

## GENERAL TERMS & CONDITIONS OF PURCHASE

### 1. Applicability.

(a) These terms and conditions of purchase (these "Terms") are the only terms which govern the purchase of the goods ("Goods") and services ("Services") by DYWIDAG-Systems International USA, Inc. ("DYWIDAG") from the supplier named on the reverse side of these Terms ("Seller"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying order (the "Purchase Order") 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 Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms. Any conditions sought to be imposed by Seller (including, without limitation, any terms or conditions which Seller purports to apply in any quotation, acknowledgement or acceptance, specification or similar document) are excluded, except where otherwise agreed in writing and signed by the parties' authorized representatives.

(c) Any conduct consistent with acceptance of a Purchase Order (for example, dispatch or delivery of Goods, or commencement of work on the Goods or performance of the Services), shall constitute acceptance by Seller of the Agreement and these Conditions.

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

(a) Time of delivery is of the essence. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If no delivery date is specified, Seller shall deliver the Goods within 30 days of Seller's receipt of the Purchase Order. If Seller fails to deliver the Goods strictly in accordance with the Purchase Order and in full on the Delivery Date, DYWIDAG may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify DYWIDAG against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. DYWIDAG has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date. Unless otherwise agreed, delivery shall be made to DYWIDAG's site and Seller shall offload the Goods. Seller must notify DYWIDAG promptly if it is unable to so comply, take every possible step to remedy the same, and shall pay any costs incurred in meeting the late or alternate delivery. DYWIDAG may cancel the Purchase Order and/or terminate the Agreement, without prejudice to any other rights it may have, if any Goods and/or Services are not delivered strictly in accordance with the Purchase Order. If the Goods are to be delivered or the Services performed by installments, the Agreement shall be treated as a single contract and not severable.

(b) Seller shall deliver all Goods to the address specified in the Purchase Order (the "Delivery Point") during DYWIDAG's normal business hours or as otherwise instructed by DYWIDAG. Seller shall pack all goods for shipment according to DYWIDAG's instructions or, if there are no instructions, in a manner sufficient to protect them adequately before, during and after delivery and, if required by DYWIDAG, each delivery shall be accompanied by a certificate of analysis and/or up-to-date material safety data sheet in a form acceptable to DYWIDAG. Seller must provide DYWIDAG prior written notice if it requires DYWIDAG to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.

(c) Any hazardous material supplied must be marked by Seller with its international danger symbol(s) and the name displayed in English. Transport and other documents must contain the same, together with emergency information in English. Seller's attention is drawn to all local and international agreements, regulations and codes of practice in the country of delivery relating to the packing, labeling, and carriage of hazardous goods, with which Seller must ensure that it complies.

(d) Seller shall, and shall procure that its employees, agents and subcontractors shall, abide by all DYWIDAG's applicable site and safety rules when on a DYWIDAG site, in particular but not limited to, rules regarding arrival and departure and the (un)loading of Goods.

(e) Seller shall provide the Services to DYWIDAG as described and in accordance with the mutually agreed upon schedule set and in accordance with the terms and conditions set forth in these Terms.

(f) Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones, and other requirements in this Agreement. Delivery shall not be effected until the Goods have been unloaded and/or the Services have been performed, and in each case, accepted in writing by an authorized officer of DYWIDAG.

3. Quantity. If Seller delivers more or less than the quantity of Goods ordered, DYWIDAG may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If DYWIDAG does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Shipping Terms. Unless provided otherwise in the Purchase Order, delivery shall be FOB Delivery Point for domestic shipments and Delivery Duty Paid (Incoterms 2020) Delivery Point for international shipments. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence, and any other documents pertaining to the Purchase Order.

### 5. Title and Risk of Loss.

(a) Without prejudice to DYWIDAG's rights to reject any Goods, title to the Goods and risk of loss shall pass to DYWIDAG upon satisfactory delivery at the Delivery Point. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Point. Seller warrants that DYWIDAG shall receive good and marketable title to the Goods, free of any claims, liens or encumbrances.

(b) Where DYWIDAG provides free issue materials or equipment to Seller, these shall remain the property of DYWIDAG but shall be at the risk of Seller while in the Seller's possession or control. Seller shall maintain all such materials and equipment in good order and condition, shall use the same solely for and strictly in accordance with the Agreement, and shall comply with all DYWIDAG's directions given from time to time in respect of the same. Waste or loss shall be made good at Seller's expense.

(c) DYWIDAG may inspect and test the Goods and may reject and return (at the risk and expense of Seller) such Goods as fail to conform exactly to the standards referred to in Article 6 below. Seller shall either, at DYWIDAG's option, refund the cost of rejected goods, or replace such rejected Goods within a reasonable time (being not more than fifteen days after notice of rejection) with Goods complying with such standards at Seller's sole cost and expense. DYWIDAG shall not be deemed to have accepted the Goods without its written confirmation until it has had a reasonable time to inspect the Goods, or, within a reasonable time of any latent defect becoming apparent.

6. Inspection and Rejection of Nonconforming Goods. DYWIDAG has the right to inspect and/or test the Goods on or after the Delivery Date, or at any time during the manufacturing, processing, or storage stages, and to inspect and test performance of the Services. DYWIDAG, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If DYWIDAG rejects any portion of the Goods, DYWIDAG has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If DYWIDAG requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, DYWIDAG may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 17. Any inspection or other action by DYWIDAG under this Section shall not

reduce or otherwise affect Seller's obligations under the Agreement, and DYWIDAG shall have the right to conduct further inspections after Seller has carried out its remedial actions. For the avoidance of doubt, DYWIDAG's right to inspect and require steps to be taken does not indicate DYWIDAG's acceptance or approval of work done nor does it reduce or remove the obligation of Seller to comply with the Contract.

7. Price. The price of the Goods and Services is the price stated in the Purchase Order (the "Price"). If no price is included in the Purchase Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Point, insurance, customs or import/export duties or levies, and fees and applicable taxes, including, but not limited to, all sales, use, or excise taxes. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of DYWIDAG.

8. Payment Terms. Unless provided otherwise in the Purchase Order, Seller shall issue an invoice to DYWIDAG on or any time after the completion of delivery and only in accordance with these Terms. Invoices, and all other correspondence relating to this Agreement, must reference the Purchase Order number, the date of delivery, delivery address, product name, quantity, and description, and must be sent to the invoice address specified in the Purchase Order referencing the appropriate individual contact at DYWIDAG. Failure to comply with the requirements of this Section 8 shall entitle DYWIDAG to return the invoice, unpaid, to Seller. DYWIDAG shall pay all properly invoiced amounts due to Seller within 90 days from the end of the month in which a valid invoice is received by DYWIDAG or, if later, after DYWIDAG has accepted the Goods and/or Services in question, except for any amounts disputed by DYWIDAG in good faith. Payment does not constitute acceptance by DYWIDAG of the Goods or Services. Without prejudice to any other right or remedy it may have, DYWIDAG reserves the right to set off at any time any amount owing to it by Seller against any amount payable by DYWIDAG to Seller under this or any other Agreement between DYWIDAG and Seller. In the event of a payment dispute, DYWIDAG shall deliver a written statement to Seller no later than the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

### 9. Seller's Obligations Regarding Services. Seller shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of DYWIDAG, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as DYWIDAG shall approve. During the term of this Agreement and for a period of two (2) years thereafter, upon DYWIDAG's written request, Seller shall allow DYWIDAG to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;

(d) obtain DYWIDAG's written consent, which may be given or withheld in DYWIDAG's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to DYWIDAG (each such approved subcontractor or other third party, a "Permitted Subcontractor"). DYWIDAG's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between DYWIDAG and any subcontractor or supplier;

(e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon DYWIDAG's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to DYWIDAG;

(f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the DYWIDAG; and

(h) keep and maintain any DYWIDAG equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the DYWIDAG's written instructions or authorization.

10. Change Orders. DYWIDAG may at any time, by written instructions to Seller, which may include drawings and/or specifications, (each a "Change Order"), order changes to the Goods or Services. Seller shall within 7 days of receipt of a Change Order submit to DYWIDAG a firm cost proposal for the Change Order. If DYWIDAG accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement. Any reasonable costs incurred or savings that could reasonably have been made by Seller in varying the Contract shall be charged or credited to Buyer. The rates or prices specified in the Purchase Order shall form the basis for calculating costs or savings.

### 11. Warranties.

(a) Seller warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and/or the Services prior to entering into the Contract and acknowledges DYWIDAG's reliance upon the same.

(b) Seller warrants to DYWIDAG that for a period of 36 months from the Delivery Date, all Goods will: (i) be merchantable, of satisfactory quality, and free from any defects in workmanship, material, and design; (ii) be of the quantity specified and conform to applicable specifications, drawings, designs, samples and other requirements specified by DYWIDAG or in any advertising or other material published or provided by Seller; and (iii) be fit for their normal purpose and any specific purpose of DYWIDAG made known to Seller or for any other purpose of DYWIDAG of which Seller ought reasonably to have been aware. Seller, at its own expense, shall perform quality control testing in accordance with its own procedures to ensure that the Goods meet the requirements of the Contract. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by DYWIDAG.

(c) Seller further warrants to DYWIDAG that any Goods and Services provided shall: (i) comply with all applicable statutory requirements and regulations, including without limitation, those relating to the manufacture, packaging, packing, carriage and delivery of the Goods and the performance of the Services, and health and safety and environmental laws for the same; (ii) not infringe or misappropriate the patent or other intellectual property rights of any third party; and (iii) be free and clear of all liens, security, interests, or other encumbrances.

(d) Seller warrants to DYWIDAG that it will perform the Services efficiently, safely, competently, and in conformity with any applicable industry code of practice by suitably qualified personnel of required skill and experience, and in a professional and workmanlike manner to the highest quality which reasonably would be expected from a skilled and experienced operator providing a similar type of services in similar circumstances, and shall devote adequate resources to meet its obligations under this Agreement; and

(e) The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of DYWIDAG's discovery of the



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noncompliance of the Goods or Services with the foregoing warranties. If DYWIDAG gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to DYWIDAG, and, if applicable, (ii) repair or re-perform the applicable Services.

12. **General Indemnification.** Seller shall defend, indemnify and hold harmless DYWIDAG, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees against any and all direct and indirect and consequential liability, loss, injury, death, damage, liability, claim (including third party claims), deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including reasonable attorney and professional fees, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with: (i) any breach of the Contract; (ii) willful misconduct or breach of the Terms; or (iii) any act or omission of Seller or its employees, agents or subcontractors in supplying the Goods and/or the Services, except that nothing shall render Seller liable to indemnify DYWIDAG insofar as and to the extent that the matter in respect of which DYWIDAG seeks indemnity has been caused by the negligence of DYWIDAG or its employees acting in the course of their employment. Seller shall not enter into any settlement without DYWIDAG's prior written consent. This indemnification obligation is an ongoing obligation and shall survive any termination or expiration of the Contract or other purported completion of the Services or delivery of Goods.

13. **Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify and hold harmless DYWIDAG and any Indemnitee against any and all Losses arising out of or in connection with any claim that DYWIDAG's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without DYWIDAG's or Indemnitee's prior written consent.

14. **Limitation of Liability.** Nothing in this Agreement shall exclude or limit (i) Seller's liability under Sections 12 and 13 hereof, or (ii) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

15. **Insurance.** During the term of this Agreement, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) and other types of coverage in amounts acceptable to DYWIDAG with financially sound and reputable insurers. Upon DYWIDAG's request, Seller shall provide DYWIDAG with a certificate of insurance from Seller's insurer evidencing the specified insurance coverage. DYWIDAG may require the certificate of insurance to name DYWIDAG as an additional insured. Seller shall provide DYWIDAG with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

16. **Compliance with Law.** Seller shall comply with all applicable laws, regulations, and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall 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 Seller and must ensure that any export/import licenses, certificates of origin and any other governmental authorizations or necessary documentation has been obtained prior to shipment. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Seller agrees to provide all information necessary for DYWIDAG to comply with all applicable laws, regulations and any related legal reporting obligations in the country(ies) of destination, including, but not limited to, customs-related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable. DYWIDAG may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

### 17. Termination.

(a) In addition to any remedies that may be provided under these Terms and notwithstanding any term to the contrary in this Agreement, DYWIDAG at its option may unilaterally terminate all or part of this Agreement (i) by sixty (60) days' notice, or (ii) immediately if Seller becomes bankrupt, unable to pay its debts as they fall due, enters into any composition or arrangement with its creditors or, where Seller is a company, if any resolution or petition to wind up the company is passed or presented or if an administrator or a receiver of the company's undertaking, property or assets or any part thereof is appointed (or anything analogous occurs or arises in any other jurisdiction), or (iii) if Seller is in breach of contract, and, if the breach can be remedied, Seller fails to remedy such breach within twenty days of receiving notice to do so.

(b) If DYWIDAG terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by DYWIDAG prior to the termination. Upon termination, Seller will promptly refund advance payments made by DYWIDAG to Seller for Goods and Services not yet supplied. Termination does not release either party from any liability which at the time of termination has accrued already or which thereafter may accrue nor does it affect the survival of any right, duty or obligation which is expressly or impliedly stated to survive termination.

(c) DYWIDAG may cancel any Purchase Order in respect of all or any part of the Goods or Services by giving notice to Seller at any time prior to delivery or performance and shall in such event not be liable to pay the Price for such Goods or Services but shall reimburse Seller's reasonable administrative costs arising directly from such cancellation.

(d) Seller agrees that the fact that one or more Purchase Orders have been placed by DYWIDAG with Seller does not entitle Seller to future Purchase Orders or to an entitlement to damages or other relief where DYWIDAG does not place future Purchase Orders with Seller. Any volume indications or estimates given by or on behalf of DYWIDAG to Seller (whether before or after the formation of the Contract) do not impose any contractual obligations to purchase on DYWIDAG.

18. **Waiver.** No waiver by DYWIDAG of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by DYWIDAG. 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.

### 19. Confidential Information.

(a) All non-public, confidential or proprietary information of DYWIDAG, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by DYWIDAG to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by DYWIDAG in writing. Seller may not use DYWIDAG's name or the names of its associated companies for the purposes of discussions with any third party regarding the supply of Goods or the performance of Services, or for the purposes of any advertisement or publicity, without obtaining the prior written consent of DYWIDAG.

(b) Seller shall, upon request, assign and transfer free of charge, with full title guarantee, any intellectual property rights (including patents, patent applications, and know-how) in documents, specifications, plans, drawings, samples, information or Goods created or prepared by Seller specifically for DYWIDAG. Any documents, specifications, plans, drawings, samples, information or Goods supplied by DYWIDAG shall remain DYWIDAG's property and Seller shall return these and any copies to DYWIDAG, upon DYWIDAG's request, or permit DYWIDAG access to Seller's premises to recover the same.

(c) Seller is responsible for any unauthorized disclosures made by its employees and agents and shall take all reasonable precautions to prevent such disclosures. This obligation of confidence continues during the Contract period and for so long as the information remains confidential thereafter. DYWIDAG shall be entitled to injunctive relief for any violation of this Section.

20. **Force Majeure.** No party shall be liable or responsible to the other party, nor 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 the impacted party's ("Impacted Party") reasonable control, including, without limitation, Acts of God, flood, earthquake, or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination or sonic boom; any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; fire, explosion or accidental damage by a third party; loss during transportation; adverse weather conditions; interruption or failure of utility service, including but not limited to electric power, gas or water; any labor dispute, including but not limited to walkouts, strikes, industrial action or lockouts (other than by DYWIDAG's employees); non-performance by DYWIDAG's suppliers, inability to obtain raw materials; and unexpected failure of plant machinery, machinery, computers or vehicles, and other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give written notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized, and in respect of Seller's delivery of Goods, Seller shall not reduce quantities supplied by any greater proportion than that by which availability is reduced to it nor shall Seller give DYWIDAG's requirements any less priority than any other purchaser of Goods (as Seller shall evidence if so requested). The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains unpracticed for a period of 90 days following written notice given by it under this Section 20, DYWIDAG may thereafter terminate this Agreement without penalty upon written notice to Seller.

21. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of DYWIDAG. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. DYWIDAG may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of DYWIDAG's assets.

22. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall 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 shall have authority to contract for or bind the other party in any manner whatsoever.

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

24. **Governing Law and Jurisdiction.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the state in which DYWIDAG's office indicated in this Agreement is located without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. Any action arising out of or related to this Agreement shall and may be brought only in the court of appropriate jurisdiction of the state and county or province of the pertinent DYWIDAG location and each party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding; provided, however, that DYWIDAG, at its sole option, may bring an action in any jurisdiction where the Goods and/or Services provided hereunder are located, or where Seller maintains an office or other facility, or as permitted by any bond.

25. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid) 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.

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

27. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following: Section 11 (Warranty); Section 12 (General Indemnification); Section 13 (Intellectual Property Indemnification); Section 14 (Limitation of Liability); Section 15 (Insurance); Section 16 (Compliance with Laws); Section 19 (Confidential Information); Section 24 (Governing Law and Submission to Jurisdiction); and this Section 27 (Survival).

28. **Amendment.** 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.