

# Imaginetics South, LLC - Purchase Order Terms and Conditions 07/23/19

## 1. Agreement

**A.** Time is of the essence in the performance of this PO.

**B.** Purchase orders shall be referred to as "**PO**" and mean the agreement whereby Azmark agrees to purchase and Seller agrees to sell the Products, consisting of the terms specified on the face page hereof of this PO, and the Purchase Order Terms and Conditions ("**T&Cs**"), both as set forth herein. In the event of any conflict between the terms and conditions constituting this PO, the following order of precedence shall apply: (i) the terms specified on the face page of this PO, then (ii) the T&Cs. Acceptance is strictly limited to the terms and conditions in this PO. Unless specifically agreed to in writing by Azmark, Azmark objects to, and is not bound by, any term or condition that differs from or adds to this PO. Seller's commencement of performance or acceptance of this PO in any manner shall conclusively evidence acceptance of this PO as written.

**C.** Acceptance of this PO by Seller is required on the attached acknowledgement copy, which must be signed by Seller and returned immediately. However, any conduct by Seller recognizing the existence of an agreement also shall be deemed an acceptance, **without exception**, of the terms of this PO. Any addition to, or other modification of, these terms, or in quantities, prices or deliveries contained in any acknowledgment, invoice, or other form of communication from Seller, irrespective of whether communicated to Azmark before or after receipt by Seller of this PO or of any Products ordered, is hereby objected to and rejected, and shall be of no effect, notwithstanding Azmark's acceptance of delivery or payment for such Products. The terms and conditions of this PO may only be amended or modified in writing, acknowledged and signed by an authorized Azmark representative. Any claim by Seller that this PO has been amended or modified except in compliance with the preceding sentence, shall give Azmark the right, at its election, to rescind this PO, regardless of whether the Products ordered have been delivered to Azmark

**D.** The term "**Products**" as used herein may refer to goods, products, services rendered in connection with Products, reports, data and other personal or intellectual property ordered or deliverable hereunder as the context so requires. Any provision of this PO or of the law pertaining to goods, products, supplies, or services shall apply to all things so defined, including, without limitation the Arizona Uniform Commercial Code, to the extent applicable.

**E.** The terms "**Conforming**" or "**Conforming Products**" means Products that conform in all respects with the specifications as set forth in this PO or otherwise communicated in writing by Azmark to Seller. The terms "**Non-Conforming**" or "**Non-Conforming Products**" means Products which fail in any respect to conform with the specifications as set forth in this PO or otherwise communicated in writing by Azmark to Seller.

## 2. Delivery Schedule

**A.** Seller shall strictly adhere to the shipment or delivery schedules specified in this PO. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Azmark in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Azmark with a written recovery schedule; and (iii) if requested by Azmark, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force

Majeure" Section of this PO. The added premium transportation costs are to be borne by Seller.

**B.** Seller shall not deliver Products prior to the scheduled delivery dates unless authorized by Azmark.

**C.** Azmark shall, at no additional cost, retain Products furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Azmark for reasonable costs associated with storage and return of the excess. If Products are manufactured with reference to Azmark's proprietary information or materials, Seller agrees that, pursuant to the "Confidential, Proprietary and Trade Secrets Information and Materials" Section of this contract, it will not sell or offer such Products for sale to anyone other than Azmark without Azmark's prior written consent.

## 3. Seller Quality Management Systems

**A.** Seller shall maintain a quality management system that will assure compliance with supplied drawings and specifications, MOT and or written PO instructions and conform to ISO 9001 or AS9100.

**B.** If applicable, Sellers shall maintain a calibration systems that provides valid measurements of the appropriate accuracy and traceable to National Institute of Standards and Technology ("NIST") and conform to ANSI/NCSL Z540.1, IOS/IEC 17025, or equivalent.

**C.** Seller will provide "mercury free" certificates for all applicable Products.

**D.** Seller shall use only Azmark pre-approved sources and/or special process sources during the production or manufacturing process.

**E.** If applicable, Seller shall comply with any flowdown Federal Acquisition Regulations ("**FARs**") or Defense Federal Acquisition Regulations ("**DFARs**"), as directed by Azmark.

**F.** All suppliers providing products or services shall have a counterfeit prevention procedure and prevention of suspected unapproved parts procedure in place.

## 4. Material/Hardware and Process Certifications.

**A.** Seller shall provide legible, reproducible copies of any raw materials or hardware certifications with each Product. Unless otherwise specified, all material and process certifications must be to the most recent specification revision level.

**B.** Seller shall provide legible, reproducible certifications of processes performed in conformance with each Product, including the following:

(i) Applicable part number and revision letter;

(ii) Reference to Azmark PO number;

(iii) Certification to process performed and revisions in effect as of the date of the purchase order (Please contact Quality Manager at (480) 926-8969);

(iv) Vendor Code of the applicable approval source (e.g. Honeywell Vendor Code, Boeing Vendor Code, etc.); and

(v) Supporting documentation (i.e. Statistical Process Control ("**SPC**"), inspection reports, testing reports, test schedules, First Article Inspection Reports ("**FAIRs**"), control plans, etc.)

**C.** Seller will promptly report all nonconforming material to Azmark's Quality Manager followed by a written discrepancy report. Seller will segregate and hold in bond all nonconforming material until Azmark provides written material disposition instructions.

**D.** Certifications must be signed and dated by the proper Seller authority.

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## E. Packaging/Shipping

**F. Seller shall pack the Products to prevent damage and deterioration and to maintain traceability. Azmark may charge Seller for damage to or deterioration of any Products resulting from improper packing. Unless this PO specifies otherwise, the price includes shipping charges for Products sold F.O.B. destination, including, as applicable, all carrier tariff terms and conditions. Unless otherwise specified in this PO, Products sold F.O.B. place of shipment shall be forwarded collect. Seller shall make no declaration concerning the value of the Products shipped except on Products where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating.**

**G.** Unless this PO specifies otherwise, Seller will ship the Products in accordance with the following instructions:

*(i)* Shipments by Seller or its subcontractors must include packing sheets containing Azmark's PO number, line item number, description and quantity of Products shipped, part number or size, if applicable, and evidence of inspections. A shipment containing hazardous and nonhazardous materials must have separate packing sheets for the hazardous and nonhazardous materials. Seller shall not include any hazardous substance in any packing material included with the Products

*(ii)* Seller will label each shipping container with the contract number and the number that each container represents of the total number being shipped (e.g., box 1 of 2, box 2 of 2).

*(iii)* Azmark will select the carrier and mode of transportation for all shipments where freight costs will be charged to Azmark.

*(iv)* Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices.

*(v)* If Seller is unable to comply with the shipping instructions in this PO, Seller will contact Azmark.

**H.** If applicable, Products shall be packaged in accordance with IATA & Code of Federal Regulations- 49 Transportation parts 100 to 185. Seller shall obtain DOT 'competent authority approval' of the classification and compatibility group assignment of all explosive items. Seller shall secure from the DOT required documentation for classifying and approving shipment of all explosive items.

**5. Inspection.** Seller shall maintain an inspection system acceptable to Azmark for the Products purchased under this PO. At no additional cost to Azmark, Products shall be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' locations. These inspection rights shall extend to customers of Azmark including, but not limited to, departments, agencies or instrumentalities of the United States Government. Azmark shall perform inspections, surveillance and tests so as not to unduly delay the work. If Azmark performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties. Seller, at no expense to Azmark, shall promptly comply with any written directions by Azmark reasonably necessary to correct deficiencies in such systems or in the manufacture of the Products or the Products themselves. Neither any inspection, testing, delivery nor payment for the Products delivered hereunder shall constitute acceptance thereof. All Products

are subject to final inspection, test, and acceptance at their destination.

## 6. Receiving Shipment and Quantities.

**A.** Seller shall be responsible for all damages and losses of any kind incurred or suffered by Azmark as a result of failure to deliver the Products by the due date. Due dates shown are on dock at Azmark, unless otherwise stated in the body of this PO. Azmark reserves the right to refuse deliveries that are even one day late. Shipments of Products will be accepted up to 3 days prior to due date. Unauthorized advance shipments and shipments of other than the quantity ordered are returnable at Seller's expense.

**B.** Title to all Products to be delivered hereunder shall remain with Seller until the Products are delivered at the shipping point specified on this PO and Azmark has inspected and, at its discretion, tested the Products and found the Products to be either Conforming or otherwise satisfactory or given Seller notice of rejection or revocation of acceptance ("**rejection**" herein). All risk of loss or damage to the Products shall be upon Seller until title to the Products passes to Azmark; however, Seller shall bear all risk of loss or damage to Products rejected by Azmark after Seller's receipt of written notice of rejection of such Products until they are redelivered to Azmark, in a Conforming condition, except for the loss, destruction of, or damage to such rejected Products resulting from the negligence of Azmark.

**C.** Title to all Products delivered hereunder shall be delivered free and clear of all liens, charges or encumbrances, and Seller warrants that the title conveyed shall be good and marketable, and the transfer rightful. If the Products have been either originated or designed by Azmark in accordance with specifications or other data furnished by Azmark, all rights to the Products or such other data and all rights to the reproduction, use or sale thereof are, and shall continue to be owned solely by Azmark.

**D.** Seller shall bear all risk of loss or damage to any and all property furnished by Azmark to Seller or any subcontractor or agent of Seller for Seller's performance under this PO until the property has been redelivered to Azmark. Seller, or, as applicable, its subcontractors or agents, shall properly segregate, identify and protect all such property.

## 7. Non-Conformance.

**A.** Azmark may, if the Products or any part or portion thereof are Non-Conforming, do any or all the following:

*(i)* Reject or return those Products which, in Azmark's judgment, fail to pass inspection or meet warranty or conform to the requirements of this PO, including with respect to timeliness of delivery. As to returned Products (and as to rejected Products, but only if Azmark so directs), Seller shall promptly, at its expense, and at Azmark's election, repair or replace such Products, and Seller shall also be responsible for Azmark's cost of removal and reinstallation of such Products. Upon rejection or failure to promptly repair or replace, Azmark may cancel this PO and/or effect cover by purchase or otherwise, at Seller's expense. Products rejected or in excess of quantities ordered, at Azmark's election, may be returned to Seller at Seller's expense. If notice of rejection or return is given, incidental expenses and the risk of loss or damage to such rejected or returned Products shall be borne by Seller. In addition, Azmark may charge Seller all expenses of unpacking, examining, repacking and reshipping such Products.

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(ii) Accept or retain Non-Conforming Products and, at Azmark's election, either equitably reduce the purchase price of those Products or repair them at Seller's expense. Azmark reserves the right to require repayment, or effect a setoff against any amounts owed to Seller (irrespective of whether such amounts owed are in connection with this PO or not), of any expenses incurred by Azmark resulting from rejection or return and of any amount paid for such Non-Conforming Products pending a Conforming redelivery.

**B.** Acceptance of Products previously rejected or returned, or of used Products, or of former Government property, may be revoked if delivery is Conforming, but is not accompanied by written notice that those Products were previously rejected, returned, used or former Government property.

**8. Payments/Invoices.** Unless otherwise authorized by Azmark, Seller shall issue a separate original invoice for each delivery that shall include Azmark's PO number and line item number. Seller shall forward its invoice to the address specified in this PO. Unless freight or other charges are itemized, Azmark may take any offered discount on the full amount of the invoice. Payment is due **[60]** days from the payment due date unless otherwise agreed by both Buyer and Seller in writing. The payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Azmark's check is mailed or payment is otherwise tendered. Seller shall promptly repay Azmark any amounts paid in excess of amounts due Seller. Unless this PO specifies otherwise, the price of this PO includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this PO except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Azmark has furnished a valid exemption certificate or other evidence of exemption.

**9. Warranty.** Seller warrants that all Products furnished under this PO shall conform to all specifications and requirements of this PO and shall be free from defects in materials, workmanship, design and specification. Seller further warrants that, unless expressly stated otherwise by Azmark in this PO, all Products will be new or made from new materials. This warranty shall survive inspection, test and acceptance of, and payment for, the Products. This warranty shall run to Azmark and its successors, assigns and customers. Such warranty shall begin after Azmark's final acceptance. Products required to be corrected or replaced shall be subject to this Section and the "Inspection" Section of this PO in the same manner and to the same extent as Products originally delivered under this PO, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Azmark's direction to: (i) repair, rework or replace the Products, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach this warranty, the parties shall equitably adjust this PO price.

## 10. Changes.

**A.** Azmark may, by giving written notice, direct changes within the general scope of this PO in any of the following: (i)

technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Azmark-furnished property; and, if this PO includes services, (1) description of services to be performed; (2) time of performance (e.g., hours of the day, days of the week); (3i) place of performance, and (4) terms and conditions of this PO required to meet Azmark's obligations under Government prime contracts or subcontracts. Subject to part B below, Seller shall comply immediately with such direction.

**B.** If such change increases or decreases the cost or time required to perform this PO, Azmark and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Azmark shall modify this PO in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Azmark in writing within 10 calendar days and deliver a fully supported proposal to Azmark within 20 calendar days after Seller's receipt of such direction. If Seller's proposal includes the cost of property made obsolete or excess by the change, Azmark may direct the disposition of the property. Azmark may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Azmark's direction.

**C.** If Seller considers that Azmark's conduct constitutes a change, Seller shall notify Azmark immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Azmark, Seller shall take no action to implement any such change.

**D.** Notwithstanding the above or any other provision in this PO, Seller hereby agrees that changes to the Products that may be required in order to meet the specified performance requirements of this PO do not constitute changes that would entitle Seller to any adjustment in either price or delivery.

**E.** Notwithstanding the above or any other provision in this PO, Seller shall notify Azmark of any changes to product, process, suppliers and/or manufacturing facility location for any product or service to be fulfilled under this PO.

**11. Suspension of Work.** Azmark may, by written order, suspend all or part of the work to be performed under this PO. Seller shall resume work whenever a suspension is canceled.

## 12. Termination

**A.** Azmark may, by written notice to Seller, cancel all or part of this PO if (i) Seller fails to deliver the Products within the time specified by this PO or any written extension; (ii) Seller fails to perform any other provision of this PO or fails to make progress, so as to endanger performance of this PO, and, in either of these two circumstances, does not cure the failure within 5 days after receipt of notice from Azmark specifying the failure; (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

**B.** Further, Azmark may terminate all or part of this PO for convenience by providing written notice to Seller. Termination will be effective as of the date specified by Azmark.

**C.** If Azmark cancels all or part of this PO as a result of Seller's breach, then in addition to any other remedies available to Azmark, Seller shall be liable for Azmark's excess

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re-procurement costs. If Azmark cancels all or part of this PO for convenience, Azmark will not be obligated to pay for any Products not delivered pursuant to the relevant delivery schedule of the PO. In either event, Seller shall continue work not terminated.

**D.** Azmark may require Seller to transfer title and deliver to Azmark, as directed by Azmark, any (i) completed Products, and (ii) any partially completed Products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "**Manufacturing Materials**") that Seller has specifically produced or acquired for the terminated portion of this PO.

**E.** Azmark shall pay the contract price for Products accepted and Seller's actual costs for Manufacturing Materials. Azmark may withhold from any amount due under this PO any sum Azmark determines to be necessary to protect Azmark or Azmark's customer against loss because of outstanding liens or claims of former lien holders.

**13. Parts Obsolescence.** Seller agrees to continue all manufacturing capabilities and/or provide alternate support for the form, fit and functional requirements for the original configurations on any/all of the Products for at least 24 months following the date the Product was delivered. Seller further agrees to provide Azmark at least 90 days prior written notice of its intent to discontinue providing any Product.

**14. Assignment, Delegation and Subcontracting.** Seller shall not assign any of its rights or interest in this PO or delegate any of its duties or obligations under this PO without Azmark's prior written consent. No assignment, delegation or subcontracting by Seller, with or without Azmark's consent, shall relieve Seller of any of its obligations under this contract or prejudice any of Azmark's rights against Seller whether arising before or after the date of any assignment. This Section does not limit Seller's ability to purchase standard commercial supplies or raw materials.

**15. Publicity.** Seller shall not, and shall require that its subcontractors shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this PO or the Products or program to which it pertains without Azmark's prior written approval. Seller shall be liable to Azmark for any breach of such obligation by any subcontractor.

**16. Confidential, Proprietary and Trade Secret Information and Materials.** Azmark and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to this Section and obtained, directly or indirectly, from the other in connection with this PO or other agreement referencing this PO (collectively referred to as "**Proprietary Information and Materials**").

**A.** Azmark and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this PO and/or any other agreement referencing this PO. However, despite any other obligations or restrictions imposed by this Section, Azmark shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Products delivered under this PO or any other agreement referencing

this PO. Any such use, disclosure, reproduction or derivative work by Azmark shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances.

**B.** The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Azmark's Proprietary Information and Materials. Upon Azmark's request at any time, and in any event upon the completion, termination or cancellation of this PO, Seller shall return to Azmark all of Azmark's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Azmark.

**C.** Seller shall not, without the prior written authorization of Azmark, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Azmark. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Azmark shall have the right to audit Seller's compliance with this Section.

**D.** Seller may disclose Proprietary Information and Materials of Azmark to its subcontractors as required for the performance of this PO, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this Section relating to Proprietary Information and Material. Seller shall be liable to Azmark for any breach of such obligation by such subcontractor.

**E.** The provisions of this Section are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this Section shall survive the performance, completion, termination or cancellation of this PO.

**17. Azmark's Property.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Azmark's property and all property to which Azmark acquires an interest by virtue of this PO. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Azmark with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this contract without Azmark's prior written consent. Seller shall notify Azmark if Azmark's property is lost, damaged or destroyed. As directed by Azmark, upon completion, termination or cancellation of this PO, Seller shall deliver such property, to the extent not incorporated in delivered Products, to Azmark in good condition subject to ordinary wear and tear and normal manufacturing losses.

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## 18. Indemnity.

**A.** Seller shall defend, indemnify and hold harmless Azmark against all damages, claims, costs and expenses (including attorneys' fees) arising out of or resulting from the Products provided under this PO, or from any act or omission of Seller, its agents, employees or subcontractors or which otherwise arises as a result of Seller's performance of this PO including, without limitation, all liabilities to its employees, agents and subcontractors, including liability for personal injury or death arising out of or resulting from providing such Products. If Seller enters the premises of Azmark or Azmark's customer, Seller shall indemnify and hold harmless Azmark, its officers, agents and employees from any loss or liability by reason of property damage, personal injury or death arising out of Seller's presence thereon, including loss or liability arising from the negligence of Seller.

**B.** Seller will indemnify, defend and hold harmless Azmark and its customers from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Products by either Azmark or its customers. Azmark and/or its customers will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnitees.

**19. Gratuities.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Azmark's employees, agents or representatives for the purpose of securing this PO or securing favorable treatment under this PO.

## 20. Records/Audits.

**A.** Seller shall retain all records and documents pertaining to the Products for a period of no less than **eleven (11) years** after delivery for non-traceable parts, and indefinitely for traceable parts. Such records and documents shall date back to the time this PO was issued and shall include without limitation, catalogs, price lists, invoices and inventory records for purposes of verification of prices or rates charged by Seller for Products procured by Azmark. Azmark shall have the right to examine, reproduce and audit all such records related to pricing and performance to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell; and related to "Changes" or "Termination" Sections of this PO.

**B.** Seller shall provide Azmark with reproducible copies of any requested quality-related documentation (e.g. First Article Inspection Reports ("FAIRs"), process control, inspection plans, etc.) within **24 hours** of a written or electronically delivered request (i.e. mail, email or fax).

**C.** Seller will return any Azmark provided, or Seller produced, blueprints with the relevant Products.

**D.** Notwithstanding any retention period requirements, Seller will provide Azmark with prior written notice prior to the destruction of any records and documents and permit Azmark

to make copies of any such records and documents prior to destruction or disposal.

**21. Waiver; Cumulative Rights and Remedies.** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this PO, or in exercising any rights or remedies under this PO, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this PO, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity, including without limitation, remedies available under the Arizona Uniform Commercial Code. If any provision of this PO is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

**A. Force Majeure.** In the event of a significant force majeure event, terrorist act or other act or declaration of war that materially impacts Azmark's backlog or sales activities, Azmark may, in addition to the other rights set forth in this PO, reschedule or cancel deliveries affected by such an event as required (in Azmark's sole determination). In the event Azmark elects to either reschedule or cancel deliveries, Azmark will notify Seller in writing of the deliveries impacted by Azmark's determination. This PO will be modified accordingly, and all other deliveries, rights and obligations under this PO will remain unchanged, and there shall be no penalty, additional costs or liability assessed to Azmark as a result of its cancellation or rescheduling of deliveries under this paragraph.

## 22. Disputes.

**A.** Any dispute arising out of or relating to these Conditions of Sale, including the breach, termination or validity thereof ("**Dispute**"), will be finally resolved by arbitration. The arbitration will be conducted in English. A single arbitrator will apply the Center for Public Resources Institute for Dispute Resolution Rules for Non-Administered Arbitration then currently in effect to finally resolve the Dispute. The arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. Secs. 1-16, and judgment upon on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration will be Phoenix, Arizona, unless otherwise agreed upon in writing by both parties.

**B.** All awards will be payable in U.S. dollars, and judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved.

**C.** If any dispute, or response to any dispute, includes an allegation that potentially concerns whether any intellectual property right owned, controlled or licensable by either party is invalid, unenforceable or infringed or misappropriated, or is otherwise limited in scope or application, then either party may, in its sole discretion, elect to have that dispute adjudicated before a court of competent jurisdiction and this section will not be binding on either party with respect to that dispute in its entirety or any related dispute, including any portions of a dispute that do not concern intellectual property rights.

**23. Compliance with Law.** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls. Government clauses applicable to this PO are

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incorporated herein either by attachment to this document or by some other means of reference.

**24. Export Controls.** Seller will comply with all applicable export and import control laws and regulations, including the United States Export Administration Regulation ("EAR") and the United States International Traffic in Arms Regulations ("ITAR"), and will retain documentation evidencing such compliance.

**25. Offset Credits.** To the exclusion of all others, Azmark or its assignees shall be entitled to all industrial benefits or offset credits which might result from this PO. Seller shall provide documentation or information that Azmark or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits. Seller agrees to use reasonable efforts to identify the foreign content of goods that Seller either produces itself or procures from subcontractors for work directly related to this PO. Promptly after selection of a non-U.S. subcontractor for work under this PO, Seller shall notify Azmark of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.

**26. Code of Conduct.** Azmark is committed to conducting its business fairly, impartially, and in an ethical and proper

manner. Azmark's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Azmark's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards, and ensure that their employees understand their roles, responsibilities, and contributions to product safety. Seller shall comply with all the rules and regulations established by Azmark for access to and activities in and around premises controlled by Azmark or Azmark's customer. If Seller has cause to believe that Azmark or any employee or agent of Azmark has behaved improperly or unethically under this PO, Seller shall report such behavior to Azmark Leadership.

**27. Governing Law.** This PO shall be governed by and construed in accordance with the laws of the state of Arizona, without regard to its conflict of laws rules. This PO excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**28. Entire Agreement.** This PO contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Azmark and Seller related to the subject matter of this PO. No amendment or modification of this PO shall bind either party unless it is in writing and is signed by an authorized representative of the parties.