

**CREE FAYETTEVILLE, INC.**  
**STANDARD TERMS AND CONDITIONS**

**1. INTRODUCTION**

These terms and conditions set forth herein (the “**Terms and Conditions**”) shall apply, automatically and without any further act or deed, to any sale or supplying of goods and/or services and to any courtesy product samples provided by CREE FAYETTEVILLE, INC., formerly Arkansas Power Electronics International, Inc. (hereinafter, “**Seller**”). Any Person to whom Seller makes an offer of sale, or any Person purchasing goods and/or services, or any Person receiving product samples from Seller shall be bound by the Terms and Conditions herein (such Person being the “**Buyer**”). Seller and Buyer are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**”. For purposes of these Terms and Conditions, “**Person**” shall mean and refer to an individual, partnership, corporation, limited liability company, trust, unincorporated organization, association, joint venture or a government or agency or political subdivision thereof, joint stock company, or informal organization, or any other entity of any kind whatsoever.

**2. CONSTRUCTION AND LEGAL EFFECT**

These Terms and Conditions constitute the entire and sole agreement between Seller and Buyer in connection with any offer, sale or supplying of Seller’s goods and/or services, except to the extent that another written agreement governing the purchase of such goods and/or services has been duly executed by authorized representatives of Seller and Buyer and specifically states that it supersedes these Terms and Conditions to the express extent set forth therein (such other agreement being the “**Special Agreement**”). The terms of such Special Agreement will prevail only to the limited extent that such Special Agreement conflicts with these Terms and Conditions, unless expressly stated otherwise in the Special Agreement.

**3. OFFERS**

Any quotation, bid or proposal for goods and/or services made by Seller to Buyer (“**Offer**”) shall be valid for a period of thirty (30) calendar days from the date of such Offer, unless Seller states in writing otherwise (the “**Offer Validity Period**”). Notwithstanding the immediately preceding sentence, until accepted in writing by Buyer within the Offer Validity Period, Seller reserves the right, exercisable in its sole discretion, to withdraw and/or modify its Offer with or without notice to Buyer at any time for any or no reason.

**4. ACCEPTANCE AND PRECEDENCE OF TERMS**

Any purchase order or similar instrument of Buyer issued to Seller (“**Order**”) is subject to acceptance by Seller and strictly limited to and conditioned upon the Terms and Conditions set forth herein. The Terms and Conditions herein apply to all Offers made, and all Orders accepted, by Seller. Unless otherwise agreed in writing by a duly authorized representative of Seller, Seller rejects, objects to, and is not bound by, any terms or conditions of any Order to the extent that it differs from, adds to, or otherwise modifies these Terms and Conditions herein. Seller’s failure to object to any terms and conditions or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer’s Order and any changes or amendments thereto, does not waive any of the Terms and Conditions specified herein. Unless Seller agrees otherwise in writing, Buyer’s issuance of an Order in response to Seller’s Offer shall conclusively evidence Buyer’s unconditional acceptance of these Terms and Conditions irrespective of any different terms and conditions Buyer may offer or include in its Order. These Terms and Conditions shall supersede, control and prevail over any Buyer Order, communication, other writing, course of dealing, usage of trade or other conduct that is different, in addition to, or in conflict with the Terms and Conditions herein and notice of objection and rejection of same is hereby given by Seller. No waiver, alteration or modification of these Terms and Conditions shall be binding upon

Seller unless made in writing and signed by a duly authorized representative of Seller. The Terms and Conditions herein shall be applicable whether or not they are attached to or enclosed with the goods and/or services sold or to be sold hereunder.

## **5. PRICING AND TAXES**

All Seller quoted prices are in U.S. dollars and based on the current exchange rates, tariffs and costs of manufacture. Seller quoted prices do not include any shipping and handling costs, insurance costs, set up costs, city, state, or federal excise taxes, including without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, value-added, and similar taxes, fees or other charges imposed by governmental entities. When applicable, taxes will be added to the invoice as a separate charge to be paid by Buyer, regardless of whether such taxes are specifically identified, stated or referred to in any Offer, Order or other instrument. If an exemption from a tax is claimed by Buyer, valid supporting documents shall be furnished by Buyer to Seller prior to delivery. Seller reserves the right to require Buyer to provide Seller its United Parcel Service ("UPS"), Federal Express ("FedEx") or other courier shipping account number prior to accepting an Order or shipping Buyer's Order. Seller shall not be liable for any damages whatsoever caused by Buyer's delay or refusal to provide such shipping account number upon Seller's request. All Seller prices are subject to correction for typographical or clerical errors.

## **6. PAYMENT TERMS**

Subject to Seller approval of Buyer's credit and unless otherwise agreed to by Seller in writing, in Seller's sole and absolute discretion, all payments for domestic orders shall be due thirty (30) days from the date of Seller's invoice. Unless otherwise agreed in writing by a duly authorized representative of Seller, payment terms for international Orders shall be either in cash in advance by wire transfer, or by an irrevocable standby letter of credit issued by a financial institution acceptable to Seller and confirmed by Seller's bank. All amounts due to Seller but not paid by Buyer on the due date shall accrue interest payable at a rate equal to the lesser of (a) one and one-half percent (1.5%) of the outstanding balance per month, or (b) the maximum interest rate permitted under applicable law. Interest accrues on past due amounts as of the date on which such amounts become due until the date Seller receives payment from Buyer. All payments shall be in U.S. dollars. Buyer shall also be liable to Seller for any expenses incidental to collection of past due amounts, including reasonable attorneys' fees and court costs.

## **7. SHIPPING TERMS, TITLE, AND RISK OF LOSS**

Delivery and lead times are approximate and are based on Seller's expectations regarding material and equipment availability and the prevailing market conditions applicable at the time of both Seller's Offer and Seller's acceptance of Buyer's Order. Lead times are subject to adjustment from the date of receipt of complete technical data and approved designs or drawings as such may be necessary for Buyer custom Orders and Seller shall not be liable in any way whatsoever for delays related to the receipt of such data. Unless otherwise agreed in writing by the Parties, deliveries of the goods shall be F.O.B. Seller's Facility (as defined in the Uniform Commercial Code as adopted by the State of Arkansas). Buyer shall accept any early or late deliveries in connection with its order without liability or penalty to Seller. Seller's responsibility for goods ceases upon delivery to the shipping carrier. In the event of loss or damage during shipment, Buyer's claim shall be against the shipping carrier only. Seller, will, however, give Buyer any reasonable assistance to secure adjustment of Buyer's claim against the carrier provided immediate notice of such claim is given by Buyer to Seller. Claims for shortages shall be made in writing within five (5) calendar days after receipt of goods by Buyer. If Seller does not receive written notification of such shortages within such five (5) calendar days, it shall be conclusively presumed that the goods were delivered in their entirety. Unless otherwise agreed in writing, Seller reserves the right to make partial shipments and to submit invoices for partial shipments.

## 8. FORCE MAJEURE

SELLER SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE INCURRED BY BUYER HEREIN RESULTING FROM CAUSES BEYOND THE REASONABLE CONTROL OF SELLER INCLUDING, BUT WITHOUT LIMITATION, ACTS OF GOD, WAR, INVASION, INSURRECTION, RIOT, ACTS OF TERRORISM, THE ORDER OF ANY CIVIL OR MILITARY AUTHORITY, FIRE, FLOOD, WEATHER, ACTS OF THE ELEMENTS, DELAYS IN TRANSPORTATION, UNAVAILABILITY OF NECESSARY EQUIPMENT OR RAW MATERIALS, BREAKDOWN, SABOTAGE, LOCK-OUTS, STRIKES OR LABOR DISPUTES, OR THE FAILURE OF SELLER'S SUPPLIERS TO MEET THEIR DELIVERY PROMISES. THE ACCEPTANCE OF DELIVERY OF THE GOODS BY BUYER SHALL CONSTITUTE A WAIVER OF ALL CLAIMS FOR LOSS OR DAMAGE DUE TO ANY DELAY WHATSOEVER.

## 9. EXPORT COMPLIANCE

The shipment of goods, provision of services, and delivery of technical information to Buyer is subject to all applicable decrees, statutes, laws, rules and regulations which govern export, re-export, or otherwise pertain to export controls and regulations of (a) the United States, including, but not limited to the U.S. Department of Commerce Export Administration Regulations (EAR) and the U.S. Department of State International Traffic in Arms Regulations (ITAR), and (b) the country of Buyer. Buyer irrevocably and unconditionally agrees to indemnify and hold Seller harmless from any claims or liability arising from Buyer's failure to comply with all such decrees, statutes, laws, rules, and regulations. The Parties each agree to provide the other in a timely manner such information and assistance as may reasonably be required in connection with securing any required authorizations or export licenses. The delivery schedules delineated in Seller's Offer and/or Buyer's Order are calculated from the date of receipt of any required export license(s). Seller shall commence work only after receipt of a valid export license(s) from the appropriate U.S. Government agencies, or other applicable governmental agencies, provided, however, Buyer may, at its sole risk authorize Seller to commence work under Buyer's Order prior to receipt of an export license. In such case, Buyer agrees that it is fully liable to Seller for all costs (direct or indirect), normal profit on such costs, settlements with suppliers and related expenses incurred by Seller in the performance of Buyer's Order and will tender payment to Seller for such costs, profits and expenses in the event any required export license or authorization is denied or cancelled, or if any restrictions imposed by the issuing agency render continued performance of Buyer's Order impossible or impracticable. Notwithstanding the foregoing, any Order accepted by Seller that may require an export license(s), may be cancelled by Seller. In such case, Seller shall have no liability or obligations to Buyer.

## 10. SECURITY INTEREST

Seller retains and hereby reserves the right to file a purchase money security interest ("PMSI") in all goods and products sold to Buyer and all proceeds therefrom until all charges due to Seller have been paid in full. Buyer hereby grants to Seller a PMSI, including any proceeds therefrom, in all goods and products sold or otherwise transferred or conveyed to Buyer and shall promptly cooperate, at Seller's request, in the execution and filing of any financing statements or other documents or take such further actions as requested by Seller in order to perfect Seller's first priority PMSI in such goods or products and in this respect, Buyer hereby irrevocably grants the right of Seller to, and authorizes Seller to, execute and file with all applicable governments, agencies and instrumentalities, all financing statements and other documents necessary for Seller to perfect its first priority PMSI in such goods or products. Buyer shall reimburse Seller for any fees incurred in filing the financing statement and other instruments which may be added by Seller to the amount of Seller's invoice to Buyer.

## 11. INSPECTION AND TESTS

All Seller standard product goods (i.e. those products Seller has assigned a part number) manufactured by Seller are subject to Seller's standard inspection and quality assurance processes. Any additional testing requirements shall be at Buyer's sole expense. Nothing in this section shall be construed as a Seller representation or warranty or interpreted to be in conflict in any way whatsoever with Section 15 herein.

## 12. PROPRIETARY RIGHTS

The following paragraphs (a) through (d) shall collectively be Seller's "**Proprietary Rights**" as used herein.

(a) Retention of Proprietary Rights. Seller shall retain all right, title, and interest to, in and under any and all data, information, tools, specifications, templates, scripts, ideas, concepts, inventions (whether or not patentable), works of authorship, products, samples, prototypes, embedded technology, know-how, processes, techniques or other intellectual property rights used or developed, in whole or in part, by Seller, its employees, subcontractors, consultants, agents and representatives in connection with Buyer's Order. Buyer irrevocably and unconditionally agrees and acknowledges that Seller retains all intellectual property rights in and to all products, samples, prototypes, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Seller's goods and/or services.

(b) Sale of Goods Conveys No Ownership or License. The goods, products and/or services offered or accepted for sale by Seller are subject to the strict condition that such sale, production or provision does not convey any ownership or license, expressly or by implication, estoppel or otherwise, under any patent, copyright or other intellectual property rights of Seller to the extent to which Seller can grant such licenses. Seller expressly reserves all of its rights under such patents, copyrights and other intellectual property rights arising hereunder.

(c) Reverse Engineering Restriction. Buyer shall not reverse engineer copy, disassemble, decompile or otherwise attempt to reconstruct any physical embodiments, prototypes, samples, methods, goods or products sold or otherwise provided, conveyed, transferred or delivered hereunder to Buyer. In the event any such actions nevertheless occur in violation of these Terms and Conditions or any Special Agreement, all data and results and/or any inventions, discoveries, or works derived or arising therefrom shall be solely and exclusively owned by Seller, and Buyer agrees and covenants to promptly assign, at its expense, and hereby does assign any such inventions or discoveries to Seller.

(d) Product Remarketing. Buyer shall not remark or modify any Seller products or their markings including, but not limited to, the product logo, part number, patent marking or other printed or attached labeling in any way whatsoever.

(e) Power of Attorney. Buyer hereby constitutes and appoints Seller as Buyer's true and lawful attorney-in-fact, with full power of substitution, in Buyer's name and stead, for Seller's own account and benefit (i) to enter into and execute any and all documents and instruments for and on behalf of Buyer for the purpose of Buyer complying with all provisions of this Agreement; (ii) to institute, prosecute, compromise and settle any and all actions or proceedings in which Seller may deem necessary or appropriate in order to collect, assert or enforce any claim, right, or title in and to any of intellectual property and all other property of Seller; and (iii) to do all such acts and things in relation to such matters. Buyer hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason.

### 13. CONFIDENTIALITY

(a) Seller may provide proprietary or confidential information to Buyer in connection with the sale of its goods and/or services or while in preliminary business discussions or when product samples are provided to Buyer. Buyer shall, irrevocably and unconditionally, keep and maintain, the confidentiality of such proprietary or confidential information, and specifically shall not directly or indirectly disclose to any third party any Confidential Information of Seller, as defined herein. “**Confidential Information**” of Seller is broadly construed for the benefit of Seller and specifically includes, but is not limited to, business, financial, statistical, commercial information, pricing, technical data and information, formulae, analyses, trade secrets, ideas, methods, processes, inventory and quality control matters, know-how, designs, data sheets, specifications, configurations, drawings, designs, materials, composition of Seller goods or samples, engineering and manufacturing processes, and embedded technology contained in any manner in Seller’s products, samples or prototypes. Confidential Information also includes any analysis, reports, memorandums or other items compiled or prepared by or at the request of Buyer containing Confidential Information of Seller, regardless of who prepared it. Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by Buyer, (b) was available on a non-confidential basis prior to its disclosure by Seller, (c) is or becomes available to Buyer on a non-confidential basis from a source other than Seller when such source is not subject to a confidentiality obligation or (d) was independently developed by Buyer without reference to the Confidential Information, and Buyer can verify by clear and convincing evidence development of such information by written documentation.

(b) Confidential Information shall remain the sole and exclusive property of Seller, and Buyer shall protect such information using at least the same measures that Buyer uses to protect its own confidential or proprietary business information of a similar nature, but in any event, shall not use less than a reasonable standard of care. Upon Seller’s request and at Seller’s option, Buyer will destroy or return to Seller all documents containing Seller’s Confidential Information and delete any electronic copies from Buyer’s system and retain no copies thereof. At Seller’s request, Buyer shall certify in writing that it has complied with Seller’s respective request to return, destroy or delete Seller’s Confidential Information. Buyer agrees that its obligation to protect Seller’s Confidential Information shall be ongoing and shall survive termination or expiration of these Terms and Conditions or any Special Agreement.

### 14. CUSTOM PRODUCTS

(a) In the event Buyer engages Seller’s services for the development, design or manufacture of a product that is not one of Seller’s standard products with a designated part number assigned by Seller or Buyer requires special needs, specifications, or design for the development of a product (such product being a “**Custom Product**”), Buyer acknowledges and agrees that it is not acquiring any right, title, interest or license in, to or under Seller’s Confidential Information or any other intellectual property or other proprietary rights associated with the Custom Product, Seller’s services or other Seller goods or products. Buyer expressly agrees that Seller shall retain all rights, title, and interest to, in and under any original works of authorship, mask works, inventions (whether or not patentable), designs, embedded technology, configurations, drawings, circuit designs and systems, manufacturing and engineering processes, and ideas and information made or conceived or reduced to practice, in whole or in part, in the course of performing Seller’s services, or otherwise arising out of the development of such Custom Product (such works being the “**Work Product**”). Buyer agrees and acknowledges that Seller will solely and exclusively own all right, title, and interest in, without limitation, any copyrights, patent rights, trademark rights, trade secret rights, and any other intellectual property or proprietary rights related to the Work Product. Buyer agrees and acknowledges that Seller may use the Work Product for other Seller designs, prototypes and products, including without limitation the right to make derivative works thereof without any claim of license, royalty, title, right or interest of any kind or nature whatsoever from Buyer. Buyer agrees and acknowledges that the Work Product is subject to all limitations and restrictions that Buyer owes Seller in regards to Proprietary Rights and Confidential Information as set forth herein. Prices and/or lead times (and delivery schedules)

for Custom Product Orders or Offers are subject to change by Seller if any specifications are revised or supplemented or if there are unforeseen difficulties with the design or development of the Custom Product.

(b) Buyer shall irrevocably and unconditionally indemnify and hold Seller harmless from any and all claims or losses of any kind or nature, including without limitation any related costs, attorneys' fees, expenses or liabilities incurred, arising from (i) conformance or meeting the specifications, designs or instructions provided by Buyer, (ii) the combination or incorporation of any Custom Product, or of the elements of any Custom Product, with any other circuitry, subassembly, products, applications, equipment or materials not supplied by Seller, and (iii) the purchase, use or sale of the Custom Product.

## 15. NO WARRANTY; DISCLAIMERS

(a) No Warranty.

ALL OF SELLER'S PRODUCTS, INCLUDING WITHOUT LIMITATION THE SELLER'S STANDARD PRODUCTS, AND ANY OTHER DEVICES OR PROTOTYPES MADE BY SELLER, ARE ENGINEERING SAMPLES. ENGINEERING SAMPLES ARE MADE AVAILABLE SOLELY FOR PURPOSES OF RESEARCH DEVELOPMENT AND PROTOTYPING. ALL OF SELLER'S PRODUCTS ARE SOLD "AS-IS" WITH NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. SELLER DOES NOT WARRANT THAT ITS ENGINEERING SAMPLES ARE FULLY VERIFIED, TESTED, OR WILL OPERATE IN ACCORDANCE WITH ANY DATA SHEET SPECIFICATIONS. SELLER DISCLAIMS ANY OBLIGATIONS FOR TECHNICAL SUPPORT AND BUG FIXES. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, STATUTORY OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE, INSTALLATION, OR IMPLEMENTATION OF ENGINEERING SAMPLES IN ANY MANNER WHATSOEVER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. SELLER MAKES NO REPRESENTATION THAT ITS ENGINEERING SAMPLES PROVIDE ANY PARTICULAR FUNCTIONALITY, OR THAT ITS ENGINEERING SAMPLES WILL MEET THE REQUIREMENTS OF A PARTICULAR USER APPLICATION. SELLER DOES NOT WARRANT THAT ITS ENGINEERING SAMPLES ARE ERROR-FREE, NOR DOES SELLER MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

(b) Critical Applications Disclaimer.

SELLER'S PRODUCTS AND PROTOTYPES ARE ENGINEERING SAMPLES AND ARE NOT DESIGNED OR INTENDED TO BE FAIL-SAFE, FAULT TOLERANT OR FOR USE IN ANY APPLICATION THAT COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE (INDIVIDUALLY AND COLLECTIVELY, "CRITICAL APPLICATIONS"), SUCH AS LIFE-SUPPORT OR SAFETY DEVICES OR SYSTEMS, CLASS III MEDICAL DEVICES, NUCLEAR FACILITIES, APPLICATIONS THAT AFFECT CONTROL OF A VEHICLE OR AIRCRAFT, APPLICATIONS RELATED TO THE DEPLOYMENT OF AIRBAGS, OR ANY OTHER CRITICAL APPLICATIONS. BUYER AGREES, PRIOR TO USING OR DISTRIBUTING ANY SYSTEMS THAT INCORPORATE SELLER PRODUCTS, TO THOROUGHLY TEST THE SAME FOR SAFETY PURPOSES. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY MANNER WHATSOEVER, ARISING FROM OR IN CONNECTION WITH THE USE OF ITS PRODUCTS, SAMPLES OR PROTOTYPES IN CRITICAL APPLICATIONS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. BUYER ASSUMES THE SOLE RISK AND LIABILITY OF ANY USE OF SELLER PRODUCTS IN CRITICAL

## APPLICATIONS, SUBJECT ONLY TO APPLICABLE LAWS AND REGULATIONS GOVERNING LIMITATIONS ON PRODUCT LIABILITY.

### 16. INDEMNITY

Buyer (the "Indemnifying Party") irrevocably and unconditionally agrees to indemnify, defend, and hold harmless the Seller, its officers, directors, and employees (the "Indemnified Party" or "Indemnified Parties") from and against any and all liabilities, losses, expenses, liens, claims, demands, and causes of action ("Claims") for death, personal injury, or property damage arising out of any negligent act or omission of the Indemnifying Party in the performance of Buyer's Order, except to the extent such Claims are contributed by the gross negligence or willful misconduct of the Indemnified Party. Buyer further irrevocably and unconditionally agrees to indemnify, defend, and hold harmless all Indemnified Parties from any and all Claims, including Claims asserted by third parties, related to any goods manufactured or developed for Buyer or services performed in whole or in part to Buyer's designs or attributed to equipment, information, or materials furnished by Buyer to Seller. The Indemnified Party agrees to (a) notify the Indemnifying Party in writing of any Claims as soon as reasonably practicable, (b) allow the Indemnifying Party to control the defense of any such Claim and related settlement negotiations, and (c) reasonably cooperate with the Indemnifying Party in such defense.

### 17. TERMINATION

No Buyer Order may be cancelled, rescheduled, reconfigured, or assigned by Buyer without Seller's prior written consent. Buyer may request cancellation or termination of Buyer's Order, in whole or in part, by providing prior written notice to Seller thereof. Seller agrees to cooperate with Buyer in attempting to effect such cancellation or termination conditioned upon Buyer paying Seller for all goods delivered and/or services performed, and for all work in progress, including all applicable direct and indirect costs, normal profit on such costs, settlements with suppliers, and related termination expenses. To the extent possible, Seller will use reasonable commercial efforts to divert materials and work in progress from Buyer's Order to other customers' orders.

### 18. GOVERNING LAW AND VENUE

These Terms and Conditions (including any Special Agreement or Seller's Special Terms and Conditions, as applicable) and the rights and obligations of the Parties hereunder shall in all respects be governed by and interpreted, construed, and enforced in accordance with (and any arbitration shall apply) the laws of Arkansas, without regard to the choice of law provisions of Arkansas. All proceedings shall be conducted in the English language. Neither (a) the United Nations Conventions on Contracts for the International Sale of Goods, (b) the 1974 Convention on the Limitation Period in Contracts for the International Sale of Goods (hereinafter the "1974 Convention"), (c) the Protocol Amending the 1974 Convention held at Vienna, Austria, on April 11, 1980, nor (d) the Uniform Information Transactions Act, shall apply to these Terms and Conditions or in any manner to the interpretation or enforcement of these Terms and Conditions, Seller's Offer, or Buyer's Order. Buyer hereby irrevocably (i) consents to the jurisdiction of the courts of the State of Arkansas and of any federal court located in Arkansas and to venue in any Washington County Circuit Court and any federal court located in Arkansas in connection with any action or proceeding arising out of or relating to these Terms and Conditions, all Orders and any other document or instrument delivered in connection herewith or therewith, and agrees that any such action or proceeding may be litigated in such courts and (ii) consents and agrees that service of legal process in any such action or proceeding may be made in any manner permitted by the rules of practice and procedure applicable to such courts. Buyer hereby accepts such jurisdiction and venue and waives any defense of forum non-conveniens. Nothing contained herein shall limit the right of any party to remove any action commenced in state court to the federal court in accordance with applicable law and applicable court rules of practice and procedure.

## 19. ASSIGNMENT

Buyer shall not assign its rights or obligations under these Terms and Conditions in connection with any Buyer Order, Seller Offer or any interest therein without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion. Any assignment without such consent shall be void and have no force or effect. Seller may, without Buyer's consent (a) assign accounts receivable in connection with any Buyer order or obligations under these Terms and Conditions; (b) subcontract work to be performed under Buyer's Order; or (c) assign Buyer's Order to a parent, subsidiary or affiliate company of Seller.

## 20. WAIVER

None of these Terms and Conditions, provisions or parts hereof, shall be waived by any act or knowledge of Seller, except by written instrument signed by a duly authorized representative of Seller. The waiver by Seller of any term, condition, provision, or right hereunder or the failure to enforce at any time any of the Terms and Conditions herein, or any rights with respect thereto, is not a continuing waiver or a waiver of any other rights, or of any material breach or failure of performance of Buyer.

## 21. REMEDIES; COSTS

The remedies herein reserved or created for Seller shall be cumulative, and additional to any other or further remedies provided at law or in equity. Seller may remedy such breach of these Terms and Conditions hereof without waiving the breach remedied, or without waiving any other prior or subsequent breach of Buyer. In the event Seller requires specific performance, injunctive or other equitable relief due to Buyer's breach of Section 12, Section 13 or otherwise, then Seller shall be able to obtain such relief without the necessity or requirement for the securing or posting of any bond in connection therewith. Buyer shall pay all Seller's costs and expenses, including attorney's fees, incurred by Seller in exercising any of its rights or remedies hereunder or enforcing any of these Terms and Conditions.

## 22. SEVERABILITY

If any term, condition, or provision herein is declared by a court of competent jurisdiction to be invalid, ineffective, or unenforceable, then the remainder of the terms, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

## 23. RELATIONSHIP OF PARTIES

(a) Each Party is an independent contractor. Neither Party shall have authority to bind the other except to the extent authorized herein. These Terms and Conditions are not intended by the Parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind. The Parties shall act as independent contractors at all times, and neither Party shall act as an agent for the other, and the employees of one shall not be deemed employees of the other.

(b) Buyer hereby certifies that it will be the actual recipient of the goods and/or services provided by Seller. The Parties to any Offer, Order, or associated transaction are Seller and Buyer identified above and unless expressly stated otherwise herein, no other persons, parties, or entities have any rights, or receive any benefits hereunder.



## 24. DESCRIPTIVE HEADINGS

The descriptive headings and sections of these Terms and Conditions are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions hereof.

## 25. ENTIRE AGREEMENT

These Terms and Conditions (including any Special Agreement or Seller's Special Terms and Conditions, as applicable) and Buyer's Order (as accepted by Seller in accordance with the terms herein), including any applicable specifications, statement of work, or other applicable documents constitute the entire agreement between the Parties and supersede any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of Buyer's Order.

## 26. FURTHER ASSURANCES

Buyer agrees that from time to time hereafter, upon request by Seller, Buyer will execute, acknowledge and deliver such other documents and instruments, and take such further action, as may be reasonably necessary to carry out the intent of these Terms and Conditions.

## 27. SURVIVAL

Any section or provision herein which contemplates performance or observance subsequent to any termination or expiration of these Terms and Conditions, or which by its nature should survive, shall survive any termination or expiration of Buyer's Order and continue in full force and effect.

[End of Terms and Conditions]

## REVISION HISTORY

Revision No.	Description of Revision	Date of Revision
1.0	Initial Launch of New Standard Terms and Conditions	1/22/2014
2.0	Sections: 1, 11, 13, 14 and 15 were modified; Revision History added; and Footer modified.	4/27/2015
3.0	Legal name change edits	8/4/2015
4.0	Minor edit to legal name	9/3/2015