

1. DEFINITIONS

- (a) "Company" means **PathSensors Inc.**, of 701 E Pratt St, Baltimore, MD 21202, USA.
- (b) "Equipment" means all components, spare parts, goods, equipment, or materials of any kind, which are supplied by the Company under this Order.
- (c) "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for consequential loss (including loss of revenue or profit) or damage of any kind howsoever caused or arising.
- (d) "ICC Incoterms" means the International Chamber of Commerce's Incoterms as published from time to time and "Ex Works" and "FCA" shall have the meanings given them by ICC Incoterms from time to time save where such meanings are inconsistent with the terms hereof.
- (e) "Losses" means losses, claims, causes of action, suits, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations.
- (f) "Operator" means the operator or user of Equipment.
- (g) "Order" shall mean the agreement between the Company and the Purchaser (individually "Party" and collectively "the Parties") for the sale and purchase of the Equipment/Services, referencing the Terms and Conditions of Sale herein and any other contemporaneous writing, signed by both Parties.
- (h) "Purchaser" means the company, firm or individual who has bought, or agreed to buy, the Equipment and/or Services.
- (i) "Purchaser Delays" means any delay by Purchaser in performing any contractual obligations or any other circumstances for which Purchaser is responsible, including, without limitation, delays to attend testing (if required), take delivery, arrange shipment or import licences, or be available for installation and/or training.
- (j) "Quotation" means the quotation addressed to the Purchaser by the Company.
- (k) "Services" means all services, including maintenance and installation services, and operator training where applicable, provided under the Order.

2. GENERAL

- (a) The Quotation does not constitute an offer to supply any Equipment or Services and no contract exists unless and until there has been an acceptance by the Company in writing of the Order.
- (b) The acceptance of the Order whether or not based on a Quotation from the Company shall, unless otherwise specifically agreed by the Company in writing, be deemed to be subject to the terms and conditions herein contained which shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser at any time before or after this contract and, in particular, but without prejudice to the generality of the foregoing, contained in any order by the Purchaser.
- (c) Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's handbooks, manuals, catalogues, brochures, price lists and other published matter are approximate only and none of these form part of any contract or gives rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the Equipment as described therein.
- (d) The performance figures in respect of the Equipment included in the Company's specifications, product brochures and other published matter are indicative only and based on results obtained by the Company representative testing. The Company accordingly represents only that the Equipment met or demonstrated those performance standards or characteristics which are specifically attributed thereto in such specifications made available by the Company to the Purchaser and the Company gives no warranty that the Equipment will be suitable for any particular use to which the Purchaser may put them or how they will perform in such use or application.
- (e) The Purchaser shall ensure that any of its employees, agents or representatives or other person to whom the Purchaser shall provide the Equipment shall receive a copy of any operator manual in respect of the Equipment which is available from the Company.

3. PRICE

- (a) The price of the Equipment is current as of the date of the Quotation and valid for a period of 90 days thereafter, unless stated to the contrary by the Company in writing.
- (b) The Equipment shall be those specified in the Order as confirmed by the Company's acceptance in writing and the Company reserves the right to increase the price if the Purchaser requests an alteration to the Order or requests any modification to the Equipment.
- (c) Unless otherwise agreed in writing the price for the Equipment in respect of: (i) contracts for delivery within the United States is Ex Works Company's Designated Facility (Incoterms 2020) including the cost of basic packaging but excluding freight, insurance, delivery charges, unloading, VAT and all applicable taxes and duties the cost of which shall be determined as at the date of the invoice and shall be payable by the Purchaser; and (ii) contracts for delivery outside the United States is FCA Company's Designated Facility (Incoterms 2020) and includes the cost of basic packaging.
- (d) The cost of any special packaging shall be determined at the date of invoice and shall be payable by the Purchaser.
- (e) The Purchaser shall not be entitled to make any deduction from the price of the Equipment in respect of any set-off or counter-claim unless both the validity and the amount thereof have been expressly admitted by the Company in writing.

4. PAYMENT

- (a) In respect of Equipment, the Company shall invoice the Purchaser on or at any time after completion of each delivery in accordance with Condition 6(a), unless otherwise agreed in writing with the Purchaser.
- (b) In respect of Services, the Company shall invoice the Purchaser on or at any time after completion of the Services, unless otherwise agreed in writing with the Purchaser.
- (c) The Purchaser shall, except where other payment arrangements are specifically agreed in writing or identified on the face of the Order, make full payment in US Dollars for the Equipment/Services not later than 30 days after the date of the invoice relating thereto or, if earlier, on the day which a receiver of the Purchaser's undertaking is appointed or upon which any act is done or event occurs which is related to the insolvency of the Purchaser. If payment for the Equipment is not made when due the Company may charge interest thereon at the rate of one and a half per cent (1.5%) per month or the maximum rate allowable by law. Time of payment shall be of the essence.
- (d) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to make delivery of any further consignment of Equipment under this contract or goods under any other contract with the Purchaser and without incurring any liability whatsoever to the Purchaser for any delay.
- (e) The Company shall retain a first, perfected security interest in the Equipment until the Purchaser has made full payment for the Equipment. Until the Purchaser has made full payment for the Equipment, the Purchaser shall keep the Equipment free from any lien, charge, or similar encumbrance and shall not resell the Equipment. Until the Purchaser has made full payment for the Equipment, the Company shall have the right to retake possession of the Equipment and for that purpose, with or without notice to the Purchaser, to enter any premises occupied by the Purchaser in which the Equipment may be. Such retaking of possession shall not relieve the Purchaser from its obligation to purchase the Equipment by paying the full price thereof and shall not prejudice any rights of the Company including any right it may have to accept a repudiation by the Purchaser of the contract relating to the Equipment.
- (f) In addition to the foregoing and any additional lien to which the Company may otherwise be entitled, the Company shall, in the event of the Purchaser being insolvent or failing to pay the purchase price due under any other contract with the Company, be entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid price of the Equipment sold and delivered to the Purchaser by the Company under this or any other contract. In the case of repairs or overhauls performed pursuant to this Order, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of Smiths upon which any repair or overhaul services have been performed by the Company. To the extent that the Company maintains possession of Equipment under repair, the Purchaser agrees that the Company is a secured creditor of the Purchaser and has all the rights of a secured creditor. Any such liens or security interests granted herein may not be subordinated by the Purchaser.
- (g) No defect in the Equipment or Services shall operate to interfere with the terms of payment.
- (h) The Company reserves the right to change the terms of payment whenever it reasonably appears that Purchaser's financial condition requires such changes and may demand assurance of the Purchaser's ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and the Company may, upon making such demand, stop production and/or suspend shipments hereunder without any liability whatsoever to the Purchaser.

5. TRANSFER OF RISK AND PROPERTY

- (a) All risk and title in and to the Goods shall transfer to the Purchaser in accordance with the Incoterm stated on the Quotation/Order.
- (b) Any Purchaser Delays shall result in immediate transfer of the risk of loss to the Purchaser and Purchaser shall be responsible for the procurement of insurance, if so desired, on the Equipment.
- (c) The Company shall have no liability for damage of the Equipment unless notice of a claim is received by the Company within 3 days of the Equipment being received by the Purchaser.

6. DELIVERY

- (a) Unless otherwise agreed in writing: (i) all shipments of Equipment made by Smiths shall be Ex-Works Company's Designated Facility (INCOTERMS 2020); (ii) notwithstanding the foregoing, all shipments exported outside of the United States shall be FCA Company's Designated Facility (INCOTERMS 2020).
- (b) Unless otherwise stated in writing any time or date for the delivery shall run from the date on which acceptance of the Order is communicated to the Purchaser. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- (c) Delivery and the Purchaser's acceptance of the Equipment shall be deemed to have taken place at the earliest point in time at which risk passes to the Purchaser under the ICC Incoterms. Signature of any delivery note by any agent, employee or representative of the Purchaser or by any independent carrier shall be conclusive proof of the delivery and the Purchaser's acceptance of the Equipment. Notwithstanding such delivery, the Company shall have a general and particular lien over the Equipment for all claims by the Company against the Purchaser and all monies owing by the Purchaser to the Company howsoever arising.

- (d) Without prejudice to any rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities (which the Purchaser is obliged under these terms and conditions or by law to obtain) for forwarding the Equipment or if there is any other Purchaser Delay, the Purchaser shall pay to the Company all storage and insurance costs and any other out of pocket expenses incurred arising from such delay.
- (e) The Purchaser shall be obliged to take delivery of the Equipment and/or Services when they are delivered or tendered for delivery in accordance with the Order. Where the Purchaser refuses or is unable (for any reason) to accept delivery of the Equipment and/or Services or if there is any other Purchaser Delay, the Company shall have the right (without prejudice to its other rights) to invoice the Purchaser in respect thereof (payment to be made within 30 days of the invoice date) and the Equipment and/or Services shall be deemed Delivered. The Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage and all other handling costs arising directly or indirectly therefrom and the Purchaser shall make payment to the Company within 30 days of the invoice date.
- (f) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Order. The Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays.
- (g) The Company shall be entitled to make partial deliveries by instalments and (where the Company has agreed to be responsible for delivery of the Equipment to the Customer) to determine the route and manner of delivery of the Equipment and shall be deemed to have the Purchaser's authority to make such contract with any carrier as the Company may deem reasonable. If the route involves sea transit the Company shall not be obliged to give the Purchaser any notice.
- (h) Where delivery of the Equipment is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply. Any delay in or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.
- (i) In the event of any delay in delivery or installation whether attributable to cause outside the Company's control or not the Company shall be under no liability whatsoever to the Purchaser.

7. WARRANTY

- (a) The Company warrants that the Equipment supplied by it (excluding Consumables) against defective materials and defective workmanship for a period of twelve months from the date of delivery or deemed delivery (see condition 6 (e) above) provided the Purchaser notifies the Company in writing of any alleged defect within 30 days of its discovery. Under this warranty the Company will, in its sole discretion, either at the Customer's premises or on the Purchaser returning the Equipment carriage paid to such place as the Company shall direct, make good any defect by repair or replacement within a reasonable period of time if, in the opinion of the Company, the defect constitutes a breach of this warranty.
- (b) Consumable items consumed in operation (including but not limited to BioDiscs and tubes) ("**Consumables**") are excluded from the warranty set out at 7(a). The Company warrants Consumables against defective materials and workmanship for one day from the date the packaging is opened, provided that the Consumable is within the shelf life marked on the product packaging. No claim will be met under this Consumables warranty if any of the circumstances set out in 7(d) apply.
- (c) Any parts so repaired or replaced free of charge under this warranty will be subject to a warranty on the same terms as this warranty for the remaining initial warranty period.
- (d) No claim will be met by the Company under this warranty arising out of fair wear and tear or if the Equipment have been incorrectly fitted, misused, kept in storage or immobilised for one year or more, subjected to neglect or abnormal conditions or involved in any accident or any attempt to repair, disassemble or alter, replacement or modification has been made without the sanction of the Company or if they have been in any way dealt with contrary to any instructions issued by the Company.
- (e) The Company warrants that it shall use reasonable skill and care in the performance of the Services delivered under the Order. The Company does not represent or warrant that all equipment problems will be corrected to the full satisfaction of Purchaser. The express warranty set forth in the first sentence of this provision shall be the only warranty given by the Company with respect to the Services provided. The Purchaser's exclusive remedy for breach of the express warranty set forth in this provision 7(d) shall be re-performance of the deficient Services within a reasonable period of time. Notice of a breach of this warranty must (i) specify in reasonable detail the nature of the claim, and (ii) be received within thirty (30) days from the last day of performance of the Services.
- (f) For goods not manufactured by the Company, the Company's only responsibility is to assign to the Purchaser any manufacturer's warranty where permissible.

8. LIMITATION OF LIABILITY

- (a) The Purchaser is relying on its own skill and judgement in relation to the Equipment supplied under this contract and the Company accepts no liability whatsoever for any knowledge it or its employees, agents or representatives may possess as to the purpose for which the Equipment are supplied.
- (b) The Purchaser acknowledges and agrees that:

- (i) The Equipment is intended to be used as screening equipment, in order to assist in the detection of biological threat agents and other or hazardous materials;
 - (ii) The degree of success with which the Equipment will fulfil their intended use is dependent on numerous factors, including without limitation, the biological identity and quantity of such materials, the quality of the sample, the strain / mutation of the biological threat agent and/or pathogen, the skill, diligence and qualifications of the Operator (where applicable) and environmental conditions; and
 - (iii) No screening equipment is capable of detecting every threat, and neither the Purchaser nor the Operator has any expectation that the Equipment are capable of detecting, or that they will detect, all biological threat agents and/or hazardous materials (this being the case whether the Equipment are operated with or without Operator supervision, and regardless of the degree of diligence with which services of the Company, if any, are or have been performed).
- (c) The Company makes no guaranty or warranty as to the results that will be achieved through the use of the Equipment and it is agreed that the sole responsibility for such results shall be borne by Purchaser.
 - (d) **The remedies provided in Clause 7 above shall be the Purchaser's sole remedy under the Warranty and all further remedies are hereby expressly excluded.**
 - (e) **Neither the Company nor any of its affiliates shall be under any liability whatsoever to the Purchaser for indirect or consequential loss (including, but without limitation, loss of profit, loss of revenue, loss of goodwill, special, consequential, incidental, exemplary or other damages, including damages resulting from substitute procurement, loss of use, loss of data, loss of savings, loss of business, failure or delay in performance, even if the Company or its affiliates have been advised of the possibility of any such damages and whether or not arising out of any liability of the Purchaser to any other person).**
 - (f) **To the extent permitted by the applicable law, all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this Section, are hereby expressly excluded.**
 - (g) **The total aggregate liability of the Company and its affiliates taken together in respect of the direct consequences and, in the event that the Company is not entitled (for any reason) to rely on the provisions of paragraph (e) above, the indirect consequences (including but without limitation loss of profit, revenue or goodwill and whether or not arising out of any liability of the Purchaser to any other person) resulting from any breach of contract, breach of a duty of care, statutory duty, product liability or otherwise howsoever suffered shall be limited to the lesser of: (i) the amount of the Order to which the Equipment relate or (ii) US\$500,000, and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with provisions of this Section are hereby expressly excluded.** Nothing in this section or Section 7 shall exclude or limit the liability of the Company or its affiliates, or require the Purchaser to defend, indemnify or hold harmless the Company or its affiliates, in circumstances where the Losses claimed are alleged to have resulted from (i) wilful misconduct or gross negligence of the Company and/or its affiliates, (ii) any fraud or fraudulent conduct on the part of the Supplier the Company and/or its affiliates, or (iii) any other liability that cannot be excluded by law, and where (in each case) such fault on the part of the Company and/or its affiliates or liability is adjudicated to be the cause of the Losses.
 - (h) All, if any, statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Equipment are given without responsibility and shall not give rise to any liability whatsoever on the part of the Company and the Purchaser hereby represents and warrants to the Company that no representation has been made to it by or on behalf of the Company that has in any way induced the Purchaser to enter into the contract with the Company.
 - (i) Should these Conditions apply to a consumer transaction the Purchaser's statutory rights shall not be affected by this Section 8.

9. INDEMNITY

To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from or in connection with the purchase, use and/or operation of Equipment by Purchaser or Operator, including but not limited to any of the following: (i) the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person, and the damage, loss, or destruction of any real or tangible personal property; (ii) any action taken by or on behalf of Purchaser and/or Operator in the performance of this Agreement that causes the Company or its affiliates to be obligated to indemnify, defend, and/or hold harmless any third party; (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of the Purchaser, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant; and (iv) any claim by the Purchaser or the Operator, whether based on warranty or other contract breach, negligence or other tort, for matters disclaimed in subsection 8(d) above. The Purchaser shall fully indemnify and completely hold harmless the Company and its affiliates as provided above, whether or not negligence or other fault of the Company or any of

its affiliates contributed to, or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability or expense.

10. COMPLIANCE WITH APPLICABLE LAW

The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice including, without limitation, the laws of the United States, and shall be solely liable for obtaining and maintaining any licenses, permits, or approvals that may be required for the purchase and operation of the Equipment.

11. EXPORT AND IMPORT CONTROLS

- (a) In the case of export contracts, all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary import licences in respect of the Equipment shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of goods exported without the necessary import licences. The number and expiry date of any import licence shall be furnished to the Company with the shipping instructions at least one month prior to the delivery date. If the import licence expires before the Equipment has been made available the Purchaser shall be responsible for its renewal. The Company shall not be liable for any expense or loss caused by a Purchaser Delay in obtaining such licence or the renewal thereof.
- (b) When the export of the goods from the United States is subject to control, the contract will be conditional on the grant of an export licence. Applications for this licence will be made by the Company only when the Company is responsible for shipment. In all other cases the Company may assist the Purchaser in the procurement of such licence, but without being under any legal liability to do so.
- (c) The sale, resale or other disposition of the Equipment and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. The Purchaser agrees to comply with such laws, regulations and orders and shall not permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Equipment or any technology to any foreign person without complying with the applicable laws. To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from a breach of this Section 11.

12. INTELLECTUAL PROPERTY RIGHTS

- (a) Purchaser agrees that the Company is and shall be the owner of all Intellectual Property, inventions, technology, designs, works of authorship, technical information, computer software, business information and other information existing prior to or conceived, developed or otherwise generated in the performance of the Order with respect to the Equipment. Purchaser shall not: (i) reverse engineer, disassemble (except to the extent applicable laws specifically prohibit such restriction), or decompile the Equipment or any portion thereof; (ii) engage in activities to develop improvements to the Equipment; (iii) modify the Equipment or integrate them with any other products, systems, devices or other items other than as contemplated at the time of sale; or (iv) allow or assist any third party to perform any of the foregoing.
- (b) Purchaser agrees to provide the Company with sufficient information in relation and to assist the Company, at the Company's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing any Intellectual Property rights on the subject matter covered by this Section.
- (c) Purchaser shall give prompt notice to the Company of any allegation of infringement of Intellectual Property rights in respect of the Equipment and the Company shall have the exclusive right to control and direct the investigation, defense and settlement of any claim based on such allegation.
- (d) Purchaser shall give prompt notice to the Company if it becomes aware of any unauthorized use or exploitation of the whole or any part of the Equipment or any aspect of the operation of the Equipment.
- (e) Seller shall defend any suit or proceeding brought against Purchaser so far as based on a claim that the Products furnished under this Agreement constitute an infringement of any patent of the United States, issued on or before the date of shipment, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein against Purchaser. In case such goods, or any part thereof, are held to infringe and the use of said goods or part is enjoined, or Seller shall reasonably conclude that the goods are infringing, Seller shall, at its own expense, either procure for Purchaser the right to continue using said goods or parts, or replace same with non-infringing goods; or modify such goods so they become non-infringing; or remove said goods from the market and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of seller for patent infringement by the said goods or any part thereof.

13. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract or any part thereof.

14. ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the consent of the Company.

15. SALES BY THE PURCHASER

The Purchaser undertakes to the Company that in respect of any sales of the Equipment the Purchaser shall:

- (a) maintain a record of all such sales, including dates, prices, the names and addresses of the Purchaser's customers and product references and numbers and provide such details to the Company within 30 days of any such sale;
- (b) submit to the Company all complaints relating to the Equipment together with all available evidence and other information relating thereto and forward to the Company for examination if necessary the Equipment in respect of which complaints are made together with full identification of such Equipment including product references and numbers. In the event of any dispute arising between the Purchaser and any third party in relation to the quality or characteristics of any of the Equipment sold by the Purchaser, the Purchaser shall inform the Company immediately of such dispute. The Purchaser shall not admit liability or do anything which might be construed as an admission of liability nor take any proceedings in respect of, or compromise, such dispute;
- (c) provide all customers with the specification and the operator manual and (where the customer requests) service manual relating to the relevant Equipment and make it clear to customers that training and service support are available directly from the Company and pass on to the Company any resultant requests;
- (d) shall procure that none of its employees, agents or representatives shall make any representation or statement in relation to the goods which is not contained in the Company's current technical specifications or Conditions of Sale;
- (e) comply with all applicable export control laws, regulations and orders; and
- (f) indemnify the Company against all costs, expenses, loss or damage incurred by the Company as a result of any breach by the Purchaser or any of its employees, agents or representatives of any of the provisions of this Section 15.

16. CONFIDENTIALITY

- (a) The Parties agree that in the course of performance of the contract to which these Conditions apply, it may be necessary and desirable for them to exchange confidential information. For example, all updates, repairs, replacements, fixes, modifications, and other changes to the Equipment shall be considered the Company's proprietary information. To accomplish this confidentiality, the parties agree as follows: Purchaser shall not disclose confidential information of the Company to any person outside its employ, except when authorized by the Company. Purchaser shall use the same level of care in preserving the confidential nature of the confidential information as it uses to protect its own confidential information but not less than reasonable care. Purchaser shall use the Equipment only for the purpose contemplated by the parties at the time of sale, and for no other purpose.

17. RETURN OF GOODS

- (a) No return of Equipment for purposes of the Warranty or where return is otherwise expressly permitted under the Order shall be accepted by Company without a Return Material Authorization ("RMA") number, which may be issued by the Company in its sole discretion, and receipt of a duly completed Purchaser Declaration in the Company's designated format in respect of exposure of the Equipment to hazards which is available at http://www.smithsdetection.com/US_terms_conditions.php. All Equipment for return shall be returned freight prepaid in the manner specified in the RMA. If returned Equipment are claimed to be defective, a complete description of the nature of the defect must be included with the returned Equipment. Equipment not eligible for return shall be returned to Purchaser, freight collect.
- (b) The Purchaser agrees to defend, indemnify and hold the Company, its affiliates and its and their respective officers, partners, directors, employees, agents, successors, and assigns harmless from all , Losses and threatened Losses arising out of or in connection with the exposure of the product to hazardous materials, regardless of whether or not: (i) the exposure to hazardous materials was caused by or within the control of the Purchaser; (ii) the Company was aware of such exposure; and (iii) any negligence or other fault of the Company contributed to, or is alleged to have contributed to, the Loss, except and only to the extent such Loss was adjudicated to be caused by the wilful misconduct or gross negligence of the Company.

18. GOVERNING LAW

The Order and these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of New York State without reference to its conflicts or choice of laws provisions. Any legal action shall be brought in the exclusive venue of the federal and state courts of New York State in Manhattan, New York, NY. The Company and the Purchaser hereby irrevocably waive the right to a jury trial to the extent permissible by law. **THIS ORDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Notwithstanding the foregoing, the federal laws of the United States of America shall be the governing

laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark.

19. CHANGES AND TERMINATION

- (a) Company shall have the right, in its sole discretion, to terminate the Order if the Purchaser:
- (i) is unable to pay its debts generally as and when they become due;
 - (ii) is the subject of a legal process declaring it insolvent;
 - (iii) ceases or threatens to cease carrying on its business;
 - (iv) commits any breach of the Order which is (a) incapable of remedy (as reasonably determined by the Company) ; or (b) not remedied within 14 days of the date of the breach.
- (b) Purchaser may make a written request for amendment, modification, or termination of the Order. If a request for amendment or modification is accepted by the Company, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any work under the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Wherever the cost of property made obsolete as a result of the change is included in the price adjustment, Purchaser shall have the right to prescribe the manner of disposition of such property.
- (c) The Purchaser is not entitled to cancel or terminate the Order without the Company's prior written approval, which shall be entirely at the Company's sole discretion. If Purchaser's written request for termination is accepted by the Company, equitable provision shall be made to the Company for a recoupment of all costs incurred under the Order and for reasonable overhead and profit based on time and costs expended. The Order shall continue in effect until such time as payment is received. The Company shall not be obligated to return any payments made in advance of Equipment and/or Services being delivered.
- (d) On termination of the Order for any reason, the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices, and in respect of Equipment and/or Services supplied for which no invoice has been submitted, the Company shall submit an invoice which shall be payable by the Purchaser immediately on receipt. The accrued rights and remedies of the Company at termination shall not be affected, including the right to claim damages in respect of any breach which existed at or before the date of termination.

20. FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss or damage arising due to delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, exceptional adverse weather conditions, epidemic, pandemic, flood, lightning or fire (except if the cause of fire originates from the Equipment), strike or lockout, terrorist and/or insurgent activity, armed conflict, large scale organized criminal activity, the act or omission of Government or administrative or other competent authority, war, military operations or riot. The Company shall be permitted to suspend its obligations under the Order for the duration of any force majeure event.

21. INSTALLATION OF THE EQUIPMENT

- (a) Installation and training are not included unless otherwise expressly stated in the Order. Where the Company has agreed to install the Equipment, the Purchaser shall at its own cost prepare the site on which the Equipment is to be installed in accordance with the specifications furnished by the Company for this purpose and, in accordance with such specifications, provide such equipment (including without limitation, any equipment necessary to unload the Equipment) and carry out such works to the site as may be necessary to enable the Company to install the Equipment and if it shall fail so to prepare the site and provide such equipment and carry out such works before the agreed delivery date the Purchaser shall indemnify the Company for all costs and charges incurred by the Company (including storage and transportation costs) as a result of such failure.
- (b) When the Equipment shall have been installed at the site, tested and shown to be operating to the satisfaction of the Company, the Purchaser shall be deemed to have accepted the Equipment unless the Company has been notified to the contrary in writing by the Purchaser within seven days of completion of such testing (the "Notice"). The Purchaser shall not give and shall be deemed not to have given the Notice unless the Purchaser has found a substantial defect in the Equipment. If the Company is so notified, the Company shall use its reasonable endeavours to remedy any such defect within a reasonable time and the Purchaser shall be deemed to have accepted the Equipment within seven days of such defect being remedied.
- (c) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Order. The Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays.

22. SOFTWARE

To the extent that the Equipment contain or are software, Company hereby grants to Purchaser a non-exclusive, non-transferable, personal license to use the software and related documentation solely with the Equipment. Purchaser's use of the Equipment conclusively evidences its acceptance of this license and these Terms and Conditions, including this Section 22. Title to the software shall at all times remain with Company. Purchaser

agrees that the software, all enhancements, related documentation, and derivative works are, and will remain, the sole property of the Company and includes valuable trade secrets. Purchaser agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties. Purchaser agrees to not disassemble, decompile, reverse engineer, create derivative works from, attempt to derive the source code or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation.

23. COMPLIANCE AND ETHICS

The Company is an Equal Opportunity Employer and is committed to conducting its business ethically and lawfully. To that end Company, maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct. Company expects that the Purchaser also will conduct its business ethically and lawfully. Company Code of Business Ethics is available at <https://www.smiths.com/who-we-are/responsible-business>.