

## KINOVATE TERMS AND CONDITIONS OF SALE

These Kinovate Terms and Conditions of Sale, together with any quotations, orders or other exhibits or addenda expressly incorporated herein by reference (collectively, this “**Agreement**”), is entered into as of the Effective Date defined below by and between Kinovate Life Sciences, Inc., a Delaware corporation with offices at 501 Via del Monte, Oceanside, CA 92058 (“**KLS**”) and the customer identified on any KLS Quotation, or an accepted Order, as each such term is defined below (together with its affiliates, “**Customer**”). The “**Effective Date**” of this Agreement shall be first to occur of: (a) the date of the first Quotation provided by KLS to Customer, or (b) the date KLS first accepts an order from Customer to manufacture or supply Products or provide Services (as each is defined below). Customer and KLS may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

### **1. QUOTATIONS AND ORDERS**

**1.1 KLS Quotations.** From time to time, KLS may offer to sell to Customer certain polymeric solid support products for oligonucleotide synthesis (including KLS’s NittoPhase® line of products) and/or other related products (“**Products**”) and/or to perform for Customer related manufacturing, analytical or similar services (“**Services**”), in each such case by providing to Customer a quotation, price estimate, proposal, offer document or similar document or communication from KLS (each a “**Quotation**”) specifying the Products to be sold and/or Services to be provided, pricing and quantity information and other relevant details. All Quotations issued by KLS are an offer to contract. Customer can accept this offer in any manner that indicates acceptance including, but not limited to, ordering any quantity of products identified in a Quotation. KLS has no obligation to issue any Quotations hereunder, and each Quotation shall only be valid for the time period stated therein (or if not so stated, for a period of thirty (30) days) after which such Quotation shall expire.

**1.2 Customer Orders.** During the Term (as defined below), Customer may request to order the Products and/or Services specified in a Quotation provided by KLS to Customer by issuing a purchase order to KLS consistent with such Quotation prior to its expiration (“**Purchase Order**”), confirming the type and quantity of Products and/or Services to be ordered and the associated total price (as per the Quotation) as well as delivery details to the extent not in the Quotation. KLS may review the Purchase Order for, among other things, conformance with the Quotation, to determine whether or not to fulfill such Purchase Order. KLS may fulfill (by confirmation or otherwise) or refuse to fulfill any Purchase Order in its sole discretion. If KLS refuses to fulfill, such Purchase Order shall become null and void. Once KLS agrees in writing to fulfill a Purchase Order, the associated Quotation corresponding to such Purchase Order, together with any confirmatory details in such Purchase Order consistent with such Quotation (but not any new or additional terms or conditions in such Purchase Order) shall become effective and binding hereunder, and automatically incorporated into, this Agreement (each such Quotation and confirmatory details being an “**Order**”). Once KLS agrees to fulfill an Order, Customer may not modify, cancel or revoke such Order, except to the extent otherwise expressly specified in the underlying Quotation or agreed to in writing by KLS. Customer agrees that these Terms and Conditions of Sale exclusively govern all sales made by KLS to Customer.

### **2. SUPPLY OF PRODUCTS AND SERVICES**

**2.1 Product Manufacture and Supply.** Upon KLS’s agreement to fulfill an Order in accordance with this Agreement, KLS will use commercially reasonable efforts to manufacture and supply the Products designated in the Order in accordance with the terms and conditions of this Agreement. KLS will have no obligation to commence any manufacturing or supply activities with respect to any Products until it agrees to fulfill an Order for such Products as provided herein. If reasonably warranted, KLS may

cancel an Order if KLS determines in its reasonable discretion that it needs to do so for biosecurity, safety, infringement, export restrictions and/or feasibility reasons. Any cancellation of an Order as described above shall be without penalty or liability to KLS (provided that any prepaid amounts for such Products shall be promptly refunded to Customer by KLS). If and to the extent expressly specified in the applicable Quotation that any particular Products will be manufactured in accordance with applicable current Good Manufacturing Practices (“GMP”), KLS will manufacture such Products in accordance with GMP and provide any requisite certificates of analysis in connection with any shipment of such Products.

**2.2 Shipment and Delivery Terms.** All Products will be shipped Ex Works (Incoterms 2020) KLS’s facility to the delivery address specified in the Order. Except as otherwise stated in the Order, KLS may ship all Products using the means and carrier of its choice. KLS reserves the right to deliver Orders in installments, where applicable, in which case KLS will send a separate invoice for each delivery. Customer will pay for all shipping, handling, insurance, processing fees, freight, tariffs and customs for Products shipped hereunder. Products are deemed shipped and delivered to Customer when tendered to the applicable commercial carrier at KLS’s facility. At this point, title to the Products passes to Customer (subject to Customer’s payment in full of all associated Fees, as that term is defined below) and Customer becomes responsible for risk of loss and damage. KLS does not clear Products for import into Customer’s country if outside the U.S., which is Customer’s sole responsibility. In the event the applicable Quotation specifies any delivery dates or lead times, KLS will use commercially reasonable efforts to ship Products by such delivery dates and/or in accordance with such lead times (based on the date of Order acceptance). Time of delivery or shipment is not of the essence hereunder.

**2.3 Delivery Acceptance and Returns.** If any Products shipped to Customer under an Order do not materially conform to the applicable KLS specifications for such Products, or are materially short in quantity (except where any of the foregoing are due to causes occurring during or after shipment), then Customer can notify KLS within thirty (30) days of Customer’s receipt of such Products to arrange for the return and replacement of such Products. If Customer does not notify KLS of such non-conformance or shortfall within such time period, such Products will be deemed accepted and fully conforming and compliant for purposes of this Agreement. If Customer timely notifies KLS and, if requested by KLS, returns the Products to KLS in accordance with KLS’s reasonable instructions and the return provisions below (within no more than thirty (30) days), KLS will use commercially reasonable efforts to produce and ship to Customer replacement Products within a reasonable period of time; provided that KLS may cancel such Order (and refund or credit to Customer any amounts received from Customer for such Products) if KLS has already shipped replacement Products for such Order once before. The foregoing shall be Customer’s sole and exclusive remedy, and KLS’s sole and exclusive liability, for any failure of Products or Product shipments to conform to the Order or otherwise be satisfactory to Customer. Return of Products to KLS is allowed only after a Return Material Authorization (“RMA”) number has been issued by KLS. Such authorization will be issued, if at all, after KLS receives notice of non-conformance within the time period specified above. No shipments of returned Products will be accepted without an RMA number. Repair or replacement of Products returned to KLS as specified above will occur only after KLS has received the returned Products, reviewed the reasons for the return, and determined whether the returned Products were defective or otherwise non-conforming. Customer will bear all expenses and all risk of loss in connection with the return of Products hereunder, provided that Customer will be reimbursed by KLS for the reasonable cost of transportation of authorized Product returns to KLS if KLS reasonably determines such Products are non-conforming.

**2.4 Services.** KLS shall perform any Services specified in an Order in a professional and workmanlike manner using commercially reasonable efforts.

**2.5 Quality Agreement.** For any Products specified in the Order as being manufactured in accordance with GMP, the Parties will negotiate and enter into a reasonable and customary quality agreement if requested by either Party to the extent required in connection with such compliance.

### **3. CUSTOMER MATERIALS, ASSURANCES AND RESPONSIBILITIES**

**3.1 Customer Materials.** If and to the extent specified in the applicable Order or otherwise mutually agreed by the Parties, Customer shall provide (or have provided) to KLS sufficient amounts of certain materials (such as, for example, nucleoside succinate, linkers, other molecules to be loaded into the Products or other reagents) and/or information to be used by KLS to produce Products, provide Services or otherwise perform under this Agreement (collectively, “**Customer Materials**”). Customer shall ensure (and represents and warrants) that the Customer Materials (if any) comply with the quantity, volume and other parameters, criteria and requirements set forth in the Order therefor (or as otherwise mutually agreed by the Parties). Customer will ensure that any Customer Material will be de-identified will not include any personal information or other information the disclosure of which is prohibited by applicable law. KLS shall not be liable or responsible for (nor be in breach hereunder on account of) any defects, errors, inaccuracies, deficiencies or problems with any Customer Materials provided to KLS hereunder.

**3.2 Customer Assurances.** Customer shall provide any Customer Materials at its sole expense (including without limitation any shipping and handling) according to the timelines and other details in the Order or, if not so specified, in a prompt and timely manner so as to allow KLS’s timely performance of its supply of Products and otherwise under this Agreement. Customer agrees to label, package, and transport the Customer Materials in accordance with applicable laws. Title to the Customer Materials shall remain with Customer (and its licensors or suppliers if and as applicable). Customer represents and warrants that (a) Customer has all rights, licenses, consents and permissions required to provide the Customer Materials to KLS and for KLS to use such Customer Materials to make and supply the Products, provide Services and otherwise perform under this Agreement; and (b) KLS’s possession and use of the Customer Materials in accordance with this Agreement shall not violate any applicable laws or Customer agreement or infringe or misappropriate the intellectual property rights of any third party. Customer further represents and warrants that it has provided KLS with all material information of which Customer is aware regarding any toxic substances or material hazards associated with the handling, transport, exposure or other usage of the Customer Materials.

**3.3 KLS Use of Customer Materials and Proprietary Components** Customer hereby grants KLS and its affiliates a nonexclusive license to use the Customer Materials and any Proprietary Components (as defined below) solely to make, and supply the Products and provide Services under an Order and otherwise to perform under this Agreement. “**Proprietary Components**” means any proprietary molecules, compounds, linkers (other than those licensed directly to KLS, such as UnyLinker™) or substances, if any, to be loaded or conjugated on or into the Products pursuant to an Order. Except to the extent the Order or this Agreement expressly states otherwise, or pursuant to Customer’s prior written consent, KLS agrees to use the Customer Materials solely for the licensed purposes described above. KLS shall have no obligation to return any unused Customer Materials. KLS may extend the foregoing rights (and disclose the Customer Materials under comparable confidentiality restrictions) to affiliates and third party service providers working on behalf of KLS with respect to the permitted purposes.

**3.4 Customer Responsibilities.** Customer will provide KLS with reasonable cooperation and assistance in connection with KLS’s production and supply of Products, provision of Services and other performance under this Agreement. In addition to and without limiting the foregoing, Customer will perform those tasks and fulfill those responsibilities specified in this Agreement (including without limitation the provision of Customer Materials) and the applicable Order. Customer understands and agrees that KLS’s production and supply of Products, provision of Services and other performance under this

Agreement is dependent on and subject to Customer's timely and complete performance of such responsibilities and obligations of Customer hereunder. Customer shall comply with all applicable laws in connection with its activities and performance under this Agreement and in connection with its use of Products provided or supplied by KLS.

**3.5 Limitations and Restrictions on Use of Products.** The Products are supplied by KLS solely for use in manufacturing other products and have not been approved, cleared, or licensed by the United States Food and Drug Administration or any other regulatory entity, whether foreign or domestic, for any particular use whether research, commercial, diagnostic, therapeutic or otherwise. Customer shall be solely responsible and liable for its use of any Products supplied hereunder, including without limitation for using all such Products in accordance with applicable laws, rules, regulations and for obtaining and maintaining all necessary approvals, licenses and permissions for its use of the Products and any products manufactured with such Products. KLS will not be responsible or liable for any losses, costs, expenses, or any other forms of liability arising out of Customer's use of the Products. Customer shall use the Products only for the manufacture of products by or for Customer and shall not sell, resell, transfer or distribute the Products to any third party except for use in making products for Customer. Customer also hereby agrees not to (and not to authorize or permit others to) reverse engineer, deconstruct or disassemble any Products.

#### **4. PURCHASE PRICE; FEES AND PAYMENT TERMS**

**4.1 Purchase Price and Fees.** Customer shall pay KLS the purchase price, fees and other charges (if any) specified in each Order (collectively, "**Fees**") for KLS's production and supply of Products, provision of Services and other performance under this Agreement. Pricing does not include shipping, handling, freight, insurance, taxes, tariffs and customs, which Customer is responsible for paying and which, as applicable, KLS may add to Customer's invoice for reimbursement by Customer (which shall then be deemed part of the Fees hereunder). KLS shall have no obligation to purchase insurance for shipments unless specified in the Order, subject to reimbursement by Customer. Only the pricing on the applicable KLS-issued Quotation is valid, and KLS shall not be bound or subject to any other pricing, regardless of where stated.

**4.2 Payment Terms.** Customer shall pay the Fees to KLS on the dates or occasions specified in the Order, or if not so specified in the Order, within thirty (30) days of KLS's invoice for such Fees. Unless the Order specifies otherwise, KLS will provide invoices for shipped Products together with or promptly following such shipment. Except to the extent expressly provided otherwise in this Agreement, all Fees are non-cancelable, non-creditable and non-refundable. Any Fees not paid when due hereunder will accrue interest starting upon the due date and running until the date paid at a rate of one and one-half percent (1.5%) per month or, if lower, the highest rate allowed by applicable law. Payments shall be addressed to and sent via the means specified in the Order or otherwise as designated in writing by KLS. Unless the Order states otherwise, all Fees shall be payable in US dollars with immediately available funds. Without limiting any other rights or remedies of KLS, failure of Customer to pay any Fees when due shall entitle KLS to suspend completion or shipment of any pending Orders unless and until such Fees are paid. If KLS appoints a collection agency or an attorney to recover any unpaid amounts from Customer, KLS may charge Customer and Customer agrees to pay all reasonable costs of collection, including all associated reasonable attorneys' fees.

**4.3 Taxes.** KLS's pricing does not include applicable taxes. Customer will be responsible for the payment of, and shall pay all, taxes tariffs and duties imposed with respect to the Products supplied, Services provided (and any other performance by KLS) under this Agreement in the nature of sales, use, excise, value-added, business, goods and services, consumption, customs, tariffs, duties, withholding, and other similar taxes or duties, but excluding taxes on KLS's net income and employment taxes. If applicable and/or legally required for KLS to collect and pay any such taxes, KLS may add such taxes to Customer's

invoice which Customer shall be obligated to pay as part of the Fees. The Parties will cooperate in good faith to seek to obtain any legally available reductions or exemptions from such taxes to the extent legally permissible.

## 5. INTELLECTUAL PROPERTY

**5.1 Retention of Rights.** Customer shall retain all right, title and interest in and to the Customer Materials (subject to the rights and licenses expressly provided for in this Agreement) and all of Customer's other technology and intellectual property. KLS and its affiliates shall retain all right, title and interest in and to KLS's and its affiliates' methods, protocols, procedures, algorithms, inventions, software, documents, solid support technologies (including without limitation KLS's NittoPhase® technologies), materials, works of authorship and other technologies (and any improvements thereto) used or practiced in connection with any of the manufacturing activities, Services or other performance by or for KLS under this Agreement (collectively, "**KLS Manufacturing Technology**") and all of KLS's other technology and intellectual property. No rights or licenses in, to or under either Party's intellectual property are granted or provided hereunder, by implication, estoppel or otherwise, except to the extent expressly provided for in this Agreement.

**5.2 Product Rights.** Title to the tangible embodiment of Products ordered and shipped to Customer hereunder shall pass to Customer as provided for in Section 2.2 above (subject to Customer's payment in full of all Fees therefor); however, KLS shall retain all of its intellectual property rights in and to the Products and no assignments, rights or licenses to any KLS Manufacturing Technology or other technology or intellectual property of KLS are provided or granted to Customer by KLS in connection with such supply and shipment of Products or otherwise in connection with this Agreement, except for the following conditional and limited license. If and to the extent a license to any particular KLS Manufacturing Technology is required in order to use any Products supplied hereunder to manufacture Customer's products without infringing any intellectual property rights in or under such KLS Manufacturing Technology, KLS hereby grants to Customer a perpetual, non-exclusive, fully paid-up worldwide license under such KLS Manufacturing Technology solely to use such Products to make or have made products by or for Customer, subject to the terms and conditions of this Agreement.

**5.3 Manufacturing Suggestions.** It is not anticipated that Customer will be providing any suggestions, feedback, recommendations, improvement ideas or input regarding the KLS Manufacturing Technology ("**Suggestions**"). In the unlikely event that Customer does provide any such Suggestions to KLS, however, Customer hereby grants to KLS a worldwide, royalty-free, fully paid-up, non-exclusive, fully sublicenseable, irrevocable, perpetual license to use, make, have made, reproduce, offer to sell, sell, publicly perform, publicly display, adapt, modify, create derivative works of, distribute, import, and otherwise exploit the Suggestions. The foregoing license will survive any termination or expiration of this Agreement.

## 6. CONFIDENTIALITY

**6.1 Confidential Information.** All information of a non-public or proprietary nature that is disclosed or provided by either Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") pursuant to this Agreement shall be deemed "**Confidential Information**" of the Disclosing Party hereunder. Confidential Information may be disclosed to the Receiving Party hereunder in oral, written or other tangible form. The Customer Materials shall be Confidential Information of Customer, the KLS Manufacturing Technology and these KLS Supply Terms and Conditions shall be the Confidential Information of KLS, and the details of the Order shall be the Confidential Information of both Parties, in all such cases, subject to Section 6.2 below. Except to the extent expressly authorized by this Agreement or by the Disclosing Party in writing, the Receiving Party shall maintain in strict trust and confidence, and

shall not use for any purpose (other than to perform its obligations or exercise its rights under this Agreement), or disclose to any third party any Confidential Information of the Disclosing Party. The Receiving Party shall only disclose Confidential Information of the Disclosing Party to those expressly authorized by this Agreement or the Disclosing Party in writing hereunder and to those of its affiliates, employees, consultants, contractors, advisors and/or representatives with a reasonable need to know such information and who are bound by obligations of confidentiality at least as protective as those contained herein. The Receiving Party shall protect the Confidential Information of the Disclosing Party by using at least the same degree of care as the Receiving Party uses to protect its own confidential materials and information, but in any event no less than reasonable care.

**6.2 Exceptions.** The obligations of confidentiality and nonuse set forth in Section 5.1 above (and return and destruction of information below) shall not apply to any information that: (a) is in the public domain or comes into the public domain through no fault of the Receiving Party; (b) is furnished to the Receiving Party by a third party rightfully in possession of such information not subject to a duty of confidentiality with respect thereto; (c) is already known by the Receiving Party at the time of receiving such Confidential Information; or (d) is independently developed by the Receiving Party without use of or reference to the Confidential Information of Disclosing Party, as demonstrated by independent written records contemporaneous with such development.

**6.3 Authorized Disclosure.** Notwithstanding any of the foregoing in this Section 6, the Receiving Party may disclose Confidential Information to the extent such disclosure is required by law or regulation, or pursuant to a valid order of a court or other governmental body having jurisdiction, *provided that* the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure to the extent legally permissible and reasonable assistance in the Disclosing Party's efforts to obtain a protective order or confidential treatment preventing or limiting the disclosure.

**6.4 Return of Confidential Information.** Upon termination or expiration of the Agreement, or upon written request of the Disclosing Party, the Receiving Party shall promptly return or destroy all documents, notes and other tangible materials representing the Disclosing Party's Confidential Information and all copies thereof; provided, however, that subject to continued confidential treatment in accordance with the terms of this Agreement, the Receiving Party (i) may retain a copy of such Confidential Information for legal archival purposes and for compliance with the surviving provisions of this Agreement and applicable laws and regulations, and (ii) shall not be obligated to erase Confidential Information contained in an electronic archiving or backup system operating in the ordinary course of business.

**6.5 Injunctive Relief.** The Parties expressly acknowledge and agree that any breach or threatened breach of this Section 6 by the Receiving Party may cause immediate and irreparable harm to the Disclosing Party that may not be adequately compensated by damages. Each Party therefore agrees that in the event of such breach or threatened breach by the Receiving Party, and in addition to any remedies available at law, the Disclosing Party shall have the right to seek equitable and injunctive relief in connection with such a breach or threatened breach.

## **7. LIMITATION AND DISCLAIMER OF WARRANTIES**

**7.1 Limitations on Warranty.** Subject to the terms of Section 2.3 with respect to the rejection and return of non-conforming Products shipped to Customer, the Products and Services are provided "AS IS" without warranty, representation or guarantee of any kind.

**7.2 Disclaimer of Warranties.** EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, KLS MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS,

SERVICES OR ANY OTHER SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AS WELL AS WARRANTIES REGARDING SECURITY, RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT AND ANY WARRANTY ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. IN NO EVENT WILL KLS'S TOTAL LIABILITY FOR BREACH OF ANY WARRANTY EXPRESSLY PROVIDED HEREUNDER EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICES AT ISSUE. No description, statement or other content of any KLS website or marketing or communications materials will be binding on KLS.

## **8. INDEMNIFICATION; LIMITATION OF LIABILITY**

**8.1 By KLS.** KLS shall indemnify, defend and hold harmless Customer and its affiliates and their respective directors, officers, employees, and agents (the "**Customer Indemnitees**") from and against any and all third party suits, claims, actions, or proceedings (collectively, "**Claims**") brought against any Customer Indemnitees together with any costs, expenses, liabilities, damages and losses (including reasonable legal expenses and attorneys' fees) directly resulting from such Claims, to the extent such Claims are arising out of or caused by: (a) the gross negligence, recklessness or willful misconduct of KLS or its officers, directors, employees, or agents; or (b) the infringement by any KLS Manufacturing Technology of any third party intellectual property rights (excluding for the avoidance of doubt any such infringement to the extent arising from the Customer Materials or any Proprietary Components); except in each case to the extent that any such Claim arises out of or results from the negligence, recklessness or willful misconduct of any Customer Indemnitee or Customer's breach of its obligations, warranties, or representations under this Agreement. Should any KLS Manufacturing Technology incorporated into any Product (if any) become, or in KLS's opinion be likely to become, the subject of such an infringement Claim, KLS may, at its option, (i) procure for Customer the right to use such KLS Manufacturing Technology in the Products as provided hereunder; (ii) replace or modify, in whole or in part, the Product to make it non-infringing; or (iii) terminate the Agreement and refund any Fees paid for any affected Products supplied to Customer, less an amount determined by multiplying such Fees by a fraction, the numerator of which is the number of months elapsed since delivery of such Products (up to a maximum of 12) and the denominator of which is twelve (12). THE FOREGOING INDEMNITY SETS FORTH KLS'S ENTIRE LIABILITY AND OBLIGATION, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY CLAIM OF INFRINGEMENT OR VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS HEREUNDER.

**8.2 By Customer.** Customer shall indemnify, defend and hold harmless KLS, its affiliates, its contractors, and its and their directors, officers, employees, and agents (the "**KLS Indemnitees**") from and against any and all Claims brought against any KLS Indemnitees together with any costs, expenses, liabilities, damages and losses (including reasonable legal expenses and attorneys' fees) directly resulting from such Claims, to the extent such Claims are arising out of or caused by: (a) the gross negligence, recklessness or willful misconduct of any Customer Indemnitee; (b) any products made using the Products or the development, manufacture, use, marketing or sale of such products; (c) Customer's use of the Products ordered, including but not limited to liabilities arising from bodily injury, including death or property damage to any person arising from such use, (d) the infringement of any third party patent, license or other intellectual property rights arising from (i) the use of any Customer Materials or Proprietary Components in accordance with this Agreement, (ii) the use or sale by Customer of a manufactured good or any assembly, circuit, combination, method or process in which Customer uses any of the Products sold hereunder, or (iii) the manufacture or sale by KLS of the Products sold hereunder if KLS manufactures the Products according to Customer's specifications, or designs and manufactures the Products to meet Customer's requirements, or uses any equipment, material, parts or machinery furnished by Customer to

aid or enable KLS to manufacture the Products; (e) the alleged infringement or any trademark or violation of any law resulting from the marking, labeling, or branding, either by Customer or by KLS at the request of Customer, of the Products sold hereunder (or of Products containing or made using such Products); (f) any of the Customer Materials or KLS's use of any Customer Materials in accordance with this Agreement; (g) any claims of governmental authorities arising from any actions or omissions of Customer; or (h) Customer's breach of its obligations, warranties or representations under this Agreement, including without limitation any breach of Section 10 below; except in each case to the extent that any such Claim arises out of or results from the gross negligence, recklessness or willful misconduct of any KLS Indemnitee or KLS's breach of its obligations, warranties, or representations under this Agreement.

**8.3 Indemnification Conditions and Procedures.** Each Party seeking indemnification, defense or being held harmless for a Claim hereunder agrees to: (a) provide written notice to the indemnifying Party of such Claim promptly after the indemnified Party has knowledge of such Claim; (b) permit the indemnifying Party to assume full control over the defense and settlement of such Claim, except that the indemnified Party may cooperate in the defense at its own expense using its own counsel (and indemnified Party must approve any settlement that involves an admission by or imposes a material obligation on such Party, such approval not to be unreasonably withheld); (c) provide reasonable cooperation, information and assistance to the indemnifying Party, at the indemnifying Party's reasonable expense, with respect to the defense and settlement of such Claim; and (d) not compromising or settling (or admitting any liability for) such Claim without the indemnifying Party's written consent.

**8.4 Limitation of Liability.** EXCEPT FOR DAMAGES AVAILABLE FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 AND THE INDEMNIFICATION RIGHTS AND OBLIGATIONS UNDER SECTION 8, AND EXCEPT WITH RESPECT TO A PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST REVENUES OR PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR LOSS OF GOODWILL) ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY OF LIABILITY. IN ADDITION, IN NO EVENT SHALL KLS BE LIABLE FOR ANY DAMAGES OR OTHER AMOUNTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCTS AND/OR SERVICES GIVING RISE TO CUSTOMER'S CLAIM. HOWEVER, THE FOREGOING PROVISION DOES NOT LIMIT KLS'S LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER SECTION 8, GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT, FRAUD, FRAUDULENT MISREPRESENTATION OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY LAW.

THE PARTIES AGREE THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS, AND THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. ALL OF THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW

## **9. TERM AND TERMINATION**

**9.1 Term.** The term of this Agreement shall commence on the Effective Date and continue thereafter for one (1) year, unless earlier terminated or extended in accordance with the express provisions herein (such period, as extended or earlier terminated, being the "**Term**"). Following the end of the initial term or any renewal term, the Term of the Agreement shall automatically renew for successive one (1) year



periods unless either Party notifies the other Party at least sixty (60) days before the end of the then-current Term that it desires to end this Agreement (in which case this Agreement shall expire at the end of the then-current Term).

**9.2 Termination.** Either Party may terminate this Agreement at any time with or without cause for its convenience, effective upon ninety (90) days prior written notice to the other Party. In addition, either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches this Agreement or the Order, as the case may be, and does not cure such breach within thirty (30) days after the non-breaching Party gives notice of the breach to such other Party.

**9.3 Effects of Termination.** Pending Orders (along with the associated terms and conditions of this Agreement with respect to such Orders) shall survive any expiration or termination of this Agreement until completed and paid for, unless this Agreement is terminated for breach by a Party (or such pending Order is otherwise cancelled in accordance with the express terms of this Agreement). Sections 3.5, 5, 6, 7, 8, 9.3, 10 and 11 shall survive any termination or expiration of this Agreement. Termination or expiration of this Agreement shall not affect either Party's liability for any obligations or liabilities that have accrued prior to such expiration or termination (including without limitation any Fees owed by Customer and the corresponding provisions of Section 4 with respect thereto) or any breach of this Agreement committed before such expiration or termination.

## **10. EXPORT CONTROLS**

**10.1 Export Compliance.** Customer acknowledges and agrees that Products and information sold by or received from KLS hereunder may be subject to United States, European Union and local export control laws and regulations. Such regulations include, without limitation, the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and the regulations and orders administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury as well as comparable laws of other jurisdictions outside the United States (collectively and interchangeably referred to as "Export Control Regulations"). Customer agrees to comply with all Export Control Regulations in its receipt, shipment, use, handling, transfer, re-sale, export and re-export of KLS Products and any technical information received from KLS or related to KLS Products. Customer may not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any such Products or information (including products derived from or based on our Products or information) to any destination, entity, person or end use prohibited or restricted by any Export Control Regulations (unless the required licenses and approvals are obtained to legally do so, if available).

**10.2 Prohibited Countries and Persons.** Without limiting the generality of the foregoing, Customer agrees that no Products purchased from KLS will be sold to, transferred to, exported to, or re-exported to Cuba, Iran, Sudan, Syria, North Korea, any country subject to U.S. sanction or embargo administered by OFAC. Customer represents and warrants that it is not on OFAC's Specially Designated Nationals List, or the Entity List or Denied Persons List of the EAR ("Prohibited Persons") and agrees that no products Purchased from KLS will be sold to, transferred to, exported to, or re-exported to any Prohibited Person.

**10.3 Prohibited Uses.** Further, without limitation, Customer agrees that the Products purchased or received hereunder will not be used in connection with any of the following activities: (i) research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, nuclear reactor, facility for fabrication, conversion, processing or storage of nuclear fuel, components thereof, or other similar activities; (ii) design, development, production, stockpiling or use of chemical or biological weapons; (iii) design, development, production or use of rocket systems including ballistic missile systems, space launch vehicles, sounding rockets, and unmanned air vehicles including cruise

missile systems, target drones, and reconnaissance drones; or (iv) any activity relating maritime nuclear propulsion plants, their land prototypes and facilities for their construction, support or maintenance.

**10.4 Customer Provided Technical Data.** Customer represents and warrants that all specifications, drawings, designs, or technical information, along with all Customer Materials and Proprietary Components (collectively “Customer Technical Data”) which have been provided or will be provided by or on behalf of Customer to KLS hereunder, regardless of format or medium, are not controlled and do not require a license for export under the Export Control Regulations. Customer acknowledges and agrees that KLS will rely upon this general representation in managing its own export compliance obligations, unless Customer provides notice to KLS, in writing, that Customer Technical Data provided by or on behalf of Customer are subject to specific restrictions on export under Export Control Regulations. In such written notice, Customer will specifically identify the Customer Technical Data subject to restrictions and will advise of the following: (i) whether the Customer Technical Data provided is subject to the jurisdiction of the EAR or the ITAR; and (ii) the Export Commodity Classification Number, in the case of EAR controlled Technical Data, or the United States Munitions List category, in the case of ITAR controlled Technical Data.

**10.5 Assistance.** Upon written request from KLS, Customer shall promptly provide KLS with reasonable assistance and information to which it has access as needed for completion of exportation or importation governmental processes, including licensing, with respect to KLS’s performance under this Agreement.

## **11. GENERAL PROVISIONS**

**11.1 Governing Law; Arbitration.** This Agreement is governed by the laws of the State of New York without reference to any conflict of laws or choice of law rules or principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is hereby expressly disclaimed. Subject to the arbitration provision of this Section 11.1, the Parties hereby agree that all disputes arising out of this Agreement and any enforcement of this Agreement will be subject to (and each Party consents to) the nonexclusive jurisdiction and venue of the state and federal courts in New York City, New York. Any dispute or claim arising out of or in connection with this Agreement will be finally settled by binding arbitration in New York City, New York under the Rules of Arbitration of the American Arbitration Association, by at least one arbitrator appointed in accordance with said rules. The arbitrator shall apply New York law, without reference to rules of conflicts or law or rules of statutory arbitration, to the resolution of any dispute. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the Parties may apply to any court of competent jurisdiction for preliminary or interim injunctive or other interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

**11.2 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and remain in full force and effect while the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**11.3 No Assignment.** This Agreement may not be assigned or otherwise transferred, in whole or in part, by operation of law or otherwise, by either Party without the other Party’s express prior written consent; *provided, however*, that either Party may assign this Agreement without such consent to its affiliate or its successor in interest in connection with any merger, acquisition, consolidation, reorganization or sale of such Party or all or substantially all of the assets of such Party to which this Agreement relates. This Agreement shall be binding upon, and inure to the benefit of the successors, executors, heirs,

representatives, administrators and assigns of the Parties hereto. Any attempted assignment, delegation, or transfer in violation of the foregoing will be null and void.

**11.4 Notices.** Each Party must deliver all notices, consents, and approvals required or permitted under this Agreement in writing to the other Party at the address specified in the Order, by personal delivery, by certified or registered mail (postage prepaid and return receipt requested), by a nationally-recognized overnight carrier or by confirmed email (except for notices of breach or termination). Notice will be effective upon receipt or refusal of delivery. Each Party may change its address for receipt of notice by giving notice of such change to the other Party.

**11.5 Construction.** Section headings are included in this Agreement merely for convenience of reference; they are not to be considered part of this Agreement or used in the interpretation of this Agreement. No rule of strict construction will be applied in the interpretation or construction of this Agreement.

**11.6 Waiver.** All waivers must be in writing and signed by the Party to be charged to be effective hereunder. No failure or delay to enforce or exercise any provision, right or remedy hereunder shall constitute a waiver thereof.

**11.7 Entire Agreement; Amendments.** This Agreement, including any Orders hereunder, is the final, complete, and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous communications and understandings between the Parties with respect to such subject matter. KLS's offer to supply Products and provide Services is expressly limited to the terms of the Agreement. If Customer submits a purchase order, or other document for the purchase of Products or Services, whether or not in response to a quotation, Customer is deemed to have accepted and agreed to this Agreement, to the exclusion of (a) any other terms and conditions appearing in or referenced in Customer's purchase order or other documents, and (b) any previous course of dealing, course of performance, trade usage or co-existent agreement. No modification of or amendment to this Agreement will be effective unless in writing and signed by both of the Parties.

**11.8 Force Majeure.** Neither Party will be liable for any delays or failures in performance under this Agreement (other than payment obligations under this Agreement) due to circumstances beyond its reasonable control, including without limitation, acts of God, disease, pandemics (such as, without limitation, a Covid-19 pandemic), war, terrorism or the public enemy, riot, civil commotion or sabotage, expropriation, condemnation of facilities, changes in law, national or state emergencies or other governmental action, strikes, lockouts, work stoppages or other such labor difficulties, floods, droughts or other severe weather, fires, explosions or other catastrophes, or accidents causing damage to or destruction, in whole or in part, of the equipment or property necessary to perform the Services.

**11.9 Independent Contractors.** KLS's relation to Customer under this Agreement is that of an independent contractor. Nothing in this Agreement is intended or should be construed to create a joint venture, agency or employer-employee relationship between Customer and KLS or any of KLS's affiliates, employees or agents. Neither Party is authorized to bind, make any commitment or otherwise act on behalf of the other Party.

**11.10 Nonexclusive Arrangement.** Notwithstanding anything to the contrary herein, nothing in the Agreement shall limit or restrict KLS's right and ability at all times to provide products and services to third parties which are similar or identical to the Products or Services made, provided or supplied under this Agreement.

**11.11 Exclusion of Government Contracts.** This Agreement and the products and services hereunder are not for government customers or government contractors. Customer represents and warrants that the Products, Services and transactions under this Agreement are not subject to the U.S. Federal Acquisition Regulations or comparable regulations of other jurisdictions (collectively, “FARs”). If Customer is a governmental entity or seeking to enter into this Agreement as a government contractor (or if any FARs would otherwise apply hereto), Customer shall notify KLS in advance and obtain KLS’s prior written consent (and/or enter into such additional agreements or terms requested by KLS through a mutually executed document) prior to ordering or receiving any goods or services hereunder.

**11.12 Counterparts.** This Agreement may be entered into or executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute together the same instrument.