



## STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

These Standard Terms and Conditions for the Purchase of Goods ("*Terms and Conditions*") apply to all purchases of Goods from Seller under purchase orders or other similar documents or transmissions (hereafter each such purchase of Goods referred to, with the appropriate cover page, order form, or similar or other transmission or documentation, as a "*Purchase Order*"), unless otherwise agreed to in writing by Buyer.

"*Agreement*" means, collectively: (i) these Terms and Conditions, (ii) the Purchase Order, and (iii) any written contract executed by and between Seller and Buyer into which these Terms and Conditions are incorporated by reference.

"*Buyer*" means PMC Group N.A., Inc. or any of its subsidiaries or affiliates, as appropriate, that are acquiring the Goods from Seller.

"*Delivery Point*" means the point at which Goods are to be delivered by Seller to Buyer, as shown in the Purchase Order or as otherwise agreed to by the parties in writing.

"*Goods*" includes equipment, materials, supplies and other goods to be provided by Seller to Buyer under this Agreement, whether or not specifically set out in the Purchase Order, as well as, where applicable, all specifications, instructions and installation, operating and maintenance manuals necessary for the installation, operation and maintenance of the Goods.

"*Seller*" means the party selling the Goods directly to Buyer under this Agreement.

### 1. ACCEPTANCE

The Purchase Order is Buyer's offer or counteroffer to purchase Goods from Seller. Acceptance by Seller is expressly limited to the terms set forth in these Terms and Conditions and the Purchase Order. Buyer hereby objects to and rejects any different or additional terms in any response to this Agreement. In addition, Buyer and Seller are not bound by prior dealings or trade usage. EXCEPT AS AGREED TO IN WRITING BY BUYER, IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN ANY AGREEMENT SUBMITTED BY SELLER AND THE PROVISIONS HEREOF, THE PROVISIONS HEREOF SHALL GOVERN AND CONTROL AND SELLER ACKNOWLEDGES THAT UNIFORM COMMERCIAL CODE § 2-207 OR THE APPLICABLE STATE LAW EQUIVALENT, SHALL NOT APPLY, AND SHALL NOT ALTER, ADD, CHANGE OR MODIFY THE PROVISIONS HEREOF. Each acceptance of a Purchase Order by Seller shall constitute the creation of a separate binding contract between Seller and Buyer, subject to the terms hereof. Any of the following acts by Seller shall constitute acceptance of a Purchase Order:

- (a) Seller signing and returning a copy of any cover sheet, order form or similar document which references these Terms and Conditions or the Purchase Order;
- (b) Seller's shipment of all or any portion of the Goods covered by the Purchase Order; or
- (c) Seller's express written acknowledgment of these Terms and Conditions or the Purchase Order.

## 2. WARRANTIES

- (a) Seller shall provide the Goods to Buyer in accordance with the terms and conditions of this Agreement. In the event of any inconsistency between these Terms and Conditions and the other terms and conditions of the Purchase Order, the Purchase Order shall govern.
- (b) Seller represents and warrants that the Goods (i) shall be of the kind, quantity and quality specified in the Purchase Order, free from fault in design, workmanship and material, (ii) shall be new and of good and merchantable quality, (iii) are suitable and fit for the purpose for which they shall be used, (iv) shall perform in accordance with the specifications and drawings, if any, provided by Buyer or otherwise referred to, or incorporated, in the Purchase Order (and in the absence of such, then Seller's generally applicable specifications for the Goods in effect as of the date of the Purchase Order), (v) shall not constitute an infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold or used for their ordinary intended purpose, and (vi) shall be delivered free from all liens, encumbrances, claims or other charges. All Goods shall at all times be subject to Buyer's inspection but neither Buyer's inspection nor failure to inspect shall relieve Seller of any obligations hereunder or constitute a waiver of any of Buyer's rights or warranties of Seller. If any Goods fail to conform with specifications or drawings or are otherwise defective, then at Buyer's option: (i) Buyer may, in its sole discretion reject all or any portion of the non-conforming or defective Goods, and such non-conforming or defective Goods may be (A) held at Seller's risk for Seller's retrieval, or (B) returned to Seller upon notice, at Seller's cost, and in either such case Buyer shall be entitled to a refund in full, or (ii) require Seller to promptly repair or replace the non-conforming or defective Goods, at Seller's sole expense.
- (c) The warranties in this Section 2 Warranties shall continue in full force and effect until expiration of the applicable statute of limitations.
- (d) Where Goods are repaired or replaced under the above warranties, such Goods shall be warranted to the same extent as the original delivery.
- (e) Buyer shall be entitled to the benefit of any of Seller's service warranties and guaranties customarily offered by Seller, in addition to those warranties set forth above.
- (f) Seller shall bear all costs for removal, repair, replacement and reinstallation of Goods under the above warranties.
- (g) To the fullest extent permitted by law, Seller hereby assigns and transfers to Buyer all right to, and benefit from, any and all manufacturers' or suppliers' warranties (each and collectively "**Manufacturer's Warranty**") that apply or otherwise relate to any Goods provided under the Purchase Order. Seller shall fully cooperate with and assist Buyer in making any claim under any Manufacturer's Warranty. Any claim by Buyer under a Manufacturer's Warranty shall not: (i) prevent Buyer from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Buyer's rights or remedies in law or at equity.
- (h) Acceptance of, or payment for, the Goods delivered under the Purchase Order shall not constitute a waiver by Buyer of any of the warranties of Seller, either express or implied, and shall not be deemed to alter or affect the obligations of Seller or rights of Buyer under any of such warranties, either express or implied, nor shall acceptance of, or payment for, any Goods constitute a waiver of any of Buyer's rights or remedies contained herein, or in law or at equity.
- (i) All warranties and the benefits thereof will run to Buyer, its successors, assigns and customers.
- (j) The warranties set forth or referred to herein are in addition to all rights and remedies Buyer may have in law or at equity.

- (k) Seller shall provide Buyer with not less than forty-five (45) days advance written notice of any changes in or to the Goods, including, without limitation, changes in or to the specifications, raw materials, packaging, manufacturing processes, manufacturing locations, analytical test methods, use of a new reagent or solvent, or any other change which results in an alteration to the physical or chemical characteristics of the Goods.
- (l) Upon request of Buyer, Seller shall determine whether any Goods contain tin, tantalum, tungsten, gold or any other material that is designated under applicable rules of the Securities and Exchange Commission ("*SEC*") as a "conflict mineral." If no Goods contains one or more conflict minerals that are necessary to the functionality or production of such Goods within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify to Buyer that none of the Goods contains such conflict minerals. If any Goods contains one or more such conflict mineral(s), Seller shall certify to Buyer the country of origin of any such conflict mineral or that the conflict mineral came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict mineral(s), and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict mineral(s) that are necessary to the functionality or production of any Goods originated from a "covered country" within the meaning of the SEC's conflict mineral(s) rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict mineral(s) came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publicly available, and to provide written documentation of such determination. Seller shall also take such additional actions and provide such additional information requested by Buyer as may be necessary in order for Buyer to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.

### 3. TITLE

Title to each item included in the Goods shall pass to Buyer on the earlier of: (i) payment for such item, or (ii) its delivery to the Delivery Point. Notwithstanding the foregoing, risk of loss for all Goods shall remain with Seller and shall transfer to Buyer only when the Goods are under the care, custody, and control of Buyer at the Delivery Point.

### 4. CERTIFICATE OF ORIGIN

Where applicable:

- (a) Seller shall, at Seller's cost, prepare and issue to Buyer, Certificate(s) of Origin for Goods sold pursuant to the North American Free Trade Agreement (NAFTA) or any successor agreement and shall provide copies of the issued Certificate(s) of Origin to the customs administration of Seller's and Buyer's home country upon request as well as provide all information requested by either customs administration in respect of the issued Certificate(s) of Origin. Seller shall maintain records in respect of the Certificate(s) of Origin for five (5) years or such longer period as required

by law. Seller shall otherwise comply with Seller's obligations under NAFTA or any successor agreement.

- (b) Seller shall defend, indemnify and save Buyer harmless from and against all liability, loss and cost incurred for additional duties, tariffs and penalties imposed by any customs administration, resulting from the Certificate(s) of Origin furnished with respect to Goods being found to be incomplete, false or otherwise invalid in whole or in part, or arising out of a breach by Seller of Section 4(a) above. Seller's indemnity herein shall extend to all costs and expenses, including attorney's fees, arising from any resulting redetermination or reassessment with respect to any of the Goods.

## 5. PACKAGING

Seller shall ensure all Goods are packaged in accordance with applicable law and regulations and in such a manner as to ensure the Goods are transported and delivered to Buyer without sustaining damage or deteriorating in condition.

## 6. LABELING AND SHIPPING

- (a) Seller shall place or affix the number of the Purchase Order on all invoices, packing lists, packages, containers and related correspondence. Each shipment must be accompanied by all Safety Data Sheets or similar documentation, and a packing list showing the exact quantity and description of Goods shipped. Seller shall mark all containers with necessary lifting, handling, environmental, safety and shipping information.
- (b) Where Buyer is responsible for freight charges Seller shall ship the Goods by the most economical manner and route unless otherwise specified or directed by Buyer.
- (c) If Buyer specifies or directs Seller to ship the Goods in a specific manner or by a specific route and Seller fails to do so, Seller shall reimburse Buyer for any loss or extra expenses incurred by Buyer resulting from such failure.

## 7. PAYMENT TERMS

Unless otherwise agreed to in writing by Buyer in the Purchase Order, invoices shall be due and payable forty-five (45) days after the later of (i) receipt of the invoice by Buyer, or (ii) delivery of conforming Goods to Buyer.

## 8. DRAWINGS AND SPECIFICATIONS

Unless otherwise agreed to by the parties, all drawings, blueprints, specifications, dies, patterns and tools, whether supplied by Buyer or prepared or constructed by Seller as required for the completion of the Purchase Order, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Buyer.

## 9. PRICE

- (a) All prices quoted by Seller shall be quoted in United States Dollars or converted to an equivalent United States Dollar value at the time of quote unless expressly waived by Buyer. Prices shall be as last quoted in writing by Seller to Buyer and shall not change without written agreement of Buyer, delivered prior to delivery of the Goods. Buyer may cancel any order without any resulting liability after receiving a price change notice. Charges for

- packing, packaging, freight/shipping and handling will not be allowed or paid by Buyer unless expressly included in Seller's price quote prior to Buyer's acceptance.
- (b) No increases in the price or other charges shown or referred to in the Purchase Order, including taxes or customs and excise duties, shall be payable by Buyer unless such increases are authorized by Buyer in writing.
  - (c) If any error is discovered in an invoice by Buyer, such error shall be adjusted within thirty (30) days from the date of discovery of such error, provided however, that there shall be no adjustment made for any error discovered by Seller more than twelve (12) months after receipt of an invoice by Buyer.
  - (d) Unless otherwise specifically provided for in the Purchase Order, Seller assumes exclusive liability for and shall pay before delinquent, all sales, use, customs and excise, import, export (from country of origin), value added and other taxes, charges, duties, levies, imposts or contributions of any kind or with respect to or measured by the Goods supplied hereunder (collectively, "**Sales Taxes**"). Seller shall indemnify, defend and hold harmless the Buyer Indemnified Parties, as defined herein, from any claims, causes of action, costs and expenses (including court costs and expenses and reasonable attorney's fees) arising out of Seller's failure to pay any Sales Taxes that are Seller's responsibility under this Section.
  - (e) Buyer shall furnish Seller any applicable, valid and effective tax exemption certificates and Seller shall collect Sales Taxes and other taxes only in accordance with those tax exemption certificates.
  - (f) Any applicable Sales Taxes and other government charges shall be separately listed on Seller's invoice.
  - (g) Early payment discounts shall run from the later of: (i) Buyer's receipt of Seller's invoice or (ii) delivery of the Goods.

#### 10. **TIMELY PERFORMANCE AND COVER**

- (a) Seller understands and agrees that time is of the essence and Seller shall deliver all Goods in accordance with time schedules referred to in the Purchase Order.
- (b) If it is reasonably anticipated that Seller may fail to deliver Goods within the above time periods, Seller shall promptly notify Buyer of any anticipated delay and forthwith take all steps necessary to expedite performance so as to prevent such failure. Any additional costs resulting from such steps including, but not limited to, the full cost of cover for Goods not timely delivered or completed shall be borne by Seller.

#### 11. **SUBCONTRACTORS**

- (a) Seller may not subcontract any part of this Agreement without the prior written approval of Buyer and if granted such approval shall not operate to relieve Seller of any liability to Buyer under this Agreement.
- (b) Seller shall enter into written contracts with any Buyer-approved subcontractors that include provisions requiring them to perform in accordance with and subject to the terms and conditions of this Agreement.
- (c) Seller shall be fully responsible to Buyer for any and all acts and omissions of its employees, agents or subcontractors and their employees or agents of any tier.

## 12. INDEMNITIES

Seller shall defend, indemnify and save Buyer, its members, shareholders, managers, directors, officers, employees, agents and affiliates (each and collectively, "*Buyer Indemnified Parties*") harmless from and against any and all loss, liability or expense, including without limitation, all suits, actions, claims, demands, damages, costs, reasonable legal fees, and reasonable expenses and attorneys' fees, Buyer Indemnified Parties may suffer or incur by reason of, caused by, arising from, incident to, connected with, or growing out of:

- (a) any non-conforming Goods;
- (b) any breach of this Agreement by Seller;
- (c) any claim, suit or allegation, including, without limitation, any claim or suit for alleged infringement of any patent, industrial design, copyright or trademark, resulting from or arising in connection with the manufacture, sale, use or other disposition of any of the Goods;
- (d) any other act or omission by Seller or any employee, agent or subcontractor of Seller;
- (e) any and all damage to or loss or destruction of any property, including without limitation, property of Buyer, Seller, or any employee, agent or subcontractor of Buyer or Seller, arising out of or in connection with any act, omission, default, breach of warranty, violation of law or any other act of omission by Seller or any employee, agent or subcontractor of Seller under this Agreement; or
- (f) bodily or personal injury to or death of any persons, including without limitation, any employees or agents of Buyer, Seller, or any subcontractor of Buyer or Seller, arising out of or in connection with any act, omission, default, breach of warranty, violation of law or any other act of omission by Seller or any employee, agent or subcontractor of Seller under this Agreement.

## 13. INSURANCE

- (a) Seller shall, at its own expense, obtain and maintain during the term of this Agreement, with insurers having an A.M. Best rating of A VII or better, the following minimum coverages, which may be increased at Buyer's reasonable discretion:
  - (i) commercial general liability insurance (including contractual, products, and completed operations coverages) of not less than \$1,000,000 per occurrence covering bodily injury, death and property damage arising out of or relating to the acts or omissions of Seller in providing the Goods;
  - (ii) Seller shall furnish evidence of its and its permitted subcontractor's compliance with Worker's Compensation or similar legislation applicable at the site(s) where the Goods shall be delivered; and
  - (iii) product liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of Seller's provision of the Goods to Buyer.
- (b) Prior to commencing to provide any Goods hereunder, Supplier shall deliver to Buyer a broad form "vendors endorsement," ISO # 20-15-07-04 or equivalent thereto, in favor of Buyer and a certificate of insurance evidencing the above coverages or, if required by Buyer, certified copies of the above insurance policies and endorsements. The above insurances shall (i) be primary to any other coverage in favor of Buyer, (ii) include Buyer as an additional insured, (iii) provide a waiver of subrogation in Buyer's favor and (iv) provide Buyer with thirty (30) days' notice of cancellation or material change.

- (c) Seller shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Buyer with evidence of the above coverages and endorsements prior to delivering any Goods hereunder.

#### 14. CONFIDENTIALITY

Seller shall not use or disclose to any third person any business information, business plans, data, designs, drawings, specifications or other information (collectively, the “*Confidential Information*”) belonging to or supplied by or on behalf of Buyer except as necessary to perform under this Agreement. Upon completion of the Purchase Order or upon Buyer’s earlier request, all Confidential Information, including any copies thereof, shall be returned to Buyer. Where Buyer’s Confidential Information is furnished to Seller’s subcontractors or suppliers in connection with the performance of this Agreement, Seller shall insert the substance of this provision in its subcontracts and orders and shall ensure compliance with such provision by its subcontractors and suppliers.

#### 15. TERMINATION

Buyer may, in its sole discretion, terminate this Agreement at any time, in whole or in part, by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue any efforts in respect of provision of Goods being performed in connection with this Agreement, except as directed by Buyer. Upon such termination, and subject to audit, Buyer shall reimburse Seller for Goods delivered actually provided to Buyer up to the effective date of termination. In no event shall Buyer be liable to Seller for lost or anticipated profits.

#### 16. SET-OFF

- (a) Buyer shall be entitled at all times to set-off against any amount due or owing to Seller under this Agreement or under any other agreement between Company and Contractor, such amounts that, in the opinion of Buyer, are sufficient to: (i) cover any account owing from Seller to Buyer or to any of its affiliated companies, or (ii) protect Buyer from any losses or expenses arising from defects or deficiencies in the Goods provided by Seller, or any other failures by Seller to comply with the requirements of this Agreement.
- (b) Buyer shall further have the right, but not the duty, to withhold any monies payable by it hereunder and apply same to the payment of: (i) any obligations of Seller to Buyer howsoever arising or (ii) any obligations of Seller to any other parties arising in connection with this Agreement.

#### 17. FORCE MAJEURE

Neither party shall be liable for delays or defaults due to acts of God, acts of terrorism, governmental authority or public enemy, war, fires, floods, epidemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Buyer may terminate this Agreement pursuant to Section 15 in the event of such delay in performance.

18. **COMPLIANCE WITH LAWS AND POLICIES**

Seller shall comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State or local governments. Seller shall also comply with any business conduct policies and safety and security rules imposed by Buyer from time to time. Seller shall ensure that its employees, subcontractors and agents are made aware of and comply with the above laws, regulations, by-laws, permits, approvals, policies and rules and shall furnish Buyer with such evidence of compliance as Buyer may require from time to time.

19. **GOVERNING LAW**

This Agreement shall be deemed to be an agreement made in the State of Delaware governed by and construed in accordance with the laws of the State of Delaware pertaining to the sale of Goods as applicable and without reference to that jurisdiction's choice or conflict of laws rules. Seller and Buyer expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

20. **JURISDICTION AND VENUE**

Each party hereby irrevocably agrees, submits and consents to, and expressly waives any right to contest or object to, the exclusive jurisdiction and venue of the federal or state courts in the state in which the applicable Buyer's headquarters is located on any basis, including, but not limited to, *forum non conveniens*.

21. **WAIVER OF JURY TRIAL**

SELLER IRREVOCABLY WAIVES ANY AND ALL RIGHT SELLER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS PURCHASE ORDER OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT OR ANY OF SUCH DOCUMENTS. SELLER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

22. **RECOVERY OF COSTS**

In any suit between Buyer and Seller to enforce this Agreement or involving the purchase and sale of the Goods, upon the entry of a final non-appealable order of a court of competent jurisdiction, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the other party.

23. **BUYER'S RIGHTS AND LIMITATION ON DAMAGES**

- (a) Seller agrees that any right, cause of action or remedy under the warranties or undertakings assumed or imposed upon Seller under this Agreement shall extend without exception to any company affiliated with Buyer on whose behalf this Agreement is issued by Buyer.
- (b) Except as specifically set forth herein, all rights and remedies provided in favor of Buyer hereunder are in addition to and without prejudice to any other rights and remedies to which Buyer may lawfully be entitled, including, without limitation, under and by virtue of the provisions of any Federal, State or local law governing the sale of goods.
- (c) The failure of Buyer to insist upon strict performance by Seller of any of the terms and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that Buyer may have at law or in equity in respect thereof and shall not be deemed a waiver of any subsequent default by Seller.



Under no circumstances shall Buyer be liable for consequential, special, indirect, incidental, punitive, statutory or exemplary damages arising out of any claim or cause of action arising out of or based on this Agreement, even if advised of the possibility of such damages.

#### 24. ENTIRE AGREEMENT AND CHANGES

- (a) This Agreement shall constitute the entire, final, complete, and exclusive agreement between Buyer and Seller and no terms or conditions, other than those stated herein, and no agreements or understandings, oral or written, in any way purporting to modify this Agreement, or customs or usages of trade shall be binding on Buyer unless documented by Buyer's written authorization.
- (b) Without limiting the generality of the foregoing, the quality, quantity and other specifications of the Goods to be supplied hereunder shall not be changed from those referred to in the Purchase Order without Buyer's written authorization thereof.

#### 25. MISCELLANEOUS

- (a) The headings contained herein are provided for convenience only and are not to be considered when interpreting or construing this Agreement.
- (b) No right, title, or interest in this Agreement and no obligations or duty or liability of Seller shall be transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Buyer, which consent may be given or withheld in the sole discretion of Buyer.
- (c) Each notice, statement and invoice to be given pursuant to this Agreement shall be in writing and shall be sent by prepaid ordinary, certified or registered mail, by facsimile transmission or by nationally recognized express courier to the addresses and facsimile numbers for Buyer and Seller noted in the Purchase Order. Notices, statements and invoices sent by mail or courier shall be deemed to have been received when actually received or refused, and those sent by facsimile transmission shall be deemed to have been received on the first business day following the day on which they were sent.
- (d) Buyer or any person designated by Buyer may at any and all reasonable times for a period of twenty-four (24) months after completion of delivery of the Goods hereunder, have access to Seller's books and records relating to the reimbursable costs, if any, provided for under this Agreement, for the purpose of auditing and verifying such costs and Buyer may make copies of such books and records as reasonably required by Buyer in performing such audit. Seller shall promptly review and settle with Buyer all matters arising from such audit including the refunding of monies where applicable.
- (e) If this and any other documents are transmitted by any means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Seller.
- (f) Seller shall not use Buyer's names, logos, trade names, trademarks or copyrights or the fact that Seller is supplying Goods for Buyer in any press release, media statement, advertisement or other public communications or otherwise publicize this Agreement without the prior written consent of Buyer.
- (g) During the period for performance of this Agreement, Seller shall not enter into any additional agreement, or modify any existing agreement, with another buyer of Goods from Seller that establish rights or benefits to such other buyer that are more favorable in any material respect

to such other buyer than the rights and benefits afforded to Buyer in this Agreement, unless, in any such case, Seller has extended to Buyer such rights and benefits.

- (h) The invalidity or unenforceability of any portion or provision of the Purchase Order shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.