



## TERMS OF PURCHASE Worldwide Transactions

**1. General:** A purchase order ("PO") from Lumentum Operations LLC or one of its affiliates (collectively, "Lumentum") constitutes Lumentum's offer to purchase the products, deliverables, and/or services described or referenced therein (collectively, "Products") from supplier of such Products ("Supplier") in accordance with the following terms and conditions and any additional terms and conditions printed on the face of the PO that do not conflict with such following terms (collectively, "Lumentum Terms"). Supplier shall be deemed to have accepted this offer, and in the absence of a separate, signed agreement between Lumentum and Supplier, the Lumentum Terms become the exclusive and binding agreement between the parties for the purchase of Products ("Agreement"), upon the earlier of (i) acceptance or acknowledgment of the PO whether orally, in writing or otherwise, or (ii) commencement of performance of Supplier's obligations under the PO. All other terms and conditions are hereby expressly rejected and superseded by the Lumentum Terms, and failure by Lumentum to object to any other provision, and/or Lumentum's acceptance of the Products, shall not be deemed acceptance of Supplier's terms, nor a waiver of the Lumentum Terms. For clarity, Supplier may use any pre-printed form, quote, purchase order acknowledgment and/or quote order acknowledgment form to acknowledge orders, but Lumentum Terms shall govern all orders and transactions, and any standard terms and conditions of Supplier invoked or incorporated by reference in Supplier's pre-printed form, quote, order acknowledgment and/or purchase order acknowledgment is void, shall have no force and is hereby rejected. Lumentum Terms may only be excluded or amended by express written agreement signed by a duly authorized representative of Lumentum. Estimates or forecasts provided by Lumentum are for information purposes only, and shall not constitute commitments or obligations to purchase. If a separate, signed purchase agreement exists between Lumentum and Supplier with respect to the Products, the terms of such agreement shall prevail over any inconsistent terms herein. A copy, facsimile or electronic version of this document shall have the same force and effect as the original document. The parties have agreed to draft this Agreement in English. If a translation is provided, it is for convenience only as the English version of this Agreement controls.

**2. Prices:** All prices shown on the face of the PO are FCA Supplier's facility (Incoterms 2010), unless otherwise specified on the face of the PO, and are the maximum prices to be charged for the Products. Due dates for payment of invoices shall be net sixty (60) days from the date of receipt of a valid invoice from Supplier unless otherwise specified on the face of the PO. Title to the Products shall pass to Lumentum upon receipt at the identified destination point and, notwithstanding any terms to the contrary herein, risk of loss in and damage to the Products shall pass to Lumentum upon Lumentum's receipt of the Products. All prices are firm and fixed, except in the event of any decrease in Supplier's price for any Products in a quantity similar to that reflected in the PO, on or before delivery of Products is complete under such PO, Supplier shall provide Lumentum with written notice of such decrease and Supplier shall provide a corresponding credit or rebate to Lumentum within thirty (30) days or on the next invoice, whichever occurs sooner.

**3. Pricing Commitment:** Supplier represents and warrants that the prices charged for Products are no greater than the lowest prices charged by Supplier to any other customer of Supplier for substantially the same quantity of substantially the same products. Supplier agrees to allow Lumentum to reasonably verify compliance with this provision by means of an independent external auditor.

**4. Shipping:** Unless instructed otherwise, Supplier shall: (i) ship the material covered by the PO complete; (ii) ship in accordance with the instructions appearing on the face of the PO; (iii) place the PO number, freight carrier name, number of cartons (in shipment), Supplier part number / description and Lumentum part number with HTS (tariff code) and ECCN, and Lumentum buyer name on all packaging and shipping documents; and (iv) label shipping cartons with Lumentum part number(s) and quantity, serial number(s) (when applicable) and item description. Supplier shall provide adequate protective packing to prevent loss or damage, and in accordance with best commercial practices in the absence of any specifications provided by Lumentum all at no additional charge, and Supplier shall bear full responsibility for damage due to improper packing or shipping of the Products. No partial or complete delivery will be made prior to the delivery date or dates specified unless Lumentum has given prior written consent. Lumentum may, at its option and sole discretion, return any deliveries (partial or complete) made prior to delivery date(s), and in such event, Supplier shall reimburse and fully indemnify Lumentum for any and all costs or expenses related to such Product return.

**5. Late Delivery:** In this Agreement, time is of the essence. Failure to deliver Products within the time stated on the PO shall constitute a material breach. Supplier shall notify Lumentum as soon as it becomes aware that it cannot meet the delivery date specified on the face of the PO and shall propose a new delivery date. In the event of such delay, without prejudice to Lumentum's other rights and remedies hereunder, Lumentum reserves the right to instruct Supplier to take any practicable action to remedy any delay in delivery. Supplier shall, at no additional cost to Lumentum, employ accelerated measures such as material expediting fees, premium transportation costs or labor overtime to ensure the Products are delivered on or before the delivery date. If Supplier doesn't remedy the delay to Lumentum's satisfaction, Lumentum may (i) cancel the PO and/or reject the Products, without any liability whatsoever to Lumentum; and/or (ii) purchase replacements elsewhere and Supplier shall be liable for the actual and reasonable costs and damages Lumentum incurs, alongside resulting indirect costs.

**6. Cancellation & Rescheduling:** Lumentum may, at any time, with or without cause, unilaterally cancel the PO, in whole or in part ("Cancellation"). In the event Lumentum terminates without cause, Lumentum agrees to negotiate in good faith a compensation amount for reasonable, documented direct out of pocket costs incurred by Supplier. Notwithstanding the foregoing, where Lumentum provides Supplier with notice of Cancellation of a PO at least ten (10) days prior to the scheduled delivery date, Lumentum shall have no liability or obligations to Supplier whatsoever. Lumentum may, without liability reschedule any delivery date to a later date. Supplier shall not, without Lumentum's prior written consent, commence manufacture, or procurement of parts for, the Products in advance of Supplier's normal lead time for such Products.

**7. Changes:** By written notice to Supplier, Lumentum may at any time unilaterally: (i) suspend the work or shipment under a PO in whole or in part for a stated time period; and/or (ii) make changes in one or more of the following elements: designs; drawings or specifications; method of shipment or packing; place or time of delivery; or quantities to be furnished. If such suspension or change causes a change in the cost of, or the time required for furnishing the Products, an adjustment may be made in the PO price and/or delivery schedule as agreed by Lumentum. If a price and/or schedule adjustment is not included in the notice, no increase in price or delay in delivery will be allowed unless Supplier makes, with a detailed explanation, a claim in writing within thirty (30) days from the notice date. Nothing contained in this Section shall excuse Supplier from proceeding without delay in performing this PO as changed. Supplier shall not make any changes to the specifications, manufacturing processes or manufacturing site for the Products under this PO, without Lumentum's prior written consent. Breach of this provision shall entitle Lumentum to immediately cancel the PO without any notice or liability to Supplier whatsoever.

**8. Inspection:** Lumentum shall have a reasonable time after delivery to inspect and accept the Products. Where Lumentum discovers defective or non-conforming Products, Lumentum may at its option and without prejudice to any other rights or remedies it may have hereunder or at law: (i) at Supplier's expense and at Lumentum's option, return such Products for refund, credit, repair or replacement, (ii) obtain a price reduction, as determined by Lumentum in good faith; and/or (iii) at Lumentum's option, Lumentum may perform a partial or complete inspection, analysis and/or sorting of all delivered Products for the purposes of segregating any defective or non-conforming Products, and Supplier shall pay, and fully indemnify Lumentum for, Lumentum's expenses related to such inspection, analysis and/or sorting, including without limitation, any labor costs arising from such inspection, analysis, and/or sorting. If Supplier delivers a quantity of Products greater than that specified in the PO, Lumentum may reject all or part of the excess quantity or accept all or part of such quantity. Any excess quantity of Product accepted by Lumentum shall be subject to the terms and conditions of this Agreement. If Supplier delivers a quantity of Products less than that specified in the PO, Lumentum may cancel the PO for the undelivered quantity without any liability to Supplier whatsoever.

**9. Warranty:** Supplier warrants to Lumentum and its customers that:

(i) **Product Quality and Condition** - All Products will be new and free from defects in title, design, material and workmanship.

(ii) **Conformance to Specifications** - Products will conform to and perform in accordance with specifications, drawings and samples furnished or approved by Lumentum.

(iii) **Compliance with Laws and Standards** - As of the ship date, Products shall comply with all applicable laws, regulations, and industry standards relevant to their nature and intended use.

(iv) **Ongoing Support and Service** - Supplier shall, for a period of ten (10) years following the later of (a) the Product's ship date to Lumentum or (b) discontinuance of the Product, provide technical assistance, functionally equivalent replacement Products, repair services and failure analysis services, on any individual Product, including discontinued Products.

(v) **Service Performance** - Any services provided will be performed by qualified and suitably trained individuals with the necessary experience and skill to perform such services, using due diligence and in accordance with applicable industry standards.

(vi) **Intellectual Property Non-Infringement** - Products and use thereof by Lumentum and its customers shall not infringe, misappropriate or otherwise violate any intellectual property or proprietary rights, including copyrights, mask works, patents, trademarks, service marks, trade secrets, other similar rights under any legal framework.

(vii) **Software and Malware Protection** - Where applicable, all provided software or firmware (collectively "Software") and the media through which they are delivered, shall be free from any viruses, malicious code, time bombs, Trojan horses, back doors, drop dead devices, worms, or other code of any kind that may disable, erase, display any unauthorized message, permit unauthorized access, automatically or remotely stop the Software in the Products from operating, or otherwise impair or compromise Lumentum's software, hardware, data or systems (collectively, "Malware").

(viii) **Quality Compliance** - Supplier shall comply with all Lumentum quality policies, procedures, or controls as specified or requested by Lumentum.

(ix) **Ethical Conduct** - Supplier represents and warrants that it has not, and will not, engage in unethical conduct or offer any gifts or gratuities to Lumentum personnel or government officials to secure business or favorable treatment.

If Products contain third party warranties, Supplier hereby assigns such warranties to Lumentum and its customers and upon request shall provide details of such warranties to Lumentum and its customers. Without limiting Lumentum's available remedies, Products failing to comply with applicable warranties will be, at Lumentum's option, (I) returned for a full refund or credit of amounts paid by Lumentum for the defective Product, (II) repaired, (III) replaced or (IV) re-performed by Supplier, at no cost or expense to Lumentum or its customers and with shipping and transportation costs and risk of loss and damage in transit borne by Supplier. Repaired and replaced Products shall be warranted as set forth in this clause. The above warranties, together with Supplier's service warranties and guarantees, if any, survive inspection, test, acceptance of and payment for the Products and inure to Lumentum, its customers and their respective successors and assigns.

**10. Epidemic Failure:** An Epidemic Failure shall be deemed to have occurred where more than two percent (2%) of any Product sold to Lumentum fails in substantially the same manner within a time period of ninety (90) days, occurring anytime within the ten (10) year period after the Products are shipped to the delivery location specified by Lumentum. In the event of an Epidemic Failure, Supplier shall, at its cost, provide support services as required by Lumentum and, if deemed necessary by Lumentum, at Supplier's cost, implement an engineering change to correct the problem giving rise to the Epidemic Failure. Lumentum shall have the right to reject further deliveries of such Product without liability. In addition, without limitation, in relation to all affected Products, (whether already sold to Lumentum customers or stocked at Lumentum or authorized subcontractor facilities and, whether or not such Products have in fact failed), as directed by Lumentum at its option and sole discretion, Supplier shall pay Lumentum a full refund or credit, perform repair services, and/or provide replacement Products, all at Supplier's cost, together with Supplier compensating Lumentum for any and all costs, expenses, damages and/or liabilities related to the Epidemic Failure, including, without limitation, Lumentum end-customer costs associated with Product and customer product removal and reinstallation.

**11. Capacity Shortage:** In the event Supplier experiences a capacity shortage or other impairment of its ability to provide Products ordered by Lumentum, Supplier shall allocate production capacity to align with Lumentum's forecast on a priority basis at least equal to, and in no event less favorable than, the allocation afforded to Supplier's most favored customer purchasing like volumes of similar products. Supplier shall notify Lumentum promptly in writing with respect to any anticipated capacity shortage, and shall provide Lumentum with timely updates during any capacity shortage. Supplier must use best efforts, including but not limited to employing accelerated measures such as material expediting fees, premium transportation costs or labor overtime to eliminate or mitigate the shortage at Supplier's cost. Supplier's failure to comply with this section shall be deemed a material breach, entitling Lumentum to recover actual and reasonable direct costs related to Supplier's failure, alongside all rights and remedies available under applicable law.

**12. Right Of Entry:** Lumentum may, with two (2) business days prior notice to Supplier, enter the premises of Supplier during Supplier's normal business hours to verify Supplier's compliance with the terms of this Agreement and its security controls, to perform an inspection or quality review with respect to performance of the work and/or provision of Products pursuant to a PO, and/or assess Supplier's conformance to the Responsible Business Alliance (RBA) Code of Conduct.

**13. Onsite Visits/Computer Access:** Onsite Visits. Whenever Supplier's personnel, including employees or agents, are present at any Lumentum facility, Supplier shall ensure full compliance with: (i) all information provided by Lumentum through supplier qualification questionnaires, and (ii) any additional rules, policies, or procedures applicable to non-employees, as communicated by Lumentum from time to time. This includes, without limitation, adherence to Lumentum's environmental, health and safety (EHS), and security requirements. Supplier is responsible for ensuring that its personnel are informed of and comply with these requirements at all times while on Lumentum premises. Computer Access. In the event that Supplier's employees or agents require access to Lumentum's computer systems (whether onsite or remote) in order to deliver the Products or perform services under the Agreement, such access shall be: (i) strictly limited to the minimum scope necessary to fulfill Supplier's obligations under the Agreement; (ii) restricted to only those individuals whose roles expressly require such access; (iii) restricted to only those individuals who are bound by confidentiality obligations no less protective than those set forth herein; and (iv) subject to authorization by Lumentum, with Supplier providing prior written notice of the names of each individual requiring access. Supplier shall not, and shall ensure its personnel do not, access or attempt to access any files, software, networks, or systems not expressly authorized by Lumentum. All such access must be conducted in full compliance with Lumentum's security protocols and procedures. All user credentials (e.g., identification numbers, usernames, passwords) and any data or information accessed through Lumentum systems shall be treated as Confidential Information belonging to Lumentum. Unauthorized disclosure or use is strictly prohibited. Supplier shall fully cooperate in the event of any investigation into unauthorized access or breach of Lumentum's computer system.

**14. Compliance:** Supplier, and the Products, shall comply with all legal regulations, ordinances, decrees, orders, laws, and other rules and regulations that apply to Supplier in the jurisdictions they operate, including without limitation the Responsible Business Alliance (RBA) Code of Conduct and all rules, regulations and provisions relevant to health, safety, human rights, labor, ethics, and the environment including without limitation, the restrictions on materials set forth in the EU Council Directives 2011/65/EC (RoHS) and other country specific RoHS requirements, Commission Delegated Directive (EU) 2015/863 (RoHS Phthalates), Persistent Organic Pollutants (POP), Toxic Substances Control Act (US TSCA), and the restriction and communication of substances set forth in EU Regulation EC 1907/2006 (REACH), and the procurement of minerals from areas of conflict. Supplier shall comply with all anti-slavery and human trafficking laws and shall not engage in human trafficking or use child or forced labor in connection with its supply of Products and/or Services. Verification of compliance to the RBA Code may be required, including but not limited to participation in audits and assessments. Supplier shall cooperate fully with Lumentum's efforts to demonstrate compliance including providing Lumentum with a written declaration or certification of compliance upon Lumentum's request. Supplier shall also provide Lumentum with a full material declaration upon Lumentum's request and shall advise Lumentum if the chemical content of their Product changes. Any service required to achieve compliance hereunder shall be included in the price of the Products. Supplier shall flow down all applicable provisions in this Section 14 to its suppliers and subcontractors.

**15. Export Restrictions and Import Requirements:** Supplier shall comply with all export laws, rules, policies and procedures of the applicable government and other competent authorities and the requirements and recommendations of cargo security programs. Lumentum products, software, and technology may be subject to U.S. export control laws and regulations, and may be subject to international trade controls in other jurisdictions. Unless otherwise

approved by Lumentum and authorized by relevant government authorities, Supplier shall not transmit, export, re-export or transfer, directly or indirectly, separately or as part of any system, the Products, any Lumentum products, software and/or technology, or any technical data (including processes and services): (i) to any person, entity, organization or other party identified on any restricted party list administered by applicable government authorities, including but not limited to the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons Lists, or the Department of State's Debarred Parties List, as published and revised from time to time ("Restricted Party List"); (ii) to any location subject to a comprehensive embargo administered under the laws of the United States or any other applicable authority, currently Cuba, Iran, North Korea, Crimea, the so-called Donetsk People's Republic (DNR) and the so-called Luhansk People's Republic (LNR); (iii) or otherwise in violation of any applicable laws or regulations of the United States or any other applicable government authority. Supplier certifies that no materials or technical data supplied by Lumentum will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology. Supplier also warrants that neither they nor their affiliated entities provide goods used for military end use or to military end users without divulging this information to Lumentum. In advance of shipment, Supplier shall provide Lumentum with: (a) all applicable governmental trade product classifications necessary to facilitate trade (i.e. Harmonized Tariff Schedule and the U.S. Export Control Classification Number (ECCN)); (b) proper Product and carton "Origin Markings" in accordance with applicable regulations (with notification of any and all changes thereto as soon as they occur); and (c) the necessary certifications if Product is eligible for preferential trade programs (e.g., ASEAN, USMCA General Systems of Preferences, Duty Drawback, US Goods Returned, etc.). Supplier represents that it: (i) is not a person, entity, organization or other party identified on any Restricted Party List; (ii) will not transfer Lumentum products, software, technology, or technical data to a "foreign national" having a last citizenship or permanent residency of a country listed in Country Group E in Supplement 1 to Part 740 of the Export Administration Regulations (currently, Iran, Cuba, North Korea, or Syria; and (iii) in order to comply with U.S. export control laws and regulations related to Lumentum controlled technologies, Supplier agrees that it will not assign any unprotected foreign national to work on Lumentum projects unless Supplier has: (a) identified the unprotected foreign national to Lumentum; (b) provided Lumentum with all information necessary for Lumentum to make an export licensing determination; and (c) has received from Lumentum permission in writing to assign such unprotected foreign national to Lumentum's work. For the purposes of this section, the term "foreign national" is defined as any person who is not a citizen of the United States, a lawful permanent resident of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3).

**16. Export Controls for Services provided by Contractors of Supplier:** Supplier will screen all potential individual contractors and/or service providers to ensure compliance with all applicable export control and sanctions laws, including but not limited to the Deemed Export Requirements under the US Export Administration Regulations and the International Traffic in Arms Regulations, and all sanctions requirements administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC), and will not refer any such contractor or service provider individual who is a citizen or permanent resident of any of the countries for which an export license is required. Supplier will indemnify, defend and hold harmless Lumentum against any and all liability in the event that Supplier provides to Lumentum any individual who is a citizen or permanent resident of any of the countries for which an export license is required.

**17. Other Terms: FAR Compliance.** Required contract laws relative to Equal Opportunity/Affirmative Action are incorporated herein by specific reference to US Executive Order 11246, as amended; 41 C.F.R. 60-1.4 (Equal Opportunity Clause); 41 C.F.R. 60-250.4 (Disabled Veterans/Vietnam Veterans); and 41 C.F.R. 60-741.4 (Disabled). FAR/DFARS clauses referenced in or attached to the PO, if any, are hereby incorporated by reference and shall apply to this Agreement. "FAR" means Federal Acquisition Regulation (Title 48 Code of Federal Regulations Chapter 1); "DFARS" means Department of Defense Federal Acquisition Regulation Supplement. **Counterfeit Parts.** Lumentum requires all components incorporated in the Products be certified for its authenticity and that no counterfeit parts are used in Products sold to Lumentum. Supplier hereby represents and warrants that all components used to manufacture the Products for Lumentum come from original equipment manufacturers ("OEMs") and/or authorized OEM distributors. At Lumentum's request, Supplier will provide evidence of such compliance, which may include a Certification of Conformance ("CoC") and/or a Certificate of Authenticity ("CoA") from OEMs or authorized OEM distributors. All components used in Products must be traceable to the OEM. Supplier will also ensure this requirement is flowed down to its sub-tier suppliers to provide evidence of compliance in a similar form for all components incorporated into Product sold to Lumentum. If Lumentum reasonably determines that Supplier has supplied counterfeit parts to Lumentum, Lumentum shall promptly notify Supplier in writing. At its discretion, Lumentum, may either explicitly request a full refund of all payments made to Supplier, or may request for Supplier to immediately replace all counterfeit parts. Should Lumentum request a full refund, Supplier must issue said refund within five (5) business days. Should Lumentum request replacement of the counterfeit parts, Supplier shall immediately replace the counterfeit parts with parts acceptable to Lumentum. Notwithstanding any other provision contained herein, Seller shall be liable for all costs incurred by Lumentum to inspect, remove, and replace the counterfeit parts, including without limitation Lumentum's costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Supplier's goods after counterfeit parts have been exchanged. In addition, Lumentum may unilaterally terminate any current PO without any liability. Seller's liability for counterfeit parts shall survive any termination or expiration of a PO.

**18. Indemnity:**

**General Indemnity** - Supplier shall defend, indemnify and hold harmless Lumentum, its affiliates and its and their respective customers, directors, officers, employees, agents, subcontractors and other representatives (for purposes of this Section 18, collectively "Lumentum") from and against any and all losses, damages, costs, claims, liabilities, penalties and expenses (including reasonable attorneys' fees)(collectively "Losses") arising out of or related to: (i) any act or omission of Supplier (including negligence) directly or indirectly related to the PO, the use or sale of the Products - whether alone or in combination with other items - or any work performed pursuant to the PO; and/or (ii) any breach by Supplier of this Agreement. The foregoing includes without limitation any Losses relating to allegations, actions or proceedings for breach of contract, in tort (including negligence), any statutory, regulatory or other legal claims, and/or claims for bodily injury (including death) and/or damage to property.

**Intellectual Property Indemnity** - Supplier further shall defend, indemnify, and hold harmless Lumentum from and against any and all Losses arising out of or related to any claim that the Products, or their use by Lumentum, infringe, misappropriate, or otherwise violate any intellectual property or proprietary rights, including but not limited to any copyright, mask work, patent, trademark, service mark, trade name, trade secret, or any similar right conferred by contract, statute, common law, or other law. This IP indemnity applies regardless of whether such claims are brought under contract, tort, statutory, or any other legal theory and includes all related actions, proceedings, settlements, or judgments.

**19. Insurance:** Supplier shall, at its own expense, at all times during any period of performing work, either at Lumentum or elsewhere, provide and maintain in effect those insurance policies and minimum limits of coverage designated below (all dollar figures in United States currency) with insurance companies authorized to do business in the state in which work is being performed, with an A.M. Best's Insurance Rating at a minimum of A- with a financial size category of Class VII or better, or as otherwise acceptable to Lumentum:

Worker's Compensation Insurance as required by the applicable law of the state in which the work is being performed, including Employer's liability with a minimum limit of One Million Dollars (USD \$1,000,000) for bodily injury by accident, and One Million Dollars (USD \$1,000,000) for bodily injury by disease. Commercial General Liability Insurance maintained on an occurrence basis covering bodily injury and property damage liability, personal and advertising injury liability, products completed operations and contractual liability for bodily injury, property damage, personal injury and advertising injury, with minimum coverage of One Million Dollars (USD \$1,000,000) per occurrence and Two Million Dollars (USD \$2,000,000) in the aggregate.

Business Automobile Liability Insurance covering bodily injury and property damage liability, including coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of One Million Dollars (USD \$1,000,000) per occurrence.

Professional Liability Insurance for errors and omissions with a minimum limit of Five Million Dollars (USD \$5,000,000) per occurrence or per claim and Five Million Dollars (USD \$5,000,000) in the aggregate.

Umbrella and/or Excess Liability insurance on an occurrence basis with limits not less than Five Million Dollars (USD \$5,000,000) per occurrence and Five Million Dollars (USD \$5,000,000) in the aggregate in excess of the limits provided by the Supplier Employer's Liability, Commercial General Liability, and Business Automobile Liability.

Supplier shall ensure that Lumentum, its parent, subsidiaries and affiliates, its officers, directors, agents, employees and shareholders, are named as additional insureds to Supplier's Commercial General Liability Insurance. Supplier's insurance shall be primary and shall not contribute with Lumentum's insurance. Certificates of Insurance including endorsements evidencing the insurance maintained by Supplier shall be furnished to Lumentum upon request, and within a reasonable time after such coverage is renewed or replaced. Supplier shall provide Lumentum with thirty (30) days prior written notice in the event of cancellation, non-renewal or reduction in coverage that causes Supplier to no longer be in compliance with any of the requirements set forth in this Section 19. Nothing in this Section 19 shall be deemed to preclude Supplier from selecting a new insurance carrier or carriers or obtaining new or amended policies at any time, as long as the above insurance coverage is maintained. Supplier will furnish Lumentum with applicable certificates of insurance from time to time upon reasonable request.

The requirements of this Section 19 as to insurance limits, acceptability of insurers, and insurance to be maintained by Supplier are not intended to and will not in any manner limit or qualify the liabilities and obligations assumed by Supplier under this Agreement. Failure of Lumentum to obtain certificates of insurance or other evidence of full compliance with these insurance requirements or failure of Lumentum to identify a deficiency from evidence that is provided shall not be construed as a waiver of Supplier's obligation to maintain such insurance.

**20. Confidential Information:** Supplier acknowledges that certain information provided by Lumentum in connection with the PO is confidential in nature. Confidential Information means any business, marketing, technical, scientific, financial or other information, specifications, designs, plans, drawings, software, prototypes or process techniques of Lumentum, an affiliate or other third party, which at the time of disclosure, is reasonably understood to be confidential in nature, including the identity of the parties and the fact that the parties are in contact with each other (collectively, "**Confidential Information**"). Supplier shall hold Confidential Information in confidence and shall not disclose Confidential Information to third parties. Confidential Information does not include information that: (i) is or becomes publicly available through no fault of the Supplier; (ii) is lawfully disclosed to the Supplier by a third party who is not under any obligations of confidence; (iii) Supplier can establish was known to the Supplier prior to the date of disclosure by Lumentum; (iv) is required by law to be disclosed; or (v) Supplier can establish was developed independently by the Supplier without the use of Lumentum's Confidential Information. Supplier may only use Confidential Information for the purpose of fulfilling its obligations under the PO. Supplier shall, upon written request by Lumentum, promptly return and/or destroy and certify as destroyed all Confidential Information in its possession or control, as well as all material which incorporates any Confidential Information. Supplier shall not disclose, without the prior written consent of Lumentum, any Confidential Information to any third party other than its employees and contractors under similar obligations of confidence who have a need to know such information. Supplier shall assume full responsibility and shall indemnify and hold Lumentum harmless for the unauthorized disclosure or use of any Confidential Information by its employees, contractors or any other third party to whom Supplier discloses Confidential Information. All obligations of confidentiality and non-disclosure set forth in the PO survive, without limitation, the expiration or earlier termination of the PO. Where the parties have entered into a separate non-disclosure agreement which covers the subject-matter of the PO, that non-disclosure agreement, to the extent applicable, shall supersede this Section.

**21. Data Security:** Supplier represents and warrants that at all times it maintains network security and network access controls that, at a minimum, include network firewalls and regular (quarterly or annual) information security reviews. Supplier agrees to protect and maintain the security of Lumentum information and data, including any personally identifying information of Lumentum employees (and potential employees), customers or business partners from loss, misuse and unauthorized access, disclosure, alteration and destruction. If disclosing personally identifying information and/or data in connection with the PO, each party commits to comply with all applicable laws and other legal regulations with reference to data protection. Should the parties decide to pursue and/or continue the business relationship, the parties will execute a Data Processing Agreement. Security measures shall include maintaining secure systems that are patched and up-to-date with all appropriate security updates as designated by system vendor notifications. Supplier agrees that any and all transmission or exchange of system application data with Lumentum shall take place via secure means in accordance with Lumentum specifications. Supplier agrees that any and all Lumentum data will be stored, processed, and maintained solely on designated target systems and that no Lumentum data at any time will be processed on or transferred to any other target systems. Systems containing Lumentum data shall be backed up, in accordance with the data encryption specifications, to ensure data availability and integrity. Supplier agrees to store all Lumentum Confidential Information in encrypted form, using no less than a 128 bit key. Supplier agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Supplier. Supplier further agrees that no Lumentum data of any kind shall be transmitted, exchanged or otherwise passed to other third parties without Lumentum's written authorization. For personally identifiable information, Supplier will, at a minimum, have in place physical security measures designed to prevent unauthorized access to database equipment and hard copies of personal information, electronic security measures that continuously monitor access to servers and provide protection from hacking or other unauthorized access from remote locations (including the use of firewalls, restricted access and encryption technology), and limiting access to personal information and data to those persons in Supplier's organization that have a specific business purpose for maintaining and processing such personal information and data. Supplier shall promptly notify Lumentum of any security breaches and changes to Supplier's environment that may impact Lumentum's business or data. Upon request, Supplier shall provide Lumentum with written evidence that its operations and controls comply with the System and Organization Controls (SOC), General Data Protection Regulation (GDPR) and ISO27001. In case the Supplier has a known security breach or incident that may impact Lumentum or Lumentum data, Supplier will inform Lumentum within forty-eight (48 hours) at DL-Global-InfoSec@lumentum.com.

**22. No Publicity:** Supplier shall not use the Lumentum name, trademarks, or the name or marks of any of its affiliates in any public statement or publicize the fact the parties are doing business, without the prior written consent of Lumentum.

**23. Ownership and Intellectual Property Rights:** In exchange for the consideration provided to Supplier hereunder, the following rights and ownership provisions shall apply:

(i) **Ownership of Deliverables** - Lumentum shall have full and exclusive ownership, including all title and rights, in and to: (a) All Products, reports, and other deliverables provided by Supplier in connection with the PO; and (b) All intellectual property rights - including but not limited to patents, copyrights, trade secrets, and design rights - and all inventions, works of authorship, developments, improvements, know-how, software, specifications, and processes conceived, developed, created, authored, or reduced to practice by or on behalf of Supplier, either solely or jointly with others, in the performance of Supplier's obligations under the PO (collectively, the "Developed IP").

(ii) **Express Assignment of Developed IP** - To the fullest extent permitted by law, Supplier hereby irrevocably assigns, and agrees to assign, to Lumentum all right, title, and interest in and to the Developed IP, including all intellectual property rights therein, upon creation. Supplier shall require its employees, agents, subcontractors, and other representatives involved in the development of such intellectual property to enter into written agreements that effectuate the foregoing assignment to Lumentum. Supplier further agrees to execute and deliver, and cause its personnel to execute and deliver, any documents or instruments reasonably requested by Lumentum to perfect, record, or enforce Lumentum's rights in the Developed IP, including assignment documents, declarations, and powers of attorney.

(iii) **License to Supplier-Owned IP** - To the extent any deliverables incorporate or require for use any Supplier-owned or licensed intellectual property that is not assigned to Lumentum, Supplier hereby grants to Lumentum a worldwide, non-exclusive, fully paid-up, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to such intellectual property to use, make, have made, sell, import, modify, reproduce, translate, distribute such deliverables, in whole or in part, internally and/or to any third party, and to otherwise exploit such intellectual property, in whole or in part, for any internal or commercial purpose.

(iv) **Third-Party Intellectual Property** - If any deliverables include intellectual property owned by a third party, Supplier shall, at its own expense, obtain all necessary consents, waivers, or licenses from such third party to ensure that Lumentum and its customers receive the full benefit of the deliverables as intended under the PO, without any additional obligation or liability.

(v) **Use and Return of Lumentum Property** - All designs, tools, patterns, drawings, information, equipment or other material furnished or paid for by Lumentum ("Lumentum Property") shall (a) be used only in the performance of Supplier's obligations hereunder, (b) remain the exclusive property of Lumentum at all times, (c) Be kept confidential and safeguarded from loss, damage, or misuse; and (d) Be returned to Lumentum promptly upon completion or termination of the PO, in the form of finished goods or unused material. Lumentum may, at any time, enter Supplier's premises to recover Lumentum Property without liability. Supplier assumes full responsibility for any loss, damage, or destruction of Lumentum Property while in its possession or control. All such property is provided strictly "as is" with no warranty whatsoever.

**24. Information Technology:** In the event that the Products include Software, the following shall apply.

(i) **Upgrades and Updates.** Supplier shall make available to Lumentum all upgrades and updates to Software in the Products. All such upgrades and updates shall, at no additional charge to Lumentum, be provided and licensed to Lumentum as part of the intellectual property in the Products under this Agreement.

(ii) **Maintenance.** Supplier shall, at no additional charge to Lumentum, make available maintenance for the Software in the Products for the longer of (a) five (5) years after delivery of the Products; or (b) eighteen (18) months after the applicable upgrade or update is made available to Lumentum; or (c) the period for which Supplier makes available to other customers similar maintenance services for such Software. Maintenance shall include: (x) telephone support from 8 a.m. – 8 p.m. ET; and (y) an error and escalation procedure to immediately address and remedy any error or problem in the Software reported by Lumentum.

(iii) **Incident Reporting.** Supplier shall immediately notify Lumentum in the event of any actual or reasonably suspected security incident (e.g., Malware or data breaches) relating to or affecting the Products.

**25. Liability:** TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL LUMENTUM OR ITS AFFILIATES, THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR OTHER REPRESENTATIVES BE LIABLE TO SUPPLIER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS, EXPENSES OR DAMAGES INCLUDING WITHOUT LIMITATION LITIGATION COSTS, THE LOSS OF PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES OR EVEN IF SUCH COSTS OR DAMAGES ARE ALLEGED TO ARISE FROM NEGLIGENT ACTS, OMISSIONS OR CONDUCT OF LUMENTUM OR ITS AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR OTHER REPRESENTATIVES. TO THE GREATEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL LUMENTUM'S AGGREGATE LIABILITY TO SUPPLIER UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID OR DUE TO SUPPLIER FOR PRODUCTS DELIVERED IN ACCORDANCE WITH THIS AGREEMENT.

**26. Choice Of Law:** The construction, interpretation and performance of this Agreement are governed by the laws of the State of California, United States, without regard to conflicts of laws principles. The parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

**27. Assignment & Subcontracting:** Supplier may not assign or transfer any right or obligations hereunder without the prior written consent of Lumentum. Lumentum may assign its rights and obligations under this Agreement without requiring any notice to or consent from Supplier. This Agreement shall enure to the benefit of the permitted successors and assigns. Supplier may not subcontract any of its rights or obligations under the Agreement without Lumentum's prior written consent. If Lumentum consents to the use of a subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) fully indemnify Lumentum for all damages and costs of any kind incurred by Lumentum or any third party and caused by the acts and omissions of Supplier's subcontractors; and (iii) make all payments to its subcontractors.

**28. No Waiver:** Any delay by Lumentum in the exercise of any right or remedy provided herein shall in no event be deemed to be a waiver of such right or remedy. To be valid, any waiver by Lumentum must be made in writing expressly referencing the PO. A valid waiver of any right or remedy herein shall in no event be deemed to: (i) constitute a waiver of such right or remedy arising in the future or (ii) operate as a waiver of any other right or remedy.

**29. Severability:** If and to the extent that any of the terms of this Agreement become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefore another term that is legal and achieves the same objective. All remaining terms of this Agreement shall remain in full force and effect.

**30. No Authority:** The parties to this Agreement are independent contractors. No relationship of principal to agent, master or servant, employer to employee or franchisor to franchisee is established hereby between the parties. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Lumentum neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Lumentum with regard to the Products.

**31. Interpretation:** In this Agreement, unless a contrary intention appears: (i) the terms, "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular portion hereof and include any agreement supplemental hereto; (ii) words importing a singular number only shall include the plural and vice versa; and (iii) the term "including" means "including without limitation".