



## PRODUCTION PURCHASE ORDER TERMS AND CONDITIONS

### 1. Definitions & Terms.

Capitalized terms not defined in this document are defined in "EXHIBIT 1" entitled "**DEFINITIONS**", which is attached to, incorporated, in full, into and made a part of these Advanced Green Innovations, LLC ("AGI" or "Buyer") Production Purchase Order Terms and Conditions (referred to as the "AGI Production Terms and Conditions"). Each Purchase Order includes all of the terms and conditions set forth in these AGI Production Terms and Conditions; and all additional Exhibits attached to the Purchase Order as follows: EXHIBIT 2 – Tangible Property, Bailment, Tooling and Inventory; and EXHIBIT 3 – Insurance Requirements.

### 2. Formation; Offer; Acceptance; Exclusive Terms & Goods.

**A. The Purchase Order, Parties & Goods.** Each Purchase Order is an offer by AGI (referred to as the "Buyer" or "AGI") for the purchase of the goods (the "Goods") and/or for the rendering of services (referred to as "Services") as specified on the face of the Purchase Order from the party to whom the Purchase Order is addressed (referred to as the "Seller"). Seller agrees to manufacture the Goods as specified in the Purchase Order. The term Goods as used throughout these AGI Terms and Conditions includes, without limitation, raw materials, components, intermediate assemblies, Tooling, molds, equipment and end products and all services, whether or not performed in connection with any of the foregoing items. Buyer and Seller are sometimes referred to individually as a "Party" and jointly as the "Parties."

**B. Complete Agreement.** The Purchase Order, together with any and all documents, attachments, manuals, guidelines, requirements, Specifications, statements of work, scope of work, Exhibits, addendums, modifications and amendments attached to the Purchase Order, constitutes the sole, complete and entire agreement of the Parties with respect to the applicable Purchase Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the applicable Purchase Order.

**C. Seller's Quote and Proposal Terms and Conditions are Not Binding on AGI.** Except as expressly approved in a writing signed by an authorized representative of Buyer, any reference to the Seller's quotation, proposal, Specifications, Exhibits, attachments, statement of work, scope of work, and any and all other documentation or data provided or furnished by Seller (referred to collectively as "Seller's Documentation") are rejected in full and excluded in full from the applicable Purchase Order. In the event that any of Seller's Documentation is held to be an offer, that offer is expressly rejected, in full, by Buyer and is replaced in its entirety by the applicable Purchase Order. The Purchase Order expressly limits Seller's acceptance to the AGI Terms and Conditions and Exhibits set forth in the applicable Purchase Order. The Purchase Order prevails over and overrules any and all terms and conditions contained in any Seller's Documentation and expressly excludes any of the terms and conditions contained in or included with or in Seller's Documentation. The AGI Terms and Conditions and applicable Exhibits apply to any repaired or replacement Goods provided by Seller in connection with the applicable Purchase Order.

**D. No Minimum Purchase Obligations.** Unless a specific quantity is stated in the Purchase Order or a Release, Buyer is not obligated to any minimum purchase or future purchase obligations under any Purchase Order.

**E. Issuance of Purchase Orders.** Buyer may issue Purchase Orders to Seller in written form via facsimile, AGI internet portal (which Seller must check daily), electronic mail (email) or US mail.

**F. Issuance of Releases.** Buyer may also issue Releases to Seller. For the avoidance of doubt, Buyer shall only be obligated to purchase from Seller the quantities of Goods specified in any Purchase Order (including any related Release). A Release will specify a firm and finite quantity of Goods and/or a firm or finite quantity of raw materials/components that Buyer will be responsible for in the applicable Purchase Order. Releases may include Projections, (as defined below), but Releases are only binding upon Buyer for, and Buyer will have no obligation or liability beyond, the firm and finite quantity specified in the applicable Release. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release quantities provided by Buyer.

**G. Projections.** Buyer may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Goods and/or the term of a Purchase Order (Projections). Projections, unlike a Release for a firm quantity, are not binding on Buyer, are not a commitment to a requirements contract and do not constitute a Purchase Order.

**H. Inventory.** Seller shall maintain sufficient inventory of Goods associated with the applicable Release quantities required by Buyer. Seller's inventory shall be sufficient to ensure Buyer's initial Release can be fulfilled per the terms of the Purchase Order.



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**I. Acceptance.** Each Purchase Order shall be deemed accepted by Seller, in accordance with the AGI Terms and Conditions expressly set forth in the applicable Purchase Order, upon the occurrence of any of the following actions (whichever occurs first): i) Shipment of Goods by Seller; ii) Performance of Services by Seller; iii) Commencement of work on Goods by Seller; or iv) Receipt by Buyer of any written acknowledgment of acceptance of the applicable Purchase Order, in written form, via facsimile, communicated by or through any Buyer internet portal or website (which Seller must check daily), electronic mail (email) or US mail.

**J. Revisions to AGI's Term and Conditions.** Buyer may modify or amend, in its sole and unilateral discretion, the AGI Terms and Conditions (referred to as the "AGI Revised Terms and Conditions") from time to time by posting Notice of such AGI Revised Terms and Conditions through links, portals and/or websites provided on the AGI website at <http://www.agigreentech.com>, or by written or email notification to Seller. Such AGI Revised Terms and Conditions shall become effective and enforceable, in full, ten (10) calendar days after the Website Posting Date, or the date of receipt by Seller of AGI's written notice thereof (the "Objection Period"). Seller shall periodically review the AGI Website and the AGI Revised Terms and Conditions. Seller's continued performance under the applicable Purchase Order without providing a written Notice of objection (referred to as the "Objection Notice") to the AGI Revised Terms and Conditions, on or before the expiration of the Website Posting Date, shall constitute Seller's acceptance, in full, of any such AGI Revised Terms and Conditions. If Seller provides the required Objection Notice during the Revised AGI Terms & Conditions Objection Period, then Buyer and Seller shall negotiate the appropriate modification (the "Revised T&C Modification") to the AGI Revised Terms and Conditions. If the Parties agree upon the Revised T&C Modification, the Revised T&C Modification shall be set forth in a written amendment to the applicable Purchase Order signed by authorized Representatives of both Parties.

**K. AGI Manuals & Additional Documentation Included in Each Purchase Order.** Each Purchase Order includes all Buyer manuals, guidelines, packaging and shipping requirements, procedures, standards of conduct, the AGI Supplier Quality Manual, and other documentation provided by Buyer to Seller otherwise available under the heading "Additional Purchase Order Documentation" on the AGI website at <http://www.agigreentech.com> (collectively, referred to as the "AGI Manuals"), and as amended from time to time in Buyer's sole discretion (referred to as the "Revised AGI Manuals"), and are incorporated, in full, into by reference and made a part of each Purchase Order. In the event of a conflict between any terms or conditions set forth in any AGI Manuals or Revised AGI Manuals and the AGI Terms and Conditions, the AGI Terms and Conditions shall prevail and all conflicting terms and conditions set forth in the Buyer Manuals and/or Revised Buyer Manuals is overruled and shall not be enforceable. Modifications to the AGI Manuals shall be evidenced by Buyer's posting a Notice of such modified or new AGI Manuals through links provided on the Buyer's website at <http://www.agigreentech.com>, or by written or email notification. The Revised AGI Manuals shall become effective and enforceable, in full, ten (10) calendar days after the date that the Revised AGI Manuals are posted on <http://www.agigreentech.com>, or the date of receipt by Seller of AGI's written notice thereof (the "Revised Manuals Website Posting Date"). Seller's continued performance under the applicable Purchase Order without providing Buyer a written Notice of objection (referred to as the "Objection Notice") to the AGI Revised Manuals on or before the expiration of the Objection Period shall constitute Seller's acceptance, in full, of any such AGI Revised Manuals. Seller's continued performance under the Purchase Order, without providing the required written Objection Notice to the Revised AGI Manuals on or before the expiration of the Objection Period, shall constitute Seller's acceptance, in full, of any such Revised AGI Manuals.

**L. No Waiver Without AGI Written Approval.** No exception to, deviation from, or waiver of any terms conditions set forth any Purchase Order, the AGI Terms and Conditions, the AGI Revised Terms and Conditions, the AGI Manuals and/or the AGI Revised Manuals shall be enforceable against or binding upon Buyer, unless expressly approved in writing by an authorized representative of Buyer on the face of the applicable Purchase Order or a written amendment to the applicable Purchase Order signed by authorized Representatives of both Buyer and Seller.

### 3. Quantity of Goods.

The quantity of Goods applicable to each Purchase Order, and the time period within which Seller shall supply the Goods applicable to each Purchase Order, shall be expressly stated on the face of the Purchase Order. The quantity specified may, but is not obligated, to be for up to one hundred percent (100%) of Buyer's requirements for the Goods. Unless the applicable Purchase Order expressly states in writing that Seller shall manufacture and supply one hundred percent (100%) of Buyer's requirements for the Goods, Buyer shall have the unrestricted and unlimited right to obtain a portion of such Goods from another third party source or from Buyer's internal sources. Seller further acknowledges and agrees that Seller is obligated to provide Goods to Buyer in the quantity specified in any Release issued by Buyer to Seller in connection with the applicable Purchase Order. If Seller delivers more than the quantity of Goods ordered pursuant to the applicable Purchase Order on or after the Delivery Date (as defined below), Buyer may reject all or any excess Goods. Any rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods, and instead accepts the delivery of Goods at the increased quantity, the Price (as defined below) for the Goods shall be adjusted on a pro-rata basis.



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### 4. Time is of the Essence & Delivery Date.

Seller shall deliver the Goods in the quantities and on the date(s) (the "Delivery Date" or "Delivery Dates") specified in the applicable Purchase Order, the Release or as otherwise agreed in writing signed by authorized Representatives of both parties, and in accordance with the lead time, if any such lead time is stated in the applicable Purchase Order. The Delivery Date is the date that the Seller shall deliver the Goods to the Delivery Location as set forth in the applicable Purchase Order. The Delivery Date cannot be earlier than the applicable lead time for the Goods. **Timely delivery of the Goods is of the essence.** If Seller fails to deliver the Goods in full on the Delivery Date, Buyer shall have the right, but not the obligation, to terminate the applicable Purchase Order immediately by providing written Notice to Seller. Seller shall indemnify Buyer against any losses, Claims, damages, and reasonable costs and expenses directly or indirectly attributable to Seller's failure to deliver the Goods on the Delivery Date.

### 5. Cooperation After Termination or Expiration of the Applicable Purchase Order.

Upon the expiration or termination (whichever is applicable under the circumstances) of the applicable Purchase Order, Seller shall cooperate with Buyer and provide all customary and reasonably requested support and information required by Buyer to facilitate Buyer's sourcing or supply of the Goods to or by a replacement supplier or seller. If such requested support is not customary under the circumstances, the parties will mutually agree in writing to a reasonable monetary fee payable by Buyer to Seller for such support.

### 6. Warranty.

**A. Product Warranty.** Seller represents and warrants to: (i) the Buyer Parties; (ii) all other Persons authorized to install, de-install, repair, maintain, sell, license, transfer, assign, supply and/or distribute the Goods pursuant to contracts with Buyer Parties and/or Buyer's distributors and franchisees; and (iii) any end users of the Goods, a product warranty (the "Product Warranty") for each and every Good made or supplied pursuant to any Purchase Order as follows:

**1. Basic Warranty & Warranty Period.** For the period provided by applicable Law, or for the period of three (3) years or two hundred thousand (200,000) miles, whichever is greater, after installation or no later than thirty (30) calendar days after acceptance of the Goods (whichever occurs first under the circumstances) by: (i) Buyer Parties; (ii) Buyer's distributors and franchisees; (iii) all other Persons authorized to install, de-install, repair, maintain, sell, license, transfer, supply and/or distribute the Goods pursuant to contracts with Buyer Parties and/or Buyer's distributors and franchisees, the Goods shall:

- (i) Conform, in all respects, to the Specifications (as set forth in Exhibit 4), standards, drawings, samples, descriptions, quality requirements, performance requirements, statements of work, and fit, form and function requirements furnished, specified or approved by Buyer for the Goods;
- (ii) Be merchantable (as such term is defined in the Uniform Commercial Code ("UCC") and free from defects, latent or otherwise, in design (unless the design was provided solely by Buyer), materials, assembly, and workmanship;
- (iii) Be fit and sufficient for the particular purpose intended by Buyer and its customers, of which the Seller is aware (and Seller acknowledges that it knows of Buyer's intended use of the Goods and that such Goods have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use and will be fit and sufficient for the particular purposes intended by Buyer);
- (iv) Comply with all applicable Laws;
- (v) Each of the Goods will be new and conveyed by Seller to Buyer with good title, free and clear of all Encumbrances; and
- (vi) None of the Goods will infringe upon, violate or misappropriate the Intellectual Property Rights of any Person.

**B. Additional Product Warranty Terms & Conditions.** The Product Warranty furnished by Seller to Buyer in connection with each of Goods: (i) is in addition to all other warranties, express, implied, or imposed by Law; (ii) extends to the Goods' future performance and use; (iii) survives Seller's delivery of the Goods, Buyer's receipt, inspection, acceptance, use of the Goods and payment for the Goods, and the termination or expiration of the applicable Purchase Order; (iv) inures to the benefit of the Buyer Parties, the end-users of the Goods or products or services that incorporate, use, include or are integrated with or attached to the Goods; and (v) may not be limited, restricted, voided, reduced or disclaimed by Seller. Buyer's approval of Seller's designs, materials, processes, methods, drawings, Specifications or similar requirements shall not be construed to relieve, limit, restrict, reduce, decrease or void, in whole or in part, Seller of any warranties expressly set forth herein and/or required pursuant to applicable Law. Seller hereby transfers and assigns, in full, to Buyer all of its rights (but not any obligations) under all warranties from Equipment or material manufacturers, suppliers, permitted contractors and/or subcontractors or other third parties applicable to Goods sold to Buyer effective at the time of such sale to Buyer.



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Any applicable statute of limitations for any breach or breaches by Seller of any or all of the warranties set forth herein shall commence no earlier than the date on which Buyer discovers each breach.

**C. Product Recall or Field Retrofit.** Seller acknowledges and agrees that Buyer may initiate a product recall (a "Product Recall") or field retrofit effort with respect to a particular Good manufactured and supplied by Seller at any time that Buyer reasonably determines such Good contributes, in whole or in part, to an actual or alleged defect that affects, is related to or associated with, as applicable: (i) motor vehicle safety, operational safety or an actual or alleged failure of a vehicle, engine or a Good to comply with an applicable motor vehicle safety standard, regulation, guideline or applicable Law; (ii) the safety or operational safety of any product, system, good or service provided or furnished by Buyer or Buyer Parties that uses, incorporates, includes and/or is dependent upon, in whole or in part, the Goods manufactured or supplied by Seller; or (iii) any determination by a Governmental Authority that any Goods sold by Seller to Buyer are Defective and that a recall campaign, or other similar action, is necessary under the circumstances.

**D. Notification of Product Recall or Field Retrofit.** Buyer shall notify Seller as soon as practicable after Buyer decides to conduct a Product Recall or field retrofit action and shall provide Seller with performance evaluations, reports and test results relating to the Goods and other relevant information relied upon by Buyer in its decision to conduct the Product Recall or Field Retrofit action.

**E. Costs Associated with a Product Recall or Field Retrofit Action.** In the event that Buyer or Buyer Parties determines that a Product Recall or field retrofit action is necessary as set forth herein, Buyer shall bear the costs and expenses of such Product Recall or field retrofit action in the event such Product Recall or field retrofit action is the result of the fault or omission of Buyer and its agents, including, by way of example only, and not as a limitation, providing Seller with incorrect Specifications. Seller shall bear the costs and expenses of such Product Recall or field retrofit action to the extent such Product Recall or field retrofit action is the result of the fault or omission of Seller or its agents or subcontractors, including, by way of example only, and not as a limitation, supplying Buyer with Goods that are not in compliance with the Specifications as set forth in the applicable Purchase Order. The Parties shall further immediately provide to each other in writing all information reasonably available relating to any incident relating to a Good that is subject to a Product Recall or field retrofit action. The Parties will cooperate fully with each other in effecting any Product Recall or field retrofit action, including, but not limited to, any communications with any purchasers, customers or end-users. For the purposes of this provision, the term "fault" and the term "omission" shall mean, respectively, fault arising out of any act or omission with respect to a Party's obligations under the applicable Purchase Order.

**F. Suspension for Safety Concerns.** In the event that Buyer reasonably determines that the performance or condition of a Good or Goods as delivered may reasonably cause commercial or legal liability, or are Defective or are alleged to be Defective, Seller shall, upon written Notice from Buyer, suspend all shipments of the affected Goods for the period of time necessary for Buyer to resolve the cause of such liability, provided that Buyer will be responsible for all costs incurred by Seller as a result of such suspension, except in the event that such suspension is the result of or due to any breach, in whole or in part, of the applicable Purchase Order by the Seller and/or pursuant to any order, opinion, or determination by a Government Authority.

## 7. Quality and Compliance with Standards and Applicable Regulations.

**A. Specific Compliance Obligations.** In connection with each of the Goods manufactured and supplied pursuant to the applicable Purchase Order, Seller shall comply, in full, with the applicable provisions of ISO 9001:2008, ISO 14001, ISO/TS 16949:2009, PPAP, APQP, and the End of Life Vehicle ("ELV") reporting and other requirements, as well as international softwood standards, including USDA Regulations on Wood Packaging Material Imports, in fulfilling the applicable Purchase Order and all other Purchase Orders.

**B. Quality Compliance Documentation, Test Samples and Quality Certifications.** Seller shall meet or exceed Buyer's quality standards and requirements for the Goods as adopted and modified by Buyer from time-to-time, and which are provided by Buyer to Seller in writing, or as posted at <http://www.agigreentech.com>, including, but not limited to the applicable provisions of Buyer's "Supplier Quality Manual". At Buyer's request, Seller shall furnish to Buyer test samples of Goods as reasonably required by Buyer to determine if Seller's manufacture of the Goods is in accordance with the Specifications, quality standards and the Supplier Quality Manual furnished by Buyer. Seller shall perform quality inspections of Goods before delivery and shall furnish to Buyer a written certification (the "Quality Certification") documenting inspection results in the manner requested by Buyer. If the Goods are found by Buyer, in Buyer's reasonable discretion, to be in compliance with Buyer's quality standards for such Goods, subject to audit by Buyer, Buyer will promptly reimburse Seller for Seller's reasonable, pre-approved, out-of-pocket costs incurred in complying with this Section 7.B.



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**C. Capacity & Adequacy of Seller's Facilities.** Seller warrants and represents to Buyer that its overall equipment (shared and specific) and plant capacity are adequate to meet Buyer's needs. Ongoing capacity analysis must account for at least: scrap variation, downtime, maintenance, and other customer requirements. Each production process must successfully complete a run-at-rate. The run-at-rate must demonstrate that Seller's production process can produce in less than 24 hours at least one day's quantity of acceptable quality Goods to satisfy Seller's Capacity Planning Volume ("CPV"). Buyer is not obligated to pay Seller any incremental costs as long as the Release quantities, less back-order quantities, do not exceed Seller's CPV over a rolling 3-month time period. The requirement for capacity and the CPV is not a volume, program or other commitment by Buyer.

### 8. Financial Information and Operational Condition of Seller.

Seller shall furnish Buyer with statements accurately and fairly evidencing Seller's financial condition as Buyer may reasonably request. Seller shall furnish to Buyer copies of any quarterly or annual financial statements delivered by Seller to any of its creditors within thirty (30) calendar days following delivery of such financial statements to such creditor. Seller shall promptly notify Buyer, in writing, of any and all events that have had or may have a material adverse effect on Seller's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Seller's assets, a change in Control of Seller, or the breach of any loan covenants or other material obligations of Buyer to its creditors. Seller shall promptly provide written Notice to Buyer of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any such events or occurrences: (a) any failure by Seller to perform any of its obligations under the applicable Purchase Order; (b) any delay in delivery of Goods; (c) any defects or quality problems relating to the Goods; (d) any change in Control of Seller; or (e) any failure by Seller, or its subcontractors or common carriers, to comply with applicable Laws.

### 9. Inspection.

All Goods are subject to Buyer's inspection and approval or rejection notwithstanding Buyer's prior receipt of, or payment for, the Goods. Buyer shall have a reasonable period of time, not less than thirty (30) calendar days following delivery of the Goods (the "Inspection Period") to the Delivery Location, to inspect all Goods received under the applicable Purchase Order and to inform Seller, in writing, of Buyer's rejection of any Defective Goods and/or Nonconforming Goods. Buyer may return to Seller any or all units of rejected Goods: (i) that constitute Defective Goods and/or Nonconforming Goods; and/or (ii) that exceed the quantity stated in the applicable Purchase Order (or related Release). If Buyer rejects any Defective Goods and/or Nonconforming Goods, Buyer may elect in its sole discretion to: (a) require Seller, at Seller's sole cost, to repair or replace the Defective Goods and/or Nonconforming Goods at the location specified by Buyer (which may include Seller's location, Buyer's location or the location of a third party); (b) purchase similar goods from another source (and apply such purchases against any quantity requirements applicable to Buyer hereunder); (c) produce similar goods itself (and apply such production quantities against any quantity requirements applicable to Buyer hereunder); (d) repair the Goods itself or have a third party repair the Goods at Seller's sole cost; (e) retain the rejected Defective Goods and/or Nonconforming Goods; or (f) rescind or terminate the applicable Purchase Order in part or in its entirety; and in each case without limiting the exercise by Buyer of any other rights available to Buyer under the applicable Purchase Order or pursuant to applicable Law. All returns of Defective Goods and/or Nonconforming Goods to Seller are at Seller's sole risk and expense. Goods that are not rejected within the Inspection Period will be deemed to have been accepted by Buyer; provided, however, that Buyer's acceptance of any Goods will not be deemed to be a waiver, reduction, restriction or limitation of Seller's obligations relevant to or associated with the applicable Purchase Order (or any breach thereof).

### 10. Shipment and Delivery Requirements; Risk of Loss; Packaging and Labeling.

**A. FOB.** Time, quantity and delivery to the Delivery Location **are of the essence** under this Purchase Order. Seller shall procure materials for, fabricate, assemble, pack, mark and ship Goods strictly in the quantities, by the methods, to the Delivery Location and by the Delivery Dates specified in the applicable Purchase Order (or related Release). Unless otherwise agreed in writing in the applicable Purchase Order, freight terms shall be F.O.B. Destination, Freight Collect. Delivery times will be measured to the time that Goods are actually received by Buyer at the Delivery Location.

**B.** If, through no fault of Buyer, Seller fails to comply in full with any of its delivery obligations under this Section 10, then Buyer may, in Buyer's sole discretion and at Seller's sole cost and expense: (i) approve a revised Delivery Date; (ii) require expedited or premium shipment; or (iii) cancel the applicable Purchase Order and obtain similar Goods from other sources (and all such Goods will be deemed to be Goods purchased under the applicable Purchase Order for purposes of satisfying any quantity requirements applicable to Buyer hereunder). Unless otherwise expressly agreed to by the Parties in writing, Seller may not make partial shipments of Goods to Buyer.



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- C.** Buyer shall inform Seller of approved logistics providers to be used and provide account information for billing purposes. Seller shall be responsible for making all arrangements so that Delivery Date deadlines are met.
- D.** Seller shall use, preserve, reuse and return, at its sole cost, all designated packaging materials, crates, platforms or pods provided by Buyer in good condition, normal wear and tear excepted.
- E.** Seller shall comply in full with shipping directions and instructions expressly stated in the applicable Purchase Order or Release.
- F.** Title to Goods shipped under the applicable Purchase Order passes to Buyer upon delivery of the Goods to the Delivery Location. Title will transfer to Buyer even if Buyer has not paid Seller for such Goods, provided that Buyer will not be relieved of its obligation to pay for Goods in accordance with the terms hereof.
- G.** Seller bears all risk of loss or damage with respect to Goods until Buyer's receipt of such Goods at the Delivery Location.
- H.** Seller shall properly pack, mark and ship Goods as instructed by Buyer and otherwise in accordance with applicable Law and industry standards, in a manner sufficient to ensure the Goods are delivered in undamaged condition. Seller shall furnish Buyer all shipment documentation within three (3) Business Days after Seller delivers the Goods to the transportation carrier, showing the applicable Purchase Order number, Seller's identification number for the subject Goods, the quantity of pieces or units in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number, and the country of origin. If Buyer has additional packaging and labeling requirements for the Goods, such additional packaging and labeling requirements shall be set forth in a written Exhibit or written amendment to the applicable Purchase Order and shall be incorporated, in full, into and made a part of the applicable Purchase Order.
- I.** Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in the applicable Purchase Order or Release shall be Seller's sole responsibility, unless the delay or expense was the result, in whole or in part, of Buyer's acts or omissions.
- J. Delivery Location.** All Goods shall be delivered to the address specified in the applicable Purchase Order (Delivery Location) during Buyer's normal business hours or as otherwise instructed by Buyer.
- K.** Packing slips (which shall accompany the Goods), shipping documents and memos, ASNs (Advanced Shipping Notices), SID, and bills of lading shall be mailed and/or sent electronically on the shipment date, and must show the applicable Purchase Order number, the name and address of Seller, and item and reference numbers. For each international shipment, Seller shall include a customs valuation invoice (using the value set forth in the applicable Purchase Order), with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong solely to Buyer. Seller shall furnish: (i) all documents required to obtain export credits and customs drawbacks; (ii) certificates of origin of the materials and Goods provided and the value added in each country; (iii) all NAFTA, AALA and other related documents; (iv) all required export licenses, permits or authorizations; and (v) any other documents requested by Buyer or any of its customers from time to time. Seller warrants that the contents of such documents shall be true and accurate. Seller shall indemnify Buyer for any damages, including but not limited to duties, interest and penalties, arising from a false or inaccurate statement.
- L. Applicable Discounts.** All cash discounts shall be computed from the date of receipt by Buyer of a final invoice or receipt of the Goods, whichever occurs later. Cash discounts shall be based on the full amount of invoice, less freight charges and Taxes if itemized separately on the invoice.
- M. Term for Service and Replacement Goods.** Except as otherwise required under applicable Laws, for a period of five (5) years after the date of acceptance of the applicable Purchase Order in accordance with Section 2.I., entitled, "Acceptance", Seller shall provide service and replacement parts for Goods to Buyer at the Prices specified in the last applicable Purchase Order plus any actual net cost differential for required unique packaging, shipping and handling.
- N. Disputes Regarding Price of Replacement Parts.** If a dispute arises between Seller and Buyer regarding the Price of service or replacement parts, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production Prices set forth in the applicable Purchase Order pending resolution of such dispute under Section 21.P., entitled, "Dispute Resolution."



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### 11. Indemnification.

**A. Indemnification.** To the fullest extent permitted by applicable Law, Seller (the "Indemnifying Party") shall indemnify, defend and hold harmless the Buyer Parties and their members, managers, officers, employees, attorneys, agents, Affiliates, successors and permitted assigns (collectively, "Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, Claims, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under the applicable Purchase Order and the cost of pursuing any insurance providers, incurred by any Indemnified Party (collectively, "Losses"), resulting from any third-party Action alleging:

1. A material breach or non-fulfillment of any of Indemnifying Party's representations, warranties, obligations, or covenants set forth in the applicable Purchase Order;
2. Any negligent, grossly negligent or more culpable acts or omissions of Indemnifying Party or any of its Representatives (including any recklessness or willful misconduct) in connection with Indemnifying Party's performance under the applicable Purchase Order;
3. Any bodily injury, death of any Person or damage to real or tangible personal property caused by the negligent or grossly negligent or more culpable acts or omission of Indemnifying Party or any of its Representatives; or
4. That any of Indemnifying Party's Intellectual Property Rights used in the design, fabrication, assembly, development, manufacture or production of the Goods, or that is embodied, used, contained or embedded in and/or incorporated into the Goods, infringes any Intellectual Property Rights of a third party.

**B. Exceptions and Limitations on Indemnification.** Notwithstanding anything to the contrary in the applicable Purchase Order, the Indemnifying Party is not obligated to indemnify or defend any Indemnified Party against any Claim, Action or Losses if such Claim, Action or Losses result directly from Indemnified Party's: (i) sole negligence or more culpable act or omission (including recklessness or willful misconduct); or (ii) bad faith failure to materially comply with any of its obligations set forth in the applicable Purchase Order.

**C. NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES.** EXCEPT FOR LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF ANY NONDISCLOSURE AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, BUYER'S PARTIES' AND SELLER'S (INCLUDING SELLER'S REPRESENTATIVES' AND AFFILIATES) MAXIMUM AGGREGATE LIABILITY SHALL NOT EXCEED THE AGGREGATE AMOUNT ACTUALLY PAID UNDER THE APPLICABLE PURCHASE ORDER AND IN NO EVENT SHALL BUYER'S PARTIES AND SELLER (INCLUDING SELLER'S REPRESENTATIVES AND AFFILIATES) BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE DAMAGES, LOST PROFITS OR LOST REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE APPLICABLE PURCHASE ORDER, REGARDLESS WHETHER SUCH DAMAGES WERE FORESEEABLE OR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

### 12. Price; Purchase; Sale; Most Favored Customer; Payment Terms and Invoicing.

**A. Purchase and Sale.** Subject to the terms and conditions of the Purchase Order, during the Term applicable to the Purchase Order, Seller shall manufacture, sell, supply and deliver Goods to Buyer, at the Prices and in the quantities set forth in the applicable Purchase Order (including any applicable Releases thereunder).

**B. Most Favored Customer.** Seller represents and warrants that the Prices set forth on the applicable Purchase Order are at least as low as the price charged by Seller to other buyers for similar volumes of the same Goods or similar Goods. If, at any time during the Term, Seller charges any other buyer a lower price for the same Goods or similar Goods, Seller shall apply that



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If Seller fails to apply the lower price, Buyer may, at its option, in addition to all of its other rights under any applicable Purchase Order or at Law, terminate the applicable Purchase Order without liability to Buyer or its Affiliates. The Parties shall reflect any adjustment to pricing under this Section 12 in an amendment to the applicable Purchase Order; provided that, and notwithstanding anything to the contrary contained in the applicable Purchase Order or AGI Terms and Conditions, the execution and delivery of any such amendment by each of the Parties will not be a condition to the effectiveness of such price adjustment.

**C. Invoices.** All invoices and/or ASNs ("Advanced Shipping Notices") shall include the following information: (a) the date of the applicable Purchase Order; (b) the applicable Purchase Order number and line-item number; (c) Seller's name; (d) Seller's identification number; (e) carrier name; (f) ship-to address; (g) quantity of Goods shipped; (h) number of cartons or containers in shipment; (i) bill of lading number; (j) country of origin; and (k) all other information necessary for identification and control of the Goods. In addition, no invoice will include any term or condition separate from, inconsistent with, in conflict with or different from than these AGI Terms and Conditions or the terms that are expressly set forth on the face of the applicable Purchase Order. Buyer reserves the right to return and reject, in whole in part, all invoices or related documents inaccurately or incorrectly submitted to Buyer and/or withhold payment due to any invoices or related documents that are inaccurate or incorrectly submitted to Buyer. The Parties shall seek to resolve any invoice disputes expeditiously in accordance with the dispute resolution provisions set forth in the applicable Purchase Order. The time frames for payments by Buyer to Seller pursuant to any correctly submitted invoice shall be calculated as of either (whichever occurs later) the date the invoice was received by Buyer or the date the Goods were received by Buyer. Any payment by Buyer of a nonconforming invoice is not an acceptance by Buyer of any Nonconforming Goods and/or any non-conforming elements, parts or portions of the Goods and/or any non-conforming elements, terms or conditions contained in or included with any submitted invoice and/or any breach or violation of the terms of the applicable Purchase Order or terms on such invoice or invoices related to the Goods. **Seller agrees to submit invoices for payment by Buyer only to the following email address: [accounts.payable@agigreentech.com](mailto:accounts.payable@agigreentech.com).**

**D. Payment.** Payment terms shall be noted on the Purchase Order.

**E. Setoff; Contingent or Disputed Claims.** All amounts due from Buyer to Seller are net of any indebtedness of Seller to Buyer. In addition to any right of set-off, deduction or recoupment provided or allowed by Law, Buyer may, without Notice to Seller, set off against, and deduct and recoup from, any amounts due or to become due from Buyer to Seller, including for any damages resulting from breaches by Seller of its obligations under the applicable Purchase Order or any other fully executed, written agreement between the Parties. If an obligation of Seller is disputed, contingent or unliquidated, payment by Buyer of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. In the event of Seller's bankruptcy, if all of the contracts (including the applicable Purchase Order) between Buyer and Seller have not been promptly assumed by Seller (under applicable Law), Buyer may withhold payment to Seller for Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other losses is eliminated.

### 13. Compliance with Laws, Ingredients, Hazardous Substances, Documentation, Permits & Licenses.

**A. Ingredients and Materials Disclosure.** Upon Buyer's request, Seller shall promptly provide in writing to Buyer, in such form and detail as Buyer requests from time to time, a list of all ingredients and materials incorporated in the Goods, the amount of such ingredients and materials, and information concerning any changes in, or additions to, such ingredients and materials and appropriate materials certifications, if any. Without limitation of the foregoing, upon Buyer's request, Seller shall provide to Buyer all information (in sufficient detail), with written certifications thereof, to enable Buyer to timely comply with all of Buyer's, Buyer's Affiliates and Buyer's customers' due diligence, disclosure and audit requirements under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and Rule 13p-1 and Form SD under the Securities Exchange Act of 1934, and all similar, applicable Laws, including due inquiry of Seller's supply chain (and certifications by such suppliers) identifying conflict minerals (as defined in Section 1502(e)(4) of the Dodd-Frank Act) contained in the Goods and the country of origin of such conflict minerals (or, following due inquiry, why such country of origin cannot be determined).





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**B.** For each shipment of Goods, Seller shall provide Buyer sufficient written advance warning and Notice (in addition to including appropriate labels on Goods, containers and packing) of any hazardous or restricted material that is an ingredient or a part of the shipment or Goods, together with such special handling instructions as may be necessary to advise logistics providers, handlers of the Goods (including, but not limited to, Buyer and Buyer's Affiliates) of how to exercise that measure of care and precaution that will comply with any applicable Laws and prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing.

**C. Restrictions of Hazardous Substances (RoHS) and Chemicals (REACH).** If the Goods, or any of the parts, materials, substances or components contained or included in the Goods, are made, assembled, or supplied to member nations of the European Union, Seller shall comply, in full, with: (i) The regulations regarding regulated hazardous substances (including the following: Pb, Hg, Cd, Cr (VI), PBB and PBDE as set forth in Restriction of Hazardous Substances ("RoHS"), Directive 2002/95/EC, its amendments and as recast by the European Union under Directive 2011/65/EU and such Goods shall be in complete compliance with the Recast RoHS 2011/65/EU Directive; and (ii) The Regulation (EC) No. 1907/2006 of the European Parliament and the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"), if applicable, and if regulated chemical substances are contained in applicable Goods supplied by Seller, or are otherwise subject to REACH regulations, and may be manufactured, supplied and/or imported to the European Union, such Goods shall be REACH compliant.

**D. Compliance with Laws.** Seller shall, at all times during the Term, comply with all Laws applicable to each Purchase Order, Seller's operation of its business, the exercise of its rights and performance of its obligations, the rendering of Seller's Services and the supply and delivery of the Goods. Without limiting the foregoing, Seller shall ensure the Goods, and any related packaging, conform fully to all applicable Laws. Upon Buyer's request, Seller shall provide Buyer with: (a) written certification of Seller's compliance with applicable Laws; (b) written certification of the origin of any ingredients or materials in the Goods; and (c) any additional information regarding the Goods requested by Buyer such that Buyer may comply in a timely manner with its obligations under applicable Law.

**E. Customs Service's Customs Trade Partnership Against Terrorism.** For Seller's Goods to be imported in the United States, Seller shall accept, implement and comply with all applicable recommendations, requirements, instructions, rules and/or regulations of the United States Customs Service's Customs Trade Partnership Against Terrorism ("C-TPAT").

**F. Fair Labor Standards.** Seller hereby agrees to comply with all applicable requirements of Sections 6.7 and 12 of the Fair Labor Standards Act, 29 USC §§ 201 et seq. in the performance of work under any applicable Purchase Order, and with all applicable regulations and orders issued under Section 14 thereof.

**G. Permits, Licenses and Authorizations.** Seller shall obtain and maintain all Permits necessary for the exercise of its rights and performance of Seller's obligations under the applicable Purchase Order, including, but not limited to, any Permits required for the import of Goods or any raw materials and other manufacturing parts used in the production and manufacture of the Goods, and/or the shipment of hazardous materials, as applicable.

### 14. Inspection of Seller's Premises and Facilities, Audit Rights, Books & Records.

**A. Inspection.** Seller hereby grants to Buyer, and its authorized Representatives, access to Seller's premises and facilities (including Seller's manufacturing operations used in production of Goods) and all pertinent documents and other information, whether stored in tangible or intangible form, including any books, records and accounts, in any way related to Seller's performance under the applicable Purchase Order (including Sellers' processes and procedures), Goods, Bailed Property or any payment or other transaction occurring in connection with the applicable Purchase Order, for the purpose of auditing Seller's compliance with the terms of the applicable Purchase Order and any other written and fully executed agreements between Buyer and Seller, including, but not limited to, Seller's charges for Goods, or inspecting or conducting an inventory of the finished Goods, work-in-process or raw-material inventory or Bailed Property; provided that any physical inventory inspection may take place no more frequently than semi-annually. Seller agrees to cooperate fully with Buyer and its Representatives in connection with any such audit or inspection.



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**B. Maintenance of Books and Records.** Seller shall maintain, during the Term of the applicable Purchase Order and for a period of three (3) years after the termination or expiration of the applicable Purchase Order, whichever occurs first, complete and accurate books and records and any other financial information in accordance with GAAP. Seller shall segregate its records and otherwise cooperate with Buyer and its Representatives so as to facilitate any audit by Buyer. Seller shall reimburse Buyer for all amounts associated with errors discovered during an audit. In addition, costs of any audit conducted shall be paid by Buyer, except as follows: (i) if the audit identifies overpricing, overcharges or accounting errors in excess of one-half of one percent (.5%) of the total cost of the Goods purchased pursuant to the applicable Purchase Order or any Release, then Seller shall reimburse Buyer for the total cost of the audit; and/or (ii) if the audit discovers substantial findings related to fraud, misrepresentation, or non-performance, then Seller shall reimburse Buyer the total cost of the audit. Payments to Buyer, in connection with Section 14(B)(i) and/or (ii) above, shall be paid by Seller within fourteen (14) calendar days after completion of the audit. If requested by Buyer, Seller shall use its reasonable efforts to permit Buyer and its Representatives to obtain from Seller's contractors, subcontractors or other suppliers, in the event Seller's contractors, subcontractors or other suppliers render services related to or associated with the applicable Purchase Order, the same books, records and financial information, in accordance with GAAP, required hereunder. Additionally, Seller grants Buyer permission to conduct the reviews of the financial data supplied by Seller's contractors, subcontractors or other suppliers in connection with any audit of Seller under this Section 14.

### 15. Intellectual Property; Ownership; Technology and Licenses.

**A. Intellectual Property Ownership.** Each of the Parties acknowledges and agrees that:

1. Buyer and its Affiliates own or have a license to use, all right, title, and interest in and to Buyer Technology, including all Derivatives thereof and all Intellectual Property Rights therein and thereto;
2. Seller owns all right, title and interest in and to Seller Technology, including all Derivatives thereof and all Intellectual Property Rights therein and thereto;
3. Buyer does not transfer, sell, license, give, grant or assign, in whole or in part, to Seller any of the Buyer Technology, and Seller may not use any of the Buyer Technology, other than to produce and supply Goods to Buyer under the applicable Purchase Order, except as expressly set forth herein;
4. Seller does not transfer, sell, license, give, grant or assign, in whole or in part, to Buyer any of the Seller Technology, except otherwise expressly stated in these AGI Terms and Conditions, the applicable Purchase Order or as expressly set forth in a written agreement executed by authorized Representatives of both Parties, except as expressly set forth herein;
5. In addition to, and not in lieu of, or substitution of any rights in the Goods provided pursuant to applicable Law, in the event that any or all of the Goods supplied, delivered or shipped to: (i) Buyer, its Affiliates and each of their respective customers; and/or (ii) Buyer's distributors and franchisees, each of their respective customers, and all other Persons authorized to install, de-install, repair, maintain, sell, offer to sell, license, transfer, repair, supply, and/or distribute the Goods pursuant to Buyer Contracts (collectively the "Licensed Parties"), incorporate, contain, use, include or are otherwise dependent upon Seller Technology, Seller hereby grants to Buyer and the Licensed Parties a worldwide, non-exclusive, transferrable, assignable, perpetual, irrevocable, fully-paid up, and royalty-free right and license, with the right to sublicense through multiple tiers of sublicensees, to use, make use of, operate, sell, offer to sell, resell, publically display, publically perform, trade, import, export, market, promote, advertise, distribute, install, de-install, repair, maintain, license, sublicense, transfer, assign, supply, and otherwise commercialize the Goods that incorporate, contain, use, include or are otherwise dependent upon the Seller Technology, independently and/or as incorporated with, integrated into, attached to or made a part of any other products or services of Buyer and/or the Licensed Parties, now existing or created, developed, made, produced, licensed, manufactured and/or sold at any time in the future; and
6. Seller shall use the Buyer Technology only to produce and supply Goods under the applicable Purchase Order.



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### **B. Prohibited Acts.** Each of the Parties shall not:

1. Take any action that interferes with the other Party's Technology, including such other Party's ownership or exercise thereof;
2. Challenge any right, title or interest of the other Party in such other Party's Technology;
3. Make any Claim or take any Action adverse to such other Party's ownership of its Technology;
4. Register or apply for registrations of, anywhere in the world, the other Party's Trademarks or any other Trademark that is similar to such other Party's Trademark(s) or that incorporates such Trademarks in whole or in confusingly similar part;
5. Use any mark, anywhere, that is confusingly similar to the other Party's Trademarks;
6. Misappropriate any of the other Party's Trademarks for use as a domain name without such other Party's prior written approval; or
7. Alter, obscure or remove any of the other Party's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on or about the Goods supplied pursuant to the applicable Purchase Order or any marketing or advertising materials or documentation that accompany the Goods under the applicable Purchase Order.

**C. Works Made for Hire.** Seller acknowledges and agrees that, to the extent permitted under the Copyright Act, Title 17 of the U.S. Code, as amended, all Goods supplied by Seller to Buyer are "works made for hire," and the ownership of the Goods will vest in Buyer when each Good is created. If ownership of the Goods does not vest automatically in Buyer under applicable Law, Seller hereby assigns and will assign, and will cause any of its employees, agents, subcontractors, Affiliates or independent contractors to assign, to Buyer (or any of its designated Affiliates) all right, title, and interest in and to the Goods, including all Intellectual Property Rights therein and thereto. Seller further agrees to execute any and all documents and to do all other things reasonably requested by Buyer in order to secure intellectual property protection of, and vest more fully in Buyer any and all ownership rights in the Goods. If Buyer is unable, after reasonable effort, to secure Seller's signature as required or necessary to evidence Buyer sole and exclusive ownership of the Goods, Seller hereby irrevocably designates and appoints Buyer and its duly authorized agents as Seller's agent and attorney-in-fact, to act for and in Seller's behalf to execute and file any and all such documents and to do all other lawfully permitted acts with the same legal force and effect as if executed by Seller.

**D. Third Party Licensed Technology.** If Third Party Technology is used in, incorporated into, integrated with, contained in or included with any Goods, Seller shall possess or acquire the right to license, integrate, incorporate and deliver the Third-Party Technology used, integrated, included or incorporated by Seller in the Goods. Seller shall identify and disclose to Buyer, in full and prior to its use, integration, inclusion and/or incorporation, any and all Third-Party Technology that will be used with, on, in or about, integrated with and/or incorporated into the Goods. At a minimum, Seller shall assign, in full and in writing, all right, title and ownership interest, in and to the Third Party Technology, including, but not limited to any and all Intellectual Property Rights therein and thereto, to Buyer upon terms that are acceptable to Buyer in Buyer's absolute discretion.

## **16. Confidentiality, Bailment, Tooling and Inventory.**

**A.** If Buyer and Seller have executed a nondisclosure agreement (a "Nondisclosure Agreement"), then the terms and conditions of such executed Nondisclosure Agreement apply and govern the disclosure and use of confidential information of either Party in connection with the applicable Purchase Order. If the Parties have entered into a Nondisclosure Agreement, then the Parties agree that: (a) the terms and conditions of such Nondisclosure Agreement are incorporated, in full, into, and made a part of each and every applicable Purchase Order; (b) the Nondisclosure Agreement applies to and governs the disclosure of confidential information in connection with each applicable Purchase Order; and (c) the Nondisclosure Agreement is fully enforceable in accordance with its terms. If Buyer and Seller have not executed a nondisclosure agreement,



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then Sections 16.B., 16.D., 16.E., 16.F., 16.G., and 16.H., apply and govern the disclosure and use of confidential information of either Party in connection with the applicable Purchase Order.

**B. Scope of Confidential Information.** From time-to-time during the Term of the applicable Purchase Order, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs, Goods and services (including any forecasts), confidential information and materials comprising or relating to Intellectual Property Rights, Trade Secrets, third-party confidential information and other sensitive or proprietary information. Such information, as well as the terms of the applicable Purchase Order, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," constitutes confidential information hereunder as that term is defined in the nondisclosure agreement referenced in Section 16.A.

**C. Duties on Termination or Expiration.** On the expiration or earlier termination of the applicable Purchase Order, the Receiving Party and its Representatives shall promptly return all confidential information and copies thereof that it has received under the applicable Purchase Order and permanently delete and erase all of the other Party's confidential information from its computer systems and networks.

**D. Required Disclosure.** In the event that the Receiving Party or any of its Representatives is required, based on the written legal opinion of outside legal counsel, to disclose all or any part of the confidential information of the Disclosing Party under the terms of a valid and effective subpoena, order or other document issued by a Governmental Authority, the Receiving Party shall immediately notify the Disclosing Party in writing of the existence, terms and circumstances surrounding such requirement, so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's (and/or its Representatives') compliance with the provisions of the relevant provisions of the Nondisclosure Agreement or applicable Purchase Order. In the event that such protective order or other protection is denied and the Receiving Party or its Representatives are legally compelled to disclose the Disclosing Party's confidential information, the Receiving Party shall (and shall cause its Representatives to) disclose only that portion of the Disclosing Party's confidential information that the Receiving Party's outside legal counsel advises is legally required to be disclosed and shall exercise all commercially reasonable efforts to preserve the confidentiality of the remainder of the confidential information. In no event shall the Receiving Party or any of its Representatives oppose action by the Disclosing Party to obtain a protective order or other relief to prevent the disclosure of confidential information of the Disclosing Party or obtain reliable assurance that confidential treatment shall be afforded such confidential information.

**E. Liability for Breach by a Party's Representatives.** The Receiving Party shall be responsible for any breach, in whole or in part, of this Section 16 caused by the Receiving Party, its Affiliates, any of their respective Representatives, contractors, subcontractors, representatives and agents.

**F. Protection of Confidential Information.** The Receiving Party shall, for five (5) years after receipt of such confidential information (except that in the case of any Trade Secret information, the obligations and restrictions provided in this Section 16.F., shall continue in effect for so long as the Trade Secret information remains a trade secret under applicable Law): (i) Protect and safeguard the confidentiality of the Disclosing Party's confidential information with at least the same degree of care as the Receiving Party would protect its own confidential information, but in no event with less than a commercially reasonable degree of care; (ii) Not use the Disclosing Party's confidential information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under the applicable Purchase Order; and (iii) Not disclose any such confidential information to any Person, except to the Receiving Party's Representatives who need to know the confidential information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under applicable Purchase Order.

**G. Certain Information Not Confidential.** Confidential information does not include information that, at the time of disclosure:

1. Is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach, in whole or in part, of this Section 16.G. by the Receiving Party or any of its Representatives;



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2. Is or becomes available to the Receiving Party on a non-confidential basis from a third-party source without any breach, in whole or in part, and provided that such third party is not and was not prohibited from disclosing such confidential information;
3. Was known by, or in the possession of, the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party as evidenced by written documentation that predates the date of acceptance of the applicable Purchase Order;
4. Was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's confidential information and without any breach, in whole in part, of the applicable Purchase Order and as evidenced with written documentation that predates the date of acceptance of the applicable Purchase Order; or
5. Is required to be disclosed pursuant to applicable Law, provided that the Receiving Party will use its best efforts to obtain an order that the confidentiality of such information will be preserved and the Disclosing Party will first be given a reasonable Notice and an opportunity to obtain a protective order against disclosure thereof and, if a protective order is not obtained, the Receiving Party shall disclose only that portion of the information which is legally required to be disclosed.

**H. Liability for Breach by a Party's Representatives.** The Receiving Party shall be responsible for any breach, in whole or in part of this Section 16 caused by it or any of its Representatives.

**I. Tangible Property, Bailment, Tooling & Inventory.** The terms and conditions for this Section 16.I. are as expressly set forth in EXHIBIT 2.

### 17. Change Orders.

**A.** Except as otherwise provided herein, Seller shall promptly make any changes Buyer directs in writing with respect to the Goods (a "Change Order Request"), which may include, but is not limited to, changes in the design, drawings, Specifications, processing, inspection, testing, quality control, methods of packing and shipping or the date or place of delivery. Any changes pursuant to this Section 17(A) will not affect the Price or time for delivery of Goods unless, within ten (10) calendar days after the date of receipt of Buyer's Change Request by the Seller, Buyer receives from Seller a written response (a "Change Order Response") to the Buyer's Change Order Request, which shall contain a request for a Price adjustment ("Price Adjustment") and/or change to the delivery of Goods ("Delivery Adjustment") and shall include sufficient information and documentation regarding Seller's request for a Price Adjustment or Delivery Adjustment to allow Buyer to perform an audit and verify the Price Adjustment or Delivery Adjustment request. After auditing and verifying the need for a Price Adjustment and/or Delivery Adjustment as set forth in the Change Order Response, the Buyer will determine whether the Price Adjustment or Delivery Adjustment is warranted. Buyer will have the option, but not the obligation, to accept the Price Adjustment and/or Delivery Adjustment as set forth in the Change Order Response. If Buyer and Seller mutually agree to the Price Adjustment or Delivery Adjustment, the Parties shall document such agreement in an approved purchase order (the "Approved Change Order") executed by authorized Representatives of both Parties. Seller may increase the Prices and modify the delivery schedule of Goods only as expressly agreed to in the Approved Change Order. If Buyer's audit and verification results indicate that Seller's costs have or should have actually decreased, the Prices hereunder shall be deemed decreased on a per-unit basis to reflect the amount of any such cost savings. Nothing in this Section 17, including any disagreement with Buyer as to any adjustment in price or time for performance, will excuse Seller from continuing to perform its obligation in accordance with the terms and conditions expressly set forth in the applicable Purchase Order.

**B.** Seller shall not, without the prior written approval of Buyer, which may be given or withheld in Buyer's sole discretion, make any changes to the Goods or the terms and conditions of the Purchase Order, including changes related to, but not limited to: (i) the location at which Goods are manufactured; (ii) any subcontractors to Seller with respect to Goods; (iii) the processes or procedures used by Seller in the production of Goods; (iv) the composition, fit, form, function, appearance, performance and/or Backward Serviceability of Goods; or (v) the chemicals, raw materials or any components or ingredients used in



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production of Goods. If Seller learns of a possible change to the Goods that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall promptly provide Notice to Buyer of the possible change.

### 18. Insurance Requirements.

The terms and conditions for this Section 18 are as expressly set forth in EXHIBIT 3.

### 19. Term, Termination, Bankruptcy & Cooperation

**A. Term of Purchase Order.** The Term of the applicable Purchase Order commences on the date of acceptance pursuant to Section 2(I) and continues for a period of one (1) year thereafter, except as otherwise stated on the face of the applicable Purchase Order, unless: i) it is earlier terminated pursuant applicable Law; ii) it is terminated pursuant to a Termination Notice under this Section 19.A.; or (iii) the Term is extended or renewed pursuant to a mutual written agreement signed by authorized representatives of both parties.

#### B. Buyer's Right to Terminate for Convenience.

1. Buyer may, at its sole option, terminate all or any part of the applicable Purchase Order at any time and for any reason by giving written Notice to Seller (the "Termination Notice"). Termination for convenience will be effective on the later to occur of: (i) Seller's receipt of Buyer's Termination Notice; or (ii) such other later date (if any) set forth in such Termination Notice.

2. Seller's Termination Claim. Within thirty (30) calendar days after the effective date of termination set forth in Buyer's Termination Notice to Seller under Section 19.B.1, Seller may submit to Buyer a written Notice setting forth the following amounts, in sufficient detail and accompanied with sufficient written documentation to allow Buyer to audit such amounts (a "Termination Claim"). Seller's Termination Claim shall state the following: (i) purchase Price under the applicable Purchase Order for Goods finished as of the date of termination, not previously paid for by Buyer, that conform to the requirements and Specifications of applicable Purchase Order and were produced pursuant to the applicable Purchase Order, except for any such parts, materials or components that are in Seller's standard stock (i.e., "off-the-shelf parts") or are otherwise readily marketable, to be delivered to Buyer if requested, less amounts received or that could have been received by Seller for disposition or sale of any off-the-shelf parts not delivered to Buyer; and (ii) Seller's actual out-of-pocket costs for work-in-process (including reasonable overhead costs and excluding profit), and raw materials purchased by Seller as of the date of termination in furnishing Goods under applicable Purchase Order, to the extent such costs are reasonable in amount and are properly allocable or apportionable under GAAP to the terminated portion of the applicable Purchase Order and not in excess of quantities ordered by Buyer pursuant to the applicable Purchase Order (and any unfulfilled Releases).

3. If the Termination Claim is received by Buyer timely and Buyer verifies the costs set forth in the Termination Claim, Buyer shall pay to Seller the undisputed amount due with respect to the Termination Claim, less any amounts owed by Seller to Buyer within sixty (60) calendar days after Buyer's receipt of the Termination Claim. Any payment of a Termination Claim will not be deemed a waiver, in whole or in part, of any of Buyer's other rights or remedies arising under applicable Purchase Order or applicable Law.

4. A Termination Claim is Seller's sole remedy for termination of the applicable Purchase Order under this Section 19.B. Seller's failure to timely submit a Termination Claim shall be a bar to any future action on such Termination Claim. Buyer will make no payments for finished Goods, work-in-process or raw materials fabricated or procured by Seller in amounts in excess, or in addition to, those included in a Termination Claim.

5. Except as expressly provided in this Section 19.B, Buyer will not be liable for any of Seller's direct or indirect loss of anticipated profit, loss of revenue, diminution of value, unabsorbed overhead, interest on Goods, product development and engineering costs, facilities and Equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative charges.



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**C. Buyer's Right to Terminate for Cause.** Buyer may terminate the applicable Purchase Order for cause by providing written Notice to Seller if: (i) Seller repudiates, or threatens to repudiate, any of its obligations under the applicable Purchase Order; (ii) Seller is in breach of, or threatens to breach, any representation, warranty or covenant of Seller under the applicable Purchase Order and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within a commercially reasonable period (the "Cure Period") of time under the circumstances. In no case shall the Cure Period exceed fourteen (14) calendar days after Seller's receipt of Buyer's written Notice of such breach, except in the event the Parties mutually agree in writing to extend the duration of the Cure Period; (iii) Seller fails to, or threatens not to, timely deliver Goods conforming to the requirements of and/or Specifications of the applicable Purchase Order or is otherwise in not compliance with applicable Purchase Order; (iv) Seller fails to provide Buyer, within a commercially reasonable time after Buyer's written request (but in no case exceeding thirty (30) calendar days after such written request) with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under the applicable Purchase Order; (v) Seller takes any action, or fails to take any action, required under the applicable Purchase Order or any other agreement between the Parties, or as reasonably requested by Buyer, the result of which is any imminent interruption or delay, or the threat of an imminent interruption or delay, in any production at any of Buyer's manufacturing facilities; (vi) Seller sells, leases or exchanges a material portion of Seller's assets; Seller merges or consolidates with or into another Person; or a change in Control of Seller occurs that Buyer reasonably believes may have a material impact on Seller's ability to perform its obligations in accordance with the applicable Purchase Order. For the purposes of this Section 19, a change in Control of Seller includes, but is not limited to: (a) the sale or exchange of more than twenty percent (20%) of Seller's stock or other ownership interest (or of such other amount as would result in a change of Control of Seller), or the entrance into an agreement regarding the same; (b) the execution of a voting or other agreement providing a Person or entity with Control of Seller or Control of more than twenty percent (20%) of Seller's stock or other ownership interest (or of such other amount as would result in a change of Control of Seller); (vii) Seller fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support; (viii) There occurs any other event that constitutes grounds for termination set forth in any other sections of the applicable Purchase Order, including these AGI Terms and Conditions; or (ix) Seller violates, or threatens to violate, any applicable Law and Buyer reasonably believes that Seller's violation or threatened violation of the Law may have a material impact on Seller's ability to perform its obligations in accordance the applicable Purchase Order.

1. Subject to Seller's right to cure under Section 19.C., any termination under Section 19 will be effective upon Seller's receipt of Buyer's written Notice of termination or such later date (if any) set forth in such termination Notice. Upon the occurrence of any of the events described under this Section 19. Buyer may, in addition to any of its other rights under the applicable Purchase Order or applicable Law, immediately suspend its performance under all or any part of the applicable Purchase Order, without any liability of Buyer to Seller. Notwithstanding anything to the contrary contained in the applicable Purchase Order, Buyer may, at its election, also recover any and all damages (including any costs to Buyer of obtaining substitute Goods), costs (including attorneys' and other professionals' fees and costs), expenses and losses incurred by Buyer as a result of any event described in this Section 19.C..

**D. Seller's Right to Terminate for Cause.** Seller may terminate the applicable Purchase Order by providing written Notice to Buyer if: (i) Buyer is in breach of any representation, warranty, obligation or covenant of Buyer under the applicable Purchase Order, and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within a commercially reasonable period of time (in no case exceeding ten (10) calendar days) after Buyer's receipt of Seller's written Notice of such breach; or (ii) any termination under this Section 19.D. will be effective thirty (30) calendar days after the date of Buyer's receipt of Seller's written Termination Notice.

**E. Bankruptcy.** Either party shall have the right to terminate all of part of an Purchase Order if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes, or seeks to make, a general assignment for the benefit of its creditors; or (iv) applies for, or has appointed, a receiver, trustee, custodian or similar agent appointed by an order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.



## PRODUCTION PURCHASE ORDER TERMS AND CONDITIONS

### F. Effect of Termination or Expiration.

1. Immediately upon the effective date of termination or upon expiration of the Term of the applicable Purchase Order, Seller shall, unless otherwise directed by Buyer in writing, and subject to Seller's obligation to provide resourcing cooperation under Section 19.G.: (a) Promptly terminate all performance under the applicable Purchase Order and under any outstanding Purchase Orders; (b) Transfer title and deliver to Buyer all finished Goods completed prior to effective date of termination; and (c) Return to Buyer all Bailed Property, confidential information and any other property furnished by or belonging to Buyer or its Affiliates or any of Buyer's customers, or dispose of such Bailed Property or other property in accordance with Buyer's written instructions (provided that Buyer will reimburse Seller for the actual, reasonable costs associated with such disposal).
2. Termination or expiration of the Term will not affect any rights or obligations of the Parties that: (a) Come into effect upon or after termination or expiration of the applicable Purchase Order; or (b) Otherwise survive the expiration or earlier termination of the applicable Purchase Order pursuant to Section 21.D. and were incurred by the Parties prior to such expiration or earlier termination.
3. Upon termination or expiration of the applicable Purchase Order, each Party shall: (a) Return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other Party's confidential information; (b) Permanently delete and erase all of the other Party's confidential information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems ("Retained Copies"), provided that such Retained Copies are maintained in complete compliance with the terms and conditions set forth in the Nondisclosure Agreement or Section 16 (whichever is applicable under the circumstances) for so long as such Retained Copies are in the care, custody or control of a Party. Each Party shall destroy any such Retained Copies in accordance with its written policies regarding disaster recovery and/or information technology backup systems; and (c) Upon the written request of a Party, certify in writing to such other Party that it has complied with the requirements of this Section 19.F.3.
4. Termination of the applicable Purchase Order will not constitute a waiver of any of either Party's rights or remedies under the applicable Purchase Order, at Law, in equity or otherwise.

**G. Resourcing Cooperation After AGI Purchase Order Termination or Expiration.** Upon the expiration or earlier termination of the applicable Purchase Order for any reason, to the extent requested by Buyer in writing, Seller will, at Buyer's reasonable cost and expense, take the following actions and any such other actions as may be reasonably required by Buyer to transition production of Goods from Seller to an alternative seller without production disruptions:

1. Seller shall manufacture, deliver and sell to Buyer a sufficient inventory bank (the "Inventory Bank") of Goods to ensure that the transition will proceed smoothly and without interruption or delay to Buyer Parties with pricing equivalent to the pricing in effect immediately before expiration or termination;
2. In the event the Purchase Order is terminated by Buyer, for any non-standard (i.e., not "off-the-shelf") Goods, Seller shall promptly: (a) Provide to Buyer all reasonably requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, Tooling and process detail and samples of supplies and components; and (b) Upon written request from Buyer, assign to Buyer or an alternative seller any or all supply contracts or orders for raw materials or components relating to the applicable Order and any outstanding Purchase Orders.
3. Seller shall sell to Buyer, at Seller's actual cost, any or all work-in-process, partially completed Goods and any raw-materials inventory relating to the applicable Purchase Order and any outstanding Purchase Orders;
4. Sell to Buyer any or all finished Goods; and
5. Provide all Notices necessary or desirable for Buyer to resource the applicable Order to an alternative supplier.





## PRODUCTION PURCHASE ORDER TERMS AND CONDITIONS

### 20. Rights of Entry; Reclamation and Inspection.

Buyer shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times following Seller's receipt of a written or electronic mail (email) request, to inspect the facility, Goods, materials and any property of Buyer covered by each applicable Purchase Order. Without the necessity of a court order, Buyer may enter upon Seller's property and remove property belonging to Buyer or any customer of Buyer, including, without limitation, Buyer's Bailed Property and other assets, inventory or seller's property that has been or is agreed to be sold to Buyer under the applicable Purchase Order. Buyer's inspection of the Goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Goods.

### 21. Miscellaneous.

**A. Further Assurances.** Upon a Party's reasonable request, the other Party shall, at its sole cost and expense, promptly execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to the applicable Purchase Order.

**B. Relationship of the Parties.** The relationship between Seller and Buyer is solely that of vendor and vendee, and Buyer and Seller are independent contracting parties. Nothing in this Purchase Order creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

**C. Entire Agreement.** The applicable Purchase Order, including and together with all related Exhibits, schedules and the applicable AGI Terms and Conditions that are incorporated into and are a part of each and every applicable Purchase Order, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

**D. Survival.** Subject to the limitations and other provisions of the applicable Purchase Order: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of the applicable Purchase Order; and (b) Sections 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18, 19, and 21 of the applicable Purchase Order, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of the applicable Purchase Order. All other provisions of the applicable Purchase Order will not survive the expiration or earlier termination of the applicable Purchase Order.

**E. Notices.** All Notices, requests, consents, Claims, demands, waivers and other communications under the applicable Purchase Order must be in writing. Notices shall be addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time-to-time in accordance with this Section 21.E. All Notices must be sent by personal delivery, nationally recognized overnight courier or certified or registered US mail (in each case, return receipt requested, postage prepaid). Notwithstanding the foregoing, solely for the purposes of Section 9, Notice by facsimile, supplier portal or e-mail (with confirmation of transmission) will satisfy the requirements of this Section 21(E). Notices regarding Defective Goods, Nonconforming Goods and/or Product Warranty Claims may alternatively be addressed and submitted in accordance with procedures mutually established by the Parties from time-to-time or as otherwise set forth in this Purchase Order. Except as otherwise provided in the applicable Order, a properly addressed Notice is effective on: (a) receipt by the receiving Party; or (b) the third (3rd) Business Day after depositing in the US mail. Notices to Seller shall be delivered to Seller's address listed on the Purchase Order. Notices to Buyer shall be delivered to Buyer at the following address: Advanced Green Innovations, LLC, 7030 West Oakland Street, Suite 103, Chandler, Arizona 85226 c/o John Madrigal, Chief Operating Officer, Facsimile (602)-513-7499, E-mail [john.madrigal@agigreentech.com](mailto:john.madrigal@agigreentech.com).



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**F. Interpretation.** For purposes of the applicable Purchase Order: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to the applicable Purchase Order as a whole; (d) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (e) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (f) words denoting any gender include all genders. Unless the context otherwise requires, references in these AGI Terms and Conditions to: (a) to sections, Exhibits, schedules, attachments and appendices mean the sections of, and Exhibits, schedules, attachments and appendices attached to the applicable Purchase Order or outstanding Purchase Orders; (b) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time-to-time to the extent permitted by the provisions thereof; and (c) to a statute means such statute as amended from time-to-time and includes any successor legislation thereto and any regulations promulgated thereunder. The Exhibits, schedules, attachments and appendices referred to herein are an integral part of this the applicable Purchase Order to the same extent as if they were set forth verbatim herein.

**G. Headings.** The headings in the applicable Purchase Order and these AGI Terms and Conditions are for reference only and do not affect the interpretation of this Purchase Order.

**H. Severability.** If any term or provision of any applicable Purchase Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of the applicable Purchase Order or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the court may modify the applicable Purchase Order to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**I. Amendment and Modification.** Except for Change Orders under Section 17, no amendment, alteration or modification of the applicable Purchase Order is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of the applicable Purchase Order and signed by an authorized Representative of each Party.

### **J. Waiver.**

1. No waiver under the applicable Purchase Order is effective unless it is in writing and signed by an authorized Representative of the Party waiving its right;
2. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion;
3. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from the applicable Purchase Order: (i) Any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under the applicable Purchase Order; or (ii) Any act, omission or course of dealing between the Parties.

**K. Cumulative Remedies.** All rights and remedies provided in the applicable Purchase Order are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at Law, in equity, by statute, in any other agreement between the Parties or otherwise.

**L. Equitable Remedies.** Seller acknowledges and agrees that: (a) a breach or threatened breach by Seller of any of its obligations under the applicable Purchase Order would give rise to irreparable harm to Buyer for which monetary damages would not be an adequate remedy; and (b) in the event of a breach or a threatened breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to Buyer at Law, in equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an



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adequate remedy. Seller agrees that Seller will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this [Section 21.L](#).

**M. Assignment.** Seller may not assign any of its rights or delegate any of its obligations under the applicable Purchase Order without the prior written approval of Buyer. Buyer may assign any of its rights or delegate any of its obligations to any Affiliate or to any Person acquiring all or substantially all of Buyer's assets. Any purported assignment or delegation in violation of this [Section 21.M](#) is void and unenforceable. No partial assignment or delegation relieves the assigning or delegating Party of any of its obligations under the applicable Purchase Order.

**N. Successors and Assigns.** The applicable Purchase Order is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

**O. No Third-Party Beneficiaries.** Except as expressly set forth in the second sentence of this [Section 21.O](#), the applicable Purchase Order benefits solely the Parties named in the applicable Purchase Order and their respective permitted successors and permitted assigns and nothing in the applicable Purchase Order, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the applicable Purchase Order. The Parties hereby designate: (a) each Indemnified Party as a third-party beneficiary of [Section 11](#); (b) each Buyer Party, any end-users, Buyer's distributors and franchisees and all other Persons authorized to install, de-install, repair, maintain, sell, license, transfer, assign, supply and/or distribute the Goods pursuant to contracts with each of the Buyer Parties as third-party beneficiaries of [Section 6](#); and (c) each Buyer Party as a third-party beneficiary of [Section 12\(F\)](#). Each third-party beneficiary named under this [Section 21.O](#) shall have the right to enforce the applicable sections of the applicable Purchase Order on their own behalf.

**P. Dispute Resolution.** Any dispute, controversy, Claim or Action arising out of or relating to the applicable Purchase Order, or the breach, termination or invalidity hereof (each, a "[Dispute](#)"), shall be submitted for negotiation and resolution to the President of Seller (or to such other Person of equivalent or superior position designated by Seller in a written Notice to Buyer) and the Chief Operating Officer of Buyer (or to such other Person of equivalent or superior position designated by Buyer in a written Notice to Seller), by delivery of written Notice (each, a "[Dispute Notice](#)") from either of the Parties to the other Party. Such Persons shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve any Dispute within thirty (30) calendar days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of [Section 21.Q](#), [Section 21.R](#), and [Section 21.S](#), hereunder.

**Q. Governing Law.** Each Purchase Order, and all matters arising out of or relating to the applicable Purchase Order, are governed by, and construed in accordance with, the Laws of the State of Arizona. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to any Purchase Order.

**R. Choice of Forum.** Each Party irrevocably and unconditionally agrees that it shall not commence any Action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to any applicable Purchase Order and all contemplated transactions, in any forum other than the United States District Court for the District of Arizona, Phoenix Division or, if such court does not have subject matter jurisdiction the courts of the State of Arizona sitting in Phoenix, Maricopa County, and any appellate court from any thereof. Each Party agrees that a final judgment in any such Action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

**S. Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy that may arise under any Order is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal Action arising out of or relating to the applicable Purchase Order, or the transactions contemplated hereby.



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**T. Counterparts.** An Purchase Order may be executed and/or acknowledged in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same Purchase Order. Additionally, for purposes of facilitating the execution of each Purchase Order: (a) the signature or acknowledgement pages taken from separate individually executed or acknowledged counterparts of the applicable Purchase Order may be combined to form multiple fully executed or acknowledged counterparts; and (b) signature pages transmitted via facsimile, email, PDF or similar electronic file shall be deemed to be an original signature or acknowledgement for all purposes.

**U. Force Majeure.** Any delay or failure of either Party to perform its obligations under the applicable Purchase Order will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars or acts of terrorism) (each, a "Force Majeure Event"). Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or supplier actions, labor disputes, strikes, lockouts or contract disputes will not excuse performance by Seller under this Section 21.U. and shall not be deemed a Force Majeure Event. Seller shall give Buyer prompt written Notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Seller shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and mitigated, and resume full performance under the applicable Order as soon as possible. During any Force Majeure Event, Buyer may, at its sole option: (i) Purchase Goods from other sources without liability to Seller (and all such Goods will be deemed to be Goods purchased under the applicable Purchase Order for purposes of satisfying any quantity requirements applicable to Buyer hereunder), and may require Seller to reimburse Buyer for any additional costs to Buyer of obtaining the substitute Goods compared to the Prices for such Goods under the applicable Purchase Order; (ii) Require Seller to deliver to Buyer all finished Goods, work in process or parts and materials produced or acquired for work under the applicable Purchase Order; or (iii) Require Seller to provide Goods from other sources in quantities and at a time requested by Buyer and at the Prices for the Goods hereunder. If requested by Buyer, Seller shall, within three (3) calendar days of such request, provide adequate assurances that a Force Majeure Event will not exceed ten (10) calendar days. If the delay lasts more than such ten (10) calendar-day period, or if Seller does not provide such adequate assurances, Buyer may immediately terminate the applicable Purchase Order without any liability to Seller. The rights granted to Seller with respect to excused delays under this Section 21.U. are intended to limit Seller's rights under theories of force majeure, commercial impracticability, impracticability or impossibility of performance, or failure of presupposed conditions or otherwise, including any rights arising under Section 2-615 or 2-616 of the UCC.

**V. Non-Business Days.** Except as otherwise stated herein, whenever a date or deadline for any action to be taken under the applicable Purchase Order (other than dates and deadlines for delivery to a Delivery Location, with respect to which time is of the essence) is not a Business Day, the relevant date or deadline shall be the next Business Day thereafter.

**W. No Public Announcements or Trademark Use.** Neither Party shall make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding the subject matter of the applicable Purchase Order, the other Party or its business unless: (a) It has received the prior express written approval of the other Party; or it is required to do so by Law; or (b) Use any of the other Party's Trademarks without the prior written approval of the other Party, which may be withheld in the other Party's sole discretion.

## 22. Labor Disputes.

Seller shall notify Buyer in writing of any actual or potential labor dispute delaying or threatening to delay timely performance of the applicable Purchase Order. Seller shall notify Buyer in writing six (6) months in advance of the expiration of any current labor contracts that may have an impact or effect on the applicable Purchase Order. Seller shall deliver a supply of finished Goods at least thirty (30) days prior to the expiration of any such labor contract, in quantities and for storage at sites designated by Seller and approved in writing by Buyer.



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### EXHIBIT 1 - DEFINITIONS

The capitalized terms set forth in this EXHIBIT 1 are made a part the AGI Terms and Conditions.

1. "Action" means any Claim, action, cause of action, demand, lawsuit, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise related to or associated with the applicable Purchase Order.
2. "Affiliates" of Buyer or Seller means any "Person" that directly or indirectly, through one or more intermediaries, "Controls", is "Controlled by", or is under common Control with Buyer or Seller.
3. "Backward Serviceability" means with respect to a Good that has been modified, altered or changed in any manner, that such modified, changed or altered Good can be used in or with any or all previous applications or products of AGI, i.e., the parts are interchangeable. Modifications, alterations or changes to a Good that prevents its use in or with or cannot be used in or with any or all previous applications or products of AGI are not, and shall not be deemed, backward serviceable.
4. "Business Day" or "Business Days" mean any day except Saturday, Sunday and any other day on which commercial banks located in Phoenix, Arizona are authorized or required by Law to be closed for business.
5. "Buyer Contracts" means all contracts or agreements to which Buyer and/or its Affiliates is/are a party or to which any of its material assets are bound.
6. "Buyer Parties" means Buyer, its Affiliates, customers, franchisees, distributors, contractors, subcontractors, agents and successors and assigns, and each of their respective "Representatives".
7. "Buyer Technology" means all "Technology" (as defined herein) owned, conceived, created, developed, used, licensed or first reduced to practice by Buyer or its Affiliates and all Derivatives that flow from that Technology, regardless of when created or reduced to practice. Buyer Technology, includes, but is not limited to, all samples, drawings, prints, designs, parts, equipment, components and prototypes disclosed, provided or supplied by Buyer to Seller.
8. "Claim" or "Claims" means any written notice of any dispute between the parties, or a third party and/or any Action, or potential for such action related to or associated with the applicable Purchase Order.
9. "Control" (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to Buyer or Seller, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of Buyer or Seller, whether through the ownership of voting securities, by contract, or otherwise.
10. "Defective" means not confirming to the warranties in Section 6 and/or other warranties expressly stated in the applicable Purchase Order.
11. "Defective Goods" means Goods shipped by Seller to Buyer pursuant to the applicable Purchase Order that are Defective.
12. "Delivery Location" means the street address for delivery of the Goods specified in the applicable Purchase Order.
13. "Derivatives" mean any modification, improvement, enhancement, alteration, translation or adaptation of an existing work and any work that would be deemed a derivative work under the Copyright Act, Title 17 of the U.S. Code, as amended, and all Intellectual Property Rights related to any of the foregoing.
14. "Encumbrance" or "Encumbrances" mean any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.



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15. "Governmental Authority" means any United States federal, state or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any court or tribunal of competent jurisdiction.

16. "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (a) Patents (including any application, registration, extension, reexamination, reissue, continuation, continuation-in-part or renewal patents); (b) Trademarks (including any applications, registrations and the goodwill associated therewith); (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights (including any application, registration or renewal thereof) and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; and (f) all industrial and other intellectual property rights of any nature, trade dress, droit moral, or foreign equivalents of any of the foregoing, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction in any part of the world.

17. "Law" or "Laws" mean laws of the State of Arizona, without regard to the conflict of law provisions thereof, except as preempted by Federal law as codified in the United States Code or as otherwise required by rule, order, regulation or law of any government authority of competent jurisdiction.

18. "Nonconforming Goods" means any Goods received by Buyer from Seller that either: (a) do not conform to the make/model number/UPC/SKU listed in the applicable Purchase Order; (b) do not fully conform to the Specifications; (c) Buyer determines are Defective; or (d) exceed the quantity of Goods ordered by Buyer pursuant to in connection with the applicable Purchase Order.

19. "Notice" means any and all notices, requests, consents, claims, demands, waivers and other communications under the applicable Purchase Order that must be submitted or issued in writing.

20. "Patents" means all patents (including all provisionals, non-provisionals, reissues, divisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models) and any improvements.

21. "Permits" means permits, licenses, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from any Governmental Authority.

22. "Person" or "Persons" mean any individual, sole proprietor, partnership, corporation, company, trust, limited liability company, unincorporated organization, institution, association, Governmental Authority or any other entity or business.

23. "Price" means the price for the Goods set forth on the applicable Purchase Order ("Price" or "Prices"). All Prices include, and Seller is solely responsible for, all costs and expenses relating to packing, crating, boxing, loading, customs, "Taxes", tariffs and duties, insurance and any other similar financial contributions or obligations relating to the production, manufacture, sale and delivery of the Goods to the Delivery Location. All Prices are firm and are not subject to increase for any reason, except as otherwise expressly provided in the Purchase Order, including changes in market conditions, increases in raw material, component, labor or overhead costs or because of labor disruptions, changes in program timing or length, or fluctuations in production volumes.

24. "Release" or "Releases" mean a document issued by Buyer to Seller pursuant to any Order that identifies (to the extent not specified in the original Order) the quantities of Goods constituting Buyer's requirements or otherwise to be included in a particular Purchase Order for such Goods.

25. "Representatives" of a Party means a Party's officers, directors, managers, executives, partners, members, employees, agents, shareholders, attorneys, successors and permitted assigns.



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26. "Seller Technology" means all "Technology" (as defined below) related to the Seller's manufacture and sale of Goods pursuant to the Purchase Order that are owned, conceived, created, developed, licensed, used or first reduced to practice by Seller, that (a) is used in, on, integrated with, embedded in and/or incorporated into any Goods, and/or (b) is necessary or reasonably useful to Buyer's use, commercialization, sale, licensing, transfer, manufacture or distribution of the Goods.

27. "Specifications" means the specifications for the Goods and includes, but is not limited to, attributes, characteristics, features, components, dimensions, measurements, requirements, rates, appearance, apparatus, functions, materials, details and criteria provided by Buyer to Seller in connection with or relating to the Goods.

28. "Taxes" means any and all present and future sales, income, stamp and other taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld or assessed by any Governmental Authority, together with any interest or penalties imposed thereon.

29. "Technology" means all Intellectual Property Rights, discoveries, innovations, know-how, works of authorship, inventions, and Derivatives of or to the foregoing, whether patentable or not.

30. "Third-Party Technology" means any third party Technology, and all Intellectual Property Rights in and to that Technology, that Seller uses, incorporates, includes and/or integrated into the Goods and/or delivers with any of the Goods.

31. "Tooling" means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Seller unique to the manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto.

32. "Trademarks" means all rights in and to US and foreign trademarks, service marks, trade names, brand names, logos, symbols, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

33. "Trade Secrets" means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein.



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### EXHIBIT 2 - TANGIBLE PROPERTY, BAILMENT, TOOLING AND INVENTORY

The terms and conditions set forth in this EXHIBIT 2 are attached to, incorporated in full into and made a part of the AGI Terms and Conditions.

#### 1. Bailment.

A. All equipment, machinery and other tangible property (including all attachments, components, parts (including spare parts) and accessories installed thereon or affixed thereto) of every description (referred to collectively as "Equipment"), including, but not limited to, supplies, materials, Tooling, returnable or reusable packing or pods, drawings, photographic negatives and positives, artwork, copy layout, electronic data and other items (including any additions to, substitutions for, replacements of and accessions to any of the foregoing items), furnished by Buyer or Buyer's Affiliates either directly or indirectly, to Seller or to any supplier to Seller in connection with or related to the applicable Purchase Order, or for which Seller has been at least partially reimbursed by Buyer (collectively, "Bailed Property"), is and will at all times remain, the property of Buyer (or Buyer's customers, as applicable) and be held by Seller on a bailment-at-will basis. Buyer's Bailed Property shall be marked as property of Buyer and an inventory list maintained by Seller, available at the time of PPAP, and thereafter upon Buyer's request.

B. Only Buyer has any right, title or interest in and to Bailed Property, except for Seller's limited right, subject to Buyer's sole discretion, to use the Bailed Property in the performance of Seller's obligations under the applicable Purchase Order. Seller shall not use the Bailed Property for any other purpose. Seller shall not commingle Bailed Property with the property of Seller or with that of a Person other than Buyer or Seller and shall not move any Bailed Property from Seller's premises without the prior written approval by Buyer. Buyer may, at any time, for any reason and without payment of any kind, retake possession of any Bailed Property without the necessity of payment or Notice to Seller, or a hearing or a court order, which rights, if any, are waived in full by Seller. Upon Buyer's request, Bailed Property will be immediately released to Buyer or delivered to Buyer by Seller. Seller's continued holding of Bailed Property after demand has been made by Buyer for delivery will substantially impair the value thereof, and, accordingly, Buyer will be entitled to a court order of possession without any need or proving damages or a bond. To the fullest extent permitted by Law, Seller shall not allow any Encumbrance to be imposed on or attach to the Bailed Property through Seller or as a result of Seller's action or inaction, and Seller hereby waives any Encumbrance that it may have or acquire in the Bailed Property.

C. Seller acknowledges and agrees that: (i) Buyer is neither the manufacturer of the Bailed Property nor the manufacturer's agent; (ii) Buyer is bailing Bailed Property to Seller solely for the purpose of completing its obligations under the applicable Purchase Order; (iii) Seller has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its intended purposes, of which Seller is aware; and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Notwithstanding the foregoing, if the bailment relationship is deemed to be a secured financing transaction, Seller grants to Buyer a continuing security interest in any rights or interests it may have in the Bailed Property.

#### 2. Tooling Orders.

Seller may not charge Buyer for the cost of manufacturing or procuring any Tooling or other materials used in the production and sale of the Goods unless Buyer agrees in writing to reimburse Seller for Seller's actual reasonable costs of manufacturing or procuring such Tooling or other materials (a "Reimbursement Authorization"). Payment for such Tooling or materials will be due only after: (a) Seller has successfully completed all PPAP requirements by Buyer, which will be conducted at Seller's sole cost and expense; and (b) Seller has provided to Buyer detailed invoices documenting the actual costs incurred by Seller for such Tooling or materials, including copies of any invoice issued to Seller by any third party with respect thereto, and other any other information reasonably requested by Buyer with respect to such Tooling or materials (which may include CAD models and drawings). Buyer shall pay Seller only the actual cost of such Tooling or materials, not to exceed the authorized amount, if any, stated in the applicable Reimbursement Authorization. Such Tooling or other materials that are subject to a Reimbursement Authorization provided by Buyer will become Bailed Property (and title thereto will vest in full in Buyer) immediately upon completion of all testing required by





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Buyer (provided that Buyer will not be relieved of its obligation to pay for such Tooling or materials in accordance with the terms of the applicable Purchase Order) or, if earlier, any payment by Buyer to Seller therefor. Any payments made by Buyer for Bailed Property are expressly intended by Buyer to be held in trust for the benefit of any contractors, subcontractors or suppliers used by Seller to fabricate the Bailed Property that relate to such payments; and Seller agrees to hold such payments as trustee in express trust for such contractors, subcontractors or suppliers until Seller has paid the subcontractors or suppliers in full for the Bailed Property. Buyer will not pay for any Tooling necessary for the production of sample products unless otherwise provided in the applicable Reimbursement Authorization.

### 3. Maintenance; Risk of Loss.

Seller shall bear all risk of loss of, and damage to, Bailed Property. Seller shall, at its own expense, for the benefit of Buyer, insure all Bailed Property with full and extended coverage for all losses, for its full replacement value, in accordance with the terms of Section 18. When it is commercially reasonable to do so, Seller shall, at its sole cost and expense, maintain, repair, refurbish and replace Bailed Property. All replacement parts, additions, improvements and accessories for such Bailed Property will automatically become Buyer's property upon their incorporation into or attachment to the Bailed Property. All replacements of Bailed Property will also be Buyer's property. Seller shall replace any missing components of or inserts to any Bailed Property.

### 4. Inventory.

Seller will maintain a written inventory of all Bailed Property that sets forth a description and the location of all Bailed Property, and provide a copy of this inventory to Buyer upon request. Seller shall mark all Bailed Property permanently and conspicuously to identify it as the property of Buyer, and indicate Buyer's name and address. Seller shall immediately sign any documents reasonably requested by Buyer to evidence all of Buyer's rights to and interests in Bailed Property. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any documents with respect to Bailed Property that Buyer determines are reasonably necessary to reflect Buyer's interest in the Bailed Property.



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### EXHIBIT 3 - INSURANCE REQUIREMENTS

The terms and conditions set forth in this EXHIBIT 3 are attached to, incorporated in full into and made a part of the AGI Terms and Conditions.

During the Term of applicable Purchase Order, and for three (3) years after the termination or expiration of the Purchase Order, whichever occurs first, Seller shall, at its own expense, procure, maintain and carry in full force and effect, appropriate levels of self-insurance indicated as follows:

(a) commercial general liability insurance (including product liability) in a sum no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate;

(b) all-risk property insurance covering Bailed Property and all of Seller's Property, including Equipment, for its full replacement value; and

(c) commercial umbrella liability insurance in excess of the insurance coverage described above with a minimum combined limit as follows:

(i) annual gross sales to AGI up to twenty-five million dollars (\$25,000,000) will require a five million dollar (\$5,000,000) limit per occurrence;

(ii) annual gross sales to AGI over twenty-five million dollars (\$25,000,000) up to fifty million dollars (\$50,000,000) will require a ten million dollar (\$10,000,000) limit per occurrence;

(iii) annual gross sales to AGI over fifty million dollars (\$50,000,000) up to one hundred million dollars (\$100,000,000) will require a twenty-five million dollar (\$25,000,000) limit per occurrence; and

(iv) annual gross sales to AGI over one hundred million dollars (\$100,000,000) will require a fifty million dollar (\$50,000,000) limit per occurrence.

All insurance required pursuant to Section 18 and this Exhibit 3 shall be only with insurers having an A.M. Best rating of A-VII or higher. Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage specified in Section 18 and this Exhibit 3. The certificate of insurance (and the policies set forth on such certificate) shall name Buyer as an additional insured and loss payee. Seller will provide a copy of the additional insured language to Buyer for approval. Seller's insurance policies shall be primary and non-contributor with respect to the additional insured. Seller shall provide Buyer with thirty (30) calendar days' advance written Notice in the event of a cancellation or material change in such insurance policies. Seller waives, and Seller shall cause its insurers to waive, any right of subrogation or other recovery against Buyer, its Affiliates and their insurers. Buyer reserves the right to change, update, modify and/or revise the insurance requirements, types, amounts and coverage required pursuant to its sole discretion from time to time. Deductibles and retentions in excess of twenty-five thousand dollars (\$25,000) require the prior written approval of an authorized representative of Buyer.

### End of Terms and Conditions.