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## GENERAL TERMS FOR COMMERCIAL OFF-THE-SHELF (COTS) PURCHASE ORDERS

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1. **ACCEPTANCE OF TERMS AND CONDITIONS**

- (a) These Terms integrate, merge, and supersede any prior offers, negotiations, and agreements concerning the subject matter hereof and constitute the entire agreement between the parties.
- (b) SELLER’s acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER’s unqualified acceptance of these Terms.
- (c) **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER’S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY ACUMEN DETECTION AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY ACUMEN DETECTION.**

2. **DEFINITIONS**

The following expressions shall have the meanings set forth below:

- (a) “ACUMEN DETECTION Procurement Representative” means the person authorized by ACUMEN DETECTION’s cognizant procurement organization to administer and/or execute the Purchase Order.
- (b) “Open Source” means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (1) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or (2) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of the Purchase Order, “Open Source” Software shall also include “Free Software” as defined by the Free Software Foundation Inc. By way of example and not limitation, “Open Source” licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.
- (c) “PO” or “Purchase Order” as used in any document constituting a part of this transaction shall mean both ACUMEN DETECTION’S

Purchase Order and these Terms, which are hereby incorporated into the Purchase Order.

- (d) “SELLER” means the party identified on the face of the Purchase Order, with whom ACUMEN DETECTION is contracting. For the purposes of paragraph 15 (INDEPENDENT CONTRACTOR RELATIONSHIP) only, “SELLER” shall also include SELLER’s agents, representatives, subcontractors, and suppliers at any tier.
- (e) “Software” means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.
- (f) “Work” means all articles, materials, supplies, goods and services supplied pursuant to the Purchase Order.

3. **APPLICABLE LAWS**

- (a) The Purchase Order and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State of New York, excluding its choice of law rules.
- (b) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances, to include any obligations relating to its employees. SELLER shall procure all licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER’s expense.
- (c) If applicable, SELLER shall provide to ACUMEN DETECTION with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

4. **ASSIGNMENT**

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by ACUMEN DETECTION, which shall not be unreasonably withheld.

5. **CHANGES**

- (a) Only the ACUMEN DETECTION Procurement Representative in agreement with the duly authorized representative of SELLER have the authority to make changes in, to amend, or to modify these Terms. Such changes, amendments or modifications must be in writing.
- (c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be sent to the ACUMEN DETECTION Procurement Representative.

6. **DEFAULT**

- (a) ACUMEN DETECTION, by written notice, may terminate the Purchase Order for default, in whole or in part, if SELLER fails to comply with any of the terms of the Purchase Order, fails to make progress as to endanger performance of the Purchase Order, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as ACUMEN DETECTION may authorize in writing) to cure any such failure after receipt of written notice from ACUMEN DETECTION. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) ACUMEN DETECTION shall not be liable to pay for any Work not accepted.

7. **DISPUTES/JURY WAIVER**

- (a) All disputes arising from or related to the Purchase Order, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph 9(b) below. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of the Purchase Order as directed by ACUMEN DETECTION.
- (b) ACUMEN DETECTION and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to the Purchase Order, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, **ACUMEN DETECTION AND SELLER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS CONTRACT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE OF NEW YORK; AND ACUMEN DETECTION AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN ONONDAGA COUNTY WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.**

8. **EXPORT CONTROL**

- (a) **SELLER shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774. SELLER shall obtain all required export authorizations necessary to perform SELLER's Work, as applicable.**

(b) SELLER shall notify ACUMEN DETECTION if any use, sale, import or export by ACUMEN DETECTION of Work to be delivered under the Purchase Order is restricted by any export control laws or regulations applicable to SELLER.

(c) SELLER shall immediately notify the ACUMEN DETECTION Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

(d) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve ACUMEN DETECTION of its obligations under the Purchase Order. Provided SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under the Purchase Order. In either event, the Purchase Order may be terminated by ACUMEN DETECTION without additional cost or other liability.

9. **FOREIGN CORRUPT PRACTICES PROHIBITION**

**By accepting the Purchase Order, SELLER certifies and represents that it has not made or solicited and will not make or solicit any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any governmental official or any political party, party official or candidate, either directly or through an intermediary, corruptly for the purpose of influencing any official act, omission, or exercise of influence by the recipient, to assist ACUMEN DETECTION or SELLER in obtaining or retaining business.**

10. **GRATUITIES/KICKBACKS PROHIBITION**

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of ACUMEN DETECTION with a view toward securing favorable treatment as a supplier.

11. **IMPORTER OF RECORD**

This paragraph 14 applies only if the Purchase Order involves importation of Work into the United States.

(a) If elsewhere in the Purchase Order ACUMEN DETECTION is indicated as importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U.S.C. Sec. 1673 et seq.).

(b) If elsewhere in the Purchase Order ACUMEN DETECTION is not indicated as importer of record, then SELLER agrees that:

(1) ACUMEN DETECTION will not be a party to the importation of Work, the transaction(s) represented by the Purchase Order will be consummated after importation, and SELLER will neither cause nor permit ACUMEN DETECTION's name to be shown as "Importer of Record" on any customs declaration; and

(2) Upon request and where applicable, SELLER will provide to ACUMEN DETECTION United States Customs Form 7501 entitled "Customs Entry" properly executed.

12. **INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) SELLER's relationship to ACUMEN DETECTION shall be that of an independent contractor and the Purchase Order does not create an agency, partnership, or joint venture relationship between ACUMEN DETECTION and SELLER or ACUMEN DETECTION and SELLER personnel.

(b) **TO THE FULLEST EXTENT OF THE LAW, SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT ACUMEN DETECTION'S ELECTION, DEFEND ACUMEN DETECTION, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO ANY ACT OR OMISSION OF SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THE PURCHASE ORDER.**

portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for ACUMEN DETECTION the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of the Purchase Order except with regard to allowable insurance costs.

**13. INFORMATION OF ACUMEN DETECTION**

Information provided by ACUMEN DETECTION to SELLER remains the property of ACUMEN DETECTION. SELLER shall comply with all proprietary information markings and restrictive legends applied by ACUMEN DETECTION to anything provided hereunder to SELLER. SELLER shall not use any ACUMEN DETECTION provided information for any purpose except to perform the Purchase Order and shall not disclose such information to third parties without the prior written consent of ACUMEN DETECTION.

**17. MAINTENANCE OF RECORDS**

- (a) SELLER shall maintain complete and accurate records as required by law. SELLER shall retain such records for three (3) years from final payment of these Terms.
- (b) SELLER shall provide copies of such records to ACUMEN DETECTION upon request within a reasonable period.

**14. INSPECTION AND ACCEPTANCE**

- (a) ACUMEN DETECTION may inspect all Work prior to acceptance.
- (b) If SELLER delivers non-conforming Work, ACUMEN DETECTION may: (i) accept all or part of such Work at an equitable price reduction or (ii) reject such Work.

**18. NEW MATERIALS**

Unless authorized in writing by the ACUMEN DETECTION Procurement Representative, all Work to be delivered under the Purchase Order shall consist of new materials, and shall not be used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

**15. INSURANCE**

SELLER warrants that it and its subcontractors maintain worker's compensation and comprehensive general liability (bodily injury and property damage) insurance in amounts adequate to its Work, and shall timely procure such other insurance as ACUMEN DETECTION may reasonably require and furnish evidence thereof. SELLER shall indemnify, hold harmless and, at ACUMEN DETECTION's election, defend ACUMEN DETECTION, its directors, officers, employees, and agents from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury or death to any person arising from or related to the actions or omissions of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors while on the site(s) of ACUMEN DETECTION or its customers. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER's agents, subcontractors or suppliers, SELLER's obligation to indemnify and defend in accordance with this paragraph shall apply regardless of cause.

**19. OPEN SOURCE SOFTWARE**

SELLER shall disclose any Open Source Software, including any source code governed by an Open Source license, incorporated into Work to be delivered under the Purchase Order. Upon request, SELLER shall first identify all Open Source Software incorporated into Work to be performed and/or delivered under the Purchase Order, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any licenses required to be accepted.

**16. PATENT INDEMNITY**

- (a) SELLER warrants that the Work performed and delivered under the Purchase Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- (b) To the fullest extent of the law, SELLER shall indemnify, hold harmless and, at ACUMEN DETECTION's election, defend ACUMEN DETECTION and its Customer from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, arising from or related to any action by a third party that is based upon a claim that the Work performed or delivered under the Purchase Order infringes or otherwise violates the intellectual property rights of any person or entity. If an injunction is obtained against ACUMEN DETECTION's use of the Work or a

**20. PACKING AND SHIPMENT**

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial and if applicable, international practices designed to protect the integrity of the shipped contents. The minimum insurance shall cover the price provided in the Purchase Order plus ten percent (i.e. 110%). The entire risk of loss, injury, or destruction of the materials, regardless of the F.O.B. point and cause therefore, shall be borne by the SELLER until the materials are delivered to and accepted by ACUMEN DETECTION.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with any necessary lifting, loading, and shipping information, including the Purchase Order number, dates of shipment, and the names and addresses of consignor and consignee. No partial shipments or charges for freight, transportation, crating, handling, demurrage, or for any other matter relating to the delivery of the materials will be allowed unless authorized in writing.
- (c) For domestic shipments, unless otherwise specified, delivery shall be FOB Destination.
- (d) For international shipments, unless otherwise specified, delivery shall be Carriage and Insurance Paid (CIP) ACUMEN DETECTION's facility, in accordance with Incoterms 2010, and SELLER shall provide a copy of the packing list required by subparagraph 20(b) to ACUMEN DETECTION's Procurement Representative at least five business days prior to shipment.

**21. PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) ACUMEN DETECTION's receipt of SELLER's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work. ACUMEN

DETECTION shall have a right of setoff against any payments due between ACUMEN DETECTION and SELLER.

- (b) Payments shall be subject to reduction to the extent of amounts not properly payable and past overpayments.
- (c) Payment shall be deemed to have been made as of the date of mailing ACUMEN DETECTION's payment or electronic funds transfer.
- (d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

**22. PRECEDENCE**

Any inconsistencies in the Purchase Order shall be resolved in accordance with the following descending order of precedence: (a) face of the purchase order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special terms and conditions; (b) any master-type agreement (such as corporate, operating group, or blanket agreements); (c) representations and certifications; (d) these terms and conditions; (e) statement of work; and (f) specifications or drawings.

**23. QUALITY CONTROL SYSTEM**

- (a) SELLER shall provide and maintain a quality control system acceptable to ACUMEN DETECTION and in compliance with any other specific quality requirements identified in the Purchase Order.
- (b) Records of all product acceptance and quality control inspection work by SELLER shall be kept complete and available to Buyer and its Customers.

**24. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to the Purchase Order or the subject matter hereof, shall be made by SELLER without the prior written approval of the ACUMEN DETECTION Procurement Representative.

**25. SEVERABILITY**

Each paragraph and provision of these Terms is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of these Terms will remain in full force and effect.

**26. SURVIVABILITY**

If the Purchase Order expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- Applicable Laws
- Disputes/Jury Waiver
- Export Control
- Independent Contractor Relationship
- Information of ACUMEN DETECTION
- Insurance
- Patent Indemnity
- Maintenance of Records
- Release of Information
- Warranty

**27. TIMELY PERFORMANCE**

- (a) Time is of the essence with respect to the delivery date specified on the face of the Purchase Order. SELLER agrees to compensate ACUMEN DETECTION for any damages which ACUMEN DETECTION may incur as a result of Seller's failure to deliver on time. In addition, ACUMEN DETECTION reserves the right to cancel all or any portion of this order which is not delivered on time.

- (b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify ACUMEN DETECTION, in writing, giving pertinent details. This notification shall not change any delivery schedule.

**28. TITLE**

Clear title to the materials sold hereunder shall pass to ACUMEN DETECTION with payment of all money due under the agreed Purchase Order. Notwithstanding the foregoing, if SELLER ceases to conduct its normal business operations, including, without limitation, failing to meet its obligations as they mature, or if any bankruptcy or insolvency proceeding is brought by or against SELLER, or a receiver for SELLER is appointed or applied for or an assignment of substantially all the assets of SELLER for the benefit of creditors is made by SELLER, then SELLER irrevocably grants, assigns and transfers all right, title and interest in and to all drawings, illustrations, pictures, descriptions, plans and characteristics (collectively, the "Plans") pertaining to the materials and services specified on the face hereof, including, without limitation, as may be reasonably necessary for ACUMEN DETECTION to use the Plans internally, or engage a third party to use the Plans, to complete the work and deliver the materials and services specified on the face hereof. At ACUMEN DETECTION's request, SELLER shall execute and deliver any documents and instruments reasonably necessary to affect the transfer of rights provided for in the immediately preceding sentence.

**29. WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by ACUMEN DETECTION to enforce any provision(s) of the Purchase Order shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of ACUMEN DETECTION thereafter to enforce each and every such provision(s).
- (b) ACUMEN DETECTION's approval of documents shall not relieve SELLER from complying with any requirements of the Purchase Order.
- (b) The rights and remedies of ACUMEN DETECTION in these Terms are cumulative and in addition to any other rights and remedies provided by law or in equity.

**30. WARRANTY**

SELLER warrants that all Work furnished pursuant to these Terms shall strictly conform to manufacturer specifications and descriptions, and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or twelve (12) months, whichever is longer, if SELLER is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer, if SELLER is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or re-performance of Work is not timely, ACUMEN DETECTION may elect to return the non-conforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All warranties shall run to ACUMEN DETECTION and its Customers.