



STANDARD PRODUCT TERMS AND CONDITIONS

These Standard Product Terms and Conditions of Sale ("Terms") govern the sale of Products by EPC Power Corp. ("EPC") to the customer (the "**Customer**"), as specified on a quote, purchase order or other ordering document issued by Customer ("PO"), order confirmation, or invoice (each, a "**Sales Document**"). The Sales Documents, collectively and with these Terms, comprise the entire agreement between the parties (the "**Agreement**"), and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase, regardless of whether or when Customer has submitted its PO or such terms. Fulfillment of the Customer's PO, in whole or in part, does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

1. **QUOTES.** EPC's quote, including the price, expected timing, and deliverables is valid for a period of ninety (90) days from the issuance date of the quote unless otherwise stated.
2. **SALE OF PRODUCTS.** EPC has the right, in its sole discretion, to accept or reject any PO. No PO is binding on EPC unless accepted by EPC by confirming the PO. Once a PO is accepted, EPC shall sell to Customer and Customer shall purchase from EPC the products set forth on a PO executed between the parties (the "**Products**") in the quantities, configurations, and at the Prices (as defined in Section 9) and upon the terms and conditions set forth in this Agreement. Each accepted PO, together with these Terms, constitutes a separate agreement for the purchase and sale of the Products specified on the PO.
3. **PROHIBITED ACTS.** Except as this Agreement expressly permits, Customer shall not, and shall not permit any third party to analyze, decompile, disassemble, decode, adapt, reverse engineer, or otherwise attempt to gain access to the source code, techniques, processes, algorithms, or know-how used in or with the Products.
4. **CANCELLATION BY CUSTOMER.** Customer's default or cancellation of this Agreement entitles EPC to recover from Customer the cancellation charges set forth in the table below. All deposits are non-refundable.

Weeks before Delivery Date that EPC Receives Cancellation Notice	Cancellation Fee as Percentage of PO Price for Terminated Product
41 or more	10%
40 to 25	30%
24 to 13	50%
12 to 5	90%
4 or fewer	100%

5. **PRODUCT CHANGES; SOURCE OF PRODUCTION.** EPC reserves the right to change or improve the Product, or any component thereof, and may modify, update, or replace the design and/or models of the Product in its sole discretion and without any liability so long as the Products comply with the specifications in the Sales Documents.
6. **PRODUCT DATA.** EPC and Customer shall implement reasonable technical and organizational measures to protect Product data in accordance with industry standards. Customer shall not use or permit any third party to reverse engineer the Product using Product data or any other information.
7. **DELIVERY.**
 - 7.1. The Products will be delivered EXW (EPC's facility), unless expressly agreed otherwise in the Sales Documents, within a reasonable time after the date of this Agreement, subject to availability of finished Products. EPC shall not be liable for any delays, loss or damage in transit. All time quoted by EPC in a Sales Document is an estimate only. EPC is not liable for any loss or damage arising from any failure to deliver or delay in delivery.
 - 7.2. EPC shall deliver the Products to the location specified in the PO using EPC's standard methods for packaging and shipping such Products. Customer shall pay for all shipping charges and insurance costs from EPC's manufacturing facilities as specified in the Sales

Document.

- 7.3. In the event a PO specifies more than one Product, or specifies Products individually distinct from other Products on the PO, EPC may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Products purchased under this Agreement.
- 7.4. If Customer fails, at the time agreed in the Sales Documents, to: (i) pick up delivered Products, or (ii) accept delivery of Products then, in either case, EPC shall have the right, with prior notice to Customer and at Customer's sole cost and expense, to transport Products to a storage location reasonably selected by EPC after Customer fails to pick up or accept delivery of Products within seven days of notification of order readiness for domestic orders or within fourteen days of the same notification for international orders. Upon any such transport to storage, the following shall apply:
- (a) To the extent not already "delivered" by being made ready for loading at EPC's facility, the Products shall be deemed to have been "delivered" to the delivery point for all purposes under this Agreement and EPC shall have no further responsibility for transport or delivery of the Products.
 - (b) Title and risk of loss shall immediately pass to Customer, if they have not already passed, and Customer shall insure the Products.
 - (c) EPC shall have no liability for any delayed delivery so long as transport to the storage location is timely.
 - (d) For each week the Products are in storage, Customer shall pay to EPC one half of one percent (0.5%) of the total price of such Products.
 - (e) Customer shall, within thirty (30) days after receipt of an invoice, reimburse EPC for additional costs reasonably incurred by EPC, including without limitation maintenance, preservation activities, inspection, transportation from storage, third-party shipping costs, and any additional insurance premiums.
8. **TITLE AND RISK OF LOSS.** Title and risk of loss passes to Customer upon delivery of the Products. As collateral security for the payment of the purchase price of the Products, Customer hereby grants to EPC a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Products, which such lien and security interest shall be extinguished upon EPC's receipt of full payment for the Products.
9. **PRICE.** Customer shall purchase the Products from EPC at the prices set forth in the applicable Sales Document (the "**Prices**"). All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes. However, Customer shall not be responsible for any taxes imposed on, or with respect to, EPC's income, revenues, gross receipts, personnel or real or personal property or other assets.
- 9.1. Import Duties and Fees. The Prices include all applicable import duties, fees, taxes, and tariffs (collectively, "Import Tariffs") in effect as of the date of the PO and imposed on, assessed, or levied in connection with EPC's importation of parts and components used to manufacture the Product. The Prices do not account for Import Tariffs or increases in existing Import Tariffs that are not in effect as of the date of the PO. EPC reserves the right to adjust the Prices based on any actual documented costs incurred by EPC due to such new or increased tariffs after the date of the PO (a "Change in Tariff"). If a Change in Tariff is implemented, EPC shall use commercially reasonable efforts to mitigate its impact.
10. **PAYMENT TERMS.** Customer shall pay all invoiced amounts due to EPC within fifteen (15) days from the date of EPC's invoice. Customer shall make all payments hereunder by check and in US dollars. Where Product delivery is divided into separate batches in a PO, the delivery milestone shall be achieved and Customer invoiced for each batch upon its delivery. Overdue amounts shall bear interest at the lesser of 1.5% monthly or the maximum legal rate. Customer shall reimburse EPC for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
11. **CREDIT APPROVAL AND FINANCIAL ASSURANCES.** Acceptance by EPC of a PO is subject to credit approval by EPC and such acceptance may be withheld pending a credit investigation or conditioned upon receipt of additional financial assurances. Upon EPC's reasonable request, Customer shall furnish EPC with statements evidencing Customer's financial condition. Customer

shall immediately provide notice to EPC of any events that may have a materially adverse effect on Customer's business, financial condition, or creditworthiness. If Customer experiences financial, credit, or labor difficulties that in EPC's commercially reasonable opinion threaten Customer's ability to perform its payment or other obligations under this Agreement, EPC may upon notice to Customer, in addition to EPC's other rights, accelerate any amounts owed by Customer to EPC under this Agreement and, if Customer fails to timely make such payment(s), EPC may cancel any previously accepted PO.

12. **NO SET-OFF.** Customer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to EPC or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by EPC's or its affiliates, whether relating to EPC's or its affiliates' breach or non-performance of this Agreement or any other agreement between Customer or any of its affiliates, and EPC or any of its affiliates, or otherwise.

13. **WARRANTIES.**

- 13.1. Each party represents and warrants to the other party that: (i) it has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement; (ii) upon the Parties' execution of a Sales Document, this Agreement will constitute the legal, valid, and binding obligations of each party enforceable against the party in accordance with its terms; and (iii) the execution, delivery, and performance of this Agreement does not and will not conflict with or constitute a default under any of the parties' contractual obligations under any other contract.
- 13.2. All representations and warranties for the Products are limited to the terms and conditions set forth in EPC's Limited Warranty Coverage for each Product at www.epcpower.com/warranty (the "**Limited Product Warranty**").
- 13.3. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13.2, EPC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- 13.4. PRODUCTS MANUFACTURED BY A THIRD PARTY ("**THIRD PARTY PRODUCT**") MAY CONSTITUTE, CONTAIN, BE CONTAINED IN, INCORPORATED INTO, ATTACHED TO OR PACKAGED TOGETHER WITH, THE PRODUCTS. THIRD PARTY PRODUCTS ARE NOT COVERED BY THE WARRANTY IN SECTION 13.2. FOR THE AVOIDANCE OF DOUBT, EPC MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD-PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, OR COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. TO THE EXTENT PERMITTED BY THE APPLICABLE THIRD PARTY, EPC WILL PASS THROUGH ALL REPRESENTATIONS AND WARRANTIES PROVIDED BY THE THIRD PARTIES FOR THE THIRD-PARTY PRODUCTS.

14. **LIMITATION OF LIABILITY.**

- 14.1. IN NO EVENT SHALL EPC BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES (INCLUDING WITHOUT LIMITATION LOST ACTUAL OR ANTICIPATED PROFITS OR REVENUES, LOSS OF USE OR PRODUCTIVITY, OR LOSS OR DAMAGE TO INTERCONNECTED SYSTEMS OR EQUIPMENT), ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH, ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE; (II) WHETHER OR NOT EPC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (III) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (IV) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 14.2. IN NO EVENT SHALL EPC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED

TO ANY PRODUCT PURCHASED UNDER THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO A BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO EPC UNDER THE APPLICABLE PURCHASE ORDER.

15. **COMPLIANCE WITH LAW.** Customer is in compliance with and shall comply with all applicable laws, regulations and ordinances. Customer has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
16. **INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless EPC and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified party, resulting from a third party claim arising out of or relating to any personal injury (including death) or property damage caused by the negligence or willful misconduct of Customer. Customer shall not enter into any settlement without the written consent of EPC and the Indemnified Party.
17. **TERMINATION.** In addition to any remedies that may be provided in this Agreement, EPC may terminate this Agreement and any PO with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) 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.
18. **INTELLECTUAL PROPERTY.** "IP" shall mean all current and future rights in copyrightable works (including software and source code), trade secrets, know-how, processes, trademarks (together with all goodwill associated therewith), domain names, patents, inventions, design rights, trade dress, and any other intellectual property rights that may exist anywhere in the world, including, in each case, whether unregistered, registered or comprising an application for registration, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing, including all applications, disclosures, registrations, issuances, renewals and extensions with respect thereto.
 - 18.1. Ownership. As between the Parties, EPC shall own all right, title, and interest in and to all IP rights in and to the Products and any deliverables related thereto ("EPC IP"). If Customer is entitled under applicable federal, state, or local laws, rules, regulations, or orders of any governmental authority or court with jurisdiction to claim any ownership interest in any EPC IP, then Customer hereby irrevocably assigns, transfers, and conveys to EPC, on a royalty-free and exclusive basis, all right, title, and interest of Customer in and to such EPC IP. Customer shall, at EPC's reasonable request, complete, execute, and deliver all documents necessary to effect or perfect such assignments.
 - 18.2. License to EPC IP. EPC IP is proprietary to EPC and shall remain EPC's exclusive property. Subject to Customer's compliance with this Agreement, EPC hereby grants to Customer a nonexclusive, royalty-free, fully paid-up, irrevocable, non-transferable (except as permitted herein), non-sublicensable (except as set forth below) license to use EPC IP related to the Products solely for Customer's own internal use in connection with the intended use of the Products, and only in accordance with this Agreement and the instructions of EPC, and in no event in a manner that infringes, misappropriates, or otherwise violates any IP right or other right of any person, or that violates applicable law. Customer may assign the license rights set forth in this Section in connection with the sale of the Products to an end customer. Customer may sublicense the license rights set forth in this Section to third party contractors, service providers and other agents of Customer that require such sublicense rights in order to provide services to Customer, so long as Customer restricts the use and disclosure of EPC IP in a manner consistent with Customer's confidentiality obligations and license restrictions under this Agreement. Customer shall be responsible for compliance with this Agreement by its sublicensees to the same extent as Customer itself.
 - 18.3. Customer IP. As between the Parties, Customer shall own all right, title, and interest in and to all data, information, and IP rights provided by Customer to EPC in connection with EPC's provision of the Product and any deliverables. Customer hereby grants to EPC a nonexclusive, royalty-free, fully paid-up, revocable, non-transferable (except as permitted

herein), non-sublicensable license for EPC and its personnel to use such data, information, and IP rights solely to provide the Products to Customer.

19. CONFIDENTIAL INFORMATION.

- 19.1. Confidential Information. In connection with this Agreement, each Party ("Discloser") may disclose to the other Party ("Recipient") information that relates to Discloser's business operations, financial condition, customers, products, services, or technical knowledge. EPC and Customer agree that all such information communicated to it by the other or to which it has access in connection with the Products, and any other information which reasonably would be understood by a prudent person to be confidential ("Confidential Information"), will be held by Recipient in confidence and used only for the purposes of this Agreement.
- 19.2. Use and Nondisclosure. The Confidential Information of Discloser may be used by Recipient only in connection with the Products and may only be copied or reproduced to the extent reasonably necessary for Recipient to perform its obligations. Recipient shall not reverse engineer, decompile, or disassemble any of the Confidential Information or assist others in such activity unless expressly permitted by applicable law. Without the prior written consent of Discloser, Recipient shall not distribute, disclose, or disseminate Confidential Information to anyone except to the minimum number of its officers, directors, agents, employees, or advisors with a need to know such information to assist Recipient with respect to performance of its obligations hereunder. Recipient will be responsible for any misuse of Confidential Information by its representatives and will assist Discloser in remedying the unauthorized use or disclosure.
- 19.3. Return. All Confidential Information made available by either Party, including copies of the Confidential Information, upon written request by Discloser shall be returned or destroyed, unless Recipient is otherwise allowed to retain such Confidential Information. EPC may retain, subject to the terms of this Section, copies of Customer's Confidential Information required for compliance with applicable professional standards or quality assurance requirements.
- 19.4. Exceptions. This Section 19 will not apply to any particular information that either Party can demonstrate: (a) was, at the time of disclosure to it, in the public domain or generally known in the industry; (b) after disclosure to it, is published or otherwise becomes part of the public domain or generally known in the industry through no fault of Recipient; (c) was in the possession of Recipient at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (d) was received after disclosure to it from a third party who had a lawful right to disclose such information (without corresponding confidentiality obligations) to it; or (e) was independently developed by Recipient without use of the Confidential Information of the Discloser.
- 19.5. Compelled Disclosure. Disclosure of Confidential Information shall not be precluded if disclosure is in response to a valid court order or pursuant to any law or regulation of the United States or other governmental body; provided, however, that Recipient shall promptly give prior written notice to Discloser and shall fully co-operate with Discloser's efforts to obtain a protective order or other confidential treatment. If a protective order or other appropriate protection is not obtained, Recipient shall furnish only that portion of the Confidential Information that, upon the advice of legal counsel, it is legally required to disclose.
- 19.6. Equitable Relief. The Parties acknowledge that breach of the provisions of this Section 19 may cause irreparable harm to the other Party, and that remedies at law may be inadequate. Therefore, in addition to any other remedies available at law or in equity, Discloser may seek specific performance or injunctive relief in the event of any breach or attempted breach of this Section 19 by Recipient without proving actual damages.
- 19.7. No License. Confidential Information disclosed under this Agreement shall remain the exclusive property of the disclosing Party. No license or right is granted by either Party, either expressly or by implication, in any Confidential Information, by virtue of the disclosure.

20. EXPORT REGULATION (EAR AND ITAR) COVENANT. Customer acknowledges that the Products, including any software, documentation and any related technical data included with, or

contained in, such Products, and any products utilizing any such Products, software, documentation, or technical data (collectively, “**Regulated Products**”) may be subject to US export control laws and regulations, including the Export Administration Regulations promulgated under the Export Administration Act of 1979, and the International Traffic in Arms Regulations administered by the US Department of State. Without limiting the generality of Section 15, Customer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Regulated Products to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Regulated Products is prohibited by applicable federal or foreign law. Customer shall be responsible for any breach of this Section 20 by its, and its successors’ and permitted assigns’, parent, affiliates, employees, officers, directors, partners, customers, agents, distributors, resellers or vendors that are not Customer or Customer’s representatives. Without limiting the generality of Section 15, Customer shall comply with all applicable federal and foreign laws, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting or releasing any Regulated Products. Customer shall provide prior written notice of the need to comply with such laws to any person, firm or entity which it has reason to believe is obtaining any such Regulated Products from the Customer with the intent to export.

21. MISCELLANEOUS.

- 21.1. Force Majeure. Any delay or failure of EPC to perform its obligations under this Agreement will be excused to the extent the delay or failure was caused directly by an event beyond EPC’s control, without EPC’s fault or negligence and that by its nature could not have been foreseen by EPC or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).
- 21.2. Forms. The use of Customer’s business forms for quotations of prices, to confirm or accept orders, or for any other purpose will be for administrative convenience only. Any preprinted or special terms contained in such forms will not be applicable to the purchase of any Products or provision of any services, and all such terms (whether additional or different, and whether or not such terms alter the above referenced terms and conditions) will be excluded from this Agreement without need for any specific objection or rejection of such terms and conditions. Without limiting the foregoing, EPC hereby notifies Customer that EPC rejects any additional or different terms contained in such forms. Neither silence nor any other conduct will constitute agreement to any additional or different terms proposed by Customer or a waiver of this provision.
- 21.3. Notice. All notices and all other communications provided for in this Agreement shall be in writing and addressed to: (i) EPC at the address set forth below, (ii) Customer at the address set forth on the PO, (iii) or to such other address that may be designated by either Party in writing. All Notices shall be deemed to have been duly given (a) on the date of delivery, if delivered by hand; (b) on the date of transmission, if delivered by electronic mail; (c) on the first business day following the date of deposit, if delivered by guaranteed overnight delivery service; or (d) on the fourth business day following the date delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid.

EPC Power Corp.
13250 Gregg St., Suite A-2
Poway, CA 92064
sales@epcpower.com

With a copy to: legal@epcpower.com

- 21.4. 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. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 21.5. Amendments. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or

rescission, termination or discharge of this Agreement and signed by an authorized representative of each party.

- 21.6. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 21.7. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise. Notwithstanding the previous sentence, the parties intend that Customer's rights under Section 13 are Customer's exclusive remedies for the events specified therein.
- 21.8. Assignment. Customer shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of EPC. Any purported assignment, transfer, delegation or subcontract in violation of this Section 21.8 shall be null and void. No assignment, transfer, delegation or subcontract shall relieve Customer of any of its obligations hereunder. EPC may at any time assign, transfer, delegate or subcontract any or all of its rights or obligations under this Agreement without Customer's prior written consent.
- 21.9. 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, franchise, business opportunity, 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. No relationship of exclusivity shall be construed from this Agreement.
- 21.10. Successors and Assigns. This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective permitted successors and permitted assigns.
- 21.11. No Third-party Beneficiaries. Nothing in this Agreement creates any third party rights or confers any rights or remedies on any other person or entity other than the Parties and their successors and permitted assigns.
- 21.12. Governing Law; Venue. This Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of California, without reference to its choice of law principles. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or shall be instituted in any United States federal court or state court located in the state of California in the City of San Diego and County of San Diego, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- 21.13. Survival. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Section 15, Section 19, Section 21.12 and this Section 21.13.

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