



PURCHASE ORDER

Standard Terms and Conditions

SECTION 1: DEFINITIONS

"Seller" means the person or entity that receives this Order from Buyer to perform the Work. "Buyer" means Mesa Associates, Inc., an Alabama corporation. "Order" means the attached purchase order issued by Buyer to Seller, together with the Terms and Conditions contained herein.

SECTION 2: ACCEPTANCE AND MODIFICATION OF TERMS

Acceptance of this Order by Seller may be made by signing the acknowledgment copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.

SECTION 3: GENERAL RELATIONSHIP

Neither Seller, nor its employees are, nor shall they be deemed to be, employees of Buyer for any purpose whatsoever. Seller agrees that in all matters relating to this Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

SECTION 4: SUBCONTRACTS AND ASSIGNMENTS

Seller agrees to obtain Buyer's approval before subcontracting the work to be performed under this Order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Further, this Order shall not be assigned or delegated by Seller without the prior written consent of Buyer.

SECTION 5: RESPONSIBILITY FOR PROPERTY

In the case of any tools, dies, jigs, fixtures, patterns, equipment, facilities or other property (hereafter "property") of Buyer and/or Buyer's customer, which may be in the possession, or control of Seller in connection with this Order, Seller shall use such property only in performance of and as specifically authorized by this Order. Seller should take appropriate measures including clearly marking, maintaining an inventory and segregating Buyer's property to protect Buyer's rights and interests in any property provided by Buyer to Seller. Such property shall be returned to Buyer in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of such goods. Risk of loss with respect to all such property shall be the responsibility of Seller. Seller shall indemnify, defend and hold harmless Buyer from any loss or damage to such property, which is caused by, or results from any act or omission on the part of Seller or its agents, employees or subcontractors. If Seller acquires or manufactures any property in connection with this Order and charges Buyer therefore, Buyer may, at its option upon completion or termination of this Order, elect to take title to such property and, upon receiving notice of such election, Seller shall deliver such property to Buyer.

SECTION 6: INTERCHANGEABILITY

All items furnished pursuant to this Order under the part number specified shall be fully interchangeable with and equal in function and quality to items heretofore furnished under the same part number.

SECTION 7: PACKAGING AND SHIPPING

Any goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates or appropriately packed to comply with any specific transportation specifications of Buyer, and in all cases, to comply with carrier's regulations. All charges for packing, crating and transportation are included in the price for the goods set forth herein and will be paid by Seller. A Packing List shall accompany each box or package shipment showing the order number specified hereon as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count, weight or other measure of Buyer shall be final and conclusive. Buyer shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.

SECTION 8: DELIVERY

Time is of the essence in this Order. The date specified for delivery or performance is the required delivery date at Buyer's facility or other specified location (FOB destination), unless otherwise specifically noted herein. Seller shall bear the risk of loss of, or damage to, the deliverables covered by this Order, until delivered to Buyer's facility (or to such other destination as may be designated on the face of this Order) and accepted by Buyer, including any defective, non-conforming or rejected deliverables. Buyer reserves the right to refuse any goods or services and to cancel all or any part hereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's deliveries will not meet agreed schedules, Buyer may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller if additional shipping costs



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are not pre-authorized by Buyer. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier, or until orders for services have been performed, received and accepted.

SECTION 9: NOTICE OF DELAYS

Whenever the Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order or delivery of materials, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer.

SECTION 10: CHANGES AND SUSPENSION

Buyer may, by written notice to Seller at any time, make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) time or place of delivery; (d) method of shipment or packing; and (e) the quantity of Buyer furnished property to be used by Seller in the performance of this Order. Buyer may, for any reason, direct Seller to suspend, in whole or in part, delivery of goods or performance of services hereunder for such period of time as may be determined by Buyer in its sole discretion. If any such change or suspension causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order (as determined by Buyer), an equitable adjustment shall be made in the Order price or delivery schedule, or both, provided Seller shall have notified Buyer in writing of any claim for such adjustment within twenty (20) days from the date of notification of the change or suspension from Buyer. No such adjustment or any other modification of the terms of this Order will be allowed unless authorized by Buyer by means of a written modification to this Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

SECTION 11: COMPLIANCE WITH LAWS

Seller shall comply with the applicable provisions of any federal, state or local law or ordinance and all orders, rules and regulations issued thereunder.

SECTION 12: INSPECTION

All goods supplied and services performed shall be subject to inspection and testing by Buyer, its agents and its customers at all reasonable times and places, whether during or after manufacture as to goods, or performance as to services, and notwithstanding the terms of delivery or payment or, as to goods, with respect to which title has not yet passed to Buyer or its customers. In the event goods or services do not conform to the specifications and instructions of Buyer, Buyer may require prompt correction, repair, replacement or re-performance thereof at Buyer's option and Seller's sole expense. If Seller is unable to accomplish the foregoing, then Buyer may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith. After Seller is notified of the foregoing defects or non-conformances, all risk of loss with respect to such nonconforming goods shall be the responsibility of Seller and Seller shall pay all packing and shipping charges in connection with such defective or non-conforming goods. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations hereunder.

SECTION 13: ACCEPTANCE

Acceptance of any part of the Order shall not bind Buyer to accept future shipments or performance of services nor deprive it of the right to return goods already accepted, which are later determined not to conform to Buyer's specifications, and shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods because of failure to conform to the Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages.

SECTION 14: PAYMENT

Invoices shall contain the following information: order number, item number, description of articles, sizes, quantities, unit prices and extended totals. Invoices submitted hereunder will be paid Net 30 Days after receipt of invoices or acceptance of delivered items by the Buyer, whichever occurs later. Before payment, Buyer may make any adjustments to Seller's invoices to accommodate shortages, late delivery, rejections, or other failure to comply with the requirements of this Order. Cash discounts will be taken from the date of final acceptance of delivered items, or the date of Buyer's receipt of an acceptable invoice, whichever is later. Payment shall not constitute final acceptance. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller.

SECTION 15: WARRANTY

Seller represents and warrants that: (1) all goods delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship; (2) all goods will conform to applicable specifications, drawings, and standards of quality and performance, and all items will be free from defects in design and suitable for their intended purpose; (3) the goods covered by this Order are fit and safe for consumer use, if so intended; and (4) that any services performed hereunder shall be performed in accordance with the specifications and instructions of Buyer, and with that degree of skill and judgment exercised by recognized professional firms performing services of a similar nature and consistent with best practices in the industry. All representations and warranties of Seller shall run to Buyer and Buyer's customers. Remedies under this warranty shall include, without limitation, at Buyer's option and at Seller's sole expense, prompt repair, replacement, re-performance, or reimbursement of the purchase price. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.



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SECTION 16: TERMINATION FOR CONVENIENCE

Buyer may terminate this Order, in whole or in part, at any time for any reason whatsoever by giving not less than seven (7) days written notice to the Seller. If this Order is so terminated, Buyer shall pay Seller only for that portion of the services actually performed and accepted, or goods actually delivered and accepted, and for documented expenses incurred by Seller and authorized by Buyer prior to the date of termination. Under no circumstance shall Buyer be liable for any other damages whatsoever, including loss of anticipated profit on account of such termination. Notwithstanding any partial termination of services, Seller shall continue to perform and complete any remaining services required.

SECTION 17: TERMINATION FOR DEFAULT

- (a) Buyer may, by written notice of default to Seller, immediately terminate the whole or any part of this Order in any one of the following circumstances:
- (i) Seller fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
 - (ii) Seller fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, and in either of the circumstances specified in this subpart 17(a)(ii) does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure;
 - (iii) Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due; or
 - (iv) Seller fails to provide Buyer, in writing, within a reasonable time after demand by Buyer, adequate assurances of performance by Seller.
- (b) If this Order is so terminated, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar supplies or services.
- (c) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination, such complete or partially completed articles, property, materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.
- (d) Seller shall continue performance of this Order to the extent not terminated. Buyer shall have no obligations to Seller in respect to the terminated part of this Order except as herein provided. Buyer's rights as set forth herein shall be in addition to any other rights in case of Seller's default.
- (e) Seller shall not be liable for damages resulting from default due to causes beyond Seller's control and without Seller's fault or negligence, provided, however, that if Seller's default is caused by the default of a subcontractor or supplier at any tier, such default must arise out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them and, provided further, the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources.

SECTION 18: TAXES

The price(s) set forth herein shall include all applicable Federal, State and local taxes and duties.

SECTION 19: ADVERTISING

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the supplies or services hereunder, or disclose any of the details connected with this Order to any third party, except as may be required to perform this Order.

SECTION 20: INSURANCE

In accordance with subparts 20(a) and/or 20(b) below, upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverages are in force and providing not less than thirty days notice prior to any cancellation or restrictive modification of the policies. Further, the required insurance coverages below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverages and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

- (a) To the extent that Seller is performing services under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverages with minimum limits as stated (unless otherwise agreed by Buyer):
- (i) Statutory Workers' Compensation and Employers' Liability in an amount no less than \$1 Million per occurrence covering its employees, including a waiver of subrogation obtained from the carrier in favor of Buyer;



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- (ii) Commercial General Liability in an amount no less than \$1 Million per each occurrence and \$2 Million in the aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability, and independent contractors' liability.
 - (iii) Automobile Liability in an amount no less than \$1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles.
 - (iv) Professional Liability in an amount no less than \$1 Million per occurrence covering damages caused by any acts, errors, and omissions arising out of the professional services performed by Seller, or any person for whom the Seller is legally liable. To the extent that coverage for Seller's services are not excluded from coverage under the policy described in subpart 20 (a)(ii) above by virtue of being deemed not of a professional nature, this requirement does not apply.
 - (v) All-Risk Property Insurance in an amount adequate to replace property, including supplies covered by this Order, of Buyer and/or Buyer's customer which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.
- (b) To the extent that Seller is providing products under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverages with minimum limits as stated:
- (i) Commercial General Liability as described above in Section 21 (a) (ii);
 - (ii) Products Liability in an amount no less than \$1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products are not excluded in not excluded from coverage under the policy described in subpart 20(b)(i), this requirement does not apply;
 - (iii) All-Risk Property Insurance (as described above in Section 21 (a) (v)) in an amount adequate to replace property of Buyer and/or Buyer's customer, including supplies covered by this Order, which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.
- (c) Buyer, its officers and employees shall be included as additional insured parties under each of the policies described above in this Section 20, and a waiver of subrogation shall be obtained from the respective carrier of each policy in favor of Buyer. Updated certificates of insurance evidencing the coverage described above shall be delivered to Buyer upon Buyer's request.

SECTION 21: CONFIDENTIALITY OF EQUIPMENT AND DATA

Seller shall not use or disclose any of Buyer's confidential, proprietary or trade secret information of Buyer, whether of a technical, business or other nature (including, without limitation, information related to this Order [including, without limitation, the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by Buyer], or Buyer's or Buyer's customer's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects or other affairs) (collectively "Proprietary Information") to any third party, unless such use or disclosure is necessary for the performance of this project and, with respect to disclosure of the Proprietary Information, is approved by Buyer in advance. Seller also agrees to use any Proprietary Information only in accordance with any restrictive legends placed on such items by the Buyer or any third party. Upon completion or termination of this Order, Seller shall return all such items to Buyer or make such other disposition thereof as may be directed or approved by Buyer. No news releases, public announcement, denial, or confirmation of any part of the subject matter of this Agreement or any phase of any project hereunder shall be made without prior written consent of Buyer. The restrictions of this paragraph shall continue in effect upon completion or termination of this Agreement for such period of time as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized.

In the event that a current or former employee, affiliate, or supplier of Seller uses or shares proprietary information other than as herein specified, Buyer intends to pursue legal action to fullest extent of the law. The obligations set forth in this Section 21 are intended to supplement and be in addition to any nondisclosure obligations contained in a separate nondisclosure agreement executed between Buyer and Seller. In the event the Buyer and the Seller have executed a separate nondisclosure agreement, the terms of the nondisclosure agreement shall supersede the terms in this Order to the extent the terms set forth in this Order conflict with the terms in such nondisclosure agreement.

Seller acknowledges and agrees that in the event of any breach of this Section 21, Buyer will suffer a substantial and irreparable harm, and a claim for monetary damages will not constitute an adequate remedy. Seller therefore agrees that in the event of a breach or threatened breach of this Section by Seller, Buyer may apply to any court of competent jurisdiction for injunctive or other relief in addition to any other legal remedy to which Buyer may be entitled. Seller further waives any requirement that the Buyer post a bond or any other financial consideration in order to maintain such action for injunctive relief.



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SECTION 22: PATENTS AND DATA

- (a) Seller hereby assigns to Buyer all rights of Seller to all ideas, processes, computer codes, computer programs, databases, inventions, works of authorship, technology, designs, formulas, discoveries, devices, symbols, marks, methods (of doing business or otherwise), patents, trademarks or copyrights developed by Seller or its employees in the course of performing this Order. Seller shall execute any document required to give effect to assignment described the preceding sentence and take any other action reasonably necessary to vest title to such developments in Buyer.
- (b) If any experimental, developmental or research work is performed hereunder, Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to make, have made, use and sell any other invention, improvement or discovery (whether or not patent-able) owned by Seller that Seller uses in the performance of this Order or incorporates into the goods or services performed hereunder.
- (c) Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to reproduce, translate, publish, use and disclose, and to authorize others to do so, for any purpose, (i) any copyrighted or copyrightable material delivered or incorporated into any deliverable hereunder; and (ii) all or any part of any deliverable hereunder, including without limitation, any reports, drawings, blueprints, data, software and technical information.

SECTION 23: INDEMNIFICATION

- (a) Seller shall indemnify, defend and hold Buyer and Buyer's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) intentional misconduct, negligence, or fraud, (ii) breach of any representation, warranty or covenant made herein, or (iii) provision or performance of the products or services provided under this Order, including, without limitation, any claims that such products or services infringe any patent, copyright, trademark, trade secret or any other proprietary right of any third party. Notwithstanding the foregoing, Seller's obligations under this Section shall not apply to any claims, which are finally determined by a court of competent jurisdiction to be occasioned by the negligence or willful misconduct of Buyer.
- (b) Buyer shall promptly notify Seller of any claim against Buyer that is covered by this indemnification provision and shall authorize representatives of Seller, using counsel reasonably acceptable to Buyer, to settle (subject to Buyer's prior approval of such settlement) or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.
- (c) In the event any goods or services provided by Seller under this Order, and/or Buyer's use thereof, are enjoined in whole or in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such goods or services; (ii) in a manner acceptable to Buyer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.
- (d) Seller's indemnification obligations shall continue in full force and effect following any termination of this Order.

SECTION 24: NON-WAIVER OF RIGHTS

The failure of Buyer to insist upon strict performance of any of the terms and conditions in this Order or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at any time thereafter. Any rights and remedies specified under this Order shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or equity. The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of other parts thereof.

SECTION 25: EXPORT CONTROL COMPLIANCE FOR FOREIGN PERSONS

The subject technology of this Order (together including data, services, and hardware provided hereunder) may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. Exports or re-exports of any U.S. technology to any destination under U.S. sanction or embargo are forbidden.

Access to certain technology ("Controlled Technology") by Foreign Persons (working legally in the U.S.), as defined below, may require an export license if the Controlled Technology would require a license prior to delivery to the Foreign Person's country of origin. Seller shall comply with all U.S. export laws, statutes and regulations in its performance of this Order. Seller shall have full responsibility for obtaining any export licenses or authorization required to fulfill its obligations under this Subcontract.

Seller hereby certifies that all of Seller's employees who have access to the Controlled Technology are U.S. citizens, have permanent U.S. residency or have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria are "Foreign Persons" within the meaning of this clause but have been authorized under export licenses to perform their work hereunder.



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SECTION 26: ORDER of PRECEDENCE

In the event of an inconsistency or conflict between provisions of this Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

1. Purchase Order and any purchase descriptions contained therein.
2. Purchase Order Standard Terms and Conditions and Exhibits thereto.
3. Specifications and/or drawings (as applicable).
4. Other provisions when attached.

SECTION 27: GOVERNING LAW

This Order shall be governed by and construed in accordance with the laws of the State of Alabama.

SECTION 28: DISPUTES

All disputes arising under this Order shall be settled in the following manner:

Buyer and Seller agree to enter into good faith negotiations to attempt to resolve any dispute. Both parties agree to negotiate in good faith to attempt to reach a mutually agreeable settlement of any dispute within a reasonable amount of time. Before either party brings an action for arbitration, the parties will attempt to settle such dispute through non-binding mediation.

If negotiation and/or non-binding mediation is unsuccessful, Buyer and Seller agree to enter into binding arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern any such Arbitration. The Arbitration shall take place in Madison, Alabama. The Arbitrator shall be bound to follow the applicable Agreement provisions and Alabama law in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The parties hereto consent to the jurisdiction of the state and Federal courts located in Madison County, Alabama for the entry of any such judgment. The parties hereby waive any defense based on lack of jurisdiction of such courts or the convenience of such courts as forums for the entry of such judgments.

Pending any decision, appeal, or judgment referred to in this provision or the settlement of any dispute arising under this Agreement, Seller shall proceed diligently with the performance of this Agreement. Buyer's failure to enforce any provisions of this Order shall not be construed as a waiver of the requirements of such provisions or any other provisions.

SECTION 29: ENTIRE AGREEMENT

This Order, including all documents incorporated herein by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.