



AUTOSPLICE PURCHASE TERMS AND CONDITIONS

1. Applicability; These Terms Govern. The following are the terms and conditions (the “Terms”) under which Autossplice, Inc. (“Buyer”) purchases products (including software and software licenses) and services (collectively, “Products”) from other parties (“Sellers”). All requests for quotations, purchase orders and offers to purchase and/or license Products from Sellers made by Buyer are made subject to these Terms. To the extent that any quotation, order acceptance, confirmation, invoice or other document of a Seller contains conflicting, differing or additional terms from these Terms, these Terms shall control and all such conflicting, differing or additional terms are rejected by Buyer and shall have no effect. If Seller is not in full agreement with the price and other terms stated herein, Seller shall notify Buyer before proceeding with Buyer’s Purchase Order (the “Order”, “corresponding Order”, or “applicable Order”). Buyer shall not be bound by any such Order until Seller executes and returns the Acknowledgment Copy of the Order. Seller’s shipment of or acceptance of Buyer’s payment for Products shall conclusively affirm Seller’s assent to these Terms.

All specifications, drawings, and data submitted to Seller with an Order are hereby incorporated herein into these terms and made part thereof. Reference in this Order to Seller’s proposal does not imply acceptance of any terms and conditions in such proposal. These Terms, in combination with the price and quantity terms agreed to by Buyer and Seller, contain the complete and final agreement, and supersede any and all prior or contemporaneous agreements between Buyer and Seller as to the purchase of Products from Seller by Buyer. Notwithstanding the foregoing, in the event that Buyer and Seller are parties to a fully signed, written agreement that is in effect at the time that a Buyer’s Order for a Product is accepted by Seller, and such agreement covers the purchase of such Product by Buyer from such Seller, then such agreement shall control over these Terms.

2. Prices and Payment. Unless otherwise specifically agreed to by Buyer in writing, all prices are firm and no extra charges of any kind, including but not limited to charges for boxing, preparation, crating, packing, loading, bracing, or cartage, shall be permitted. Seller warrants that all prices of all Products sold by Seller to Buyer are not greater than the lowest prices at which such Products have been sold by Seller to any third party as of the date such Products are sold to Buyer. Seller shall issue a separate invoice for each delivery of Products and shall not issue any invoice prior to the scheduled or actual date of delivery, whichever is later. Due dates for payment of invoices shall be computed from the date of receipt by Buyer of a correct invoice for Products already delivered to Buyer, or from the date of receipt of the Products which are the subject of a correct invoice which is received by Buyer in advance of such Products, as applicable, and shall be deemed made on the date Buyer mails a check or otherwise initiates such payment. Unless otherwise specified on the face of an applicable Order, payment of all invoices by Buyer shall be due in 60 days, applying the provisions of the preceding sentence.



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3. **Shipment and Delivery.** Time is of the essence and substitutions shall not be accepted. Seller shall ship and deliver Products strictly in accordance with the specification(s), schedule, quantities, and other requirements specified by the Order. Transportation charges shall be prepaid unless otherwise specified on Order, and Products that are sold F.O.B. origin shall be shipped at the most advantageous rates. Delays in shipments, including the reasons therefore, shall be reported immediately by Seller to Buyer. Buyer reserves the right to cancel any Order for any Product in whole or in part if Seller should fail to ship and deliver in accordance with the terms of the Order.

4. **Packaging and Packing.** Packing and packaging must be in accordance with Autosplice Specification QM-003. Seller shall be responsible for proper packing and packaging of any goods purchased hereunder, so as to prevent damage to and deterioration of the goods, secure the lowest transportation rates and comply with carrier tariffs. Seller shall separately number all cases, packages, and other shipping containers and place an itemized packing slip bearing the Buyer's Order number, line item number, Buyer part number and any revision marker corresponding to the contents of such shipping container on each such container, and/or as otherwise provided in QM-003.

5. **Title to Goods.** Title to, and risk of loss for, the Products shall pass in accordance with the terms specified on the face of Buyer's Order. In the event such terms are not shown on the Order, shipment, passage of title, and risk of loss shall be F.O.B. Origin.

6. **Inspection and Acceptance.** Payment shall not constitute acceptance of Products. All Products sold by Seller to Buyer are subject to inspection and/or test, and approval by Buyer and/or its agent(s) to the extent practical at all times and places, including the period of manufacture and, in any event, prior to final acceptance. Seller agrees to permit access to its facilities at all reasonable times for inspection of Products by Buyer's agents or employees and shall provide all tools, facilities and assistance necessary for such inspection at no additional cost to Buyer. If any goods subject to this Order, or any components thereof, are to be manufactured by subcontractor(s), Seller shall require such subcontractors to comply with this provision. This right of inspection, whether exercised or not, shall not affect Buyer's right to revoke acceptance or pursue other remedies if defects or nonconformities are discovered at a later date, notwithstanding that any defect or nonconformity could have been discovered upon inspection.

In the event that Products do not comply with applicable instructions, specifications, drawings, and data, or Seller's warranty (express or implied), Buyer shall have the option to reject and return all such nonconforming Products, or a part thereof, even though less than a commercial unit, and Seller agrees to pay or reimburse Buyer for all costs or expenses incurred in returning such nonconforming Products, including but not limited to all handling,



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costs of inspection, and transportation expenses to and from Buyer's location. Seller shall also reimburse Buyer for any purchase price paid by Buyer to Seller for such nonconforming Products. No goods returned as nonconforming shall be replaced without a new Order from Buyer. Buyer's rights under this Section shall be in addition to all other rights of Buyer under these Terms or under applicable law.

7. **Warranty.** Seller warrants that all Products sold by Seller to Buyer are new, that Seller has conveyed good title to such Products to Buyer, and that such Products are free from all liens and encumbrances, in each case at the time such Products are delivered to Buyer. Seller further warrants that all Products sold by Seller to Buyer, at the time such Products are delivered by Seller to Buyer and for a period of twelve (12) months (or for the period of Seller's standard warranty covering the products, whichever is longer) thereafter, are and shall remain: (1) free from defects in design, material and workmanship, (2) in conformity with the applicable Product specifications, designs, drawings, samples or other descriptions furnished or specified by Buyer, and (3) merchantable and fit for the purpose for which intended. In addition, Seller hereby transfers and assigns to Buyer all of Seller's right, title and interest in and to any warranty provided to Seller by Seller's suppliers, licensors, component manufacturers and similar parties, which provide Seller with recourse in the event of a defect in any Product sold to Buyer by Seller. The foregoing warranties are in addition to all other applicable warranties, whether express, implied or statutory, and shall survive any inspection of, delivery of, acceptance of or payment for the Products, as well as any expiration or termination of these Terms. None of the remedies available to Buyer for a breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed to by Buyer in a separate agreement specifically designating such limitation and signed by an authorized representative of Buyer. All of these warranties shall run to the benefit of Buyer and its successors and assigns.

8. **LIMITATION OF LIABILITY.** ANY PROVISION HEREIN TO THE CONTRARY NOTWITHSTANDING, NEITHER BUYER NOR ANY AFFILIATE, AGENT, OR EMPLOYEE OF BUYER SHALL BE LIABLE TO SELLER, OR ANY OTHER THIRD PARTY CLAIMING THROUGH SELLER, FOR INDIRECT, INCIDENTAL, CONTINGENT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE, OVERHEAD, COST OF CAPITAL, OR ANY CLAIMS OF SELLER'S SUPPLIERS FOR ANY SUCH DAMAGES), AND IN NO EVENT SHALL THE LIABILITY OF BUYER TO SELLER, WHETHER SUCH LIABILITY ARISES OUT OF BUYER'S PERFORMANCE HEREUNDER, AND WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED ON AGREEMENT, WARRANTY, TORT, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EXCEED THE AMOUNT PAID BY BUYER TO SELLER FOR SUCH PRODUCTS OR SERVICES. (FOR THE PURPOSE OF DETERMINING THE MAXIMUM AMOUNT PAID BY BUYER TO SELLER HEREUNDER, SUCH AMOUNT



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SHALL BE THAT PAID DIRECTLY FOR THE SPECIFIC PRODUCT OR SERVICE THAT GIVES RISE TO THE LIABILITY AT ISSUE. IF THE CLAIM IS RELATED DIRECTLY TO A SERVICE THAT WAS CONTINUING OVER A PERIOD OF TIME, AND THE INCIDENT GIVING RISE TO THE CLAIM CANNOT BE TRACED TO A PARTICULAR DATE OR PERIOD OF SERVICE DELIVERY, THE MAXIMUM AMOUNT SHALL BE THAT PAID BY BUYER FOR SAID SERVICES DURING THE NINETY (90) DAY PERIOD PRECEDING THE INCIDENT THAT GIVES RISE TO SAID LIABILITY). THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST SELLER. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF BUYER ARISING OUT OF THIS AGREEMENT, AND CORRESPONDING ORDERS AND TRANSACTIONS.

9. **Indemnification.** Seller agrees to indemnify, defend, and hold harmless Buyer, its officers, directors, affiliates, successors, assigns, and customers from and against all suits at law and equity, and any liabilities, obligations, damages, losses, claims, encumbrances, costs or expenses (including, without limitation, attorney's fees) of any nature, (any or all of the foregoing herein referred to as a "Loss") insofar as a Loss (or actions in respect thereof) arises out of or is based upon (a) Seller's Products supplied to Buyer, or installed in any product or application of Buyer, (b) a breach by Seller of any warranties, covenants, or obligations of Seller under these Terms, (c) Seller's assistance in the application of Seller's products, (d) a Product defect, or (e) any actual or claimed infringement of patents, trademarks, service marks, trade names or copyrights with respect to Products sold by Seller to Buyer or arising from any actual or alleged misappropriation or wrongful use of any trade secret or confidential information involving any such Products. With respect to subsection (e) of this paragraph, Seller is relieved of such obligation to settle, defend, indemnify and hold harmless if the actual or claimed infringement is based solely upon Seller's compliance with detailed designs or written specifications supplied by Buyer which could not be complied with in the absence of such infringement.

Buyer shall be entitled to retain separate counsel, reasonably acceptable to Seller, if Buyer determines, upon the written advice of counsel, that an actual or potential conflict of interest exists between Buyer and Seller in connection with any claim against Seller or related proceeding. Buyer shall be obligated to pay the reasonable fees and expenses of such separate counsel to the extent Seller is entitled to indemnification by Buyer with respect to such claim or proceeding.

If Seller assumes the defense of any such claim or proceeding, Seller shall select counsel reasonably acceptable to Buyer to conduct the defense of such claim or proceeding, shall take all steps necessary in the defense or settlement thereof and shall at all times diligently and promptly pursue the resolution thereof. If Seller shall have assumed the



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defense of any such claim or proceeding, Seller shall be authorized to consent to a settlement of, or the entry of any judgment arising from, any such claim or proceeding, with the prior written consent of Buyer, not to be unreasonably withheld; provided, however, that Seller shall pay or cause to be paid all amounts arising out of such settlement or judgment concurrently with the effectiveness thereof. If Seller does not assume the defense of any claim or proceeding resulting therefrom, as discussed above, Buyer may defend against such claim or proceeding in such manner as it may deem appropriate, including settling such claim or proceeding, but only with the prior written consent of Seller, which may not be unreasonably withheld, on such terms as Buyer may deem appropriate.

10. Buyer's Property. Unless otherwise agreed in writing, all tools, equipment, patterns, molds, templates or material furnished to Seller by Buyer or specifically paid for by Buyer shall be and remain the personal property of Buyer. Such property shall be held at Seller's risk, and shall be delivered to Buyer upon completion of all corresponding Orders or upon Buyer's written request. Seller agrees to comply promptly with all disposal and shipping instructions furnished by Buyer. Seller agrees, at its expense, to maintain all of Buyer's property in Seller's possession in good condition and repair, and adequately insured, and to indemnify Buyer for any damage or loss to such property. Seller agrees not to deliver or make available Buyer's property, or any property or goods developed, manufactured, or created with Buyer's property, to any third party. Buyer, at any reasonable time, shall have the right to inspect the condition, and verify the location and insurance against damage or loss, of such property.

11. Changes. Buyer may make changes in the quantities or delivery schedule ("Quantity/Delivery Changes") applicable to Products ordered by Buyer from Seller at any time prior to the scheduled delivery date for such Products. Buyer may make changes in any Product drawings, designs, specifications, or other descriptions supplied by Buyer and applicable to Products ordered from Seller by Buyer ("Specification Changes") at any time prior to the scheduled delivery date for such Products, which shall be effective when notice of the change is received by Seller. Buyer may make changes in the method of shipment or packing and place of delivery, inspection or acceptance of any Products ordered from Seller at any time prior to the scheduled delivery date for such Products. If any change made pursuant to this Section 11 increases or decreases Seller's costs, the parties shall mutually agree to an equitable adjustment for the cost(s) to account for such changes, provided that (a) in the event of a cost increase or adjustment, Seller has provided Buyer with written notice of such increased costs within fifteen (15) days from the date Seller receives notification of the change, and (b) Buyer's agreement to such adjustment is in a writing signed by an officer of Buyer. There shall be no price increase if Buyer makes Quantity/Delivery Changes or Specification Changes thirty (30) days or more prior to a scheduled delivery date. Furthermore a delivery schedule change may be made by Buyer up to fifteen (15) days prior to a scheduled ship date without added cost to Buyer. Seller shall not make substitutions in



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parts or materials ordered and shall not deviate from Seller's specifications, drawings, and data unless authorized by a Purchase Change Order or revision issued by Buyer.

12. Assignment and Subcontracting. Seller may not assign or transfer this Order without Buyer's prior written approval. Seller may not subcontract any substantial portion of the work to be performed by it under this Order, or the manufacture of any critical component of the products to be delivered under this Order, without Buyer's prior written consent.

13. Compliance with Laws. In performance work under this Order, Seller shall comply at all times with, and give all stipulations and representations required by all applicable executive orders, Federal, State, County, Municipal and local laws and rules, orders, requirements and regulations thereunder. Such Federal Laws include, but are not limited to, Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, the Occupational Safety and Health Act of 1970, as amended, the Civil Rights Act of 1964, as amended, Walsh-Healy Act, Robinson-Patman Act, applicable state Workers' Compensation laws, state and federal Occupational Safety and Health Acts, and all rules and regulations passed pursuant thereto, which are incorporated herein by this reference. Seller agrees to be subject to all applicable contract clauses required by federal, state, or local law, rule, or regulation to be included in this Order, including, but not limited to, the following clauses, which are incorporated herein by this reference: Equal Opportunity Clause (41 CFR 60.1.4); Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); Affirmative Action Clause for Handicapped Workers (41 CFR 60-741.4); and the Certification of Nonsegregated Facilities Clause (41 CFR 60.1.8; 41 CFR 1-12.803.10). In addition, Seller agrees and certifies, if applicable, that it has developed a written affirmative action compliance program (41 CFR 60-1.40(a)) and annually files Standard Form 100 (EEO-1) (41 CFR 60-1.7 (a)).

14. Confidential Information and Publicity. Seller shall keep confidential and, without prior written consent of Buyer, shall neither disclose to any person outside its employ, nor use for purposes other than performance of Orders by Buyer for Products from Seller, any confidential or proprietary information relating to the Products including but not limited to designs, drawings, blueprints, descriptions or specifications. Seller shall not make any advertisement, news release, public announcement, denial or confirmation regarding any aspect of the Products or Seller's business relationship with Buyer without Buyer's prior written approval. Upon Buyer's request, Seller shall return to Buyer all information or property delivered to Seller or generated by Seller pursuant to the performance of Seller's sales of Products to Buyer. The terms of any separate, written non-disclosure agreement between Seller and Buyer in effect at the time Seller receives an Order for Products from Buyer is incorporated herein by reference. Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Buyer in connection with a request for a



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quotation or the purchase of Products covered by this Order, shall not, unless otherwise specifically agreed upon in writing by the Buyer, be deemed to be confidential or proprietary information, and shall be acquired, free from any restrictions (other than a claim for patent infringement) as part of the consideration for any applicable Order hereunder.

15. For Work on Buyer's or Its Customer's Promises. If Seller's work under the Order involves operations of the Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work. Except to the extent that such injury is due solely and directly to Buyer's or customers negligence, as the case may be, Seller shall indemnify Buyer against all Loss (as defined in Section 8 above) which arises from any act or omission of the Seller, its agents, employees, or subcontractors. Seller shall maintain such Public Liability, Property Damage, and Employee's Liability and Compensation Insurance as will protect Buyer from said risks and from any claims under any applicable Worker's Compensation, Occupational Safety, or related laws.

16. Cancellation or Termination. Buyer may cancel any Order for Products in whole or in part without liability to Buyer at any time prior to the scheduled delivery of such Products by written notice to Seller in the event: (1) that Seller fails to comply with any term or condition of these Terms, including but not limited to delivery terms; (2) the parties fail to mutually agree on any adjustment under Section 11; (3) of the insolvency of Seller or its failure to pay debts as they mature, an assignment by Seller for the benefit of its creditors, the appointment of a receiver for Seller or the filing of any petition to adjudicate Seller bankrupt; (4) Seller merges with or is acquired by a third party; (5) Seller assigns any of its rights or obligations under a corresponding Order to a third party without Buyer's prior written consent; (6) of failure by Seller to provide adequate assurance of performance within ten (10) days after a justified demand by Buyer; (7) of a manifested unwillingness or inability to perform a material executory portion of the Order or Terms; or (8) that Buyer, in good faith, believes that Seller's prospect of performance under the Order or Terms is impaired. Any such cancellation shall be made by Buyer notifying Seller in writing of said cancellation and Seller shall thereupon transfer title and deliver to Buyer such work in process or completed goods as may be requested by Buyer. In the event Buyer elects to obtain the Products subject to such cancellation from another source, any excess cost resulting therefrom shall be chargeable to Seller.

17. Non-Waiver. The failure of the Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor the right of Buyer to enforce each and every such provision.

18. Early Cancellation. Buyer may cancel any Order or portion thereof upon written notice to Seller delivered to Seller at least 60 days prior to the scheduled delivery date for the



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cancelled Products without cost and with no liability to Buyer. Buyer may cancel any Order or portion thereof with less notice to Seller, in which event Buyer's sole liability shall be to pay to Seller a reasonable amount to compensate Seller for direct, actual costs of work in process and materials, if any, which cannot be reused or resold. Buyer shall be entitled to receive all such work in process and materials for which it reimburses Seller in accordance with this paragraph.

19. Drawing Submitted By Seller. Buyer's check and approval of drawings submitted by Seller shall be for and shall cover only general conformity to the specifications. The approval shall not constitute a blanket approval of all dimensions, quantities and details of the material shown by such drawings. Such approval shall not relieve the Seller of its responsibility to meet all requirements contained in Buyer's corresponding Order.

20. Taxes. Seller agrees to pay any taxes imposed on Seller by law upon or on account of Products covered by this Order or by virtue of a sale consummated under this Order unless otherwise agreed. Buyer agrees to pay any taxes imposed upon Buyer by law, including sales and use taxes, if applicable.

21. Setoff. All claims for monies due or to become due from Buyer under this Order are subject to deduction by Buyer for any setoff or counterclaim that Buyer may have against Seller.

22. Government Contract. If it is indicated on the face of this Order that the articles are for use in a Government contract, this Order shall be deemed to contain all the provisions of the supplement(s) attached. In addition, if this is an agreement under a Government prime contract or subcontract, applicable additional clauses set forth in the Federal Acquisition Regulation (FAR) in effect on the date of this agreement are incorporated by reference herein. Buyer shall make a copy of such applicable FAR clauses available to Seller upon Seller's request therefore in writing. In interpreting any such applicable FAR clauses or this agreement, "Contractor" shall mean Seller, "Contracting Officer" and "Government" shall mean Autosplice, Inc. and "Contract" shall mean this agreement. Acceptance of this Order constitutes an acceptance of the Additional Terms and Conditions contained in the supplement(s). If supplement(s) are not attached, Seller shall immediately request same from Buyer.

23. Equal Opportunity. Seller agrees to comply fully with the requirements of Executive Order 11246 as amended by Executive Order 11375 (Equal Employment Opportunity), 38 USC 2012 (VietnamEra Veterans Readjustment Assistance Act of 1374), Section 503 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the implementing regulations found at 41 CFR 60-1&2, 41 CFR.



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24. Jurisdiction, Venue, and Governing Law. Buyer and Seller agree that any disputes arising out of or relating to the Products sold or purchased hereunder, or any other aspect of the commercial relationship between Buyer and Seller, shall be litigated exclusively in the state or federal courts located in San Diego County, California. Jurisdiction and venue shall be exclusively in the state or federal courts located in San Diego County, California. Both parties consent to personal jurisdiction in those courts; and all rights and obligations under these Terms or any transaction between Buyer and Seller shall be governed as to validity, construction and in all other respects by the laws of the state of California without regard to its choice of law provisions, but including the Uniform Commercial Code as enacted and in force in the State of California.

25. Attorneys Fees and Costs. Reasonable attorney's fees and costs shall be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of these Terms, or this or any agreement or Order entered into by and between Buyer and Seller.

26. Independent Contractor. Seller is an independent contractor for all purposes, without express or implied authority to bind Buyer by contract or otherwise. Neither Seller nor its employees, agents or subcontractors are agents or employees of Buyer, not entitled to any employee benefits of Buyer, or any type of insurance. When work of any description is performed in furtherance of Seller's obligations under this Order on the premises of Buyer or any of Buyer's customers, Seller agrees that such services are to be rendered by Seller as an independent contractor and Seller shall provide all safeguards and take all necessary precautions to prevent the occurrence of any accident, injury, death, or loss to any person or property and shall be solely responsible therefor.

27. Seller's Quality Requirements. Seller's quality requirements, as embodied in the Supplier Quality Requirements Manual, document no. QM-003, posted to Buyer's website (www.autosplice.com), and any supplemental or successor documents (the "Quality Requirements") are applicable to Buyer's purchase of Products from Seller. The Quality Requirements are incorporated into these Terms by reference.

28. Force Majeure. Buyer shall not be liable for any failure to perform, including failure to take delivery of the Products as provided, caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action and accident. In the event Buyer is so excused, either party may terminate the Agreement and Buyer shall at its expense and risk, return any Products received to the place of shipment.

29. Notices. Any notice, request, instruction, or other document to be given under these Terms or any corresponding Orders, by either party to the other party, shall be in writing and (a) delivered personally; (b) sent by facsimile; (c) delivered by overnight express (charges



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prepaid); or (d) sent by registered or certified mail, postage prepaid. If to Buyer, such notice shall be addressed to: Autosplice, Inc., 10121 Barnes Canyon Road, San Diego, CA 92121, Attention: President. If to Seller, such notice shall be addressed to the most recent address provided by Seller in writing for Buyer's use in transacting business with or providing notices to Seller as contemplated by this paragraph. Notices given by the methods in subsections (a) or (b) above shall be followed up by regular, certified, or registered mail, within seventy-two hours after such method is employed.

30. Survival. Sections 1, 2, 5-10, 14, 20-22, 24, 25, 27, 29 and 31 shall survive termination of this Order and these Terms.

31. Computer Programs and Written Works. All works of authorship, including without limitation, software, computer programs, and databases (including object code, micro code, source code and data structures), and all enhancements, modifications and updates thereof and all other written work products or materials, which are created in the course of performing this Order or Terms (separately or as part of any goods and components) are "works made for hire" and the sole property of Buyer. To the extent that such works of authorship do not qualify under applicable law as works made for hire, Seller agrees to assign and assigns to Buyer all right, title and interest in any intellectual property rights in such works authorship.