

Kinetyc's TERMS AND CONDITIONS OF PURCHASING

1. **Definitions.**

A. “Competition Laws” means any law that prohibits, restricts, or regulates actions having the purpose or effect of monopolization, restraint of trade, or lessening of competition.

B. “Copyleft Materials” means materials subject to any license that requires as a condition of use, modification, or distribution thereof, that such materials, or materials combined or distributed with such materials, be (1) disclosed or distributed in source code or similar form, (2) licensed for the purpose of making derivative works, or (3) redistributable at no charge.

C. “Customer” means Kinetyc’s customer for which Kinetyc is providing the Goods or Services provided by Seller.

D. “Customer Data” means all data and information which is collected, transmitted, stored, processed, derived from or used by, or on behalf of, or relating to, Kinetyc’s Customer (as defined below), including, but not limited to, (a) the Goods and Tech Products, and (b) Customer’s operations, production, vehicle-related data.

E. “Error States” means Goods, Services, or Tech Products that do not function for their intended use, resulting in a warranty claim.

F. “Goods” or “Services” means such goods or services, as the case may be, provided to Kinetyc by Seller pursuant to a Purchase Order.

G. “Government” means an entity that claims a right to investigate or regulate the Goods, Services, and/or Tech Products, the vehicles into which the Goods, Services, and/or Tech Products may be installed, Kinetyc, the Seller, or any of their Related Companies. The term Government includes the United States Environmental Protection Agency, the United States National Highway Traffic Safety Administration, and the Commission of the European Union.

H. “Government Requirement” means any law, rule, regulation or requirement of a Government, including those that apply to new motor vehicles in general or the Goods, Services, or Tech Products installed in them, or parties that may provide them. These requirements include emissions control, safety, hazardous materials, recycling, end-of-life disposal, U.S. and other applicable export controls, sanctions, and anti-boycott regulations. A Government Requirement may include specific warranty periods or terms of coverage, or a period of time during which Kinetyc may be required to conduct a Field Service Action.

I. “Information” means all information that would reasonably be regarded as being of a confidential nature and includes, at minimum, all Kinetyc Data, drawings, reproductions, Specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations and other information whatsoever and in any form or medium furnished, directly or indirectly, by Kinetyc, or anything derived therefrom.

J. “Items” means any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished by Kinetyc to Seller, obtained by Seller at Kinetyc’s expense and/or which are to become the property of Kinetyc under a Purchase Order.

K. “Laws” means all federal, state, local and foreign laws, ordinances, rules, regulations, orders, conventions, ordinances, Executive Orders, standards, and all amendments thereto.

L. “Kinetyc” means Kinetyc, LLC (f/k/a MOXz, LLC) and/or its affiliate or subsidiary as the case may be.

M. “Kinetyc Data” means all data and information which is collected, transmitted, stored, processed, derived from or used by, or on behalf of, or relating to, Kinetyc, including, but not limited to, (a) the Goods and Tech Products, and (b) Kinetyc operations, production, vehicle-related data.

N. “Purchase Order” means any and all purchase orders issued to Seller by Kinetyc.

O. “Related Company” is any parent company of Kinetyc or the Seller, as appropriate, and any subsidiary or affiliate in which any of them owns or controls at least 25% of the voting stock, partnership interest, or other ownership interest.

P. “Release” means Kinetyc’s authorization for shipment of the Goods, Services, or Tech Products, which authorization may be electronic or in writing and which (i) shall specify the quantity of the Goods, Services, and Tech Products and the delivery dates and (ii) may authorize Seller to procure raw materials and/or components.

Q. “Seller” means the entity listed on the face of a Purchase Order or the other Party executing these Terms and Conditions.

R. “Software” means software application, commercial software, developed software, and respective updated and enhanced versions, support and maintenance.

S. “Specifications” means all drawings, specifications, samples and other descriptions furnished, specified or adopted by Kinetyc.

T. “Supplied Data” means any data or metadata, including but not limited to digital data, that is related to Seller’s production, delivery, logistics, quality, volume or similar business information regarding the Goods and Tech Products.

U. “Tech Products” means Software, Software as a Service, Customer Data, Kinetyc Data, and Supplied Data.

V. “Terms” and “Terms and Conditions” means these Terms and Conditions.

2. Acceptance of Purchase Order. Any acceptance of a Purchase Order is limited to acceptance of the express terms of Kinetyc’s offer as set forth in these Terms and Conditions and the Purchase Order. Any proposal for additional or different terms or any attempt whatsoever by Seller to vary any of the terms of a Purchase Order (whether in Seller’s quotation form, acknowledgement form, invoice or otherwise) shall be deemed material and is hereby objected to and rejected. Any exception, deviation, amendment, modification, or waiver of any provisions of these Terms and Conditions, whenever made, shall only be binding on Kinetyc if it has been made (1) in writing and (2) approved by Kinetyc’s then-current Commercial Director (or its designated agent). Seller’s written acceptance of the Purchase Order, Seller’s tendering of an invoice, or its earlier commencement of (i) work on the Goods subject to a Purchase Order or shipment of the Goods, whichever occurs first, or (ii) performance of all or any portion of the Services for which a Purchase Order has been issued, shall constitute acceptance of Kinetyc’s offer contained in a Purchase Order. In addition to any other rights of Kinetyc, Kinetyc may cancel a Purchase Order at any time prior to Kinetyc’s actual knowledge of Seller’s acceptance. The term of any Purchase Order shall be for the duration of the term identified on any Purchase Order or, if no dates are identified, begin on the date of its acceptance and shall continue until the earlier of (a) the life of the program for which the Purchase Order is fulfilling or (b) until terminated pursuant to the terms of these Terms and Conditions.

3. Labeling, Packing and Shipping. All Goods are to be suitably prepared for shipment and must be labeled, packed and shipped in accordance with Kinetyc’s specifications as set forth on any Purchase Order. The pricing set forth in a Purchase Order shall be inclusive of labeling, packing, boxing and crating and Seller shall not charge Kinetyc for labeling, packing, boxing or crating except as stated specifically in a Purchase Order. Goods shipped in advance of Release’s (as defined hereinafter), in excess of the quantity ordered, or not shipped in accordance with these Terms and Conditions shall be at Seller’s risk. Upon such

occurrence, Kinetyc may (1) return such Goods to Seller, with all transportation charges both to and from the original destination payable by the Seller, or (2) Seller shall be liable for any excess costs occasioned thereby including, without limitation, Kinetyc's storage and transportation fees with respect to such Goods.

4. Delivery and Delays.

- A. Time is of the essence with regard to performance under any Purchase Order and/or Releases.
- B. Deliveries are to be made both in the quantities and at the times specified in a Purchase Order or if not specified therein, in such quantities and at such times as may be indicated in Kinetyc's Releases or other instructions. If Seller is unable to make shipments as specified in a Purchase Order or in a Release or other instructions from Kinetyc, then Seller will immediately notify Kinetyc and Kinetyc shall have the right to cancel such Purchase Order without liability and without prejudice to Kinetyc's right to claim from Seller any losses or damages occasioned thereby.
- C. For purposes of a Purchase Order, notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have transferred to Kinetyc until delivery of the Goods pursuant to the shipping terms contained in the Purchase Order. Kinetyc shall not be required to make payment for Goods delivered to Kinetyc which is in excess of quantities specified in Kinetyc's delivery schedules.
- D. Kinetyc may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the prices for the Goods so long as the quantities in any Purchase Order are not exceeded.
- E. Title to any Goods shall pass to Kinetyc from the earlier of the date upon which Kinetyc has made payment for such Goods or delivery of such Goods to Kinetyc and no reservation of title clause proposed by the Seller shall be effective against Kinetyc, except if expressly accepted in writing by Kinetyc. The Seller shall assure that no reservation of title clause shall be asserted by its subcontractors for any element delivered by them and which is part of the Goods and/or Services.
- F. Transfer of risk of loss related to the Services shall be upon their final acceptance by Kinetyc as set forth in these Terms.

5. Production Capacity and Flexibility.

- A. Requirement Contracts. Purchase Orders which specify "Requirements" (or with such similar language) represent a commitment to purchase all of the specified part numbers from the Seller which Kinetyc may need with respect to a particular contract between Kinetyc and its Customer, and not for Kinetyc's general operations. Any "Requirements" shall specifically exclude: (i) any similar Goods, Services, and Tech Products which are not used with respect to Kinetyc's production pursuant to a particular contract between Kinetyc and its Customer, (ii) engineering samples, (iii) engineering validation, (iv) prototypes, (v) engineering changes, or (vi) other similar variations.
- B. Specific Quantities. Purchase Orders which specify a specific quantity of Goods or Services represent a commitment to purchase that specific number of Goods or Services from Seller.
- C. Quantity Ranges. Purchase Orders which specify a range of quantities (or with such similar language) represent a commitment to purchase not less than the minimum number of Goods and Services and not more than the maximum number of Goods and Services from the Seller.

6. Conforming and Non-Conforming Goods, Services and Tech Products.

- A. Delivery of Conforming Goods, Services, and Tech Products. Seller will only deliver Goods, Services, and Tech Products which conform in all respects to the Specifications and with all

warranty obligations. Kinetyc is not required to, but may, engage in any inspections of the Goods, Services, or Tech Products to determine their adequacy. Kinetyc shall not be required to accept conforming Goods, Services, or Tech Products in excess of any quantities specified by Kinetyc.

B. Notification of Defects. Kinetyc may, using commercially reasonable methods, inform the Seller of any apparent defects in the Goods which should be detectable in the ordinary course of Kinetyc's operations. Kinetyc's failure to assert a claim or reserve such claim at the time of delivery and/or payment for Goods shall not be considered as a final acceptance of the Goods delivered, nor as an acceptance of the amount invoiced, and shall not, under any condition, be deemed as a waiver by Kinetyc of its right to assert any claim in the future in accordance with all applicable laws.

C. Services. Services shall be accepted by Kinetyc only upon completion of performance which shall occur either:

- i. upon the date provided in the Purchase Order or other written agreement, and only if Services are satisfactory without reservation; or
- ii. upon the date on which all reservations have been withdrawn by Kinetyc as evidenced by Kinetyc's execution and delivery of a corresponding completion certificate.

Kinetyc reserves the right to reject the Services if:

- i. at the completion date of the Services, the Services are not satisfactory without reservation, by reason of other than immaterial nonconformity or defect; or
- ii. Kinetyc's reservations have not been withdrawn within the time limits established by the Parties by reason of other than immaterial nonconformity or defect; or
- iii. the Seller has failed to comply with the Service delivery schedule or completion deadlines.

D. Defective and/or Nonconforming Goods, Services, and/or Tech Products. If any of the Goods, Services, and/or Tech Products fail to meet the warranties contained in these Terms, any applicable law or any other written agreement between the Parties, Kinetyc shall have at any time, without prejudice to the right of Kinetyc to terminate or to claim compensatory damages, the option, to:

- i. have such Goods repaired or replaced immediately by and at the sole expense of the Seller, who shall have no right to raise any objections or claims regarding the production or delivery schedule or as to Services have such Services performed again immediately by and at the sole expense of the Seller, who shall have no right to raise any objection;
- ii. have such nonconforming Services performed by a third party designated by Kinetyc, at the sole expense of the Seller who shall have no right to raise any objection;
- iii. have the purchase price for the Goods or payment for Services promptly refunded promptly upon demand of Kinetyc; or
- iv. otherwise satisfactorily deal with the defective or nonconforming Goods, Services, and/or Tech Products (including, to the extent applicable, participation in recall, claims adjustment and other similar programs) in a manner acceptable to Kinetyc in its sole discretion, at Seller's sole expense.

Any rejected Goods must be recovered by the Seller at its sole expense and risk within ten (10) calendar days following notice of rejection by Kinetyc. It is expressly agreed that after such time, Kinetyc may, without any liability whatsoever, at the Seller's sole cost, expense and risk, either destroy the rejected Goods or return them to the Seller.

E. **Failure to timely cure.** Should Seller fail or otherwise be unable to cure any such breach or nonconformity within the time-frame or other parameters required by Kinetyc (and whether or not such time-frame or other parameters are communicated to Seller) (i) Kinetyc may cancel in whole or part any Purchase Order as to the particular defective or nonconforming Goods, Services, and/or Tech Products, or (ii) Kinetyc may, in Kinetyc's sole discretion, (and without any obligation to do so), assume control over the correction, repair, replacement or other rectification efforts, processes and programs, in which case Seller shall pay or reimburse Kinetyc for all associated costs and expenses (including Kinetyc's internal handling, reworking and administrative time, labor and materials). After notice to Seller, all defective or nonconforming Goods shall be held at Seller's risk. Kinetyc may, and at Seller's direction, shall return such Goods to Seller at Seller's risk, and all sorting and handling charges, as well as transportation, freight and delivery charges (both to and from the original destination) and any other related expenses, shall be paid by Seller. Any payment made by Kinetyc to Seller for such defective or nonconforming Goods, Services, and/or Tech Products shall be immediately refunded by Seller, unless and to the extent that Seller promptly corrects, repairs, replaces or otherwise satisfactorily corrects such nonconformity. Seller's warranties shall also apply to such corrected, repaired, or replaced Goods, Services, and/or Tech Products.

7. **Invoices.** Seller shall send the original invoice(s) which shall comply with all applicable legal requirements (plus two additional copies) and bill(s) of lading to the physical or electronic address designated by Kinetyc. Seller's invoice(s) shall show the Number of the Purchase Order and all items invoiced, with quantities, unit prices and taxes (if any) listed separately. The words final invoice (or similar terminology) shall appear on Seller's last invoice covering the completion of the Purchase Order.

8. **Delays.**

A. If Seller fails to perform as required under a Purchase Order or fails to make deliveries as contemplated by a Purchase Order, Kinetyc may:

- i. terminate all or any part of any Purchase Order with Seller pursuant to these Terms and Conditions;
- ii. direct expedited routing and charge Seller for all excess costs incurred thereby and all additional handling charges and other expenses resulting therefrom;
- iii. source all or any part of the Goods, Services, or Tech Products from any other supplier; and
- iv. undertake any other commercial reasonable action.

B. Kinetyc may delay delivery or acceptance of the Goods or performance of the Services, in which case Seller shall hold the Goods and/or delay performance of the Services, at Kinetyc's direction.

C. If, a Purchase Order constitutes a requirements contract, such grant of rights shall not restrict Kinetyc's ability to absolute entitlement to procure Goods, Services, and/or Tech Products which are the same as or similar to the Goods, Services, and/or Tech Products from third parties in the event of (and throughout the period of) a delay and, at Kinetyc's option, to reduce a Purchase Order by such quantities without liability to Seller.

9. **Transportation Charges; Customs Duties and Taxes.**

A. Unless otherwise stated in a Purchase Order:

- i. all transportation up to the delivery point set forth in a Purchase Order, insurance, storage, parking, detention, freight, and delivery charges shall be at Seller's expense; and
- ii. the prices are inclusive of all customs duties and expenses and all Federal, State,

local and foreign taxes (including import, excise, sales and/or Goods, Services, and/or Tech Products taxes) applicable to the sale of the Goods, Services, and/or Tech Products.

B. To the extent Kinetyc is required by law to withhold tax based upon the Seller's income or revenue, Kinetyc may deduct such tax from the amounts payable to the Seller and remit to the appropriate government authorities provided that: (i) Kinetyc may only deduct such tax to the extent the income or revenue pertains to amounts paid by Kinetyc to the Seller; (ii) such deduction is in accordance with the tax laws and regulations of the applicable countries; and (iii) Kinetyc shall subsequently provide the Seller with a receipt showing the payment of such tax. For the avoidance of doubt, any taxes, withheld or otherwise, imposed on the Seller's income or revenue will be the sole financial responsibility of the Seller.

C. Upon request, Seller shall furnish promptly all certificates and other information of domestic value added, properly completed in accordance with applicable governmental regulations.

10. Import Compliance; Customs Drawback Documents.:

A. Regardless of the stated delivery term, any importation or exportation of Goods to reach Kinetyc's facilities must comply with all Kinetyc import/export procedures and Government Requirements for the countries of import and export. All Goods and Tech Products must be valued, classified and be processed under the correct import/export classification, type of shipment or trade agreement.

B. Seller will be responsible for any damages which arise from Seller's failure to comply with such procedures and regulations and shall defend and hold Kinetyc harmless from any costs, fines, expedited freight, or production line stoppages arising from such failure.

C. Upon request, Seller shall furnish promptly all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise stated in a Purchase Order, all customs drawbacks shall be reserved and retained for, or credited or paid to, Kinetyc.

11. Value Added. Upon request, Seller shall furnish promptly all certificates and other information of domestic value added, properly completed in accordance with applicable Government Requirements.

12. Payment. Unless otherwise provided in these Terms and Conditions or stated on the face of a Purchase Order, net invoices (subject to applicable withholding taxes, charge-backs and other matters, if any) shall be paid within 60 days of the acceptance of the Goods and Services. For Goods, Services, and/or Tech Products manufactured and/or performed within the United States, payment shall be tendered in US Dollars. For Goods, Services, and/or Tech Products manufactured and/or performed outside the United States, payment shall be tendered in US Dollars or a local currency utilized in the country of manufacture as determined by Kinetyc. In the event of any conflict as to the country of manufacture or performance of Goods, Services, and/or Tech Products, Kinetyc good-faith determination shall be binding for all purposes.

13. Setoff; Subcontracts. In addition to any right of set-off provided by law, all amounts due or to become due to Seller from Kinetyc shall be considered net of indebtedness of Seller (and/or Seller's affiliates) to Kinetyc (and/or Kinetyc's affiliates), and Kinetyc may deduct or set-off at any time any such indebtedness from any amounts due or to become due to Seller (and/or Seller's affiliates) from Kinetyc (and/or Kinetyc's affiliates).

14. Changes.

A. Kinetyc and its Customer, reserve the right to make changes to:

- i. Specifications;
- ii. designs or part numbers (or any other type of identifications);

- iii. processes and procedures; or
- iv. sub-suppliers.

In the event that any such change causes an increase or decrease in the price of, or the time required for, the delivery of the Goods, Services, and/or Tech Products, Seller shall request any pricing adjustments from Kinetyc within 30 days following the notification of the change. Seller shall have the burden of evidencing a change in its costs and acknowledges that not every engineering change shall result in an adjustment to the pricing for such Goods. Such adjustment, if any, shall relate solely to the costs related to the changes implemented by Kinetyc. If Seller does not submit its written request within said 30 days, Seller shall be deemed to have waived any adjustment to the pricing for such Goods. Kinetyc shall be entitled to audit Seller's records to confirm the Seller's claims with regard to any such request. Until such time as Kinetyc approves a pricing adjustment, Seller shall continue to provide the Goods Services, and Tech Products pursuant to the existing Purchase Agreement.

B. In the event Seller wishes to change any Specifications, design or part numbers (or other types of identification), or make changes in processes or procedures or any changes in Seller's subcontractors, or any changes to raw materials or goods used by Seller in the manufacture or supply of the Goods, Services, or Tech Products or in the location of the facilities used by Seller, then Seller shall request in writing permission from Kinetyc to make such changes. Seller shall not make such changes until or unless approved in writing by Kinetyc.

15. Seller's Representations and Warranties.

A. Seller warrants that all of the Goods, Services, and/or Tech Products, including any packaging, special tools, dies, jigs, fixtures, patterns, raw materials, machinery, and equipment obtained by Seller at Kinetyc's expense and/or which are to become the property of Kinetyc under a Purchase Order:

- i. shall conform to and fulfill all Specifications;
- ii. shall be merchantable, free from any defects in design (but only to the extent designed by Seller), material, and workmanship;
- iii. shall be free of all liens, claims and encumbrances whatsoever;
- iv. shall comply with all laws and Government Requirements of the countries in which the Goods, Services, and/or Tech Products are installed and/or are to be sold as directed by Kinetyc;
- v. Are free of Error States and defects in design to the extent furnished by the Seller and/or its subcontractors, irrespective of whether the design has been approved by Kinetyc and/or Kinetyc's Customer;
- vi. Are not governmental or commercial surplus, used, remanufactured, or reconditioned;
- vii. Be suitable for their intended use by Kinetyc and Customer, including the specified performance in the component, system, subsystem, and vehicle location specified by Kinetyc and the environment in which the Goods, Services, and Tech Products are or reasonably may be expected to perform; and
- viii. Do not infringe any proprietary rights (including patents, copyrights, trademarks, trade secrets).

B. With respect to any Tech Products, Seller warrants that it has the right to license the Tech Products to Kinetyc and Customer and that Seller is in compliance with the licenses of any free or

open-source software contained in the software. No Tech Products will contain software (A) constituting Copyleft Materials, or (B) not in compliance with the applicable notice, disclaimer, or other licensing requirements thereof.

C. With respect to any Supplied Data, Seller warrants that (i) all Supplied Data is timely and accurate, (ii) all Supplied Data was obtained legally by Seller, (iii) Seller has the unrestricted right to use, sell, provide, license, or include in Kinetyc and Customer products such Supplied Data, and (iv) all Supplied Data will comply with all security and privacy laws, including the provision of notice and obtaining any consent required to provide the Supplied Data and advising of any limitations on its use.

D. If the Goods constitute special tools, dies, jigs, fixtures, patterns, raw materials, machinery or equipment, Seller further warrants that such Goods will operate and perform successfully on a commercial scale in accordance with Kinetyc's usual requirements and methods of operation. Additionally, Seller acknowledges that Seller knows the particular purpose for which Kinetyc intends to use the Goods, Services, and/or Tech Products and Seller warrants such Goods, Services, and/or Tech Products shall be fit and sufficient for such particular purpose. Seller's warranties herein are available to, and are granted for the benefit of, Kinetyc, Kinetyc's affiliates and their respective successors, assigns, customers and users of products incorporating the Goods, Services, and/or Tech Products.

E. These warranties shall be in addition to all other warranties and conditions, express, implied, statutory, or otherwise, available under applicable law. Seller shall indemnify and save Kinetyc, Kinetyc's affiliates and their respective successors, assigns, customers and users of products incorporating the Goods, Services, and/or Tech Products, harmless from any breach of these warranties and, for greater certainty, no limitation on Kinetyc's rights or remedies in Seller's documents, if any, shall operate to reduce this indemnification.

F. Seller will indemnify and hold Kinetyc harmless from all liability, damages and associated costs and expenses (including any lost profits, recall costs and other direct or indirect, consequential, or special damages) imposed upon Kinetyc resulting from the acts, omissions, or negligence of Seller in respect of the Goods, Services, and/or Tech Products and/or Seller's breach of these warranties.

16. Goods and Services Warranties and Support.

A. Unless otherwise set forth in the Specifications, the warranty period shall equal the greater of: (i) two (2) year(s) from the later of the date of delivery of the Goods or final run-off for machines, equipment, spare parts and/or Services; or (ii) any warranty period that has been agreed to by Kinetyc and Seller, documented in writing and signed by Kinetyc, and disclosed to Seller; or (iii) as provided by applicable law or pursuant to any Government Requirement.

B. Support relating to Tech Products.

i. To the extent that Seller provides Goods and/or Services which contain Tech Products, Software, or Software as a Service, or otherwise provides any Tech Products, Seller shall include all support, updates, and enhancements which are available from the Seller in accordance with the support services specified on the Purchase Order. In the event that there are no support services specified, Seller will provide to Kinetyc and Customer support services, including updates and enhancements, which it makes generally available. In addition, as part of the support program, Seller shall provide Kinetyc with on-line end user materials, FAQ's, techniques, and general product usage information.

ii. In the event Seller discontinues its maintenance and support of the Goods and Tech Products, files a petition, or is subject to an involuntary petition under the Bankruptcy

Code, Seller shall provide to Kinetyc and/or Customer, as directed by Kinetyc, an unrestricted license to use and modify the then current version of the source code for the affected Goods, Services, Tech Products, Software, and/or Software as a Service supplied to Kinetyc. Seller shall deliver to Kinetyc and/or Customer, as directed by Kinetyc, complete copies of all source code and related technical documentation to enable Kinetyc to continue its use of the Goods, Services, Tech Products, Software, and/or Software as a Service in accordance with these Terms.

iii. Kinetyc may: (i) export all Kinetyc Data and Customer Data relating to the Goods, Services, Tech Products, Software, and/or Software as a Service; or (ii) request Seller to provide a copy of all Kinetyc Data and Customer to Kinetyc and/or Customer, as directed by Kinetyc, in a mutually agreeable and industry standard format.

iv. The Goods, Services, Tech Products, Software, and/or Software as a Service may be copied by Kinetyc, Customer, and their respective agents for use in understanding the Goods, Services, Tech Products, Software, and/or Software as a Service, for backup or archive purposes, and for purposes of installation and running the Goods, Services, Tech Products, Software, and/or Software as a Service. Unless otherwise agreed on the Purchase Order, Kinetyc and Customer may modify any Goods, Services, Tech Products, Software, and/or Software as a Service for their own uses and may integrate the Goods, Services, Tech Products, Software, and/or Software as a Service into Goods, Services, Tech Products, Software, and/or Software as a Service, provided that all copies and modifications of the Goods, Services, Tech Products, Software, and/or Software as a Service will be destroyed upon termination or expiration of this license.

17. Quality Control and Inspection; Audits. At Kinetyc's option, Kinetyc may, from time to time and with commercially-reasonable notice, review and inspect Seller's components, materials, workmanship, testing, inspection, quality control and reliability procedures, or any other matters relating to the Goods, Services, or Tech Products. If any such inspection or testing is made on Seller's premises or on the premises of any authorized subcontractor or agent of Seller, Seller or such authorized subcontractor or agent, as the case may be, shall provide, without additional charge, all reasonable facilities and assistance. The inspection shall not unnecessarily interfere with the Seller's performance of the Agreement. As part of the inspection, Kinetyc may take random samples of the Goods manufactured or being manufactured by the Seller in order to confirm compliance with quality standards and to confirm that the Goods will conform to all Specifications. Further, Kinetyc may review and inspect Kinetyc's data breach, disaster recovery, and incident response plans (including any related policies and procedures) with respect to the provisioning of Goods, Services, and Tech Products. In no case whatsoever shall (i) any inspection or testing by Kinetyc (or Kinetyc's customers) of the materials and workmanship utilized in the performance of any Purchase Order, (ii) any review or inspection by Kinetyc of Seller's testing, inspection, quality control or reliability procedures (or related data), or (iii) any acceptance by Kinetyc of the Goods, Services, and/or Tech Products, relieve Seller from the strict and complete performance of all of Seller's obligations and warranties under any Purchase Order. In no event shall any inspection be deemed to constitute acceptance by or on behalf of Kinetyc of any nonconforming Goods, Services, and/or Tech Products.

18. Kinetyc's Items. Kinetyc's Items shall become, from the date of Seller's acceptance of Purchase Order and remain the sole and exclusive property of Kinetyc, with the absolute right of possession in, Kinetyc, free from any liens or claims of any type or nature whatsoever by Seller or any other party claiming by or through Seller, and Seller shall indemnify and defend Kinetyc against any and all such claims, including bonding, if necessary or expedient, to ensure Kinetyc's possession when demanded. Seller shall hold the Items as a bailment only. Seller shall use the Items only in the performance of work for Kinetyc and not otherwise. All Items in the custody and control of Seller or Seller's authorized subcontractors or agents shall be held at Seller's risk, shall be kept insured by Seller, at Seller's expense, against loss or damage in amounts equal to the full replacement value thereof and shall be subject to immediate removal

at Kinetyc's written request, in which event Seller shall prepare the Items for shipment and shall deliver them to Kinetyc in accordance with Kinetyc's instructions. Seller shall promptly notify Kinetyc of the location of the Items, if the Items are located at any place other than the Seller's premises and shall not change the location of such Items without the advance written consent of Kinetyc. Seller shall, at Seller's expense, maintain all Items in at least as good condition and repair as when originally received by Seller, reasonable wear and tear excepted, and shall, if and as necessary, replace any items that are used, worn, damaged or destroyed as a result of Seller's intentional or negligent conduct or omissions. Kinetyc does not provide any representations, assurances, warranties or conditions whatsoever (and whether express, implied, statutory or otherwise) with respect to the Items. Upon the completion or termination of a Purchase Order, all Items shall be retained by Seller, at Seller's expense, until disposition directions are received from Kinetyc.

Kinetyc shall have the option at any time to purchase any and all molds, tools, tooling, dies, jigs, fixtures, and other equipment used in the manufacture of Goods or delivery of Services for Kinetyc not already owned by Kinetyc, at the then current book value, less any costs for repair or refurbishment.

Each tool, tooling, mold, die, jig, fixture or piece of equipment is to be clearly stamped or stenciled with the following and no other markings:

- A. Kinetyc's Tool (or Capital Equipment) Identification Number;
- B. Kinetyc's product number; and
- C. Labeled "PROPERTY OF _____" (with Seller to insert "Kinetyc" or the name of Customer, as directed by Kinetyc in writing).

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall be secured, fully insured and maintained production ready at all times by Seller on behalf of Kinetyc, at Seller's sole expense.

Where permitted by law, Seller waives any possession rights, lien rights, requirements for the posting of bond or other surety, or other rights that Seller might otherwise have in any of such molds, tools, tooling, dies, jigs, fixtures, and other equipment or other of Kinetyc's property for work performed on such property, goods manufactured with such property or otherwise.

Except where stated differently on the Purchase Order, the Seller shall bear all risk of loss and of damage to Kinetyc's Items until risk of loss is transferred to Kinetyc in accordance with the delivery provisions set forth in these Terms.

19. Proprietary Rights.

- A. Seller represents and warrants to Kinetyc that no Goods, Services, Tech Products and no article, machine, product, component, material or services provided or used by Seller in connection with a Purchase Order shall be a misuse or misappropriation of any trade secret or infringe any patent, copyright, trademark, trade secret, industrial design right utility model, or other proprietary right not owned or controlled by Seller, and that neither the normally anticipated uses thereof by Kinetyc, nor any specified methods of using same known by Seller to be contemplated by Kinetyc, will infringe any patent, copyright, trademark, industrial design right or other proprietary right in accordance with applicable law. Seller shall, upon notice of any possible violation of this section will investigate, indemnify, defend and hold and save Kinetyc, Customer, Kinetyc's affiliates and their respective successors, assigns, customers and users of products incorporating the Goods, Services and Tech Products, harmless from all losses and/or liabilities of any nature or kind, including damages, court costs, representation expenses (both internal and external, including lost management and employee time and out-of-pocket expenditures) and legal fees, arising or existing because of the infringement or alleged infringement of any patent, trademark, copyright, industrial design or process of manufacture for or on account of the manufacture, sale or use of any of the Goods, Services, and/or Tech Products, or products incorporating the Goods, Services, and/or Tech

Products, except where strict and complete compliance by Seller with the specifications prescribed by and originating with Kinetyc constitutes the sole basis of the infringement or alleged infringement. In the event a claim of infringement is asserted, Seller may replace or modify the Goods, Services and Tech Products to make them non-infringing at no cost to Kinetyc, provided that Kinetyc and Customer approves such replacement or modification and agrees in writing that such replacement or modification achieves the substantive results of the original version of such Goods, Services, and Tech Products and any related cost incurred are paid by Seller, or Seller may procure at its expense a license for Kinetyc and/or Customer, as directed by Kinetyc, to use the allegedly infringing Goods and Tech Products.

B. Seller hereby grants to Kinetyc, Kinetyc's affiliates and their respective successors and assigns, and, with Kinetyc's express written consent, to customers and users of products incorporating the Goods, Services, and/or Tech Products, a non-exclusive, royalty free, paid-up, irrevocable, worldwide license (i) to use any patents, industrial designs and processes of manufacture relating to the Goods, Services, and/or Tech Products, including such a license to make, repair, rebuild, relocate, and sell, and to have made, repaired, relocated, and sold, the Goods, Services, and/or Tech Products, and (ii) to use any copyrighted or copyrightable works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller to any such party in the course of Seller's activities under a Purchase Order, including the right to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions herein.

C. All patents, trademarks, copyrights, industrial designs and processes of manufacture created or developed by Seller in connection with supplying the Goods, Services, and/or Tech Products to Kinetyc shall become and remain the sole and exclusive property of Kinetyc.

D. Any work of authorship created by Seller or Seller's employees under a Purchase Order will be considered as a "work made for hire" and all copyrights for such works of authorship will belong to Kinetyc by operation of law. In the event that any work of authorship or portion thereof created by Seller under a Purchase Order does not qualify as a "work made for hire," Seller hereby assigns to Kinetyc all right, title, and Seller hereby assigns to Kinetyc all right, title and interest in all copyrights and moral rights therein. If Seller has failed to previously secure ownership of all copyrights in any such work of authorship or portion thereof, Seller will obtain title and assign all copyrights and moral rights in such work to Kinetyc.

20. Data.

A. Kinetyc Data and Customer Data. Kinetyc retains all right, title, and interest in and to all Kinetyc Data; Customer retains all right, title and interest in and to all Customer Data. Seller has no rights in or to any Kinetyc Data or Customer Data unless expressly assigned through a separate instrument. During the term of the applicable Purchase Order, Kinetyc hereby grants to Seller a limited, non-exclusive, non-transferable, revocable license to strictly collect, transmit, store, or otherwise process Kinetyc Data and Customer Data (but only to the extent permitted by Customer), for the sole purpose of providing the Goods, Services, and Tech Products to Kinetyc. Seller shall not use Kinetyc Data or Customer Data, whether in aggregated, anonymized, or de-identified format or not, for any business or other commercial purpose of Seller or any other person. Without limiting the foregoing, Seller shall not use Kinetyc Data which is aggregated, anonymized, or de-identified and attempt to use it in manner which, either alone or in combination with other information, would make such Kinetyc Data or Customer Data identifiable.

B. Data Incidents. Seller shall be responsible for, and shall indemnify Kinetyc and Customer from, all reasonable and necessary data incident notifications, forensics, credit protection services, and other data mitigation services resulting from Seller's failure to protect Kinetyc Data and Customer Data.

C. Supplied Data. Upon Kinetyc's request, Seller shall provide to Kinetyc any and all Supplied Data at no additional cost. Supplied Data shall not include any Kinetyc Data or Customer Data provided by Kinetyc to Seller. Seller shall deliver all requested Supplied Data to Kinetyc and/or Customer with right for Kinetyc and/or Customer to use Supplied Data in analytics, in operations, related to providing products and services, in manufacturing, with third parties, or merged with other data assets. Kinetyc reserves the right to designate, and amend such designation at any time in the future, the formatting and specifications of all Supplied Data.

D. Cyber Security; Disaster Recovery. Seller shall maintain and implement all appropriate data recovery, cyber security, and business continuity policies and procedures which are necessary and beneficial to the provisioning of Goods, Services, and Tech Products to Kinetyc, but under no circumstances less than commercially reasonable and industry standard policies and procedures so as to ensure the uninterrupted provisioning of Goods, Services, and Tech Products to Kinetyc. Further, Seller shall indemnify and hold Kinetyc harmless for any and all costs and losses with respect to any incidents involving cyber security, disaster recovery, and/or data incident events (as any of such terms may be defined pursuant to industry practices).

21. Indemnification and Insurance.

A. Seller's representatives, employees or agents shall be under the exclusive direction of the Seller. If Seller's representatives, employees, subcontractors, or agents enter upon any premises owned or occupied by Kinetyc in the performance of Seller's obligation hereunder, Seller shall: (i) indemnify, defend, and hold and save harmless Kinetyc, Kinetyc's representatives, employees, agents, and invitees, from and against all liabilities, demands, claims, losses, costs, damages and expenses by reason or on account of property damages, death and/or personal injury of whatever nature or kind except as a result of Kinetyc's intentional or grossly negligent acts or omissions, (ii) ensure that Seller is in compliance with all requirements under all applicable laws including but not limited to workers' compensation legislation of the jurisdiction in which Kinetyc's premises are located, and (iii) ensure and remain responsible for the compliance by Seller's representatives, employees and agents with Kinetyc's rules and regulations (pertaining to safety and other occupancy requirements). Seller agrees that all of Seller's efforts in the performance of any Purchase Order shall be made as an independent contractor and that the persons engaged in such performance shall not be considered employees of Kinetyc. Seller further agrees to remove and/or substitute any of Seller's employees when so requested by Kinetyc (in Kinetyc's sole discretion) and to ensure that any labor or union affiliations of the employees of Seller are compatible with the requirements of Kinetyc.

B. Seller shall maintain and carry adequate insurance, on a commercially reasonable basis, on Seller's own plant and equipment for the full insurable value thereof, as well as comprehensive commercial general liability insurance, including public liability, property damage liability, product liability and contractual liability coverage, automobile liability for all owned, non-owned and hired automobiles for bodily and property damages, and workers' compensation and employees' liability insurance covering all employees engaged in the performance of any Purchase Order in amounts required by law and employer's liability insurance. Seller shall have Kinetyc named as an additional insured on its insurance policies. Seller shall, on Kinetyc's request, furnish certificates or other acceptable forms of proof of insurance confirming the foregoing coverages. The receipt or review of such certificates or other forms of proof of coverage by Kinetyc shall not relieve Seller from Seller's insurance obligations hereunder or reduce or modify such insurance obligations.

C. Seller agrees to indemnify, defend, protect and hold harmless Kinetyc, Kinetyc's affiliates and their respective successors, assigns, agents, employees, customers and users of products incorporating the Goods, Services, and/or Tech Products from and against any and all claims and

alleged claims for personal injury, property damage, economic loss, cost or expense, including reasonable attorney fees and expense, and/or consequential or special damages arising out of, resulting from or related to (i) improper, unsafe or defective materials, workmanship or design of the Goods, Services, and/or Tech Products, except where strict and complete compliance by Seller with the Specifications prescribed by and originating with Kinetyc constitutes the sole basis of the claim or alleged claim; (ii) breach of any provisions of any Purchase Order, including but not limited to any of the representations or warranties provided herein; or (iii) Seller's failure to comply with all applicable Laws.

22. Termination

A. For convenience.

i. Kinetyc may terminate a Purchase Order in whole or in part at any time by written notice stating the extent and effective date of such termination. Upon receipt thereof, Seller shall (i) stop work on the termination date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work, (ii) promptly advise Kinetyc of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof; (iii) in accordance with Kinetyc's instruction manufacture and deliver not less than a five (5) week bank of Goods at the pricing set forth in the applicable Purchase Order; and (iv) comply with Kinetyc's instructions regarding the protection, transfer and disposition of title to and possession of such work and materials. Seller shall submit to Kinetyc any claims relating to such termination as soon as possible, but in any event within 30 days (unless Kinetyc agrees otherwise) from the effective date of such termination. The failure of Seller to submit its claim within this time period shall be an absolute waiver of any right of compensation. Seller hereby grants Kinetyc the right to audit and inspect Seller's books, records, and all other documents relating to Seller's termination claims.

ii. Unless otherwise authorized in writing by Kinetyc, Seller shall not make commitments for materials or fabricate in advance of the time necessary to permit shipment(s) on the delivery date(s) specified in Kinetyc's Releases. Kinetyc shall in no event be liable or responsible for any such costs or amounts incurred by Seller in breach of this provision.

iii. If the parties cannot agree within a reasonable time upon the amount of fair compensation for termination by Kinetyc under this subparagraph, Kinetyc shall, in addition to making payment of the contract price for the Goods, Services, and/or Tech Products delivered or performed and accepted by Kinetyc prior to the effective date of termination, pay to Seller, without duplication, only the following costs and expenses: (i) the contract price for Services performed or Goods completed in accordance with the terms of the Purchase Order but not previously paid for, and (ii) the actual direct costs incurred and paid by Seller for any engineering and development work authorized in a writing signed by Kinetyc and properly allocated or apportioned to the terminated portion of a Purchase Order, all of the foregoing subject to audit and verification by Kinetyc in accordance with generally accepted accounting principles. In all events, compensable costs hereunder shall not include, by example but not limitation, program management costs, costs incurred for capital equipment, tooling or fixture enhancements, or other similar costs.

B. Upon Default.

i. Kinetyc may terminate a Purchase Order in whole or in part for default occasioned by Seller's failure to perform in accordance with the requirements of a Purchase Order

(including the obligations arising under these Terms) or Release. Such termination shall be without liability to Kinetyc, except for completed Goods delivered and accepted or Services performed and accepted by Kinetyc. Seller shall be liable for all direct, indirect, special, and consequential damages, including but not limited to lost profits, caused by, or resulting from, Seller's default.

ii. Kinetyc may terminate a Purchase order in whole or in part, in the event of a change in control/ownership of the Seller or the sale by Seller of a material part of its assets used to perform under a Purchase Order. Any such termination shall be a termination for cause and shall be without cost to Kinetyc.

iii. Seller may terminate a Purchase Order only for non-payment of the purchase price for Goods which are thirty (30) or more days past due and in a material amount. Seller may not request such termination unless prior to such termination (i) Seller first provides Kinetyc written notice specifying in detail the amounts past due (including the relevant Purchase Order and invoice numbers); and (ii) Kinetyc, within sixty (60) days of actual receipt of such notice, does not either: (a) pay the past due amounts, or (b) notify Seller that the amounts claimed to be unpaid are disputed by Kinetyc. If Kinetyc fails to either pay such amounts or notify Seller of the disputed amounts, Seller may thereafter deliver a termination notice to Kinetyc setting forth the termination of such Purchase Order. Seller may not terminate or cancel any Purchase Order for any reason except as permitted under this Section. Seller may not suspend performance under a Purchase Order for any reason.

C. Upon Insolvency or Bankruptcy. Kinetyc may terminate a Purchase Order, without liability, in the event of the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against the Seller; or if Seller fails to provide adequate written assurance of adequate performance after demand by Kinetyc; or if the Seller makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary course.

23. Remedies. The remedies reserved in these Terms and at law are cumulative, and not alternative, and may be exercised separately or together, in any order or combination, and, in the case of Kinetyc only, are in addition to any other rights and remedies provided for or available to Kinetyc at Law, in equity or otherwise. Seller hereby waives any claims that it may have against Kinetyc in tort, under statute or in equity, and confirms that Seller's complete rights and remedies as against Kinetyc, including the right of indemnity and measure of damages in the event of Kinetyc's breach or default, are limited to those expressly conferred by or provided for in these Terms.

24. Waiver and Modification; Inconsistency.

A. Kinetyc's Purchase Order(s) and Release(s) and these Terms and Conditions, together with Kinetyc's documents specifically referenced herein constitute the entire agreement between the Parties and supersede all prior or contemporaneous agreements, representations and understandings of the Parties with regard to the subject matter of a Purchase Order. In the event of an inconsistency between these documents the order of priority shall be the supply agreement (if any), a Release, the Purchase Order, the Terms and Conditions and thereafter such other manuals or documents as are referenced herein. There are no terms that are not specifically set forth in these Terms and Conditions or the Purchase Order.

B. Either party's failure to insist on the strict and complete performance by the other party of any term or condition hereof or failure to exercise any right or remedy reserved herein shall not constitute a waiver of any such provision, or affecting the validity of these Terms or of the right to subsequently claim the application of such provision or of the Terms themselves. In addition, either party's waiver of any breach or default hereunder by the other party, shall not, thereafter, waive

any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar nature or type.

C. No modification of a Purchase Order, or waiver of, or addition to, any Purchase Order's terms and conditions, shall be binding upon Kinetyc, unless made in writing and signed by Kinetyc's representatives. In the event of a conflict between the printed conditions appearing in a Purchase Order and any notations, modifications, waivers or additions made or expressly accepted by Kinetyc's authorized representatives, the latter shall supersede and prevail.

25. Assignment. Seller shall not assign a Purchase Order or any portion thereof or any work thereunder or any interest therein, except that Seller may, with the prior written consent of Kinetyc, make an assignment of monies due or which may become due Seller to a bank, or other financial institution: provided, however, that any such assignment shall be subject to set-off, recoupment or any other lawful means of enforcing any present or future claim or claims which Kinetyc may have against Seller. Where used in a Purchase Order, the terms Seller mean Seller and Seller's heirs, executors, legal representatives, successors and permitted assigns, as the case may be. Kinetyc shall have the right to freely assign a Purchase Order or Kinetyc's interest herein to any third party.

26. Governing Law, Dispute Resolution; Anti-Competitive Practices.

A. Negotiation Period. In the event of any dispute between Kinetyc and Seller, or between Kinetyc and Customer (to the extent that such dispute involves, in whole or in part, Seller), Kinetyc, Seller, and, to the extent involved, Customer, shall negotiate in good faith with respect to a fair and equitable resolution of the dispute provided, however, that such negotiation may be terminated by either Party upon 14 days' notice or as otherwise provided by any agreement between Kinetyc and Customer.

B. Arbitration. In the event of any dispute between Kinetyc and Customer, which involves, in whole or in part, Seller, Seller acknowledges and agrees that Kinetyc or Customer may elect to resolve such matters pursuant to binding arbitration. To the extent that Seller is notified of the pendency of any such arbitration proceeding, Seller agrees to submit to binding arbitration pursuant to the terms and conditions of such arbitration as agreed to by Kinetyc and Customer and waives any and all rights to pursue such matters in any other forum.

C. Choice of Law. These Terms and any Purchase Order shall be interpreted and enforced in accordance with the laws of the State of Michigan, exclusive of the choice of law rules thereof. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.

D. Forum Selection. Except with respect to any dispute involving Customer, any action or proceedings with respect to these Terms and/or any Purchase Order must be brought in the United States District Court for the Eastern District of Michigan, Southern Division in Detroit, Michigan and/or the Circuit Court for the County of Wayne and Parties irrevocably consent to jurisdiction and venue therein and irrevocably waive all other forums. In the event of any dispute involving Customer, Seller shall irrevocably submit to the jurisdiction and venue of such dispute between Kinetyc and Customer and irrevocably waive all other forums. No Party may assert, and each Party expressly waives, any objection to jurisdiction and venue including any objection based on the inconvenience of any forum agreed to herein. Seller waives, and covenants not to assert or receive, any awards of punitive, exemplary, or multiple of damages other than as expressly permitted by these Terms.

E. Anti-Competitive Practices. If the Seller admits or is found to have, violated or infringed a Competition Law with respect to any Goods, Services, or Tech Products delivered to Kinetyc, , including pursuant to a Government antitrust leniency program, the Seller shall: (a) produce to Kinetyc all documents, data, and other information produced to all Government authorities globally

that is related to an investigation of a Competition Law violation, within 4 weeks of a finding or admission; and (b) participate in binding arbitration to resolve any Kinetyc claims related to the violation. If, during arbitration, Seller is found to have violated competition laws with respect to Kinetyc, the Seller agrees to pay Kinetyc 15% of the purchase price of all Goods, Services, and Tech Products impacted by the anticompetitive conduct, regardless of the location of Kinetyc's principal place of business. If the Seller is found to have violated the Sherman Act in the United States, Kinetyc shall be entitled to treble the amount otherwise payable under this section for all purchases governed by the Sherman Act. The payment required by Section shall not be the sole or exclusive remedy of Kinetyc for Competition Law violations, and Kinetyc is entitled to any available statutory damages at arbitration. The location of the arbitration shall be Michigan, unless Kinetyc and Seller agree otherwise. The rules and procedures to be followed in the arbitration will be the CPR Rules for Non-Administered Arbitration of Business Disputes. The arbitration rules current as of the time the arbitration is initiated will apply.

F. 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 shall not apply to these Terms and Conditions and any Purchase Order. In the event of any purported inconsistency between the Purchase Order and these Terms and Conditions on the one hand and any acceptance by Seller on the other hand, the Purchase Order and these Terms and Conditions shall govern.

G. Entire Agreement. THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN KINETYC AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN KINETYC AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.

27. Limitations of Remedies, Liability, and Damages. Kinetyc's entire liability to Seller for any loss, liability or damage, including attorneys' fees, for any claim arising out of or related to the Goods, Services, and/or Tech Products provided to Kinetyc, regardless of the form of action, will be limited to Seller's actual direct out-of-pocket expenses which are reasonably incurred by Seller, and only to the extent that sufficient and acceptable documentary evidence of such damages is presented to Kinetyc. Seller's recovery will not in any event exceed the total amount of purchases by Kinetyc during the three (3) month period immediately preceding such claim. IN NO EVENT WILL KINETYC BE LIABLE TO SELLER OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THE GOODS, SERVICES, AND/OR TECH PRODUCTS PROVIDED TO KINETYC, REGARDLESS OF THE BASIS OF SUCH CLAIM.

28. Advertising. Seller shall not advertise or otherwise make any public statements with respect to their engagement with Kinetyc under any Purchase Order, or use Kinetyc's name, logo, or any quote attributable to Kinetyc, except with Kinetyc's prior written consent. Without limiting the generality of the foregoing, Seller shall not (1) disclose the value, length, or other terms of any Purchase Order or (2) use Customer's name, logo, or other information except in conformity with such Customer's approval and all relevant policies and procedures.