



Standard Purchase Order Terms and Conditions

The following Standard Purchase Order Terms and Conditions (“Terms and Conditions”) shall apply to procurements of goods/services (the “Work”) undertaken by the Virginia Passenger Rail Authority (“Buyer”) through a Purchase Order (“Order”) and, together with the Order and such other documents incorporated therein by reference, is intended to fully set forth the rights and obligations of the parties on such transactions.

1. Acceptance of Terms and Conditions

1.1 Acceptance of an Order from Buyer shall constitute acceptance of these Terms and Conditions, which shall be deemed a part of the Order and hereby incorporated therein by reference. The Order itself, these Terms and Conditions, and any additional clauses in the specifications, drawings, amendments, and/or documents submitted by Buyer shall constitute the entire agreement between Buyer and Seller and supersede prior offers, negotiations, exceptions, and understandings, whether oral or written between the parties.

1.2 Terms and conditions in Seller’s acknowledgment, invoice or any other correspondence containing any conflicting terms not contained herein, whether or not such terms materially alter the Order, and even if Seller’s acceptance is expressly conditioned on Buyer’s acceptance of such conflicting or additional terms, are objected to by Buyer without need of further notice of objection, and are of no legal effect.

2. Delivery

2.1 Delivery of the Work must be in strict compliance with the required delivery date and routing instructions within the Order. Delivery should be made by Seller at such times and places and of such items and quantities as may be specified by the Order.

2.2 All materials to be delivered in connection with any Order shall be packed and packaged in accordance with Buyer’s instructions. If Buyer has not specified the manner in which the goods must be packaged, Seller shall package them so as to avoid damage in transit and shall obtain the lowest possible transportation rate.

2.3 Title and risk of loss shall remain with Seller until (i) all materials are delivered to the destination specified in the Order (ii) the arrival of the specified delivery date, and (iii) Buyer has accepted the materials. Notwithstanding such delivery, Seller shall bear risk of loss or damage to materials purchased hereunder from the time that Buyer gives Notice of rejection of materials pursuant to the provision of the Order. All materials provided hereunder shall be free and clear of all liens, claims, and encumbrances.

2.4 Buyer’s Order numbers and symbols must be plainly marked on all packing lists, invoices, packages, bills of lading, and shipping orders. Shipping memos or packing lists must accompany materials. Items shipped are not deemed received until all required documentation is received. Buyer’s count or weight shall be determinate on shipments not accompanied by packing lists.

2.5 When materials are specially packed to avoid contamination or climatic exposure or if materials are temperature or age-sensitive, notice to this effect must be prominently placed on the bill of lading, packing sheet, and packages. If Seller fails to comply with this requirement, it shall be held liable for rejection of or loss to material due to such failure, including without limitation spoilage.

3. Inspection

3.1 Buyer shall have the right to inspect materials supplied as part of the Work to the extent practicable, at all places and times, including during the manufacture or fabrication, at Seller's facilities or elsewhere. Seller and Seller's suppliers will furnish, without additional charge, all reasonable facilities and assistance for the safety and convenience of Buyer performing their duties on Seller's premises or, where applicable, that of its suppliers.

3.2 Such inspection may include raw materials, components, work in process, and completed products as well as drawings, specifications, and related data. Final inspection acceptance shall be in accordance with criteria specified in the Order and after delivery to the delivery point designated by the Order.

3.3 Buyer may reject all materials found to be defective. Rejected materials may be returned to Seller at Seller's expense. At Buyer's request, Seller shall repair or replace defective materials at Seller's expense. Buyer's failure to inspect materials, failure to discover defects in materials, or payment for materials shall not constitute approval, acceptance, forfeiture of warranty rights, or limitation of any other of Buyer's rights provided by law or the Order.

3.4 If required by Buyer at any time prior to Seller's full performance, Seller shall provide and maintain, at no additional cost to Buyer, an inspection/quality control system acceptable to Buyer covering materials under the Order and shall tender to Buyer for acceptance only supplies that have been inspected in accordance with the inspection system and found by the Seller to be in conformity with the Buyer's requirements. As part of the system, Seller shall prepare records evidencing all inspections made under this system available and the outcome of such inspections. These records shall be kept complete and made available to Buyer before and after delivery. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. Buyer's right of inspection, whether exercised or not, shall be solely for Buyer's benefit, and shall not relieve Seller of any warranties or other obligations under the Order.

4. Over Shipment

4.1 Materials included as part of the Work shall not be supplied in excess of ordered quantities and any applicable shipping tolerances specified in the Order. Seller shall be liable for return shipment costs for any excess quantities shipped by Seller and returned by Buyer. If Seller refuses to pay for such costs, in advance of return shipment, the over-shipped material will be retained by Buyer at no cost. Buyer is under no obligation to notify Seller of any over shipments.

5. Pricing Terms; Warranty

5.1 The prices are firm and fixed unless otherwise expressly agreed in writing. All prices shall be inclusive of all fees or other charges and shall include all costs associated with suitable packaging and preparation for shipment.

5.2 Unless otherwise specified in the Order, prices are F.O.B. to the destination stated in the Order and shall include all federal, state, and local taxes (if required), and insurance.

5.3 Seller warrants that prices charged for the Work are not higher than those charged to any of Seller's other customers, including any other governmental agency or body. If, at any time, Seller reduces its prices for the goods and/or services referenced in the Order, Seller shall correspondingly provide an equivalent discount to Buyer.

6. Invoicing; Tax Exempt Status

6.1 Following delivery to, and acceptance of the Work by Buyer, Seller shall provide invoicing that shall contain the Order number, item number, description of goods or services, quantities, pricing

information, and such other supporting documentation as may be specified in the Order or otherwise required by Buyer.

6.2. Pursuant to Va. Code §§ 33.2-299.3, 58.1-609.1(4), Buyer is exempt from certain taxation, including retail sales and use tax. Seller shall not include in the invoice any taxes imposed by any taxing authority of the state in which the project is located, or any political subdivision thereof, upon the sale or use of the Work covered by the Order. Any such sales or use tax, if applicable, shall be paid by Seller. Seller shall prepay all freight and transportation charges to the F.O.B point of delivery and such freight charges shall be stated separately, as requested from the sales price of material, so as not to impose any tax upon Buyer.

6.2 Seller's failure to provide conforming invoicing, errors or omissions within invoicing, and/or failure to provide required invoicing documentation, shall constitute grounds under which Buyer may suspend or withhold payment.

7. Payment

7.1 Payment shall be due and payable to Seller within thirty (30) days of receipt of a conforming invoice together with all required documentation. Unless otherwise specified in the Order, all payments shall be made by wire transfer or ACH.

7.2 Buyer shall have the ongoing right to setoff and to make adjustments in Seller's invoicing due to non-performance by Seller.

8. Warranties

8.1 Seller warrants that the Work ordered or delivered hereunder will be merchantable; free from defect in materials and workmanship; in conformance with specifications, drawings, samples, or other descriptions furnished by Buyer; and fit and sufficient for the purpose intended. Such warranties, from date of acceptance, together with Seller's service warranties and guarantees, shall run to Buyer, its successors, assigns, customers at any tier, and ultimate user and joint users.

8.2 In the event of a breach of the foregoing warranty, Buyer may, at its option, either (a) return the materials for credit or (b) require prompt correction or replacement of the defective or nonconforming materials, and delivery to Buyer of any corrected or replaced materials at Seller's expense. Materials required to be corrected or replaced shall subject to Section 3 (*Inspection*) hereof in the same manner and to the same extent as materials originally delivered under the Order.

9. Compliance with Laws and Regulations; Permits/Licenses

9.1 Seller shall comply with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules, and regulations as well as any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in the Order.

9.2 Seller further expressly represents that it is: (i) a corporation, partnership, limited liability company, or other business entity type that it is in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Order, and (ii) authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity to the extent required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.

9.3 Seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of the Work.

10. Changes

10.1 Buyer may, at any time by Notice to Seller, make reasonable changes to the Work. However, no such change shall be effective unless in writing signed by the duly authorized representative of the parties. For purposes of Buyer, the duly authorized representative shall be the Director of Procurement or his/her designee.

10.2 If any such change causes an increase or decrease in the cost of, or the time required for, Seller's performance hereunder, then an equitable adjustment shall be made in the price or delivery schedule, or both.

10.3 Any claim by Seller for equitable adjustment under this section shall be proposed in writing within thirty (30) days from the date of receipt of Buyer's Notice directing the change. Where the cost of property acquired for the performance of an Order made obsolete or excess as a result of a change is included in the claim for equitable adjustment, Buyer shall have the right to prescribe the manner of disposition of such property, and Seller will diligently follow Buyer's direction.

10.4 Failure to agree to any adjustment as to price pursuant to this section shall constitute a dispute and subject to the "Dispute Resolution" provisions of these Terms and Conditions. However, nothing in this section shall excuse Seller from proceeding with the Order as changed.

11. Buyer-Furnished Material or Supplies

11.1 Buyer may, from time to time, deliver to Seller materials required by Seller for the performance of the Work. In such an event, if the delivery of such materials from Buyer to Seller was not contemplated in the original price, the total price of the Order shall be reduced by Seller's avoided costs related to such materials, which avoided costs amount Seller will propose to Buyer and which amount shall be agreed upon between Buyer and Seller prior to such delivery.

12. Confidential Information

12.1 Seller will keep confidential any technical, process, economic, or other information derived from drawings, specifications and other data furnished by Buyer in connection with the Order (collectively, the "Confidential Information") and will not divulge, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Buyer's prior written consent.

12.2 Except as required for the performance of the Work, Seller will not use such information or make copies or permit copies to be made of such Confidential Information without the prior written consent of Buyer.

12.3 Upon completion or termination of the Order, Seller shall return all such Confidential Information to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

13. Stop Work Order

13.1 Buyer may at any time by Notice to Seller, require Seller to stop all or any part of the Work for a period of up to ninety (90) days after the Notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage.

13.2 Within a period of ninety (90) days after a Stop Work order is delivered to Seller, Buyer shall either cancel the Stop Work Order or terminate the Work covered by the Stop Work Order as provided in the "Default" or the "Termination for Convenience" sections hereof, as Buyer deems appropriate. Seller shall resume Work upon cancellation or expiration of any Stop Work Order. If the Stop Work Order results in an increase in the time required for the performance of an Order or in Seller's costs properly

allocable thereto, then upon a written request made by Seller to Buyer, an equitable adjustment shall be made in the delivery schedule or prices, or both in accordance with the "Changes" section hereof.

14. Default

14.1 Time is of the essence of the Order. Buyer may by Notice of default to Seller (a) terminate all or any part of this Order if Seller fails to perform, or so fails to make progress as to endanger performance of the Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of Notice from Buyer specifying such failure; and (b) procure, on such terms as it will deem appropriate, goods or services similar to those so terminated.

14.2 Seller will continue performance of the Order to the extent not terminated and will be liable to Buyer for any excess costs for such similar goods or services. As an alternate remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price will be negotiated.

14.3 If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of the Order, Seller will promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may require delivery by fastest way and charges resulting from the premium transportation shall be fully prepaid and absorbed by Seller.

14.4 In addition to the foregoing, the Order may be terminated in whole or in part by Buyer upon Notice to Seller, if Seller should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Seller of an assignment for the benefit of its creditors.

14.5 The rights and remedies of Buyer provided in this section will not be exclusive and are in addition to any other rights and remedies provided by the Uniform Commercial Code, by law, at equity or under the Order (inclusive of these Terms and Conditions).

15. Termination for Convenience

15.1 Buyer may terminate all or any part of the Order for convenience at any time by Notice to Seller. Upon such termination, Buyer's liability will be limited to reasonable termination charges mutually agreed by Seller and Buyer, provided that Seller must specify any proposed charges in writing within thirty (30) days after termination, and provided further that Buyer shall not be liable for lost or anticipated profits on Work not undertaken by Seller.

15.2 Upon payment of the termination charges, Buyer, at its sole election, may immediately take possession and become the owner of the Work, free and clear of all liens, claims, and encumbrances as shall be evidenced in a bill of sale to be provided by Seller.

16. Buyer's Property; Rights to Drawings, Documents, etc.

16.1 Tangible or intangible property of any nature furnished to Seller by Buyer or specifically paid for in whole or in part by Buyer, and any replacements or attachments, are the property of Buyer and, unless otherwise agreed in writing by Buyer, will be used by Seller solely to furnish the Work to Buyer.

16.2 Seller will not substitute any property or take any action inconsistent with Buyer's ownership of such property. While in Seller's custody or control such property will be held at Seller's risk, and will be subject to removal at Buyer's written request, in which event Seller will prepare such property for shipment and redelivery to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.

16.3 Upon termination of the Order for default or convenience, Buyer may use all drawings, documents, or other records related to Order whether created by Buyer or Seller for which Buyer has already compensated Seller, without additional compensation to Seller.

17. Patents and Copyrights

17.1 Seller warrants that Buyer will suffer no claim, damages, or liability arising from any of the material's breach of any patent, trademark, copyright, or similar law.

17.2 Seller shall disclose, deliver, and does hereby assign to buyer all inventions, discoveries, processes, data, plans, specifications, information, and computer software generated from the Order whether or not specified to be delivered hereunder. Seller agrees to execute all documents required by Buyer in this regard.

18. Work on Buyer's Premises

18.1 If Seller's Work under the Order requires Seller to be on the premises of Buyer or at Buyer's direction, Seller will take all necessary precautions to prevent any injury to persons or damage to property, including following any rules, procedures or other requirements of Buyer.

19. Travel Related Expenses

19.1 Buyer will only be liable to pay for Seller's travel-related expenses, including transportation, meals, lodging, and incidental expenses that have been authorized by Buyer in advance. Travel-related expenditures must comply with Buyer's Travel & Expense Policy and Procedures and will be reimbursable at the then-current per diem rates as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov>).

20. Insurance

20.1 Seller and its subcontractors will maintain Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed in these Terms and Conditions), Automobile Liability and Employers' Liability insurance with limits as reasonably required by Buyer, as well as appropriate Workers' Compensation insurance as will protect Seller from all claims under any applicable workers' compensation and occupational disease acts.

20.2 At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers and that of any of its subcontractors, showing such coverage is in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of the coverage. Buyer may stipulate minimum liability coverage. Buyer shall be named as an additional insured under such liability insurance policies.

21. Indemnity

21.1 Seller shall indemnify and hold Buyer and the Commonwealth of Virginia harmless and, on Buyer's request, shall defend each of them from and against any or all third party claims, demands, litigation, or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability, infringement of intellectual property rights, or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors, or suppliers.

21.2 Seller shall, on request, pay or reimburse Buyer or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys' fees, as incurred by Buyer or such other party in connection with any such claim, demand, litigation, proceeding, loss, or damage. In addition,

for infringement claims, Seller will, at its own expense and at Buyer's option, either procure for Buyer the right to continue using the allegedly infringing item, replace it with a non-infringing equivalent, or remove it and refund the purchase price and the transportation and installation costs thereof.

22. Dispute Resolution; Injunctive Relief

22.1 Disputes arising under the Order will be initially referred to designated representatives of the Parties (the "Designated Representatives") who shall make good faith effort to resolve the dispute in the ordinary course of business and who shall have full settlement authority subject to any approvals as may be required by law.

22.2 To initiate a dispute, a party must provide Notice of its claim which Notice shall set forth a description of the controversy and the relief requested.

22.3 If the Designated Representatives cannot resolve the matter within thirty (30) days of receipt of a Notice of dispute, then either party may pursue legal action, and any judicial proceeding shall take place only in the Circuit Court of the City of Richmond. The Parties accept the personal jurisdiction of such court and waive all jurisdiction and venue-related defenses to the maintenance of such actions.

22.4 Notwithstanding the foregoing, in the event of a breach or threatened breach by a party of any material obligation under the Order (inclusive of these Terms and Conditions), any other party shall, in addition to and not in substitution for any other remedy available to it in respect of such breach, be entitled to injunctive relief which restrains the party in breach from committing or continuing such breach.

23. Limitation of Liability

23.1 In no event shall Buyer be liable for any loss of profits, loss of revenue, loss of data, loss of use, special, indirect, or consequential damages arising out of or related to its performance under the Order.

23.2 Buyer's aggregate liability arising from or relating to the Order shall be limited to the amount paid by Buyer for the Work.

24. Force Majeure

24.1 A party shall not be in default for any failure to perform any of its obligations under the Order if such failure arises from any cause that could not have been prevented by means reasonably available to the party and that was beyond the control of and without the fault or negligence of the party. Such causes include but are not limited to: acts of God or of the public enemy; acts of Government in either its sovereign, legislative or contractual capacity; fire; flood; landslide; earthquake; epidemic; quarantine restrictions; freight embargo; strike; lockout; sabotage; labor dispute; or unusually severe weather.

24.2 The affected party shall, as soon as reasonably possible, give Notice to the other, including all relevant information that it has available, regarding any such actual event that is impacting or any potential event that threatens to impact the affected party's performance of its obligations under the Order.

24.3 If a suspension under this section has lasted for a period exceeding ninety (90) calendar days, Buyer shall be entitled, by providing Notice to Seller, to terminate the Order with respect to the remaining Work. Such a termination shall be treated as a Termination for Convenience.

25. Publicity

25.1 Except as required by any applicable law or regulation, Seller shall not release any information concerning the Order or disclose or use Buyer's name for purposes of advertising or soliciting business,

including, but not limited to, press releases, social media posts, brochures, photographs, or verbal announcements without the prior written permission of Buyer.

26. Ethics in Public Contracting

26.1 Seller certifies that they have offered their proposal and have accepted the Order without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal or obligations under the Order, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

27. Debarment Status

27.1 Seller certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response or from entering into contracts for the type of goods and/or services covered by the Order. Seller further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently so debarred by the Commonwealth of Virginia. If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

28. Availability of Funds; Appropriation

28.1 It is understood and agreed between the parties herein that Buyer shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of the Order. In addition, any payments due from Buyer hereunder are subject to and dependent upon appropriation by the Virginia General Assembly.

29. Audit

29.1 Seller shall retain all books, records, and other documents relative to the Order for five (5) years after final payment, or until audited by Buyer, whichever is sooner. Buyer, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

30. Anti-Discrimination

30.1 Seller certifies to Buyer that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended and where applicable, the Virginians with Disabilities Act, and the Americans with Disabilities Act. Further, in every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of the Order, Seller agrees as follows:

1. Seller will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Seller. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Seller, in all solicitations or advertisements for employees placed by or on behalf of Seller, will state that Seller is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

3. If Seller employs more than five employees, Seller shall (i) provide annual training on Seller's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Seller's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that Seller owns or leases for business purposes and (b) Seller's employee handbook.
4. The requirements of these provisions A. and B. are a material part of the Order. If Seller violates one of these provisions, Buyer may terminate the affected part of the Order for breach, or at its option, the whole Order. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

B. Seller will include the provisions of subdivisions 1-3 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or supplier.

31. Assignment and Subcontracting; Prompt Payment of Subcontractors/Suppliers

31.1 Seller shall not assign the Order in whole or part without prior express written consent of Buyer. Nor shall Seller subcontract for completed or substantially completed materials or services purchased hereunder without the prior express written consent of Buyer. The limitation shall not apply to the purchase by Seller of standard commercial supplies or raw material. Seller shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of Buyer and the Order.

31.2 Seller shall promptly pay all subcontractors and suppliers upon receipt of payment from Buyer and shall keep the Work and any property of Buyer, free from all liens arising from labor or materials furnished in connection with the Order. Buyer may, as a condition of final payment, require Seller to submit an affidavit stating that all subcontractors and suppliers, if any, have been paid in full for any goods and/or services provided in connection with the Order.

32. Notices

32.1 Any Notice required pursuant these Terms and Conditions shall be in writing and sent by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail at the addresses set forth in the approved name and address information to be furnished by Buyer or Seller.

32.2 The date such Notice shall be deemed to have been given shall be the Business Day of receipt if received during business hours, the first Business Day after the Business Day of receipt if received after business hours on the preceding Business Day, the first Business Day after the date sent by courier, express or overnight ("next day delivery") service, or the third Business Day after the date of the postmark on the envelope if mailed, whichever occurs first.

32.3 As used herein, "Business Day" shall mean that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the Commonwealth of Virginia or the United States Government.

33. No Waiver

33.1 Except as otherwise expressly provided herein, neither the failure of either party to exercise any power given such party or to insist upon strict compliance by the other party with its obligations under the Order (inclusive of these Terms and Conditions), nor any custom or practice of the parties at variance with the terms of the Order (inclusive of these Terms and Conditions), shall constitute a waiver of either party's right to demand exact compliance with the terms of the Order (inclusive of these Terms and Conditions).

34. Governing Law

34.1 The validity, performance, and construction of the Order shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to its choice of law provisions.

35. Remedies

35.1 Any remedies specified for Seller's breach of the Order shall not be exclusive. If Seller breaches any provision, representation, covenant or warranty under the Order, Buyer shall have all rights and remedies specifically stated in the Order (inclusive of these Terms and Conditions), as well as those available under applicable law, including without limitation specific performance and all rights and remedies under the Uniform Commercial Code.

36. Sovereign Immunity

36.1 Buyer, specifically and the Commonwealth of Virginia generally, neither waive nor abrogate their sovereign immunity, in part or in whole, in any manner, under any theory, hereunder.

36.2 Notwithstanding the foregoing, Buyer agrees and acknowledges that the Order constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) the sovereign immunity of the Commonwealth of Virginia; provided that sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia.

37. Severability

37.1 The invalidity, illegality, or unenforceability of any provision of the Order or its related documents (including these Terms and Conditions), or the occurrence of any event rendering any provision of the Order or its related documents void, shall not affect the validity or enforceability of any other provision. Any such provision shall be severed from the Order and the remainder shall be construed and enforced as if it did not contain it.