

## KINETYC, LLC TERMS AND CONDITIONS OF SALE

### 1. **Applicability.**

(a) These terms and conditions of sale (these “Terms”) are the only terms that govern the sale of the goods (“Goods”) and services (“Services”) by Kinetyc, LLC (“Kinetyc”) to the buyer (“Buyer”) identified in any Sales Confirmation (as defined below) which references these Terms.

(b) The accompanying quotation or confirmation of sale after receipt of Buyer’s purchase order (the “Sales Confirmation”) and these Terms (collectively, this “Agreement”) comprise the entire agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Kinetyc’s signature upon Buyer’s purchase order or the fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Kinetyc’s offer to supply the Goods and Services, including the Sales Confirmation, is limited to the acceptance of these terms. In the event of any irreconcilable conflict between these Terms and the Sales Confirmation, the provisions of the Sales Confirmation will control but only to the extent necessary to resolve the conflict.

(c) Notwithstanding anything to the contrary contained in this Agreement, Kinetyc may, from time to time change the Terms without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Terms, or the fees or any performance dates set forth in the Sales Confirmation. Continued acceptance of the Goods and Services constitutes Buyer’s acceptance of any changes to these Terms.

### 2. **Delivery of Goods and Performance of Services.**

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Kinetyc will not be liable for any delays, loss, or damage in transit. With respect to any parts, components, Third-Party Products (as defined below) or services which will be used in the finished Goods or Services (collectively “Subassemblies”), Kinetyc will not be responsible for any delays, loss, or damages which occur as a result of the failure to, upon schedules determined by Kinetyc, deliver to Kinetyc confirming Subassemblies by: (i) Buyer (directly or through its other vendors), or (ii) any vendor which Buyer requires Kinetyc engage with.

(b) Unless otherwise agreed in writing by the Parties:

(i) Kinetyc will deliver the Goods EXW to Kinetyc’s dock (the “Delivery Point”);

(ii) Buyer will take delivery of the Goods within five (5) days of Kinetyc’s written notice that the Goods have been delivered to the Delivery Point;

(iii) Seller will reasonably assist Buyer with the loading of the Goods onto Buyer’s transport.

(c) Kinetyc may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Kinetyc’s notice that the Goods have been delivered at the Delivery Point, or if Kinetyc is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided

appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods will pass to Buyer; (ii) the Goods will be deemed to have been delivered; and (iii) Kinetyc, at its option, may store the Goods until Buyer picks them up, whereupon Buyer will be liable for all related costs and expenses (including, without limitation, storage, and insurance).

(e) Kinetyc will use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates will be estimates only.

(f) Kinetyc may use, dismiss, or replace various subcontractors with respect to the Goods and Services.

(g) With respect to the Services, Buyer will (i) cooperate with Kinetyc in all matters relating to the Services and provide such access to Buyer's premises and such office accommodation and other facilities as may reasonably be requested by Kinetyc to the extent the Services are to be performed on Buyer's site; (ii) respond promptly to any Kinetyc request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Kinetyc to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Kinetyc may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. **Non-Delivery.**

(a) The quantity of any installment of Goods as recorded by Kinetyc on dispatch from Kinetyc's place of business is conclusive evidence of the quantity received by Buyer on delivery absent Buyer's demonstration of manifest error.

(b) Kinetyc will not be liable for any non-delivery of Goods (even if caused by Kinetyc's negligence) unless Buyer gives written notice to Kinetyc of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Kinetyc for non-delivery of the Goods will be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. **Quantity.** Kinetyc's pricing is valid only for the quantity listed in any Sales Confirmation and if no quantity is listed, a reasonable quantity as reasonably determined by Kinetyc. If Kinetyc delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer will not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and will pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata. Parties may agree on a release schedule for Goods and Services to the extent all of the Goods or Services set forth in any Sales Confirmation are not to be delivered at once.

5. **Change Orders.** In the event Buyer wishes to make any changes to the Goods and Services including, without limitation, any specifications or quantities, Kinetyc will not be obligated with respect to any such change until a Change Order is executed by all Parties. The Change Order will set forth the nature of the change including any changes to price, delivery, or other matters.

6. **Title and Risk of Loss.** Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Kinetyc a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds

(including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under MCL 440.9103 *et. seq.*. Buyer authorizes Kinetyc to file any and all financing statements, addenda, and termination statements as Kinetyc determines is reasonably necessary.

7. **Buyer's Acts or Omissions.** If Kinetyc's performance of its obligations under this Agreement is prevented, delayed, or otherwise impacted in any manner by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, including, without limitation, with respect to any Subassemblies, Kinetyc will not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. **Inspection and Rejection of Nonconforming Goods.**

(a) Buyer will inspect the Goods upon receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Kinetyc in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Kinetyc. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in the Sales Confirmation; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Kinetyc of any Nonconforming Goods, Kinetyc will, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. At Kinetyc's request, Buyer will ship, at Kinetyc's expense and risk of loss, the Nonconforming Goods to Kinetyc's facility. If Kinetyc exercises its option to replace Nonconforming Goods, Kinetyc will, after receiving Buyer's shipment of Nonconforming Goods, tender the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Kinetyc.

9. **Price.**

(a) Buyer will purchase the Goods and Services from Kinetyc at the price[s] (the "Price[s]") set forth in the Sales Confirmation.

(b) Buyer agrees to reimburse Kinetyc for all pre-approved travel and out-of-pocket expenses incurred by Kinetyc.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer will be responsible for all such charges, costs, and taxes; provided, however, that Buyer will not be responsible for any taxes imposed on, or with respect to, Kinetyc's income, revenues, gross receipts, personal or real property, or other assets. Kinetyc will be entitled to rely on Buyer's sales tax exemption certificate for all purposes.

10. **Payment Terms.**

(a) Unless Buyer shall have entered into a separate credit agreement with Kinetyc, Buyer will pay all invoiced amounts due to Kinetyc cash in advance. Buyer will make all payments hereunder in US dollars. Buyer bears all risks associated with any loss or mis-delivery of any payments unless caused by Kinetyc.

(b) Buyer will pay interest on all late payments at the lesser of the rate of 1.5% per month or

the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer will reimburse Kinetyc for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Kinetyc does not waive by the exercise of any rights hereunder), Kinetyc will be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(c) Buyer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Kinetyc, whether relating to Kinetyc's breach, bankruptcy, or otherwise.

11. **Kinetyc's/Buyer's Items.** Any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished or obtained by Kinetyc or used in conjunction with Kinetyc's provisioning of the Goods or Services (collectively, "Kinetyc's Items") will remain the sole and exclusive property of Kinetyc. Any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished by Buyer to Kinetyc or which Kinetyc has purchased on behalf of Buyer and at Buyer's expense (collectively, "Buyer's Items") will remain the sole and exclusive property of Buyer; provided, however, that Kinetyc will be given a license to use all Buyer's Items for the provisioning of the Goods and Services. All of Buyer's Items in the custody and control of Kinetyc or Kinetyc's authorized subcontractors or agents will be held at Buyer's risk and will be kept insured by Buyer. Kinetyc will, at Buyer's expense, maintain all Buyer's Items in at least as good condition and repair as when originally received by Kinetyc, reasonable wear and tear excepted. Kinetyc does not provide any representations, assurances, warranties or conditions whatsoever (and whether express, implied, statutory or otherwise) with respect to Buyer's Items. Buyer will clearly identify Buyer's Items with Buyer's information prior to delivery to Kinetyc.

12. **Limited Warranty.**

(a) Kinetyc warrants to Buyer that for a period of 12 months from the date of shipment of the Goods (unless the Sales Confirmation sets forth a different duration), that such Goods will be free from material defects in Workmanship (as defined below). For the purpose of this Agreement, "Workmanship" means Kinetyc's value-added assembly work Kinetyc performs to complete the assembly of Third-Party Products (as defined below) into the Goods. For the avoidance of doubt, "Workmanship" specifically excludes: (i) any matters relating to the manufacturing, assembly, and workmanship of any Third-Party Products by any party other than Kinetyc and (ii) any obligation to inspect or determine whether the Third-Party Products conform to any specification.

(b) Kinetyc warrants to Buyer that for a period of 12 months from the date of the performance of the Services (unless the Sales Confirmation sets forth a different duration), that such were materially performed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

(c) Subassemblies or other products manufactured or provided by a third party (including Buyer, its vendors, or any third-party suppliers) (collectively, "Third-Party Products") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods or utilized in conjunction with the Services. Third-Party Products are not covered by the warranty in Section 12(a) and 12(b). To the extent assignable, Kinetyc will assign any warranties governing the Third-Party Products to Buyer. For the avoidance of doubt, **KINETYC MAKES NO, AND SPECIFICALLY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY;**

**WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. ALL IMPLIED WARRANTIES ARE DISCLAIMED TO THE FULLEST EXTENT OF THE LAW.**

**(d) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 12(A) AND SECTION 12(B), KINETYC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. ALL IMPLIED WARRANTIES ARE DISCLAIMED TO THE FULLEST EXTENT OF THE LAW.**

(e) Kinetyc will not be liable for a breach of the warranties set forth in Section 12(a) and Section 12(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Kinetyc within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Kinetyc is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 12(a) to examine such Goods and Buyer (if requested to do so by Kinetyc) returns such Goods to Kinetyc's place of business at Kinetyc's cost for the examination to take place there; and (iii) Kinetyc reasonably verifies Buyer's claim that the Goods or Services are defective.

(f) Kinetyc will not be liable for a breach of the warranty set forth in Section 12(a) and Section 12(b) if: (i) Buyer makes any further use of such Goods or Services after giving such notice; (ii) the defect arises because Buyer failed to follow Kinetyc's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or use of the Services; or (iii) Buyer alters or repairs such Goods without the prior written consent of Kinetyc.

(g) Subject to Section 12(e) and Section 12(f) above, with respect to any such Goods subject to a claim under the warranty set forth in Section 12(a), Kinetyc will, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Kinetyc so requests, Buyer will, at Kinetyc's expense, return such Goods to Kinetyc.

(h) Subject to Section 12(e) and Section 12(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 12(b), Kinetyc will, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

**(i) THE REMEDIES SET FORTH IN SECTION 12(G) AND SECTION 12(H) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND KINETYC'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 12(A) AND SECTION 12(B), RESPECTIVELY.**

**13. Limitation of Liability.**

**(a) IN NO EVENT SHALL KINETYC BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT; LOSS OF DATA OR DIMINUTION IN VALUE; OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT KINETYC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. BUYER WILL INDEMNIFY AND HOLD KINETYC HARMLESS FOR ALL SUCH LOSSES OR**

## **DAMAGES INCURRED.**

(b) **IN NO EVENT SHALL KINETYC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL VALUE-ADDED SALES (AS DEFINED BELOW) PAID TO KINETYC FOR THE GOODS AND SERVICES SOLD HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. FOR THE PURPOSE OF THIS AGREEMENT "VALUE-ADDED SALES" MEANS THE AMOUNTS PAID TO KINETYC LESS THE PORTION OF SUCH AMOUNTS WHICH REPRESENT THE COST OF SUBASSEMBLIES OR OTHER PASS-THROUGH MATERIALS OR COSTS AS DETERMINED BY KINETYC USING ITS GENERAL ACCOUNTING PRINCIPLES.**

14. **Compliance with Law.** Parties will comply with all applicable laws, regulations, and ordinances with respect to the Goods and Services. Buyer will maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer will comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Kinetyc may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

15. **Termination.** In addition to any remedies that may be provided under these Terms, Kinetyc may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for fifteen (15) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Buyer may terminate this Agreement with immediate effect upon written notice to Kinetyc, if Kinetyc: (y) has not otherwise performed or complied with any of these Terms, in whole or in part, and such nonperformance or noncompliance continues for a period of thirty(30) days after Kinetyc's receipt of written notice setting forth the factual basis of such claim; (z) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Upon any such termination, Buyer will, at Kinetyc's request, pay for, and take possession of: (i) all Goods which are complete at the Price, (ii) all work in progress at a pro-rata portion of the Price, (iii) all Subassemblies or other goods and materials purchased in furtherance of the Goods or Services which have not yet become a Good or work in progress at Kinetyc's cost.

16. **Waiver.** No waiver by either Party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by the waiving Party. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. **Confidential Information.** To the extent the Parties have not entered into a separate confidentiality agreement ("Confidentiality Agreement") which, if entered into, will supersede the provisions set forth in this Section 17, Parties agree as follows:

(a) **Confidential Information Defined.** The term "Confidential Information" means all information disclosed in writing, visually, or orally by a Party (the "Disclosing Party") to the other Party (the "Receiving Party") that is information regarding the Goods or Services ("Purpose"). Notwithstanding the foregoing, Confidential Information does not include information which, as proven by clear and convincing evidence:

- (i) was previously known to the Receiving Party free of any obligation to keep it confidential;
- (ii) is or becomes publicly available by other than unauthorized disclosures by the Receiving Party;
- (iii) is independently developed by the Receiving Party without the use of Confidential Information;
- (iv) is received by the Receiving Party from a third party not subject to any confidentiality obligations; or
- (v) compromises Kinetyc's general knowledge, experience, and skill in providing any goods or services which Kinetyc provides.

(b) **Obligations Regarding Confidential Information.** For a period of two (2) years after the later of the expiration, satisfaction, or termination of any Sales Confirmation, the Receiving Party will:

- (i) not, without prior written approval of the Disclosing Party, use the Confidential Information in any manner other than in the pursuit of the Purpose and in compliance with the terms of this Agreement;
- (ii) restrict disclosure of the Confidential Information solely to its employees, officers, directors, agents, subcontractors, sub-suppliers, financial and legal representatives and advisors ("Employees and Representatives") who have a need to know in order to accomplish the Purpose;
- (iii) advise its Employees and Representatives who receive the Confidential Information of the obligation of confidentiality under this Agreement;
- (iv) be responsible for the compliance by Employees and Representatives with this Agreement; and
- (v) employ commercially reasonable security precautions and efforts (such precautions and efforts to be at least as secure as the precautions and efforts the Receiving Party takes to protect its own confidential information, but in any event, no less than reasonable care) to safeguard the secrecy and confidentiality of the Confidential Information, and to prevent unauthorized access, reproduction, disclosure, and/or use of any of the Confidential Information.

(c) **Return or Destruction of Confidential Information.** The exchanged Confidential Information will remain the property of the Disclosing Party and, upon request, the Receiving Party, within 48 hours of any request, the Receiving Party will return or destroy such Confidential Information provided, however that such Confidential Information may continue to reside in backup systems, not ordinarily accessible to the Receiving Party, and which will remain subject to the terms of this Agreement.

(d) **Judicial Disclosure.** In the event that a Receiving Party, is requested or required to disclose any Confidential Information, it is agreed that the Receiving Party, to the extent permitted by law, will provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

(e) **No Rights Conferred.** The disclosure of Confidential Information does not grant or conferring any right, including intellectual property rights, by license or otherwise in any Confidential Information disclosed.

(f) **No Restrictions on Kinetyc's Business.** Buyer acknowledges and agrees that Kinetyc may provide similar Goods and Services to other customers. Nothing in this Section will restrict Kinetyc from providing such Goods and Services to any other customer so long as Kinetyc does not utilize Buyer's Confidential Information. For the avoidance of doubt, any techniques, improvements, or knowledge or experience gained by Kinetyc in its provisioning of Goods or Services pursuant to this Agreement will not constitute Buyer's Confidential Information.

18. **Force Majeure.** Kinetyc will not be liable or responsible to Buyer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond Kinetyc's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): acts of God; flood, fire, earthquake, pandemic, or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; government order, law, or actions; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns, or other industrial disturbances; telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; price changes or fluctuations in the cost of materials used in the Goods, and other similar events. For the avoidance of doubt, Buyer's non-payment of any amounts due under this Agreement will not be a Force Majeure Event. Kinetyc will give reasonable notice of the Force Majeure Event to Buyer, stating the period of time the occurrence is expected to continue. Kinetyc will use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. Kinetyc will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that Kinetyc's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 18, either Party may thereafter terminate this Agreement upon five (5) days' written notice.

19. **Assignment.** Buyer will not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Kinetyc. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

21. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

22. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision.

23. **Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement will be instituted in the United States District Court for the Eastern District of Michigan (Southern Division) or the courts of the State of Michigan in each case located in the County of Wayne, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives jurisdiction and venue in all other forums.

24. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") will be in writing and addressed to the Parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving Party in



writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

25. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each Party.

27. **Battle of the Forms.** The Parties agree that the “battle of the forms” provisions of Section 2207 of the Uniform Commercial Code as enacted in Michigan or similar provisions of any other potentially applicable law will not apply to these Terms and any Purchase Order, and in the event of any purported inconsistency between the Purchase Order and these Terms on the one hand and any acceptance by Kinetyc on the other hand, the Purchase Order and these Terms will govern.

28. **Entire Agreement.** These Terms (including any riders and annexes thereto) and the Sales Confirmation (including any documents or specifications set forth therein) and, if entered into, the Confidentiality Agreement, embody the entire agreement between Buyer and Kinetyc and no negotiations, understandings, or agreements, verbal, collateral, or otherwise exist between Buyer and Kinetyc except as set forth in these Terms and the Sales Confirmation. Each Party has the opportunity to review, negotiate, and amend this Agreement; therefore, no rule regarding strict construction shall apply against either Party.