1. Terms of Agreement. These Standard Terms and Conditions of Purchase (these “T&Cs”) shall be made a part of and incorporated into the purchase order (the “Purchase Order”) issued by Acro Associates LLC (“Buyer”), and the Purchase Order is subject to these T&Cs. Any reference herein to the Purchase Order shall include these T&Cs. The parties hereto acknowledge that these T&Cs are expressly objected to by Buyer and the terms and conditions set forth herein shall exclusively govern the purchase and sale of the goods covered by the Purchase Order. The Purchase Order is accepted by Seller upon Seller’s written acceptance or its delivery of goods pursuant to the Purchase Order.

2. Delivery Terms.

2.1. If delivery of goods is not made in the quantites and/or at the time(s) specified in the Purchase Order, Buyer reserves the right, without liability to take either or both of the following actions: (a) direct expedited routings of goods (the difference between the expedited and the order routing costs shall be paid by Seller); (b) cancel this order or balance by notice effective when delivered to Seller; to purchase substitute goods elsewhere and charge Seller with any loss incurred, including the difference between the cost of substitute goods and the goods that would have been provided by Seller.

2.2. Buyer shall provide Seller with the packaging, carrier specified and set forth by Buyer in the Purchase Order. All deliveries of goods ordered by Buyer shall be DAP Buyer’s facility (Incoterms® 2020) unless otherwise mutually agreed by Buyer and Seller, with all title and risk of loss passing to Buyer upon delivery of the goods DAP Buyer’s facility (Incoterms® 2020). Before delivery, Seller will insure all goods at Seller’s sole risk and expense.

2.3. Each shipment of goods shall include separate packing slips showing: (a) Buyers’ Purchase Order number, (b) Seller’s part number and revision level for each goods shipped, if applicable; (c) a description of the goods; (d) individual serial numbers of the goods, if applicable; (e) certificate(s) of compliance and/or material certifications, if applicable; and (f) the total quantity of goods shipped.

2.4. Buyer will have no liability for payment of goods delivered to Buyer in excess of quantities specified for Buyer’s use. Buyer shall have the right to reject any such excess and refund the purchase price stipulated in the original Purchase Order.

2.5. Buyer may, at its discretion, return any rejected goods or goods whose acceptance has been revoked unless specified by Buyer. Buyer shall not replace rejected goods or goods whose acceptance has been revoked unless specified by Buyer. Buyer shall not be liable for failure to accept any part of the goods if such failure is the result of any cause listed in the section below regarding Force Majeure.

3. Prices. If a price is not stated in the Purchase Order, Buyer and Seller agree that the goods shall be billed at the lesser of (a) the price last quoted to Buyer by Seller and (b) Seller’s prevailing customary market price. The Purchase Order may not be filled at a price higher than that which was last quoted or charged to Buyer without Buyer’s specific written authorization. Buyer shall not be charged for taxes, transportation, box, packing, or returnable containers in connection with the Purchase Order, unless such charges have been previously specifically agreed to in writing by Buyer. All sales, use, excise and similar taxes to be paid by Buyer, if any, must be itemized separately on the applicable corresponding invoice.

4. Seller’s Warranties.

4.1. NO EXPRESS WARRANTY FROM SELLER IS CREATED BY ANY AFFIRMATION OF FACT OR PROMISE MADE BY SELLER WHICH BECOMES PART OF THE BASIS OF THE AGREEMENT RELATING TO THE GOODS WAS MADE. ANY SAMPLE OR MODEL PROVIDED BY SELLER AS A BASIS FOR AN AGREEMENT BETWEEN THE PARTIES CREATE AN EXPRESS WARRANTY THAT THE GOODS SHALL CONFORM TO THE PROVIDED SAMPLE OR MODEL. THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE EXIST WHERE SELLER HAS ACQUIRED BY REASON OF ITS OWN KNOWLEDGE OR USE OF THE GOODS TO HAVE ACTED AS THE BUYER’S BUYER FOR AUTHORIZATION (Approval(s).) AS APPLICABLE. WHERE PERFORMANCE SPECIFICATIONS HAVE BEEN THE BASIS FOR PRODUCT DEVELOPMENT, SELLER IS LIABLE FOR ANY AND ALL WARRANTY ISSUES REGARDING FITNESS FOR USE IN THE PURCHASE ORDER.

4.2. WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE EXIST, WITHOUT LIMITATIONS, AS SET FORTH AND DESCRIBED IN SECTION 5 BELOW: ANY EXPENSES, CHARGES OR LIABILITY ASSOCIATED WITH DEFECTIVE PRODUCT FOR BREACH OF ABOVE-STATED WARRANTIES WILL BE BORNE BY SELLER. IF A DESIGN CHANGE IS MADE TO AN EXISTING APPROVED PRODUCT WITHOUT KNOWLEDGE AND CONSENT BY BUYER, SELLER WILL BE LIABLE FOR ANY INCREMENTAL CHARGES INCURRED. SELLER PROVIDES WARRANTY OF MERCHANTABILITY, WHEREBY SELLER HAS OBLIGATION TO REPLACE, REPAIR, OR REFUND THE PURCHASE PRICE STIPULATED IN THE ORIGINAL PURCHASE ORDER OF THE SAME OR SIMILAR GOODS FREE FROM DEFECTS IN MATERIAL AND OR WORKMANSHIP, (b) merchantable and fit for the particular purpose for which such goods were intended; and the parties hereby agree that this warranty shall survive the delivery, inspection and acceptance of, and payment for, the goods. Seller shall not have any liability for any defect in the goods that was caused by improper routing and the order routing costs shall be paid by Seller); (b) cancel this order or balance by notice effective when delivered to Seller; to purchase substitute goods elsewhere and charge Seller with any loss incurred, including the difference between the cost of substitute goods and the goods that would have been provided by Seller.

4.3. AS- SHIPped, Seller shall return all such Confidential Information to Buyer and shall be the exclusive property of Buyer, and Buyer retains all right, title and interest, in and to such Confidential Information.

5. Inspection and Acceptance.

5.1. Payment for any goods under this contract shall not constitute acceptance. All goods purchased hereunder are subject to inspection at Buyer’s destination either before or after payment or before or after acceptance by Buyer’s option. Buyer reserves the right to reject and refuse acceptance of goods which are not in accordance with the instructions, specifications, or drawings, and Buyer shall return such goods at Seller’s risk and expense, including transportation charges both ways; provided, however, that such goods may be held at Buyer’s discretion for Seller’s instructions and stored at Seller’s risk. If within 48 hours after receipt of notice of rejection or revocation of acceptance, Seller gives no instructions for the disposition of the goods, Buyer may, at its discretion, return for full credit at Seller’s expense. Seller shall not replace rejected goods or goods whose acceptance has been revoked unless specified by Buyer.

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Equipment and maintain an appropriate marking on the same and on the separate storage area to clearly and permanently identify Buyer as the owner. Such Equipment while in Seller’s custody or control, will be maintained in good working condition, reasonable wear and tear excepted, by Seller at Seller’s expense, held at Seller’s sole risk and will be kept insured by Seller at Seller’s expense in an amount equal to the replacement cost with loss payable to Buyer. Such Equipment will remain the property of Seller until paid for in full. All claim and judgments recovered to Buyer immediately upon request by Buyer. Buyer shall also have the right to enter Seller’s facility without notice during Seller’s normal business hours and remove or repossession the Equipment without cost or expense to Buyer. Equipment shall not be disposed of without prior written approval by Buyer. No use of Buyer’s Equipment shall be permitted without prior written approval by Buyer. Seller shall not publish or display Buyer’s product manufactured by Buyer’s Equipment, without prior written approval by Buyer.

10. Termination.

10.1 Buyer may, by notice in writing to Seller, terminate the Purchase Order or work thereunder, in whole or in part, at any time and such termination shall not constitute default. In such event, Buyer will pay Seller contract price for finished goods covered by this agreement held in Seller’s inventory, and for work and services accepted and accepted by Buyer. Buyer will reimburse Seller verifiable costs associated with components in manufacture of incomplete Buyer’s proprietary products covered by this agreement.

10.2 Buyer shall have the right to cancel for default all or any part of the Purchase Order upon the occurrence of any of the following events: (a) Seller does not make deliveries or furnish services as required by the terms specified, (b) Seller repudiates the contract (c) Buyer rightfully rejects or revokes acceptance, (d) Seller breaches any of the terms hereof including warranties of Seller, (e) Seller makes an arrangement, extension or assignment for the benefit of creditors, (f) Seller dissolves or otherwise ceases to exist or liquidates all or substantially all of its assets, (g) Seller becomes insolvent or generally does not pay its debts as they become due or (h) Seller is adjudicated as bankrupt or files a voluntary petition in bankruptcy. Buyer may, at its option, rescind the entire Purchase Order or rescind the unperformed balance of the Purchase Order, and in any such case, Buyer may retain any sums previously paid to Seller as liquidated damages. Buyer’s request for rescission must be in writing. Buyer may elect to proceed for the equipment remaining in the possession of Buyer, on the terms of this Purchase Order, if such failure does not exceed twenty percent (20%) of the total aggregate value of this Purchase Order.

11. Patent Infringement Indemnity. Seller warrants the goods purchased hereunder do not infringe upon any patent, trademark, service mark, trade name, copyright or other third party intellectual property right and covenants and agrees to defend (at Buyer’s request) and hold harmless Buyer, its customers, agents and subsequent owners from any claim that any product or article sold by Seller hereunder infringes any letter, patent, trademark, service mark, copyright or other right of or in or relating to any patent, trademark, service mark, copyright or other right of or in any patents, trademarks, service marks, copyrights or other rights claimed by any person or corporation, as such claim arise or be asserted, and shall pay all reasonable costs incurred in defending such claim. Buyer may have the right to require Seller to substitute materials or parts, or to modify such materials or parts. Seller shall bear all costs and expenses incurred by Buyer in connection with such claim, its defense, or settlement including the reasonable attorneys’ fees, costs, court costs, and any other expense which Buyer incurred in connection with such defense or settlement.

12. Arbitration. Except for any action where the sole relief sought is an injunction, any controversy or claim arising out of or relating to these T&Cs, or the making, performance or interpretation thereof, including without limitation alleged fraudulent inducement thereof, shall be settled by binding arbitration in the city of Buyer’s choosing in the state of Buyer’s business address as shown on the Purchase Order. In such a case, Seller must provide said written assurance of performance within 10 days of Buyer’s written request (excluding the date of mailing). This right of cancellation and the right to request an adequate written assurance of future performance are in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. Changes. Buyer reserves the rights at any time to make written changes in any one or more of the following: (a) specifications, drawings and data incorporated in this contract where the items to be furnished are to be specially manufactured for Buyer; (b) methods of shipment or packaging; (c) place of delivery; (d) time of delivery; (e) manner of delivery; or (f) quantities.

14. Notices. Notices and communications under the Purchase Order shall be deemed given to either party at the address set forth on the Purchase Order (includes any electronic address, if so provided on the Purchase Order): (a) upon the expiration of 5 business days after the date of deposit in the U.S. mails postmarked, date stamped at the time of mailing, (b) upon the date of receipt thereof by Buyer if acknowledged by return receipt requested, or (c) upon the next business day if sent by recognized overnight supplemental delivery service, or (d) upon delivery if notice is received personally; or (e) upon electronic confirmation of transmission if sent by facsimile or electronic mail.

15. Assignment. Seller may not assign, transfer or subcontract the Purchase Order or any interest herein or any rights or duties hereunder without the prior written consent of Buyer.

16. Force Majeure. Neither Party shall be liable hereunder for any failure or delay in the performance of their obligations under this Agreement due to acts of God, war, strikes, lockouts, accidents, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, terrorism, acts of God, or other similar occurrences beyond the reasonable control of the party (each “Force Majeure Event”), for so long as such Force Majeure Event continues. Failure by Seller to perform any Force Majeure Event experienced by Seller continues for more than thirty (30) days, Buyer may terminate this Purchase Order without liability. Each Party shall provide the other Party with prompt written notice of the occurrence of Force Majeure Event and in any event within five (5) business days of its occurrence. For the avoidance of doubt, a Force Majeure Event does not include (i) acts or omissions of Seller, its contractors or suppliers (including, but not limited to, price increases or the inability of Seller to obtain necessary manufacturing inputs from its normal or customary sources); (ii) labor disputes of Seller, its subcontractors or its suppliers, including lockouts, strikes or slowdowns; or (iii) failure to comply with applicable law.

17. Governing Law. The Purchase Order shall be interpreted and construed in accordance with the laws of the State of Buyer’s business address as shown on the Purchase Order.

18. Affiliates. Any right, cause of action claim for relief or remedy granted to Buyer herein shall extend without exception to any entity that controls, is controlled by, or is under common control with Buyer.

19. Entire Agreement. These T&Cs attached hereto, including the Supplier Quality Manual, all attachments hereto and thereto and specifications set forth herein and therein, constitute the complete and final agreement between the parties and supersede all prior negotiations and agreements between the parties concerning the subject matter hereof and thereof.


21. Compliance with Applicable Law and the IMI Code of Conduct. Seller will, and will ensure that each of its affiliates will, comply with all laws, rules, regulations, and orders of any jurisdiction that are applicable to it, its business activities and products including without limitation those related to anti-bribery, anti-money laundering, safety and environmental, export controls and trade sanctions, tax evasion, the facilitation of tax evasion, and human trafficking and modern slavery. Seller will without delay provide such information, documents, and access for audit and investigation as may be reasonably requested by Buyer to review Seller’s compliance with laws. Seller acknowledges that Buyer has a code of responsible business (the “IMI Code of Conduct”), which is available at www.imiplc.com. Seller shall, at all times, ensure its receipt and its implementation by Seller or its Affiliates and Subcontractors. Seller agrees that this undertaking, and the provisions of the IMI Code of Conduct, this Section 21 shall apply whether or not Seller is acting pursuant to a Purchase Order or otherwise in its relationship with Buyer. Seller agrees that it must be able to demonstrate its compliance with the requirements referred to in this Section 21 at the request of and to the satisfaction of Buyer which includes, but is not limited to, (i) the right to inspect any site involved in work for Buyer. If Seller fails to comply with this Section 21, Buyer shall be entitled, in its sole discretion, to terminate the Purchase Order or other agreements between Seller and Buyer without penalty to Buyer, but with obligations for Seller to remedy any damages suffered by Buyer as a result of such termination or as a result of the breach of the Purchase Order by Seller.

22. Country of Origin. Seller will label all goods sold hereunder, including all the good’s components and containers, with the country of origin, and will indicate the country of origin on all invoices for the goods. Upon Buyer’s request, Seller will promptly provide certification to evidence the origin of such goods.

23. Independent Contractors. The relationship of Buyer and Seller under these T&Cs and those set forth in the attached Purchase Order is one of independent contractors. Nothing in the Purchase Order or these T&Cs shall be interpreted as authorizing either party to bind the other, to incur any liability on behalf of the other, or to act as an agent for the other.

24. Survival. All provisions herein or in the attached Purchase Order regarding warranty, indemnification, confidentiality, liability and limits thereon, or other provisions that survive by their terms, will survive any termination or expiration of the attached Purchase Order.

25. Severability. In the event that any provision of these T&Cs is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, such provision shall be deemed stricken from these T&Cs, but such stricken invalid or unenforceable provision shall not invalidate any of the other provisions of these T&Cs and the remainder of these T&Cs shall continue in full force and effect. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of these T&Cs a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

26. RoHS & ELV. Seller agrees to notify Buyer, before any manufacture and delivery of goods, of the presence of hazardous substances as defined by the following Directives in goods or processes used to manufacture goods. If the presence of hazardous substances exceeds those allowable under these directives then Buyer has the right to require Seller to substitute materials in such a way as to comply with the directives. The directives are: Directive 2015/863/EU Restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS); Directive 2000/53/EC End of life vehicles; and Directive 2002/96/EC Restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS2). Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of these T&Cs a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

27. Conflict Minerals. Seller shall cooperate fully with Buyer in investigating the source of any tantalum, tin, tungsten or gold in the goods supplied by Seller to Buyer, including the completion of the standard EICC template available at http://www.conflictfreesourcing.org/conflict-minerals-reporting-template/ and any other documentation required by Buyer.

28. EEQ. The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a), 60-250.5, and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a), if applicable. These regulations prohibit discrimination against protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.