ARTICLE 1.0: TERMS OF ACCEPTANCE

1.1 The terms and conditions contained herein supersede all other terms and conditions and all other previous commitments, verbal or written. Seller’s written acceptance, or the inspection, test, performance, or rejection, by Seller, shall constitute acknowledgment of such written terms. Acceptance by Buyer of any Purchase Order is expressly limited to the terms and conditions of this agreement ("Agreement"). No terms or conditions stated by Seller, whether verbally, or on any invoices, packing slips, or other documents accepted, will be binding on Buyer unless specifically agreed to by Kinetics in writing.

ARTICLE 2.0: SHIPMENTS

2.1 Seller shall ship goods via the method specified by Kinetics. Seller acknowledges and agrees to use all commercially reasonable efforts to avoid delays in shipment.

2.2 Seller shall be responsible for proper packing and protection of the goods to adequately assure safe transit to the destination, and as to further assure safe unloading and handling at the site of delivery. No charge for packing, loading, or shipping and/or handling will be assessed unless expressly agreed to by Kinetics.

ARTICLE 3.0: PAYMENT

3.1 Seller shall submit properly documented invoices for payment. To the fullest extent permitted by law, payment terms shall be sixty (60) calendar days after Kinetics receipt of a proper and documented invoice, and if a retention of ten (10) percent of the value of the purchase order is required, then payment terms for that portion of the value of the purchase order shall be ninety (90) days from the date Kinetics requests the Purchase Order be expedited and failure to furnish prompt written notice to Kinetics of any projected or actual shipping delays.

3.2 Payment will be made by Kinetics only for goods accepted and that conform to the requirements of the Purchase Order.

3.3 Payment will be made by Kinetics only for goods accepted and that conform to the requirements of the Purchase Order.

3.4 If required by Kinetics, an amount of up to ten percent (10%) of the total value of the purchase order shall become the property of Kinetics upon payment following a determination of conformity with all applicable standards and requirements of the Purchase Order.

3.5 All Seller invoices shall be subject to adjustment for errors, shortages, defects in the goods, or other failure of the Seller to meet the requirements of the Purchase Order. Kinetics may withhold from future payment such amounts that are proper to affect such adjustment. Any material that does not adhere to the above criteria will be returned to the Seller at the Seller’s expense.

3.6 Payment will be made by Kinetics for all goods accepted and that conform to the requirements of the Purchase Order.

3.7 Payment will be made by Kinetics only for goods accepted and that conform to the requirements of the Purchase Order.

ARTICLE 4.0: CHANGES

4.1 Seller shall have the right to make changes to specifications, drawings, or other documents defining the scope of this Purchase Order. If any such change shall cause an increase or decrease in the price set forth in the Purchase Order, or in the time required for performance, or to any other provision of this agreement, acceptance of such change will be negotiated in good faith. Seller shall continue to proceed with the Purchase Order as changed while any adjustments to price or other provisions are being negotiated.

4.2 Seller’s claim for adjustment under this provision must be submitted to Kinetics in writing no later than ten (10) days from the date of receipt by the Seller of the change notification and failure on the part of the Seller to do so shall constitute a waiver of such claim.

ARTICLE 5.0: SHIPPING DELAYS

5.1 Time is of the essence of this Agreement and every provision term and condition hereof. Seller agrees to furnish prompt written notice to Kinetics of all projected or actual shipping delays. Said notice shall state the reason or reasons for the delay and the actions, if any, undertaken by Seller to prevent the delay and the anticipated completion date or actual delay. Acceptance by Kinetics of late performance hereunder shall not constitute a waiver of this provision. Seller shall be liable to Kinetics for any damages incurred by Kinetics due to Seller’s failure, including liquidated and other damages that may be assessed by the General Contractor or Owner against Kinetics due to Seller delays.

ARTICLE 6.0: TITLE AND RISK OF LOSS

6.1 Title to the goods shall pass to Kinetics upon Seller’s delivery of the goods to the shipment destination.

6.2 Notwithstanding the foregoing, risk of loss or damage to items covered by this Purchase Order shall remain with Seller until Kinetics acceptance of the goods at the destination specified by Kinetics. Risk of loss or damage to goods which fail to conform to the Purchase Order shall remain with Seller until cured.

ARTICLE 7.0: TERMINATION FOR CONVENIENCE

7.1 Kinetics may terminate any Purchase Order in whole or in part at any time during the performance of this Purchase Order and will reimburse the Seller for all reasonable costs incurred directly in the performance of this Purchase Order at the date of termination. Kinetics shall not be liable for any consequential or indirect damages arising out of cancellation by Kinetics.

7.2 All finished goods, raw materials, designs, plans and work in process that relates to this Purchase Order shall become the property of Kinetics upon payment following a determination of conformity with all applicable standards and requirements of the Purchase Order.

7.3 Kinetics shall have the right to return any or all materials under this Purchase Order to Seller as a whole or partial termination for convenience of this Agreement. Seller acknowledges and agrees that all costs, materials and equipment to Seller unless such materials are rejected for non-conformance or for late delivery, which will result in Seller being responsible for shipping or other costs. Seller agrees to waive all claims related to the return of any goods, materials or equipment under this Agreement and specifically agrees that this paragraph cannot be modified unless done so in writing and signed by both parties.

7.4 In no event shall Kinetics be liable to Seller, as a consequence of the termination under this Article 7.0, exceed the aggregate purchase price of the items so terminated. Upon payment, Kinetics shall have no further obligation to Seller for the terminated Purchase Order. Further, Kinetics shall not be liable for restocking fees under this Agreement.

ARTICLE 8.0: TERMINATION FOR CAUSE

8.1 In the event that Kinetics terminates this Purchase Order in whole or in part as provided in this Article 8.0, Kinetics may purchase from others, upon such terms and in such manner as Kinetics may deem appropriate, similar goods to those so terminated. Seller shall be liable to Kinetics for any excess costs incurred by Kinetics in procuring substitute goods.

8.2 Any unearned progress payments made to Seller by Kinetics shall be returned to Kinetics as an offset. Said notice shall state the reason or reasons for the delay and the actions, if any, undertaken by Seller to prevent the delay and the anticipated completion date or actual delay. Acceptance by Kinetics of late performance hereunder shall not constitute a waiver of this provision. Seller shall be liable to Kinetics for any damages incurred by Kinetics due to Seller delays, including liquidated and other damages that may be assessed by the General Contractor or Owner against Kinetics due to Seller delays.

8.3 Seller agrees to furnish prompt written notice to Kinetics of any projected or actual shipping delays. Said notice shall state the reason or reasons for the delay and the actions, if any, undertaken by Seller to prevent the delay and the anticipated completion date or actual delay. Acceptance by Kinetics of late performance hereunder shall not constitute a waiver of this provision. Seller shall be liable to Kinetics for any damages incurred by Kinetics due to Seller delays, including liquidated and other damages that may be assessed by the General Contractor or Owner against Kinetics due to Seller delays.

ARTICLE 9.0: REGULATORY COMPLIANCE AND RECALLS

9.1 Seller represents that all goods delivered to Kinetics shall be manufactured and sold in compliance with all applicable federal, state and municipal laws, rules, codes and regulations.

9.2 In the event the product sold does not conform to the standards, codes and/or regulations of any applicable law or Kinetics specifications, Kinetics may return the product for either complete replacement or refund. Any retention from cancellation against Kinetics resulting from an alleged violation for Seller’s failure to comply with the applicable laws and regulations shall be Seller’s sole responsibility and Seller shall indemnify Kinetics from such failure.

9.3 Seller shall promptly notify Buyer in writing of (i) any defects in the materials provided by Seller that becomes aware of, (ii) any product recall suggested or required by any governmental authority, (iii) any voluntary product recall, and (iv) any notices from any governmental authority relating to product recalls and/or defects concerning safety. The notice shall be sent to Seller’s Procurement Manager via email at procurement@kinetics.com or regular mail to 48400 Fremont Blvd., Fremont, CA 94538. Seller shall correct as soon as possible problems or other issues which result in recalls or defects. Seller shall be responsible for the cost of making and/or performing returns in connection herewith. This provision shall survive the cancellation, termination or completion of this Purchase Order.

ARTICLE 10.0: EXPEDIENT – CORRESPONDENCE

10.0 Kinetics has the right and option to expedite this Purchase Order. Seller agrees to fully cooperate with Kinetics’ expediting effort and to keep Kinetics informed of its progress, including projected expediting costs of such expedited changes. Any change in such projected costs of expediting or any other matter related to Seller’s claim for price adjustment related to expedited must be submitted to Kinetics in writing no later than ten (10) days from the date Kinetics requests the Purchase Order be expedited and failure on the part of the Seller to do so shall constitute waiver of such claim.

ARTICLE 11.0: KINETICS' RIGHT TO INSPECT – ACCEPTANCE

11.1 Seller shall have the right to inspect and test all goods or work to the extent practicable and at all times and places, including the Seller’s premises, subject to Kinetics giving reasonable advance notice to Seller. Kinetics’ right to inspect and test the goods or work shall extend through the manufacturing process, the time of shipment, and for a time period of not less than sixty (60) calendar days after arrival at the destination.

11.2 Kinetics’ inspection or test (whether or not Seller is required to test or inspect) and payment by Kinetics shall not act to relieve Seller of any of its obligations to conform to all of the requirements under this Purchase Order or impair Kinetics’ right to reject or return any portion of the goods under this Purchase Order, an expedited Purchase Order, or a modified Purchase Order.

11.3 Final acceptance of the goods by the Kinetics shall take place upon the successful start-up and operation of the equipment at the site of installation.
ARTICLE 12.0: WARRANTIES AND GUARANTEES

12.1 In addition to warranties provided by law, Seller expressly guarantees and warrants all goods to be free from defects in materials and workmanship and all goods to conform strictly to all specifications, drawings and approved samples of any, and to be new and of the most suitable grade and to meet or exceed all performance criteria set forth in the Purchase Order and related documents. Seller further guarantees and warrants that Seller has good title to all goods furnished under this Purchase Order, free and clear of liens, claims, security interests or encumbrances. All guarantees and warranties shall run to Kinetics, its successors, assigns and customers. All guarantees and warranties shall survive inspection, test, acceptance, and payment by Buyer. In the event of a breach of this section, Kinetics may either return for credit or require prompt correction, repair, or replacement of the defective or nonconforming goods. All costs, including shipping, travel, removal and installation costs incurred in connection with the goods to be replaced or repaired shall be borne by Seller.

12.2 All Seller inspections, service, repairs or corrective work resulting from Seller-furnished defective or nonconforming goods or the replacement thereof shall be performed by Seller promptly and at the Seller’s expense and at the convenience of the Kinetics and/or the Kinetics’ customers.

12.3 Kinetics may, at Seller’s expense, repair defects in Seller’s equipment or procure replacement goods if Seller fails to promptly proceed with repair, correction or replacement of defective goods. Kinetics shall be entitled to deduct all the foregoing repairs, correction, or replacement from any amounts owed to Seller. If the amount to repair such defects exceeds the remaining balance or amount owed to Seller under the purchase order, Seller shall promptly pay Kinetics for the difference. Seller shall not be relieved of any obligations it may have to Kinetics due to Kinetics’ actions under this Paragraph 12.3.

12.4 Kinetics’ inspection and/or approval of Seller’s drawings and/or inspection of goods by Kinetics shall not relieve Seller of any of its responsibilities under this Purchase Order nor shall any release of Seller’s obligation to repair, correct or replace defective goods as set forth in this Article 12.0.

ARTICLE 13.0: DURATION OF WARRANTIES

13.1 Any guarantee or warranty provided by Seller for orders placed in the United States shall be valid for a period of not less than the later of: eighteen (18) months from date of shipment of the goods or twelve (12) months from date of installation of the goods at the relevant facility. For orders placed in Asia, unless otherwise agreed upon by the parties, Seller’s obligations under this Article 13.1 shall be valid for a period of not less than twenty four (24) months from the manufacturing date code of the products or the date of delivery, whichever is later.

13.2 All goods repaired, corrected, or replaced under the provisions of Article 12.0 shall be subject to the same guarantee and warranty periods for the remainder of the original guarantee and warranty period or for a minimum period of twelve (12) months from the date of delivery or acceptance of the repaired, corrected, or replaced goods, whichever period is longer.

ARTICLE 14.0: PATENT INFRINGEMENT

14.1 Seller agrees that, to the extent applicable, Seller shall indemnify and hold Kinetics and Kinetics’ customers and hold them harmless from and against all loss, liability, damage and expense, including actual counsel fees, resulting from any actual or claimed trademark, patent or copyright infringement with respect to any part of the goods covered by this Purchase Order which the Seller is obligated to make by such obligation shall survive acceptance of the goods and payment therefore by the Kinetics.

14.2 In addition to any indemnification as provided herein, if by virtue of a patent infringement suit, an injunction is issued against Seller, Kinetics, or Kinetics’ customers that prohibits or limits the use of any items provided by Seller, Seller shall, at Kinetics’ request, either a) immediately supply Kinetics and/or Kinetics’ customers with non-infringing replacement goods of similar kind and quality at no additional cost or b) procure for Kinetics and/or Kinetics’ customers a license to use infringing goods at no additional cost to Kinetics and/or Kinetics’ customers, or c) modify the infringing goods to make them substantially equal but non-infringing, all at no additional cost to Kinetics and/or Kinetics’ customers.

ARTICLE 15.0: USE OF KINETICS’ DATA

15.1 Without Kinetics’ written consent, Seller shall not disclose any drawings, plans, specifications, confidential information, know-how, discoveries, production methods and the like ("Technical Information") furnished to Seller by Kinetics, or on Kinetics’ behalf, to any person other than personnel of Seller directly concerned with the manufacture of said article, and suppliers of goods required by Seller for goods or services provided by Seller under this Purchase Order. Seller shall take reasonable precautions against any such Technical Information being acquired by unauthorized persons and shall not employ any such Technical Information for its own use or any purpose whatsoever except in the performance of this Purchase Order. Kinetics shall retain title to all such Technical Information and Seller shall, at Kinetics’ request or upon completion of this Purchase Order, return or deliver all such Technical Information to Kinetics. Technical Information shall not include information that is generally published or lawfully available to Seller from other sources or which was known to Seller prior to delivery of the goods to Kinetics or on Kinetics’ behalf. Seller may not use Kinetics’ name or trademark without Kinetics’ approval in writing.

ARTICLE 16.0: INDEMNIFICATION

16.1 To the fullest extent permitted by law, Seller agrees to defend, indemnify and hold harmless Owner, General Contractor and Kinetics, and their employees, successors and assigns, from and against any and all claims, actions, suits, orders, fines, penalties, injuries, damages, losses, attorney and consulting fees, expenses and liabilities of any kind, arising out of or alleged to arise out of or related to the goods provided under this Purchase Order, or to services performed by Seller under this Purchase Order, or to any act or omission not limited to, all losses, claims, expenses and damages, either to person or property or from death of any persons, which result from or arise out of any act or omission on the part of the Seller, its employees, or subcontractors and, in Seller’s sole judgment, are from a sufficient liability, property damage, and employee liability insurance to protect Kinetics and Kinetics’ customers and shall supply, upon request of Kinetics, certificates satisfactory to Kinetics evidencing such coverage.

16.2 Seller shall promptly pay all its wages and bills for labor and materials used in, or specifically fabricated for, the prosecution of this Purchase Order. Seller agrees to indemnify and hold Kinetics and Kinetics’ customers harmless from any and all claims, losses, damages, expenses and costs (including court costs and attorney’s fees) incurred as a result of Seller’s failure to pay such wages and bills.

ARTICLE 17.0: LIEN WAIVER AND LIABILITY LIMITATION

17.1 If requested by Kinetics, Seller shall promptly deliver to Kinetics a satisfactory release of all liens.

17.2 Under no circumstances shall Kinetics be liable to Seller for consequential or indirect damages of any kind under this Purchase Order.

ARTICLE 18.0: AUDIT RIGHTS

18.1 Kinetics may inspect and review any and all books, records and information of Seller relating to the goods or services provided hereunder. Seller shall maintain the books, records and information relating this Purchase Order for a period of three (3) years after delivery of the goods.

ARTICLE 19.0: DISPUTES

19.1 Any controversy or claim between the parties hereto shall be noticed in writing by the complaining party and such controversy or claim shall not cause the Seller to interrupt or slow down fulfillment of obligations related to this Purchase Order. Such controversy or claim shall subsequently be reviewed and discussed between Seller and Kinetics as a condition precedent to the initiation of any legal proceeding. In the event litigation or an alternative dispute resolution process is necessary to enforce a provision or provisions of this Agreement, the prevailing party shall be entitled to recover all costs, expenses and attorney’s fees reasonably expended in enforcing such provision or provisions.

ARTICLE 20.0: ASSIGNMENT

20.1 Seller shall not assign this Purchase Order or any part thereof, without the prior written consent of Kinetics. Seller shall require that no assignee divulge any information concerning this Purchase Order except to those persons necessarily concerned with the transaction.

ARTICLE 21.0: SPARE PARTS

21.1 Unless otherwise agreed, Seller is obliged to deliver spare parts for the period of the prospective service life, but at least 5 years after delivery at appropriate conditions. Should the production of spare parts be terminated, Seller is obliged to provide Kinetics with the opportunity to place a final order and/or to hand over all equipment and documents free of charge necessary to produce the spare parts.

ARTICLE 22.0: EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER; CODE OF CONDUCT

22.1 Kinetics is an equal opportunity employer and federal contractor. Consequently, the Seller agrees that, to the extent applicable, they will comply with the following, which are incorporated herein by reference: 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), 41 CFR 60-741.5(a), and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice to employee rights under federal labor laws. Kinetics and Seller shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and protects them from employment discrimination by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and protected veterans.

22.2 Seller acknowledges that Kinetics has a Code of Conduct that may be viewed at www.Kinetics.net. A copy will be made available to Seller upon request. The Seller shall comply with the requirements of Kinetics’ Code of Conduct and maintain a consistently high standard of integrity in all its business relationships with Kinetics as well as foster the highest possible standards in personal and professional conduct in all its activities. This Code of Conduct requires Seller to act in accordance with Kinetics’ Code of Conduct. Without prejudice to other rights Kinetics may have, Kinetics may terminate this Purchase Order without any liability whatsoever if Seller is in material breach of Kinetics’ Code of Conduct or fails to remedy any breach after written notification of breach by Kinetics.

ARTICLE 23.0: WAIVER

23.1 Failure of Kinetics to insist upon strict performance of any of the terms and conditions of this Purchase Order, or to exercise any right or privilege contained herein, or the waiver of any of the terms and conditions of this Purchase Order shall not be construed as a waiver as to other provisions of this Purchase Order, or as a continuing and infinite waiver. The rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.

ARTICLE 24.0: FAILURE TO PERFORM

24.1 If Seller is guilty of material breach of any provision of this Purchase Order, Seller shall be deemed in default. Default shall mean failure to commence and continue satisfactory correction of such default with diligence and promptness within three (3) working days after written notification, then Kinetics, without prejudice to any rights or remedies, shall have the right to correct the default or breach, including the right to obtain the goods or services from another vendor, at Seller’s expense. In the case of an emergency, Kinetics may immediately proceed to cure any default by Seller.

24.2 Seller shall be liable to Kinetics for all costs, damages and expenses, including reasonable overhead, profit and all other fees and expenses incurred to Seller’s failure to perform or Contractor’s corrective measures related thereto.

24.3 Kinetics may deduct or set off from any amounts due to or become due Seller, any sum owing by Seller to Contractor under this or any other agreement. Seller shall be liable for the payment of any amount due Kinetics that exceeds any deduct or set off available to Kinetics under this Agreement.

ARTICLE 25.0: GOVERNING LAW AND SEVERABILITY

25.1 This Agreement shall be governed by the law of the jurisdiction where the goods are delivered. If any provision herein, or the application thereof to any person or circumstance, is invalid, the invalidity shall not affect any other provision or application of this Purchase Order which can be performed without invalid provision or application, and to this end, the provisions of this Purchase Order are severable.

ARTICLE 26.0: COMPLETE AGREEMENT

26.1 This Purchase Order contains the complete and entire Agreement between the parties hereto and supersedes any previous communications, representations or agreements, whether verbal or written, with respect to the subject matter hereof. NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THE TERMS OR CONDITIONS HEREOF SHALL BE VALID AND ENFORCEABLE UNLESS WRITTEN AND SIGNED BY AN OFFICIAL OR DESIGNATED REPRESENTATIVE OF KINETICS.