

# VALENCE SURFACE TECHNOLOGIES LLC

## STANDARD TERMS AND CONDITIONS OF PURCHASE

### 1. Applicability.

(a) These standard terms and conditions of purchase (these "**Terms**") are the only terms which govern the purchase of the goods ("**Goods**") and services ("**Services**") by Valence Surface Technologies LLC ("**Buyer**") from the seller named on the purchase order which accompanies these Terms ("**Seller**"). As used in these Terms, "party" refers to Buyer or Seller, and "parties" refers to Buyer and Seller, collectively.

(b) The accompanying purchase order and all specifications, drawings, designs, descriptions, technical documents, samples, requirements and documents attached thereto or incorporated by reference therein (collectively, the "**Purchase Order**") and these Terms (together with the Purchase Order, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions of sale regardless of whether or when Seller has submitted or hereafter submits its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of the Purchase Order constitutes acceptance of these Terms.

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

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order (the "**Delivery Date**"). The specific quantity of Goods ordered must be delivered in full and may not be changed without Buyer's prior written consent. Any unauthorized quantity shipped is subject to rejection and return at Seller's sole risk and expense. Goods delivered in advance of the relevant Delivery Date, without Buyer's written consent, may at Buyer's option (i) be returned at Seller's risk and expense for redelivery on the Delivery Date, or (ii) have payment therefor withheld until the date payment would otherwise have been due if the Goods had been delivered on the Delivery Date.

(b) Seller shall deliver all Goods to the address specified in the Purchase Order (the "**Delivery Point**") during Buyer's normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. In no event shall Buyer be required to return any packaging material to Seller.

(c) Seller shall provide the Services to Buyer as described in and in accordance with (i) the Purchase Order (including, without limitation, any requirements specifying date(s) for completion of Services or components thereof and related

performance schedules, timetables or project milestones), and (ii) the terms and conditions set forth in these Terms.

(d) Seller acknowledges that time is of the essence with respect to Seller's obligations under this Agreement and the timely delivery of the Goods and Services, including, without limitation, all performance dates, timetables, project milestones and other requirements in this Agreement. If delivery of Goods or rendering of Services is not completed by the time promised (whether by the Delivery Date with respect to Goods or by the relevant date(s) described in Section 2(c) hereof with respect to Services), Buyer reserves the right, in addition to any other rights and remedies which Buyer may have under this Agreement, at law or in equity, to terminate this Agreement as to Goods not yet delivered to Buyer or Services not yet rendered to Seller, and to purchase substitute goods or services elsewhere and charge Seller with any damages incurred, whether special, direct, indirect, incidental or consequential (including, without limitation, as described in Section 11 hereof).

3. Shipping Terms. Delivery shall be made FOB Delivery Point, in accordance with these Terms and all provisions set forth in the Purchase Order. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

4. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point.

5. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines that the Goods or any portion thereof are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) terminate this Agreement (either in whole or in part, in Buyer's sole discretion); (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, (i) replace the nonconforming or defective Goods in accordance with a revised delivery schedule to be provided by Buyer and (ii) pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under this Agreement. In no event shall Buyer's selection of a remedy described in subparts (a), (b) or (c) of this paragraph in any way limit the other rights and remedies which Buyer may have under this Agreement, at law or in equity, including without limitation, the right to recover from Seller any damages incurred, whether special, direct, indirect, incidental or consequential (including, without limitation, as described in Section 11 hereof). Moreover, in no event shall Buyer's selection of a remedy described in subparts (a), (b) or (c) of this paragraph in any way limit Buyer's right to purchase substitute goods elsewhere and charge Seller with any damages incurred, except that in the event that Buyer selects the subpart (c) remedy, Buyer shall not purchase substitute goods elsewhere unless Seller fails to timely deliver replacement Goods in strict compliance with all terms set forth in this Agreement. Furthermore, in the event that

Buyer selects the remedy described in subpart (c) and Seller fails to timely deliver replacement Goods in strict compliance with all terms set forth in this Agreement, Buyer may terminate this Agreement.

6. Price. The price of the Goods and Services is the price stated in the Purchase Order (the "**Price**"). Buyer will not be responsible to pay any amounts (other than the Price) without the prior written consent of Buyer, whether for packaging, transportation, storage, insurance, customs, duties, taxes or otherwise. No increase in the Price shall be effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Notwithstanding any language to the contrary in this Agreement, in no event shall Buyer be liable to Seller or any third party for any special, indirect, incidental or consequential damages, including but not limited to lost profits.

7. Payment Terms. Seller shall issue an invoice to Buyer on or no later than sixty (60) days after delivery (of Goods) or completion (of Services) and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within ninety (90) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute. Without prejudice to any other right or remedy which Buyer may have under this Agreement, at law or in equity, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

8. Seller's Obligations Regarding Services. Seller shall, at all times during the term of this Agreement:

(a) comply with all policies of Buyer, including without limitation, security procedures concerning systems and data and remote access thereto, building security procedures, including without limitation, the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(b) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve. During the term of this Agreement and for a period of seven (7) years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;

(c) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including any subcontractors or affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's written consent shall not relieve Seller of its obligations under this Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's

own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier;

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

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

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

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

9. Change Orders. Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "**Change Order**"), order changes to the Services. Seller shall within two (2) business days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement.

10. Warranties.

(a) Seller warrants to Buyer that for a period of one (1) year after the Delivery Date, all Goods will:

(i) be free from any defects in workmanship, material and design;

(ii) conform to all applicable specifications, drawings, designs, descriptions, technical documents, samples and other requirements specified or provided by Buyer and, if and to the extent that Buyer-specific requirements are not applicable to certain Goods, then such Goods shall conform to all applicable specifications, drawings, designs, descriptions, technical documents and samples of Seller, whether included in a catalog, advertised or otherwise available to potential customers of Seller in print or electronic form, or otherwise provided to Buyer;

(iii) be fit for their intended purpose and operate as intended;

(iv) be merchantable;

(v) be free and clear of all liens, security interests or other encumbrances; and

(vi) not infringe or misappropriate any third party's patent or other intellectual property rights.

All warranties set forth in this Section 10(a) shall survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer.

(b) Seller warrants to Buyer that it shall perform all Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in accordance with all provisions set forth in this Agreement (including, without limitation, in accordance with all requirements specified by Buyer) and shall devote adequate resources to timely meet all obligations of Seller under this Agreement.

(c) The warranties set forth in this Section 10 are cumulative and in addition to any other warranties provided in this Agreement, at law, or in equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the relevant warranty. If Buyer gives Seller notice of noncompliance with any provision set forth in this Section 10 or noncompliance with any other applicable warranty, Seller shall, as determined in Buyer's sole discretion: (i) replace the noncompliant Goods, at Seller's sole cost and expense (including, without limitation, transportation charges for delivery of replacement Goods to Buyer) and on such timeframe as will be specified by Buyer; (ii) repair the noncompliant Goods, at Seller's sole cost and expense (including, without limitation, transportation charges for the return of such Goods to Seller and delivery of repaired Goods to Buyer) and on such timeframe as will be specified by Buyer; (iii) re-perform the noncompliant Services, at Seller's sole cost and expense and on such timeframe as will be specified by Buyer; or (iv) refund in full the Price paid by Buyer for such Goods and Services, no later than five (5) days following Buyer's request for a refund. In addition, Seller shall be responsible for all (A) costs and expenses incurred by Buyer in identifying, determining the disposition of, and processing required documentation for the noncompliant Goods/Services; (B) delay and disruption costs incurred by Buyer; and (C) other costs or damages which Buyer incurs, whether special, direct, indirect, incidental or consequential (including, without limitation, as described in Section 11 hereof). Moreover, in no event shall Buyer's selection of a remedy described in subparts (i), (ii), (iii) or (iv) of this paragraph in any way limit Buyer's right to purchase substitute goods or services elsewhere and charge Seller with any damages incurred, except that in the event that Buyer selects a remedy described in subpart (i), (ii) or (iii), Buyer shall not purchase substitute goods or services elsewhere unless Seller fails to timely provide the relevant Goods and Services in strict compliance with all terms set forth in this Agreement.

11. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer, Buyer's subsidiaries and affiliates, and each of the directors, managers, officers, agents, employees, representatives, shareholders, members and partners of Buyer and each of Buyer's subsidiaries and affiliates, and their respective successors and assigns (collectively, the

"Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including without limitation attorney and professional fees and costs, court costs, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (a) the Goods and Services purchased from Seller (b) Seller's breach of any representation, warranty, covenant or other agreement or provision set forth in this Agreement, or (c) Seller's negligence or willful misconduct. Seller shall not enter into any settlement without Buyer's prior written consent. In furtherance and not in limitation of the foregoing, and notwithstanding any language to the contrary in this Agreement, all warranties of Seller, whether express or implied, and all other covenants and agreements of Seller set forth in this Agreement, shall extend to, and be jointly and severally enforceable by, Buyer, Buyer's subsidiaries and affiliates, any and all customers of Buyer or any of Buyer's subsidiaries or affiliates, and all third parties to or by whom any Goods or Services may be sold, transferred or used, regardless of whether such Goods or Services remain in the same form or are owned by the enforcer of the warranty or other provision at the time of suit.

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

13. No Limitation of Liability. Nothing in this Agreement shall be deemed to exclude or limit Seller's liability under the provisions set forth in this Agreement or Seller's liability for fraud, personal injury or death, whether caused by Seller's negligence, willful misconduct or otherwise. Notwithstanding any language to the contrary in this Agreement, all rights and remedies of Buyer set forth in this Agreement are cumulative and in addition to any other rights and remedies provided at law or in equity. In furtherance and not in limitation of the foregoing, and notwithstanding any language to the contrary contained herein, the exercise by Buyer of any rights or remedies, including without limitation, the right to repair or replacement of any Goods or termination of this Agreement or any portion thereof, shall in no event limit Buyer's right to recover cash damages under this Agreement, whether pursuant to Section 11 hereof or otherwise.

14. Insurance. At all times during the provision of any Goods, performance of any Services, or performance of any other obligations of Seller under this Agreement, and continuing through the duration of the warranty period(s) described in Section 10 above, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial liability (including but not limited to bodily injury, personal injury, advertising injury and property damage coverages), product liability, professional liability (if Seller is a licensed professional), and worker's compensation insurance policies. The limits of such policies shall be equal to or greater than the highest limits Seller or any of its affiliates has agreed to with other buyers of Seller's or any of its affiliate's services or products, but in no event shall any occurrence or claim limit, or any aggregate limit, on any such policy required hereunder be less than \$5 million (in primary and excess coverage combined). In addition, Buyer reserves the right to require Seller to (and if exercised, Seller shall) procure policies in addition to the types described herein, and/or increase the coverage limits on any required policy,

and/or procure any form of surety bond. The insurers issuing all such policies and bonds described in this Section 14 shall be financially sound and reputable, with a minimum A.M. Best Rating of "A." All insurance policies described herein (except professional liability and workers compensation policies) shall name the Buyer and its officers, directors, managers, employees and agents as additional insureds and shall be primary, noncontributory and otherwise required to pay a covered loss prior to any other available insurance policy. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in any of the Seller's insurance policies required hereunder. Except where prohibited by law, Seller shall require its insurers to waive all rights of subrogation against Buyer's insurers and the Indemnitees. Upon Buyer's request at any time, Seller shall provide Buyer with certificates of insurance, policies and bonds from Seller's insurers evidencing the insurance coverage and/or other obligations specified in these Terms and/or otherwise required by the Buyer pursuant hereto. Should Seller fail to provide or maintain any of the above insurance coverages or surety bonds, Seller shall defend, indemnify and hold harmless Buyer and the other Indemnitees from and against any and all Losses (even if such Losses arise in whole or in part, or are alleged to arise in whole or in part, from the negligence of Buyer or another Indemnitee) to the fullest extent that such Losses would not have been incurred by the Buyer or other Indemnitee if the Seller had provided for and maintained the insurance coverages and/or surety bonds set forth herein.

15. Compliance with Law. Seller shall at all times comply with any and all applicable federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions and orders now or hereafter in effect which relate to this Agreement or Seller's performance under this Agreement, including, without limitation, as set forth by any governmental, quasi-governmental or regulatory authority. Seller shall at all times timely obtain and maintain in effect all licenses, permissions, authorizations, certifications, consents and permits necessary to carry out its obligations under this Agreement, whether issued by any governmental, quasi-governmental or regulatory authority, trade association or organization, or any other third party. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance.

16. Termination. In addition to any rights and remedies that Buyer may have under this Agreement, at law or in equity, Buyer may terminate this Agreement (or any portion thereof) with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods or Seller's delivery of the Services, if Seller breaches or otherwise fails to perform or comply with any provision set forth in this Agreement. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates this Agreement for any reason permitted in this Agreement, Seller's sole and exclusive remedy shall be payment for the Goods received and accepted and Services accepted by Buyer prior to such termination.

17. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates,

or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or visually or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, may be used by Seller solely for the purpose of performing this Agreement, and may not be disclosed or copied by Seller unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.

19. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party's (the "**Impacted Party**") failure or delay is caused by the following force majeure events ("**Force Majeure Event(s)**"): acts of God, war, invasion, terrorist threats or acts, riot or other civil unrest, government order or law. The Impacted Party shall give notice within one (1) day of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days, the other party may thereafter terminate this Agreement.

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

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries. Except as set forth in Section 11 hereof, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and, except as set forth in Section 11 hereof, nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.



23. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

24. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California, in each case located in Los Angeles County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address as may be designated in writing as described in this Section 25. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

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

27. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Warranties, General Indemnification, Intellectual Property Indemnification, No Limitation of Liability, Insurance, Compliance with Law, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.

28. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and signed by an authorized representative of each of the parties hereto.