal** |  |
| **Tax** |  |
| **TOTAL** |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **COMPANY:**

|  |  |
| --- | --- |
| By: Name: Title:  | Address for Notice:   |

 | **CUSTOMER:**

|  |  |
| --- | --- |
| By: Name: Title:  | Address for Notice:   |

 |

**PURCHASE AGREEMENT**

This PURCHASE AGREEMENT is between the above-signed “Company” and “Customer” and is effective as of the date Customer signs the Purchase Order (defined below) (the “Effective Date”).

## **Products**. Company will deliver the products (the “Products”) to Customer as described on the purchase order attached to or referencing this agreement (the “Purchase Order”). If any delivery fails to conform with the Purchase Order, Customer must notify Company of the nonconformance within 5 days of the delivery, and Company’s sole liability will be to replace the returned Products with conforming Products such that the Purchase Order is properly filled. Otherwise, Customer will not have a right of return and/or refund. Except as otherwise set forth in the Purchase Order, THE PRODUCTS ARE PROVIDED “AS-IS,” AND COMPANY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES.

## **Shipping; Risk of Loss**. If Company is shipping any Products, shipment will be made EXW to the shipping address on the Purchase Order with shipping costs payable by Customer. Otherwise, risk of loss of the Products passes to Customer upon delivery.

## **Charges**. Customer will pay charges as set forth in the Purchase Order. Unless otherwise provided on the Purchase Order, all charges are due upon invoicing.

## **Limitation of Liability; Defense and Indemnity**.

### Limitation of Liability. NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR (a) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES; or (b) EXEMPLARY OR PUNITIVE DAMAGES. IN ADDITION, COMPANY’S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE THE CHARGES FOR THE PURCHASE ORDER(S) TO WHICH THE LIABILITY RELATES. FOR THE PURPOSES OF THE FOREGOING, “LIABILITY” MEANS ANY LIABILITY, WHETHER UNDER CONTRACT, TORT, OR OTHERWISE, EXCEPT FOR A PARTY’S DEFENSE AND INDEMNITY OBLIGATION UNDER THIS AGREEMENT.

### Defense and Indemnity.Each party will defend and indemnify the other party and its affiliates, directors, officers, and employees against any liabilities and reasonable related costs (including legal fees) incurred in connection with any third party claim (including a government agency action) to the extent arising from the party’s negligence, willful misconduct, or violation of applicable law.

## **Other Provisions**.

### Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

### Transfer of Agreement. Neither party may transfer this agreement or any Purchase Order, except that either party may transfer all or any part of this agreement or a Purchase Order to (a) an Affiliate; or (b) a third party in connection with a merger or sale of substantially all the party’s assets. An “Affiliate” is an entity that is controlled by, in common control with, or controlling a party.

### Entire Agreement; Amendments and Waiver; Severability. This agreement, together with the Purchase Order, sets out all the terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation, or warranty except those expressly set out in this agreement. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this agreement, and neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this agreement. If any term (or part of a term) of this agreement is invalid, illegal or unenforceable, the rest of this agreement will remain in effect.

### Order of Precedence. The terms of the Purchase Order will take precedence over conflicting terms of this agreement to the extent of the subject matter of the Purchase Order.

### Governing Law; Venue. All claims arising out of or related to this agreement will be governed by Texas law excluding such State’s conflict of laws rules and will be litigated exclusively in the county or federal district/division of Company’s address for notice.

## **Notices**. Notices under this agreement are only effective when delivered in writing via certified mail or overnight delivery to the address for a party listed on the Purchase Order and with a copy to the email listed on the Purchase Order, if any.

## **Signatures**. The parties may execute the Purchase Order using electronic signatures, electronic copies, and counterparts.