

## SUMMIT ESP, LLC VENDOR TERMS AND CONDITIONS

These Summit ESP, LLC Vendor Terms and Conditions ("Terms and Conditions") are attached to and made a part of all written Purchase Order(s) (defined below) issued by Summit ESP, LLC ("Summit") to the party named on the applicable Purchase Order ("Vendor"), or, were provided to Vendor in connection with a verbal Purchase Order.

- 1. Purchase Orders and Acceptance:** A "Purchase Order means a Summit issued verbal or written request to purchase Products or Services (each defined below). Each Purchase Order, together with these Terms and Conditions are referenced herein as a "Summit PO". "Products" means, as described on a Purchase Order, the goods, materials, and/or supplies to be sold, and "Services" means, as described on a Purchase Order, the labor or work to be performed. Products and Services are often referenced together referenced herein as "Products and/or Services". Each Summit PO is an offer and, once an accepted by Vendor is a binding contract pursuant to which Vendor will supply the Products and/or Services to Summit or to a Summit customer on behalf of Summit. Vendor may accept the offer solely by one of the following: (a) by signature on a Purchase Order or on another document acknowledging acceptance of the Purchase Order, (b) by otherwise indicating Vendor's acceptance of a Purchase Order (e.g., verbal acceptance), or (c) by delivering to Summit or a Summit customer on behalf of Summit any of the Products and/or Services listed on the Purchase Order. Acceptance of a Purchase Order by Vendor is Vendor's agreement to the provisions on the Purchase Order as well as these Terms and Conditions. No additional terms or conditions proposed or written by Vendor on a Purchase Order or otherwise will become a part of the Purchase Order unless Summit expressly agrees in writing by specifying which other terms are accepted by Summit. In no event shall Summit be deemed to have accepted any such additional terms by virtue of any writing contained in a Summit PO acknowledgement, bid documents, invoice(s), or any other form.
- 2. Changes:** Summit may at any time by written notice, but without notice to any surety, make changes or additions within the general scope of the Summit PO in or to drawings, designs, specifications, instructions for work, method of shipment or packing, or place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of the Summit PO, Vendor shall immediately notify Summit in writing and an appropriate equitable adjustment will be made in the price or time of performance or both, by written modification within thirty days after Vendor's receipt of notice of the change or within such other period as may be agreed upon in writing by the Summit. Nothing herein shall excuse Vendor from proceeding with a Summit PO as changed.
- 3. Quantity:** Summit need not accept any variation in the quantity of Products described in a Vendor accepted Summit PO except as specified therein.
- 4. Inspection and Acceptance of Products and Services:** All Products and/or Services are subject to inspection and acceptance by Summit within a reasonable time, but not less than 30 days, after delivery to Summit, a Summit designee, or Summit customer, notwithstanding any inspection by Summit or its representative prior to delivery or any prior payment for such Products and/or Services. Summit shall provide Vendor written notice of Summit's acceptance or rejection. Vendor will provide Summit or Summit's agent reasonable access to Vendor's facilities for purposes of inspection or audit of Products.
- 5. Rejection of Products and Services:** Summit, at its option, may reject all or any portion of such Products and/or Services that do not, in Summit's sole and exclusive opinion, comply with the specifications of the applicable Summit PO. Summit may elect to reject all provided goods and/or services even if only a portion thereof do not conform to the specifications, term and conditions of the applicable Summit PO. Summit may return, at Vendor's expense, any rejected Products. Vendor will re-perform any rejected Services on a date mutually agreed upon by Summit and Vendor. If Summit elects to reject or accept Products and/or Services that do not conform to the specifications, terms, or conditions included in a Summit PO, in addition to its other remedies provided herein, under law or in equity, Summit shall be entitled to charge Vendor, and Vendor will pay, a reasonable amount to compensate Summit for non-value added costs such as documentation, rework, loss of productivity or sales, or other such costs attributed to the nonconformity. Notwithstanding any acceptance of Products and/or Services by Summit, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such Products and/or Services, and acceptance may be revoked in the event of latent defects, fraud, such gross mistakes as to amount to fraud, and breach of the Vendor's warranty obligations or any other obligation set out on the applicable Summit PO.
- 6. Delivery:**
  - A. Unless otherwise stated on a Summit PO, delivery shall be made as follows: (a) with respect to a Summit PO for goods that originate (i) within the United States, delivery terms are F.O.B. Vendor's doc and (ii) with respect to a Summit PO for Products that originate at a location outside of the United States delivery terms are EXW Vendor's dock; (b) regardless of where the Products originate, Vendor is only authorized to use Summit's approved contract carriers; (c) Vendor will be liable for excess freight charges for shipping Products using carriers not approved by Summit; and (d) without additional charge for boxing, crating, or storage.
  - B. It is understood by Summit and Vendor that, with respect to the delivery schedule as specified as in each Summit PO, that "time is of the essence." Therefore, failure to deliver Products and/or Services on time may result in termination of the Summit PO at the sole option of Summit. Failing Vendor's delivery within the time stated on the Summit PO, Summit may purchase the Products and/or Services ordered on

such Summit PO elsewhere, and Summit may reject Vendor's Products and/or Services not delivered or furnished on the specified dates. Should Products and/or Services be delivered late by Vendor or Vendor's designee, but still accepted by the Summit with or without objection, such acceptance by Summit shall not constitute a waiver of delivery requirements for future deliveries. If no delivery date or time is specified in the Summit PO, Summit may exercise its rights herein if delivery is not made within a reasonable time.

- 7. Risk of Loss:** Vendor bears all risk of loss and damage to Products covered in the Summit PO, unless such loss or damage results solely from the gross negligence of Summit. Notwithstanding the foregoing, the risk of loss of, or damage to, any Products will pass to Summit upon delivery to, and acceptance by, Summit.
- 8. Down Payment:** If Summit makes a down payment toward the purchase of Products, Summit will have a security interest in such Products. Such security interest will reach the raw materials that may be used by Vendor to manufacture ordered Products, partially finished Products, and finished Products. Vendor will cooperate with Summit and sign and acknowledge any and all documents that may be necessary or requested by Summit to create or perfect the security interest granted herein. Moreover, Vendor unconditionally and irrevocably authorizes Summit to file any and all financing statements or other documents and instruments necessary to perfect, maintain perfection, and enforce the security interest granted herein. Upon delivery to, and acceptance by, Summit of Products covered under the security interest granted herein, the security interest will be released by Summit.
- 9. Warranty:** Vendor represents and warrants, without limitation of time, that the Products and/or Services provided hereunder (a) are of merchantable quality; (b) are fit for the particular needs and purposes of Summit, Summit's designee, or a Summit customer as has been communicated to Vendor; (c) comply with the highest warranties, representations, expressed by Vendor; (d) comply with all applicable laws, codes, and regulations as published by any national or statewide body or commission; (e) are free from defect in materials and workmanship; (f) are not restricted in any way by patents, copyrights, trade secrets, or other rights of third parties except as previously disclosed in writing to Summit; (g) are new (unless otherwise agreed in writing by Summit); (g) are free and clear of all liens, claims, and encumbrances of any kind whatsoever; and (h) with respect to Services, will be performed in a good and workmanlike manner using best efforts. If any of the foregoing warranties are breached, Vendor agrees to correct all defects and nonconformities, to be liable for all direct, indirect, consequential, and other damages suffered by Summit and any other persons or entities, and is to defend and indemnify, Summit from any claim (including all costs, expenses, and attorney's fees in defending any such claim) asserted by any person or entity resulting in whole or in part from such breach.
- 10. Intellectual Property Rights:**
  - A. Vendor hereby grants to Summit, without further cost to Summit, an irrevocable, non-exclusive and royalty-free license to make, have made, use, and sell products embodying any and all inventions and discoveries which may be made, conceived or actually reduced to practice in connection with the performance of the Summit PO.
  - B. If Summit furnishes specifications, requirements, designs, and the like to Vendor for the manufacture of any Products hereunder, Vendor acknowledges and expressly agrees that Summit is and remains the sole and exclusive owner of all such specifications, requirements, designs and the like, and of all improvements, modifications, derivative works and intellectual property rights therein. Vendor further acknowledges and expressly agrees that Summit is and remains, or shall be, the sole and exclusive owner of all improvements in, modifications to, and/or derivative works of, all such specifications, requirements, designs and the like, and intellectual property rights therein, which improvements, modifications and/or derivative works are made, developed, conceived or actually reduced to practice solely or jointly by Vendor. Vendor hereby grants, assigns and transfers to Summit (without further cost to Summit) all rights (present or future), title and interest in and to said improvements in, modifications to, and/or derivative works of, such specifications, requirements, designs and the like, and intellectual property rights therein, and shall cause its employees, consultants, contractors and/or agents (and their employees) to grant, assign and transfer to Vendor or Summit (without further cost to Summit) all their rights (whether present or future), title and interest in and to, the foregoing.
  - C. If Summit provides special tools (or dies, molds or patterns) involving Summit's confidential information for the performance of the Summit PO, the same shall be the property of Summit, kept confidential, used only for the production of the Products included herein for Summit, and returned in good condition (normal wear and tear excepted) to Summit (or destroyed, at Summit's discretion) upon the completion or cancellation of the Summit PO. If special tools have been used to perform under the Summit PO and charged to Summit, title thereto shall, at Summit's discretion, vest in Summit.
- 11. Subcontracting:** Vendor agrees to obtain Summit's written approval before sub-contracting the performance of any Summit PO or any substantial portions thereof, provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials on which Vendor will perform further work.
- 12. Assignment:** The assignment of any right or interest in the Summit PO without the written permission of the Summit shall be wholly void and totally ineffective except that the Vendor may, with prior written consent of Summit, assign claims for money due or to become due hereunder through a bank, trust company, federal lending agency or other financing institution. Summit and Vendor also agree that neither shall delegate any obligation which it has under the Summit PO without the written permission of the other party and any attempted delegation without written permission shall be wholly void and totally ineffective for all purposes. Any permitted assignment shall provide

that payment to an assignee of any such claim shall be subject to set off or recoupment for any present or future claim or claims which Summit may have against Vendor and shall be valid only after Vendor has supplied Summit with two properly executed copies of the assignment.

- 13. Default of Vendor:** Summit reserves the right to cancel all or any part of the undelivered portion of the Summit PO in the event Vendor for any reason fails to perform any of the material provisions of the Summit PO, including specified times for delivery, or so fails to make progress as to endanger performance of the Summit PO in accordance with its terms. Summit shall also have the right to cancel the Summit PO or any part thereof if Vendor becomes insolvent. Except with respect to defaults of its subcontractors, Vendor shall not be liable for damages if the failure to perform the Summit PO arises out of an event of Force Majeure. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of Force Majeure, Vendor shall not be liable for damages suffered by Summit.
- 14. Summit Furnished Property:** Vendor assumes complete liability for any tooling, articles or material furnished by Summit to Vendor in connection with this Summit PO and Vendor agrees to pay Summit for all such tooling, articles, or material spoiled by it or not otherwise accounted for to Summit's satisfaction.
- 15. Prices:** No Summit PO may be filled at higher prices than quoted and such quoted prices may not be increased without a minimum thirty (30) day written notice to Summit of such increased prices. No Summit PO previously accepted by Vendor will be subject to a price increase. If no price is stated on a Summit PO, Vendor agrees to invoice Summit at the lowest prevailing market price at the time the Summit PO was accepted. In the event Vendor, during the performance of its obligations under a Summit PO, reduces its price of Products supplied or Services furnished of the same quantity, grade and quality, Vendor agrees to give Summit the benefit of such reduction in price. Moreover, Vendor warrants that the applicable prices hereunder are no more than the prices charged to other customers for contemporaneous sales of similar items, in the same or substantially similar volumes, and under substantially similar terms and conditions.
- 16. Liens:** Vendor agrees that it shall not allow any liens to attach to anything supplied by Vendor or a designee hereunder or to any property of Summit, a customer of Summit, or a Summit customer's customer, and Vendor shall furnish, upon request, receipts, and releases showing that all related costs and expenses have been paid. VENDOR SHALL INDEMNIFY AND HOLD SUMMIT HARMLESS FROM ANY AND ALL SUCH LIENS AND/OR CLAIMS.
- 17. Insurance:** Vendor agrees, if and when requested by Summit to procure a policy or policies of insurance in a form satisfactory to Summit insuring all property on Vendor's premises owned by Summit against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Evidence of such insurance shall be submitted to Summit on an ACORD Form within a reasonable period of time after requested by Summit. Vendor acknowledges Summit enters into written agreements with many of Summit's customers to which Vendor's goods or services may be supplied under a Summit PO, and Vendor agrees that Vendor will, upon notice by Summit, procure insurance equivalent to insurance required of Summit by Summit Customers in all such applicable written agreements.
- 18. INDEMNITIES:**
  - A. Infringement Indemnity.** Notwithstanding anything in the Agreement to the contrary, Seller agrees, that, except as qualified hereinafter, it will defend or settle, at its option and expense, any claim against Summit, its affiliates and its and their respective employees, agents, and representatives ("Summit Group") alleging that the Products or Services (or any part or component thereof), in the form in which it(they) was furnished by Summit (except for infringement resulting solely from Vendor's manufacture of Products pursuant to detailed proprietary designs furnished to Vendor by Summit), infringes any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of a third party ("IP Rights"). Any settlement shall be subject to Summit's consent, not to be unreasonably withheld. Vendor further agrees to indemnify and hold Summit Group harmless from and against all claims, proceedings, suits, causes of action, demands, losses, liabilities, damages, costs, fines, and expenses (including attorneys' fees, costs, and expenses incurred in the investigation or defense or settlement of any claims covered by this indemnity); directly or indirectly arising out of, due to, or in connection with, such allegation of infringement. Vendor's obligations hereunder are conditioned upon: (i) Summit giving Vendor written notice of any allegation of infringement, and (ii) Summit reasonably cooperating with Vendor to facilitate the defense or settlement of such allegation. If the use of the alleged infringing intellectual property is held to constitute an infringement and is enjoined, or if in light of any claim Vendor deems it advisable to do so and can do so without, in Summit's reasonable opinion, impairing or adversely affecting the Products or Services or Summit's use thereof, Vendor may at Vendor's sole option: (a) procure the right to continue the use of the same for Summit; (b) replace or modify the same to be free of the infringement allegation while still maintaining functionality in all material respects; or (c) require Summit to return same to Vendor and refund Vendor an amount equal to the net price paid by Summit for such Products or Services depreciated on a straight line basis over a seven (7) year period.
  - B. General Indemnity.** Each party shall defend, indemnify and hold the other party, its affiliates and its and their respective employees, agents, and representatives harmless from and against any and all claims, proceedings, suits, causes of action, demands, losses, liabilities, damages, costs, fines, and expenses ("Claims") (including attorneys' fees, costs, and expenses incurred in the investigation or defense or settlement of any claims covered by this indemnity) for death, illness or bodily injury, or property loss or damage, incurred in connection with actions arising out of or in any way connected with activities by the indemnifying party under a Summit PO, except those Claims caused or occasioned solely by the negligence or willful misconduct of the indemnified party, or anyone otherwise responsible to the indemnified party, for such Claim. The indemnification under this subparagraph shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for Summit or Vendor under Workers' Compensation Acts, disability benefits, acts or other employee benefits acts.

C. EXCEPT AS SPECIFIED IN THESE TERMS AND CONDITIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES SUSTAINED BY THE OTHER (OR ITS AFFILIATE) IN CONNECTION WITH THE PERFORMANCE OF THIS SUMMIT PO INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTIONS, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF USE OF ASSETS AND LOSS OF CONTRACTS.

D. Vendor acknowledges that Summit enters into written agreements with many of its customers ("Summit Agreements") to which Vendor's Products and/or Services may be supplied under the Summit PO. Many of these Summit Agreements require Summit's sub-contractors to have the same, or stronger, indemnity and insurance provisions required of Summit in as provided in that customer's Summit Agreement ("Subcontractor Provisions"). Therefore, Vendor agrees that, upon notice from Summit, when any Summit Agreement includes Subcontractor Provisions, such Subcontractor Provisions will be incorporated in the Summit PO and become a part of the Summit PO, requiring Vendor act in compliance with, and be obligated under, such Subcontractor Provisions.

**19. Confidentiality:**

A. Vendor acknowledges that during the performance of the Summit PO, any information of Summit or of a Summit customer disclosed to, or obtained by, Vendor, its agents, or subcontractors as a result of said performance that is marked as confidential or proprietary or that a reasonable person would understand to be confidential due to the nature of the information and/or the circumstances of its disclosure, shall be deemed confidential and proprietary to Summit ("Confidential Information"). Vendor shall not, at any time during the performance hereof and for six (6) years thereafter, disclose, or distribute, or publish, or copy, or reproduce, or sell, or lend, or manipulate, or otherwise make use of, or permit use to be made of, any Confidential Information, except for the purpose of performing the Summit PO and except with Summit's prior written consent. Vendor agrees it may disclose the Confidential Information, in whole or in part, only to Vendor's officers, directors, employees and third party(ies) with a need-to-know in order to provide the Products and/or perform the Services, and with respect to customized Products requested of Vendor by Summit, then only to such officers, directors and employees who shall have agreed in writing to a non-disclosure agreement with no less restrictive terms than the terms provided herein. With respect to any such customized Products, if Vendor desires to utilize persons who are not its employees for the performance of the Summit PO (or a future Summit PO utilizing the same Confidential Information), Vendor agrees to obtain Summit's prior written consent and a prior written non-disclosure agreement with terms no less restrictive than the terms provided herein, from each such persons or entities. Summit shall have the right to audit compliance with any such non-disclosure agreements.

B. The foregoing shall not apply to any Confidential Information that (i) can be shown to have been previously known to Vendor at the time of disclosure by Summit and was lawfully obtained by Vendor, (ii) is independently developed by Vendor without breach of any of the terms of the Summit PO, (iii) is lawfully obtained from a third party without restriction on use or disclosure or violation by such third party of a Summit non-disclosure agreement or a Summit PO, (iv) is or becomes part of the public domain through no fault of Vendor, or (v) is disclosed pursuant to any judicial or governmental requirement or order, provided that Vendor takes reasonable steps to give Summit sufficient prior notice in order to contest such requirement or order.

C. Vendor shall guard and protect the Confidential Information using the same degree of care to avoid unauthorized disclosure of the Confidential Information as it employs with respect to its own confidential/proprietary information of like quality and nature, but employing no less than reasonably prudent care.

D. Vendor expressly acknowledges that any disclosure made by Summit does not grant Vendor any right other than the limited right to use the Confidential Information for the performance of performing the Summit PO (or a future Summit PO utilizing the same Confidential Information), and nothing contained herein shall be construed as granting or conferring any rights to any party to Summit's trademarks, inventions, proprietary information, trade secrets, copyrights, patents, or any other intellectual or proprietary property.

E. Without the express written consent of Summit, Vendor shall not advertise or publish the fact that Summit has contracted with Vendor, nor use Summit's name in any advertisement, publication, brochure or website.

**20. Force Majeure:** Neither Vendor, nor Summit, shall be liable for delay or nonperformance of its obligations hereunder (or part thereof) if the cause of delay or non-performance is an event which is unforeseeable, beyond the reasonable control of the party affected, including without limitation acts of God, acts of civil or military authority, governmental orders, war, fire, explosion, labor unrest (except if limited to the party affected) or epidemic ("Force Majeure"). The party affected shall promptly notify the other party and make reasonable efforts to mitigate the effects of Force Majeure with reasonable dispatch.

**21. No Joint Venture or Partnership:** Neither the Summit PO, nor any attached or related documents, shall be construed as creating a joint venture, partnership, or anything similar between Summit and Vendor. Neither Summit nor Vendor shall act or be deemed to act on behalf of the other, or have the right to bind the other. Each Summit and Vendor shall remain an independent entity, and act as an independent contractor hereunder. Vendor shall provide all personnel, equipment, and materials required for the adequate performance under the Summit PO, unless otherwise agreed between Summit and Vendor.

- 22. Compliance with Laws and Regulations:** Vendor warrants that no applicable laws or regulations shall be violated in the manufacture or sale of any Products to be provided hereunder or in the provision of any Services hereunder, and that Vendor shall comply with, and adhere to, all applicable laws and regulations which may apply to Vendor during the performance hereof. In addition, as required, Vendor shall obtain and maintain all licenses and permits required under applicable laws and regulations to perform hereunder. VENDOR SHALL DEFEND, INDEMNIFY, HOLD SUMMIT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, TAXES, PENALTIES, DAMAGES, COSTS, EXPENSES, LOSSES OR LIABILITIES ARISING OUT OF OR RELATED TO COMPLIANCE WITH SUCH LAWS OR REGULATIONS. VENDOR SHALL MONITOR ITS COMPLIANCE WITH THE FOREGOING AND PROVIDE SUMMIT PROOF OF SUCH COMPLIANCE UPON REQUEST.
- 23. Choice of Law / Dispute Resolution:** The Summit PO is made and executed in Tulsa County, Oklahoma. The Summit PO shall be subject to, interpreted by and in accordance with, the laws of the state of Oklahoma without giving effect to any conflicts of laws principles. Should any dispute, disagreement, or controversy related to the Summit PO arise between Summit and the Vendor, each of them will work with the other in good faith to reach amicably resolve the dispute, disagreement, or controversy. Should Summit and the Vendor be unable to reach an amicable resolution to any dispute, disagreement, or controversy related to the Summit PO, either Summit or the Vendor may, bring a cause of action for a breach or enforcement of such Summit PO, or for a declaratory judgment, in any United States District Court for the Northern District of Oklahoma or the applicable Oklahoma state trial court sitting in Tulsa County Oklahoma and having subject matter jurisdiction, and, therefore Summit and the Vendor also each: (i) consent to the sole and exclusive jurisdiction and venue of these courts; (ii) waive any objection they may have to jurisdiction or venue of these courts or that these courts are inconvenient; and (iii) agree not to bring any lawsuit or other legal action in any other jurisdiction or venue to which they may be entitled by domicile or otherwise. Moreover, the prevailing party in any legal action brought in regard to a Summit PO will be entitled to its reasonable costs and expenses related to the legal action including, but not limited to, a reasonable attorneys' fee, court costs, expert witness fees and other actual and reasonable costs and expenses.
- 24. Notices:** Notices provided hereunder shall be sent to each party's addresses by registered mail return receipt requested, by an overnight delivery service if the delivery is tracked (i.e., Federal Express, UPS, etc.), or in person
- 25. Not Exclusive:** The rights and remedies of Summit hereunder are not exclusive, and apply in addition to any other rights and remedies available at law, in contract, in equity or otherwise.
- 26. Entire Agreement:** The Summit PO embodies the entire agreement between Summit and Vendor with respect to the subject matter set out in the Purchase Order. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter of the Summit PO.
- 27. Severability:** Any provision in the Summit PO which in any way contravenes applicable laws or regulations shall be deemed severable to the extent of such contravention, and the legality, validity or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. The provisions hereof shall, to the extent legally possible, prevail (and to the extent legally impossible, be amended accordingly). Summit and Vendor shall promptly negotiate to restore the provisions hereof as near as possible to its original intent and economic effect.
- 28. Survival:** The provisions hereof which by their nature are intended to survive the expiry or termination of any Purchase Order (including without limitation warranty, indemnity/liability and confidentiality provisions) shall remain in full force and effect after said expiry or termination.
- 29. Headings:** The headings contained herein are for convenience of reference only and are not to be used in the interpretation of the Summit PO.
- 30. Invoices/Payment:** Vendor will invoice Summit for any amounts owed Vendor under the Summit PO, following Vendor's performance thereunder, but any such invoice must be delivered to Summit within sixty (60) days of the completion of such performance ("Invoice Period"). Invoices delivered to Summit by Vendor beyond the applicable Invoice Period will be null and void and Summit will have no responsibility or obligation to pay any such invoices, and any loss suffered by Vendor, as a result of its failure to deliver an invoice to Summit within the applicable Invoice Period, will be at sole cost and risk of Vendor. Payment by Summit of Vendor invoices delivered to Summit beyond an applicable Invoice Period will not constitute a waiver by Summit of any future right to not pay a Vendor invoice delivered beyond the applicable Invoice Period under any Summit PO. Summit will pay, within forty-five (45) days of Summit's receipt and acceptance of the invoice the charges in Vendor's invoice that are undisputed by Summit, provided the invoice is received within the applicable Invoice Period.
- 31. Counterparts.** The Summit PO may be executed in counterparts, each of which shall be deemed an original. The Summit PO shall become effective only when all of the Parties hereto shall have executed the original or counterpart hereof. The Summit PO may be executed and delivered by a facsimile or digitized transmission of a counterpart signature page hereof.
- 32. Drafted By All Parties.** The Summit PO, and all the provisions of the Summit PO, shall be deemed drafted by all of the Parties hereto.

33. **Prior Dealings.** No course of prior dealings involving any of the Parties hereto and no usage of trade shall be relevant or advisable to interpret, supplement, explain or vary any of the terms of the Summit PO, except as expressly provided herein.
34. **Fair Interpretation.** The Summit PO shall not be interpreted strictly for or against any party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of the Summit PO.
35. **No Additional Warranty.** Each party hereto has entered into the Summit PO based solely upon the agreements, representations and warranties expressly set forth herein and upon her, his or its own knowledge and investigation. No party has relied upon any representation or warranty of any other party hereto except any such representations or warranties as are expressly set forth herein.
36. **Authority to Sign.** Each of the persons signing below on behalf of a party hereto represents and warrants that he or she has full requisite power and authority to execute and deliver the Summit PO on behalf of the party for whom he or she is signing and to bind such party to the terms and conditions of the Summit PO.
37. **Inure To The Benefit.** The Summit PO shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
38. **No Third Party Beneficiaries.** This is not a third party beneficiary contract. No person or entity other than a party signing the Summit PO shall have any rights under the Summit PO.
39. **Repudiation.** The repudiation, breach, or failure to perform any obligation arising under the Summit PO by a party after reasonable notice thereof shall be deemed a repudiation, breach, and failure to perform all of such party's obligations arising under the Summit PO.

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