



## 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 (“**Seller**”) 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**”). Seller shall be deemed to have accepted this offer, and in the absence of a separate, signed agreement between Lumentum and Seller, 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 Seller’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 All other terms and conditions are hereby expressly rejected and superseded by the Lumentum Terms, and failure by Lumentum to object to any other provision, and/or Lumentum’s acceptance of the Products, shall not be deemed acceptance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 Seller’s terms, nor a waiver of the Lumentum Terms. 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 Seller 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 Seller’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 Seller 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 Seller’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, in which case Seller shall provide a corresponding credit or rebate to Lumentum within thirty (30) days or on the next invoice, whichever occurs sooner.

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

**4. Shipping:** Unless instructed otherwise, Seller 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), Seller 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. Seller 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 Seller 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, Seller 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. Seller 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 Seller to take any practicable action to remedy any delay in delivery. Seller 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 Seller 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 Seller shall be liable for the actual and reasonable costs and damages Lumentum incurs.

**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 Seller. Notwithstanding the foregoing, where Lumentum provides Seller with notice of Cancellation of a PO at least thirty (30) days prior to the scheduled delivery date, Lumentum shall have no liability or obligations to Seller whatsoever. Lumentum may, without liability on five (5) days notice (or greater), reschedule any delivery date to a later date. Seller shall not, without Lumentum’s prior written consent, commence manufacture, or procurement of parts for, the Products in advance of Seller’s normal lead time for such Products.

**7. Changes:** By written notice to Seller, 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 Seller makes, with a detailed explanation, a claim in writing within thirty (30) days from the notice date. Nothing contained in this Section shall excuse Seller from proceeding without delay in performing this PO as changed. Seller 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 Seller 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 Seller’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 Seller 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 Seller 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 Seller 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 Seller whatsoever.

**9. Warranty:** Seller warrants to Lumentum and its customers that: (i) the Products will be new and free from defects in title, design, material and workmanship; (ii) where applicable, the Products will conform to and perform in accordance with specifications, drawings and samples furnished or accepted by Lumentum; (iii) the Products as delivered by Seller on the ship date shall comply with all laws, regulations, and industry standards applicable to the nature of the products supplied; (iv) Seller shall also provide technical assistance, functionally equivalent replacement Products, repair services and failure analysis services, on any individual Product, including discontinued Products, for a period of ten (10) years after the later of: (a) the ship date to Lumentum for any individual Product or (b) Seller’s discontinuance of the Product; (v) Seller further warrants that any services provided will be performed by qualified and suitably trained individuals with sufficient experience and skill to perform such services, and with due diligence and in a manner consistent with industry

standards applied to the performance of similar services; (vi) the Products and use thereof by Lumentum and its customers in accordance with the specifications and instructions provided by Seller do not and shall not infringe, misappropriate or otherwise violate any copyright, mask work, patent, trademark, service mark, trade name, trade secret, other intellectual property right, or any similar proprietary right conferred by contract, statute, common law or any other law; (vii) that, where applicable, any software or firmware (collectively "Software") in the Products and the media used to distribute it are free of 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 Lumentum's software, hardware, data or systems (collectively, "Malware"); (viii) Seller shall adhere to any Lumentum quality policy, procedure, or control required by Lumentum; and (ix) Seller has not and will not act unethically, and Seller has not offered or given, and will not offer or give, any employee, agent or representative of Lumentum or any government, any gift or gratuity with the intent of securing business from, or favorable treatment by, Lumentum. If Products contain third party warranties, Seller 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 Seller, 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 Seller. Repaired and replaced Products shall be warranted as set forth in this clause. The above warranties, together with Seller'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, Seller shall, at its cost, provide support services as required by Lumentum and, if deemed necessary by Lumentum, at Seller'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, Seller shall pay Lumentum a full refund or credit, perform repair services, and/or provide replacement Products, all at Seller's cost, together with Seller 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 Seller experiences a capacity shortage or other impairment of its ability to provide Products ordered by Lumentum, Seller shall allocate production capacity to Lumentum on the same basis as Seller allocates capacity to its best customer(s) ordering like volumes of similar products. Seller shall notify Lumentum promptly in writing with respect to any anticipated capacity shortage, and shall provide Lumentum with timely updates during any capacity shortage.

**12. Right Of Entry:** Lumentum may, with two (2) business days prior notice to Seller, enter the premises of Seller during Seller's normal business hours to verify Seller'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 Seller's conformance to the Responsible Business Alliance (RBA) Code of Conduct.

**13. Onsite Visits/Computer Access:** Onsite Visits. Seller shall comply and ensure that its employees and agents comply with the information that is provided by Lumentum to Seller on supplier qualification questionnaires and any additional rules and regulations established by Lumentum for non-employees as advised from time to time by Lumentum, including without limitation, environmental, health and safety rules, security rules and regulations whenever Seller is in or upon Lumentum's premises. Computer Access. If it is necessary for an employee or agent of Seller to have access (either on-site or remotely) to and use any Lumentum computer systems in delivering the Products, Seller shall limit such access and use solely to perform work under the Agreement and shall not access or attempt to access any computer files, software or computer services other than as specifically authorized. Seller shall limit such access to those employees of Seller with an express requirement to have such access in connection with performance under the Agreement, shall advise Lumentum in writing of the names of each person who will have such computer access, and shall strictly follow all Lumentum security rules and procedures for restricting access to Lumentum computer systems. All identification numbers and passwords disclosed to Seller and any information obtained by Seller as a result of Seller's access and use of Lumentum computer systems constitutes Confidential Information of Lumentum. Seller shall fully cooperate in the investigation of any unauthorized access to any Lumentum computer system.

**14. Compliance:** Seller, and the Products, shall comply with all legal regulations, ordinances, decrees, orders, laws, and other rules and regulations that apply to Seller 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 Countering America's Adversaries Through Sanctions Act (CAATSA), 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), and the restriction and notification of substances set forth in EU Regulation EC 1907/2006 (REACH) and the procurement of minerals from areas of conflict. Seller 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. Seller 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.

**15. Export Restrictions and Import Requirements:** Seller shall comply with all export laws, rules, policies and procedures of the applicable government and other competent authorities and the requirements and recommendations of the U.S. Customs Trade Partnership Against Terrorism. Lumentum products, software, and technology are subject to U.S. export control laws and regulations, and may be subject to export or import regulations in other countries. Seller 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) in violation of any applicable laws or regulations of the United States or the country where Lumentum products, software, or technology was legally obtained; and/or (ii) without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Seller 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. In advance of shipment, Seller 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 Commodity Classification Number); (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 (i.e. NAFTA, General Systems of Preferences, Duty Drawback, 9801). Seller represents that it: (I) is not a person, entity, organization or other party identified on 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; (II) will not transfer Lumentum products, software, technology, or technical data to a "foreign national" having a last citizenship or permanent residency of Iran, Cuba, North Korea, Sudan or Syria; and (III) in order to comply with U.S. export control laws and regulations on Lumentum controlled technologies, Seller agrees that it will not assign any unprotected foreign national to work on Lumentum projects unless Seller 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 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 Seller:** Seller will screen all potential individual contractors and/or service providers in accordance with the Deemed Export Requirements issued pursuant to US Export Administration Regulations, the International Traffic in Arms Regulations and OFAC Regulations that may be applicable to Lumentum, 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. Seller will indemnify, defend and hold harmless Lumentum against any and all liability in the event that Seller 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. Seller 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, Seller 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. Seller 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.

**18. Indemnity:** Seller agrees to defend, indemnify and hold harmless Lumentum, its affiliates and customers and their respective directors, officers, employees, agents, subcontractors and other representatives (for purposes of this Section 18, collectively "Lumentum") from any and all loss, damage, cost, claims or actions (including reasonable attorneys' fees), penalty or any other liability whatsoever (collectively "**Losses**") arising out of: (i) any act or omission of Seller (including negligence) directly or indirectly relating to the PO, the use or sale of the Products, whether alone or in combination, or work performed pursuant to the PO; (ii) to the extent not covered by clause (i) of this Section 18, any claims alleging that any of the Products or the use thereof by Lumentum and/or its customers in accordance with the specifications and instructions provided by Seller infringe, misappropriate or otherwise violate any copyright, mask work, patent, trademark, service mark, trade name, trade secret, other intellectual property right, or any similar proprietary right conferred by contract, statute, common law or any other law; and/or (iii) Seller's breach of this Agreement. The foregoing includes without limitation any Losses relating to allegations, actions or proceedings for breach of contract, in tort (including negligence), intellectual property infringement, any statutory, regulatory or other legal claims, and/or claims for bodily injury (including death) and/or damage to property.

**19. Insurance:** Seller 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 Seller Employer's Liability, Commercial General Liability, and Business Automobile Liability.

Seller shall ensure that Lumentum, its parent, subsidiaries and affiliates, its officers, directors, agents, employees and shareholders, are named as additional insureds to Seller's Commercial General Liability Insurance. Seller's insurance shall be primary and shall not contribute with Lumentum's insurance. Certificates of Insurance including endorsements evidencing the insurance maintained by Seller shall be furnished to Lumentum upon request, and within a reasonable time after such coverage is renewed or replaced. Seller shall provide Lumentum with thirty (30) days prior written notice in the event of cancellation, non-renewal or reduction in coverage that causes Seller 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 Seller 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. Seller 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 Seller are not intended to and will not in any manner limit or qualify the liabilities and obligations assumed by Seller 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 Seller's obligation to maintain such insurance.

**20. Confidential Information:** Seller 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**"). Seller 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 Seller; (ii) is lawfully disclosed to the Seller by a third party who is not under any obligations of confidence; (iii) Seller can establish was known to the Seller prior to the date of disclosure by Lumentum; (iv) is required by law to be disclosed; or (v) Seller can establish was developed independently by the Seller without the use of Lumentum's Confidential Information. Seller may only use Confidential Information for the purpose of fulfilling its obligations under the PO. Seller 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. Seller 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. Seller 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 Seller 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:** Seller 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. Seller 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. 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. Seller 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. Seller 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. Seller agrees to store all Lumentum Confidential Information in encrypted form, using no less than a 128 bit key. Seller 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 Seller. Seller 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, Seller 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 Seller's organization that have a specific business purpose for maintaining and processing such personal information and data. Seller shall promptly notify Lumentum of any security breaches and changes to Seller's environment that may impact Lumentum's business or data. Upon request, Seller 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.

**22. No Publicity:** Seller 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:** In exchange for the consideration provided to Seller hereunder Lumentum shall: (i) have free title to, and all ownership interest in the Products and any reports or other deliverables provided by Seller in connection with the PO; and (ii) own all intellectual property rights in any software, specifications, inventions (whether patentable or not) and processes created for Lumentum under the PO, including the copyright in any original works fixed in any tangible medium of expression which were created for Lumentum. For Seller-owned or licensed intellectual property in any deliverables delivered hereunder, Seller 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. In respect of any intellectual property vested in a third party, Seller shall obtain from such third party (at no cost to Lumentum or its customers) such permission, waiver or license as may be necessary for Lumentum to use the deliverables as described herein. Seller shall furnish and execute any additional documents as Lumentum may require to establish ownership by Lumentum of the copyright, patent or any other rights or interests resulting from the performance of the PO. All designs, tools, patterns, drawings, information, equipment or other material furnished by Lumentum hereunder shall be used only in the performance of Seller's obligations hereunder. All such material, and any rights thereto, shall remain the property of Lumentum, be kept confidential by Seller, and Lumentum shall at all times have the right to enter Seller's premises and remove such property without liability to Seller. Upon the completion or termination of the Agreement, all such property shall be returned to Lumentum in the form of finished parts or unused material. Seller bears all responsibility for loss, damage or destruction while such property is within its possession or control. Property furnished by Lumentum 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. Seller 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. Seller 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 Seller 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. Seller 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 SELLER 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 SELLER UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID OR DUE TO SELLER 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:** Seller 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 Seller. This Agreement shall enure to the benefit of the permitted successors and assigns. Seller 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, Seller 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 Seller'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".