

Seller agrees to provide the goods ("Goods"), described in any purchase order, in accordance with the applicable purchase order, scope of work and with these Terms and Conditions ("Agreement"). Upon acceptance of a purchase order, shipment of Goods, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to shipping Goods.

This writing does not constitute a firm offer, and may be revoked at any time prior to acceptance. This Agreement may not be added to, modified, superseded or otherwise altered, except by writing signed by an authorized Bias Power representative. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods by Seller shall constitute such assent. Bias Power hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods. Bias Power shall not be subject to any charges or other fees as a result of such cancellation.

Time is of the essence. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. Bias Power reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. In the event Seller fails to deliver the Goods within the time specified, Bias Power may, at its option, decline to accept the Goods and terminate the Agreement or may demand its allocable fair share of Seller's available Goods and terminate the balance of the Agreement. Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. Bias Power's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

Seller assumes all risk of loss until receipt by Bias Power. Title to the Goods shall pass to Bias Power upon receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to Bias Power, Bias Power may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Bias Power shall have the right to require delivery of the Goods not destroyed.

As full consideration for the delivery of the Goods and the assignment of rights to Bias Power as provided herein, Bias Power shall pay Seller (i) the amount agreed upon and specified in the applicable purchase order, or (ii) Seller's quoted price on date of shipment (for Goods), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges shall be stated separately on Seller's invoice. Payment is made when Bias Power's check is mailed. Payment shall not constitute acceptance. All personal property taxes assessable upon the Goods prior to receipt by Bias Power of Goods conforming to the purchase order shall be borne by Seller. Seller shall invoice Bias Power for all Goods delivered. Each invoice submitted by Seller must be provided to Bias Power within ninety (90) days of delivery of Goods and must reference the applicable purchase order, and Bias Power reserves the right to return all incorrect invoices. Bias Power will receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after delivery of the Goods. Unless otherwise specified on the face of a purchase order, Bias Power shall pay the invoiced amount within sixty (60) days after receipt of a correct invoice. Seller will receive no royalty or other remuneration on the production or distribution of any products developed by Bias Power or Seller in connection with or based on the Goods provided.

Goods: Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of fifteen (15) months from the date of delivery to Bias Power or for the period provided in Seller's standard warranty covering the Goods, whichever is longer. Seller hereby agrees that it will make spare parts available to Bias Power for a period of five (5) years from the date of shipment at Sellers then current price, less applicable discounts. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to Bias Power Seller's standard warranty and service guaranty applicable to the Goods. All warranties and service guaranties shall run both to Bias Power and to its customers.

If Bias Power identifies a warranty problem with the Goods during the warranty period, Bias Power will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at Bias Power's option, either repair or replace such Goods, or credit Bias Power's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

Bias Power shall have a reasonable time after receipt of Goods and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until Bias Power has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform with the provisions hereof, Bias Power shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon Bias Power's delivery to the common carrier.

Bias Power is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind Bias Power by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of Bias Power, and therefore are not entitled to any employee benefits of Bias Power, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.

Seller shall be solely responsible for filing the appropriate federal, state and local tax forms, including, without limitation, a Schedule C or a Form 1020, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Seller's receipt of payment under this Agreement. Seller further agrees to provide Bias Power with reasonable assistance in the event of a government audit. Bias Power shall have no responsibility to pay or withhold from any payment to Seller under this Agreement, any federal, state or local taxes or fees. Bias Power will regularly report amounts paid to Seller by filing Form 1099-MISC with the Internal Revenue Service.

Seller shall be solely responsible for maintaining and requiring Seller's Assistants to maintain such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Seller's and Seller's Assistants' trades or businesses, whichever affords greater coverage. Upon request, Seller shall provide Bias Power with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Seller shall provide adequate coverage for any Bias Power property under the care, custody or control of Seller or Seller's Assistants.

Seller shall indemnify, hold harmless, and at Bias Power's request, defend Bias Power, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods provided under this Agreement, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, (ii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor, (iii) any claim based on the negligence, omissions or willful misconduct of Seller or any Seller's Assistants, and (iv) any claim by a third party against Bias Power alleging that the Goods or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without Bias Power's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Bias Power in enforcing this indemnity, including attorneys' fees.

Should Bias Power's use, or use by its distributors, subcontractors or customers, of any Goods purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods; (b) modify the Goods so that they no longer infringe but remain fully equivalent in functionality; (c) obtain for Bias Power, its distributors, subcontractors or customers the right to continue using the Goods; or (d) if none of the foregoing is possible, refund all amounts paid for the infringing Goods.

Seller will acquire knowledge of Bias Power Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Bias Power Confidential Information in confidence during and following termination or expiration of this Agreement. "Bias Power Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by Bias Power relating to the current or anticipated business or affairs of Bias Power which is disclosed directly or indirectly to Seller. In addition, Bias Power Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Goods to Bias Power. Bias Power Confidential Information does not include any information (i) which Seller lawfully knew without restriction on disclosure before Bias Power disclosed it to Seller, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller, (iii) which Seller developed independently without use of the Bias Power Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to Bias Power of such requirement prior to disclosure.

Seller agrees not to copy, alter or directly or indirectly disclose any Bias Power Confidential Information. Additionally, Seller agrees to limit its internal distribution of Bias Power Confidential Information to Seller's Assistants who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Bias Power Confidential Information.

Seller further agrees not to use the Bias Power Confidential Information except in the course of performing hereunder and will not use such Bias Power Confidential Information for its own benefit or for the benefit of any third party. The mingling of the Bias Power Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same as stated hereunder. Seller agrees not to design or manufacture any products which incorporate Bias Power Confidential Information. All Bias Power Confidential Information is and shall remain the property of Bias Power. Upon Bias Power's written request or the termination of this Agreement, Seller shall return, transfer or assign to Bias Power all Bias Power Confidential Information, including all Work Product, as defined herein, and all copies thereof.

For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the services performed hereunder. Standard Goods manufactured by Seller and sold to Bias Power without having been designed, customized or modified for Bias Power do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of Bias Power. Seller hereby agrees to irrevocably assign and transfer to Bias Power and does hereby assign and transfer to Bias Power all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Bias Power will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Bias Power deems appropriate. Seller agrees: (a) to disclose promptly in writing to Bias Power all Work Product in its possession; (b) to assist Bias Power in every reasonable way, at Bias Power's expense, to secure, perfect, register, apply for, maintain, and defend for Bias Power's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Bias Power's name as it deems appropriate; and (c) to otherwise treat all Work Product as Bias Power Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by Bias Power to Seller shall remain the sole property of Bias Power.

Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to Bias Power any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against Bias Power or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

Bias Power may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, Bias Power shall pay Seller for the portion of those conforming Goods delivered to Bias Power through the date of termination, less appropriate offsets, including any additional costs to be incurred by Bias Power in completing the Goods.

Bias Power may terminate this Agreement for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, Bias Power shall be liable to Seller only for those conforming Goods delivered to Bias Power through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to Bias Power if Bias Power fails to pay Seller within sixty (60) days after Seller notifies Bias Power in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Seller will promptly notify Bias Power of all Bias Power Confidential Information or any Work Product in Seller's possession and, at the expense of Seller and in accordance with Bias Power's instructions, will promptly deliver to Bias Power all such Bias Power Confidential Information and/or Work Product.

If Seller breaches this Agreement, Bias Power shall have all remedies available by law and at equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by Bias Power shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for Bias Power's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Bias Power and any resale so made shall be for the account of Seller.

Bias Power shall not be liable for any failure to perform including failure to take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event Bias Power is so excused, either party may terminate the Agreement and Bias Power shall at its expense and risk, return any Goods received to the place of shipment.

If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN NO EVENT SHALL Bias Power BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT Bias Power WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Bias Power. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of Bias Power without restriction. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

This is not an exclusive agreement. Bias Power is free to engage others to provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's Goods to others; provided however, that Seller does not breach this Agreement.

Except for Purchase Orders which may be sent by local mail, facsimile transmission, or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized Bias Power representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed telex or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of Illinois, excluding its conflict of law rules. The Superior Court of the County of Cook or the United States District Court for the Northern District of Illinois shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to the terms and conditions of this Agreement.

This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, including a purchase order or a change order issued by Bias Power, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related purchase orders.

General: Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws.

Hazardous Materials: If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials

Customs: Upon Bias Power's request, Seller will promptly provide Bias Power with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, intellectual nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to Bias Power for which there will be no adequate remedy at law and, in the event of such breach, Bias Power will be entitled to seek injunctive relief, or a decree of specific performance.